BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.5121 of 2015
and
M.P.(MD) Nos.2 & 3 of 2014

1.Vijayan
2.C.Dhas
3.Thomas Verghese @ Sabu
4.V.Shaji
5.G.Justin Kumar ... Petitioners

vs.

1.The Secretary to the Government
Local Administration Department
Government of Tamil Nadu
Fort St.George, Chennai-600 009

2.The District Collector
Kanyakumari District at Nagercoil

3.The Commissioner
Melpuram Panchayat Union
Pacode Post, Kanyakumari District

4.The President
Mancode Village Panchayat
Vellachiparai Post, Kanyakumari District

5.The President
Puliyoorsalai Panchayat
Mancode Post, Kanyakumari District ... Respondents
[Cause Title amended vide order dated 09.07.2019 in M.P. (MD) No.4 of 2015]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to forthwith regularize the services of the petitioners on completion of 5/10 years of such services and consequently confer the time scale of pay by bringing into regular establishment with effect from the date of completion of 5/10 years of service and extend all benefits both service and monetary.

For Petitioner : Mr.R.Aravindraj

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader for R1, R2, R4 & R5
Mr.R.Murugan for R3

ORDER

The relief sought for in the present writ petition is for a direction to the respondents to forthwith regularize the services of the writ petitioners on completion of 5/10 years of services and confer the regular time scale of pay by bringing them into the regular establishment.

2. The learned counsel appearing for the writ petitioners states that the writ petitioners were initially appointed as Water Supply Assistants, on 03.08.1999, 26.09.2000, 25.09.2000, 01.12.2002 and 08.07.2006 respectively. The writ petitioners were engaged as daily wage employees on temporary basis. The writ petitioners have served more than five years and some of the writ petitioners have served more than ten years and therefore, they are entitled to be regularised in the sanctioned post in the regular time scale of pay.

3. The learned counsel for the writ petitioners further states that the Government has issued various orders extending the benefit of regularization in respect of daily wage employees, who have served more than ten years on temporary basis. Therefore, the writ petitioners also must be provided with the benefits of regularization and permanent absorption with reference to the Government Orders in force.

4. The learned counsel for the writ petitioners further states that the Courts have also granted the benefits of regularization and permanent absorption in respect of some writ petitioners and those persons have already brought under the regular establishment. This being the factum, the case of the writ petitioners are to be considered for grant of regularization.

5. Grant of regularization or permanent absorption cannot be granted in violation of the recruitment rules in force. All appointments are to be made strictly in accordance with the recruitment rules in force. Equal opportunity in public employment is the constitutional mandate. The Honourable Supreme Court of India has passed an order stating that High Courts cannot issue a direction, under Article 226 of the Constitution of India, to the authorities concerned to regularize the services of the employees, who were not appointed in accordance with the recruitment rules in force.

6. Under these circumstances, the case of the writ petitioners cannot be considered for grant of regularization or permanent absorption, in view of the legal principles settled by the Constitution Bench of the Honourable Supreme Court of India in the case of the ***Secretary, State of Karnataka and others vs. Umadevi and others***, reported in ***(2006) 4 SCC 1***. The relevant paragraphs of the said Judgment are extracted hereunder:

> *"5. This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the*

teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times,even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

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10. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in2003 (9) SCALE 187. This Court noticed that in the matter of regularization of ad hoc employees, there were conflicting decisions by three Judge Benches of this Court and by two Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in 2003 (10) SCALE 388. It appears to be proper to quote that order of reference at this stage. It reads:

1. Apart from the conflicting opinions between the three Judges' Bench decisions in ***Ashwani Kumar and Ors.*** *v.* ***State of Bihar and Ors.****reported in MANU/SC/0379/1997 : (1997)IILLJ856SC ,****S tate of Haryana and Ors.*** *v.* ***Piara Singh and Ors.*** *Reported in MANU/SC/0417/1992 :(1993)IILL J937SC and* ***Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and Ors.*** *v.* ***State of Karnataka and Ors.*** *Reported in MANU/SC/0164/1990 : (1990)IILL J318SC , on the one hand and* ***State of Himachal Pradesh*** *v.* ***Suresh Kumar Verma and Anr.*** *Reported in MANU/SC/0406/1996 : [1996]1SCR972 ,****S tate of Punjab*** *v.* ***Surinder Kumar and Ors.*** *Reported in MANU/SC/0306/1992 : [1992]194ITR434(SC), and* ***B.N. Nagarajan and Ors.*** *v.* ***State of Karnataka and Ors.*** *Reported in MANU/SC/0450/1979 : (1979)IILL J209SC on the other, which has been brought out in one of the judgments under appeal of Karnataka High Court in* ***State of Karnataka*** *v.* ***H. Ganesh Rao*** *decided on 1.6.2000, reported in2001 (4) KLJ 466, learned Additional Solicitor General urged that the scheme for regularization is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution of India and, therefore, these cases are required to be heard by a Bench of Five learned Judges (Constitution Bench).*

2. On the other hand, Mr. M.C. Bhandare, learned senior counsel, appearing for the employees urged that such a scheme for regularization is consistent with the provision of Articles 14 and 21 of the Constitution.

3.Mr.V.Lakshmi Narayan, learned Counsel, appearing in CC Nos. 109-498of 2003, has filed the G.O. dated 19.7.2002 and submitted that orders have already been implemented.

