

SUPREME COURT OF INDIA

Secretary to Govt. Commercial Taxes & Registration
Department, Secretariat

Vs.

A.Singamuthu

C.A.No.3770 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

07.03.2017

JUDGMENT

R. Banumathi,J.,

SLP (C) No. 17702 of 2014

1. Leave granted.

2. This Civil Appeal arises out of the judgment of the High Court of Judicature at Madras dated 04.07.2012 dismissing the Writ Appeal No.1209 of 2012 thereby affirming the order of the learned Single Judge directing to grant regularization to the respondent from the date of completion of ten years of service with salary and other benefits.

3. The respondent herein was appointed as a part-time Masalchithrough Employment Exchange on 01.04.1989 and continued to work there and as part-time Masalchi attended the menial work in the appellant-department at District Registrar Office, Trichy in the State of Tamil Nadu. The respondent completed ten years of service as part-time Masalchi on 31.03.1999. In G.O. Ms. No.22 Personnel and Administrative Reforms (F) Department, dated 28.02.2006, the State Government of Tamil Nadu directed that the services of the fulltime daily wages employees working in all Government Departments, who have rendered ten years of service as on 01.01.2006 be regularized by appointing them in the time scale pay of the post concerned subject to their being otherwise qualified for the post. In furtherance to the above Government Order, G.O. (D) No.659 Commercial Taxes and Registration (M2) Dept. dated 28.12.2006 was issued whereby the Government directed to fill vacancies in various categories in the Registration Department existing against the Direct Recruitment through Tamil Nadu Public Service Commission, Employment Exchange, Commissioner of Technical Education and on Compassionate Grounds, etc. various categories were considered and, interalia, among them 308 posts of watchman were required to be filled.

4. The respondent herein approached the High Court by filing W.P. No.26702 of 2010 praying for regularization of his service on completion of ten years of service from the date of his appointment and to appoint him as Watchman in the regular time scale. Vide order dated 26.11.2010, the learned Single Judge directed the Inspector General of Registration to extend the benefits of G.O. Ms. No. 22 dated 28.02.2006 and grant regularization to the respondent from the date of completion of ten years of service with salary and other benefits.

5. Being aggrieved, the appellant-department filed writ appeal contending that G.O.Ms. No.22 dated 28.02.2006 is applicable only to the daily wage full-time employees and not applicable to the respondent as the respondent was only a part-time Masalchi. During the pendency of the Writ Appeal vide proceedings No.10425/A1/2012 dated 02.07.2012, the District Registrar appointed the respondent and four others as a full-time employees in the post of Watchman by regularizing them and the services of respondent has been placed at Sub-Registrar, Uraiur, Trichy. The Writ Appeal filed by the Department was dismissed by the High Court affirming the order of the Single Judge. Aggrieved, the appellants have filed this appeal contending that the High Court has erred in directing regularization of the service of the respondent herein from the date of completion of ten years of his service with salary and other benefits.

6. Mr. Subramaniam Prasad, learned senior counsel for the appellants has assailed the impugned order by contending that there is no provision in the relevant Rules and Government Orders to regularize the service of temporarily appointed part-time Masalchis on completion of ten years of service or otherwise. With regard to G.O. Ms. No.22 dated 28.02.2006, the learned senior counsel Mr. Subramoniam Prasad argued that respondent being a part-time Masalchi who works only for two-three hours per day does not qualify for the benefit, as the Government Order directed regularization of services of full-time daily wage employees only. The counsel also contended that the High Court failed to note that many full-time Masalchis serving in various departments of the State Government were regularized only as a one-time scheme to bring them under the time scale of pay and the regularization scheme was operative only from the date of issuance of order. The counsel further contended that the High Court ought to have taken note of the fact that if the regularization is granted retrospectively to the respondent, in the absence of any law, it will have serious consequences in the administration of the various departments and huge financial loss will be caused to the State. The counsel brought to our notice that 72 persons out of 172 persons of the appellant-department have already filed writ petitions before the High Court which are still pending and if the impugned order is not set-aside, they will also approach the Court for regularization with retrospective effect in which case the financial burden cast upon the appellant would run to crores of rupees per annum and the same would adversely affect the State as well as the public exchequer. The counsel lastly contended that if the impugned order is not set aside, it would open flood gate of unwarranted litigations.

