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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-06-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

WA No. 2451 of 2023

1. The State Of Tamilnadu
Rep. by its Secretary, Health and Family
Welfare Department, Fort St. George,
Chennai-9.
2. The Superintendent
Government T.B Hospital, T.B.Sanitorium,
Chennai-47.

..Appellant(s)

Vs

R. Krishnaveni

..Respondent(s)

Writ Appeal filed Clause 15 of Letters Patent issuing writ of certiorari mandamus to set aside the order dated 21.02.2023 made in WP.No.5533 of 2015.

For Appellant(s): Dr.R.Gouri, Government Counsel

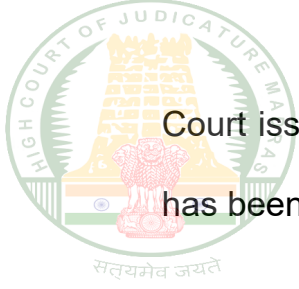
For Respondent(s): Mr.R.Thangamani

JUDGMENT

(Judgment of the Court was delivered by S.M.Subramaniam J.)

Under assail is the writ order dated 21.02.2023 in W.P.No.5533 of 2015.

2. State preferred the present appeal mainly on the ground that Writ



Court issued a direction to regularise the services of a substitute worker, who has been appointed on temporary basis in Government hospital.

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3. The facts in brief are that respondent was engaged as substitute worker on temporary basis whenever a leave vacancy arises, and salary was paid on daily wage basis. Substitute workers in Government hospitals are engaged on need basis, and in the present case, respondent had been frequently engaged as substitute worker on leave vacancies in Government hospital. Pertinently, respondent was terminated from service on the allegation that she has given a false date of birth to secure job of substitute worker. Since, High Court in W.P.No.32613 of 2006 modified the punishment from termination to that of stoppage of increment for four years with cumulative effect, respondent was allowed to continue as substitute worker. Subsequently, respondents have filed W.P.No.5533 of 2015, seeking retrospective regularisation from the date on which she was engaged as substitute worker.

4. Pertinently, Government itself has considered the case of the respondent and by relaxing Service Rules, regularised her services in the sanctioned post in the time scale of pay with effect from 31.07.2008. Thus, Government has extended a concession by relaxing the relevant Rules and granted regularisation with effect from 31.01.2008. Not satisfied with that, respondent filed a writ petition seeking retrospective regularisation. In respect



of grant of regularisation and permanent absorption, the Hon'ble Supreme Court of India in the case of **Secretary to Government, School Education Department, Chennai Vs. Thiru R. Govindaswamy & Others**¹ issued the following directions,

*“7. This Court in **State of Rajasthan & Ors. v. Daya Lal & Ors.**, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:*

“8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want

¹ 2014 (4) SCC 769

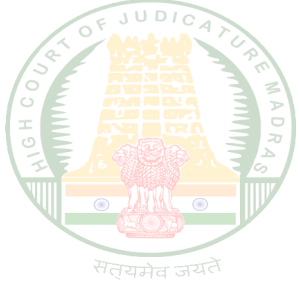


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of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by



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extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.” (Emphasis added).”

5. In the present case, grant of regularisation with effect from 31.7.2008 given to the respondent by itself is a concession extended by the Government and by relaxing the Rules. That being the factum, she cannot now seek retrospective regularisation from the date on which she was engaged as substitute worker in Government hospitals.

6. Thus, this Court is of the considered view that order of the Writ Court



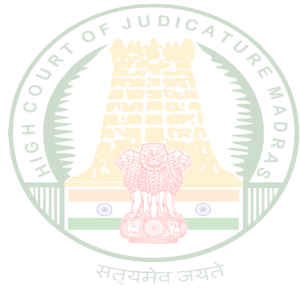
granting retrospective regularisation is not in consonance with the legal principles settled by the Hon'ble Supreme Court of India in the matter of regularisation and permanent absorption of part time, contractual and temporary substitute employees.

7. Consequently, the writ order dated 21.02.2023 made in WP.No.5533 of 2015 is set aside and the writ appeal stands allowed. No costs. The connected miscellaneous petitions, if any, are closed.

(S.M.S.,J.) (N.S.,J.)
15-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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**S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.**

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