4. After having found that there is conflict of opinion between three Judges Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before Hon'ble the Chief Justice for appropriate orders.

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should.

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12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on dailywages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and thatare required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is

nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. hat is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has aright to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In

effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context,we have also to bear in mind the exposition of law by a Constitution Bench in ***Stateof Punjab*** *v.* ***Jagdip Singh and Ors.*** *MANU/SC/0273/1963 : (1966)ILL J749SC . It was held therein,*

> *"In our opinion, where a Government servant has no right to a pos tor to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."*

14. During the course of the arguments, various orders of courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to legal principles and it is time that this Court settled the law once for all so that in case the court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing

such directions or passing such orders. The submission of learned Counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in the ***Dharwad*** *case (supra), all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the socalled equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one*

way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

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20. The Decision in Dharwad Distt. P.W.D. Literate Daily Wage Employees ***Association and Ors.*** *v.* ***State of Karnataka and Ors.*** *MANU/SC/0164/1990 :(1990)IILL J318SC dealt with a scheme framed by the State of Karnataka, though at the instance of the court. The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent,or what it called regularization, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily wage basis. In other words, employees who had been appointed without following the procedure established by law for such appointments. This Court, at the threshold, stated that it should individualize justice to suit a given situation. With respect, it is not possible to accept the statement, unqualified as it appears to be. This Court is not only the constitutional court, it is also the highest court in the country, the final court of appeal. By virtue of Article 141 of the Constitution of India, what this Court lays down is the law of the land. Its decisions are binding on all the courts. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution. We have*

given unto ourselves a system of governance by rule of law. The role of the Supreme Court is to render justice according to law. As one jurist put it, the Supreme Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos. Its role, therefore, is really to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the court in the self same judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot.

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43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the

appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment,he would not be entitled to be absorbed in regular service or made permanent,merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to

relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis,temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used forgiving the go-by to the procedure established by law in the matter of public

employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the ***Dharwad*** *decision, the Government had issue deprecated directions and mandatory orders that no temporary or ad hoc employ mentor engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment,specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.*

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It maybe true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts

whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular

appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in ***Dharwad*** *(supra),* ***Piara Singh*** *(supra),* ***Jacob****, and* ***Gujarat Agricultural University*** *and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See* ***Lord Diplock in Council of Civil Service***

Unions *v.* ***Minister for the Civil Service*** *1985 Appeal Cases 374,* ***National Buildings Construction Corporation*** *v.****S. Raghunathan*** *MANU/SC/0550/1998 : AIR1998SC2779 and* ***Dr. Chanchal Goyal****v.* ***State of Rajasthan*** *MANU/SC/0133/2003 : [2003]2SCR112 . There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the* ***Dharwad*** *decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on*

legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar

work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves,they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post,since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating un-equals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of

Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16and 309 so as to ensue that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all,the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

7. The legal principles settled by the Constitution Bench were reiterated by the two Judges Bench of the Honourable Supreme Court of India, in the case of ***Secretary to Government, School Education Department, Chennai vs. R.Govindasamy,*** reported in ***(2014) 4 SCC 769,*** and the relevant paragraphs are extracted hereunder:

> *"8. 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:(SCC P.435,para 12)*
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> > *"(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 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 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 supplied)"

8. Recently, the Honourable Supreme Court of India in the case of ***State of Tamil Nadu vs. A.Singamuthu,*** reported in ***2017 (4) SCC 113***, has held as follows:

"16. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O. Ms. No.22 dated 28.02.2006 and directed the appellants to grant regularisation of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O. Ms.No. 22 dated 28.02.2006, the services of employees working in various government

departments on full-time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularised and not part-time Masalchis like the respondent herein. In G.O.Ms. No. 84 dated 18.06.2012, the Government made it clear that G.O.Ms. No. 22 dated 28.02.2006 is applicable only to full- time daily wagers and not to part-time daily wagers. Respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part-time Masalchi, cannot compare himself to full-time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under the G.O.Ms. No.22 dated 28.02.2006.

17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned senior counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/- (approximately)towards back wages apart from pension

which will have a huge impact on the State exchequer. That apart, the learned senior counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

18. It is pertinent to note that even the regularisation of services of part-time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A. 2)Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No. 22 P &AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to

the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.

19. In the result, the impugned order is set aside and this appeal is allowed. No costs."

9. In view of the legal principles settled, the writ petitioners, who were appointed as daily wage employees on temporary basis, cannot seek the benefits of regularization and permanent absorption. The writ petitioners are at liberty to participate in the process of selection, if any notified, for the sanctioned post in the regular time scale of pay.

10. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

09.07.2019
(2/2)

Index : Yes / No
Internet : Yes / No

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To:

1.The Secretary to the Government,
Local Administration Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The District Collector,
Kanyakumari District at Nagercoil

3.The President,
Mancode Village Panchayat,
Vellachiparai Post, Kanyakumari District.

4.The President,
Puliyoorsalai Panchayat,
Mancode Post, Kanyakumari District.

S.M.SUBRAMANIAM,J.

krk

W.P.(MD) No.5121 of 2015
and
M.P.(MD) Nos.2 & 3 of 2014

09.07.2019
(2/2)