7. Per contra, the learned counsel for the respondent contended that following G.O. Ms. No. 22 dated 28.02.2006, the High Court had earlier allowed claims of many similarly situated employees and the order of the High Court was also confirmed by this Court. The counsel thus contended that the High Court rightly directed the appellants to extend the benefit of

G.O. Ms. No. 22 dated 28.02.2006 issued by Personnel and Administrative Reforms Department, to the respondent, retrospectively from the date of completion of ten years of respondent's service with salary and other benefits. The counsel also contended that the respondent should get the benefit of G.O. Ms. No. 505, Finance (AA-2) Department dated 14.10.2009 and the respondent sought parity with those 57 part-time employees, working as Masalchi in Treasury Department, whose services were regularized vide G.O. Ms. No. 32, Finance (Ka. Ka 2) Department dated 26.03.2010.

8. We have considered the submissions of the learned counsel for both the parties and also perused the impugned judgment and the documents available on record.

9. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularization in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularized or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularization is missing from the rule book and regularization casts huge financial implications on public exchequer.

10. In the present case, it is available on record that the State Government vide G.O. Ms. No.22 dated 28.02.2006, issued by the Personnel and Administrative Reforms Department, directed the services of daily wage employees working in all Departments of Government, who have rendered ten years of service as on 01.01.2006 to be regularized by appointing them in the time scale of pay of the post concerned subject to they being otherwise qualified for the post. G.O.Ms.No.22 Personnel and Administrative Reforms dated 28.02.2006 reads as under:-

“ABSTRACT

Public Services Employees working on daily wages-Bringing into regular establishment on completion of ten years of service as on 01.01.2006-Orders issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (F) DEPARTMENT

G.O. Ms. No.22

Dated 28.02.2006

ORDER:

The Hon'ble Chief Minister had announced during the Tamil Nadu Government Officials Union and Government Servants and Teachers Associations General Conference held on 08.02.2006, that the services of employees working in various Government Departments on daily wages basis who have completed more than 10 years of service as on 01.01.2006 will be regularized.

2. Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wages employees working in all

Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.

3. The Departments of Secretariat may therefore, be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006 as ordered in para 2 above in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required proposal shall be sent to Government.

4. This order issues with the concurrence of Finance Department vide its U.O. No.985/FS/P/2006 dated 28.02.2006.”

11. In G.O. Ms.No.22 P & AR Dept. dated 28.02.2006, only full-time daily wage employees were directed to be regularized on completion of ten years of continuous service as on 01.01.2006. This was clarified by the Government in the Government Order passed subsequently G.O.Ms.No.74 P & AR Dept. dated 27.06.2013 clarifying that G.O.Ms.No.22 P & AR Dept. dated 28.02.2006 is applicable only to the full-time daily wage employees, who had completed ten years of continuous service as on 01.01.2006. In G.O.Ms.No.74 dated 27.06.2013, it was made clear that the part-time employees are not entitled for regularization and that full-time daily wage employees, who had completed 10 years of service after 01.01.2006 are also not entitled for regularization of services. G.O.No. 74, Personnel and Administrative Reforms Department, dated 27.06.2013, reads as follows:

"6) In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

(i) This Order shall be deemed to have been come into force with retrospective effect from 01.01.2006.

(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and complete 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength.

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23 (a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularization;

(vi) The part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved.”

In G.O. Ms. No.74, it was thus, made clear that the part-time employees are not entitled for regularization and that full-time daily wage employees, who had completed ten years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned post. It was also made clear that the services of daily wage employees who have completed ten years of service after 01.01.2006 are not entitled for regularization.

12. In the present case, the respondent herein was engaged to fetch water, to sweep and other connected menial works for one or two hours in a day as part-time Masalchi. The post of part-time Masalchi is not included in Class IV or V of the Tamil Nadu Basic Service. Further a part-time Masalchi cannot be treated as equivalent to the post of Masalchi (full-time) basis because the post of part-time Masalchi does not come under the purview of service rules. The respondent herein was only a part-time Masalchi and hence the question of applying G.O.Ms.No. 22 P &AR Dept. dated 28.02.2006, which is applicable only to the daily wage full-time employees, does not arise.

13. G.O.(Rt.)No.84 Commercial Taxes and Registration (M2) Department dated 18.06.2012 was issued, by which 172 part-time Masalchis, who were working for more than ten years as part-time Masalchis in Registration Department were regularized from the date of issuance of G.O. providing the grant of monetary benefits from the date of issuance of the Government Order. In G.O.(Rt) No.84 dated 18.06.2012, it was clearly stated that G.O.Ms.No.22 P &A R Dept. dated 28.02.2006 was applicable only to full-time daily wage employees and that the same was not applicable to part-time Masalchis. In the said G.O.(Rt.)No.84 dated 18.06.2012, it was made clear that monetary benefits are only from the date of issuance of

the order of regularization. The relevant portion of the said G.O.(Rt.) No.84 Commercial Taxes and Registration (M2) Department, reads as under:-

"Registration Department - Tamil Nadu Basic Service - 172 Part time Masalchis - Relaxation of Rules and Appointing them as full time Employees in the post of watchmen in Time Scale Pay and Regularization of their services Orders issued. Commercial Taxes and Registration (M2) Department G.O. (Rt) No.84 Dated: 18.06.2012 Based on the Directions of the Hon'ble High Court, the School Education Department and the Treasuries and Accounts Department under the control of the Finance Department have appointed two Full-time Masalchis and 57 Full-time Masalchis, respectively, in regular time scale of pay and regularized their services from the date of issue of the orders. In compliance to the orders of the Hon'ble High Court, the services of 6 Part time Masalchis were appointed in this Department and regularized their services from the date of issue of the orders in the reference 3rd and 5th cited. Considering the Part-time Masalchis working for a long period in this Department and most of them had completed the age of 40 and certain employees have completed 50 years of age, it is not possible to seek jobs from outside and the employees were repeatedly sending representations to regularize their services, on a sympathetic consideration, the Inspector General of Registration sent a proposal to the Government to appoint the Part-time Masalchis in the post of Watchman by relaxing the necessary provisions in the Special Rules for the Tamil Nadu Basic Service from the date of issue of the orders The Government has decided that, the remaining 172 Part time Masalchis, mentioned in the Annexure, may be appointed in Time Scale Pay, in the existing vacancy of watchmen by relaxing the Rule 3 (A) (Community Rotation) and Rule 5 (1) (Age Qualification) and the services of the Part-masalchi be regularized and they may be awarded monetary benefit from the date of issue of the order..."

In pursuance of the above said Government Order and vide proceedings of the District Registrar, the respondent herein appointed as full-time employee in the post of Watchman on 02.07.2012 and has been placed at Sub-Registrar, Uraiyur, Trichy. As per G.O. Ms.No.84, the respondent can claim monetary benefits only from the date of issuance of Government Order regularizing his services and not earlier.

14. In a similar issue, concerning part-time sweepers, the State of Tamil Nadu has filed an appeal before this Court, and those appeals were allowed by this Court by judgment dated 21.02.2014 in *Secretary to Government, School Education Department, Chennai vs. Thiru. R. Govindasamy and Others*¹. After referring to various judgments on this issue, in paras (5) to (7), this Court held as under:-

“5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. The issue is no more res integra.

6. In *State of Karnataka v. Umadevi*² this Court held as under: (SCC p. 40, para 48)

“48. ... 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 unequals 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.”

7. In *Union of India v. A.S. Pillai*³ this Court dealt with the issue of regularization of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularization would not arise.”

15. In *State of Rajasthan and Others Vs. Daya Lal and Others*⁴, this Court has considered the scope of regularization of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularization as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under:

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(11) 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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization 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 regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization 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. See: *Secretary, State of Karnataka v. Uma Devi*⁵, *M. Raja v. CEERI Educational Society, Pilani*⁶, *S.C. Chandra v. State of Jharkhand*⁷, *Kurukshetra Central Co-operative Bank Ltd v. Mehar Chand*⁸, and *Official Liquidator v. Dayanand*⁹.”

(emphasis added)

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 regularization 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 regularized 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 regularization 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 regularization 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.

Judgment Referred.

¹(2014) 4 SCC 0769

²(2006) 4 SCC 0001

³(2010) 13 SCC 0448

⁴(2011) 2 SCC 0429

⁵(2006) 12 SCC 0636

⁶(2007) 8 SCC 0279

⁷(2007) 15 SCC 0680

⁸(2008) 10 SCC 0001