
(2016) 08 MAD CK 0087
In the Madras High Court
Case No : W.P.No. 24823 of 2015

M. Sekar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Citation : (2016) 2 CWC 707 : (2016) 7 MLJ 27

Hon'ble Judges : Mr. B. Rajendran, J.

Bench : Single Bench

Advocate : Mr. B. Singaravelan, Senior Counsel for Mr. V.S. Jagadeesan, Advocate, for the Petitioner; Mr. S. Gunasekaran, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Mr. B. Rajendran, J.—The Writ Petition had been filed challenging the order passed by the 1st respondent viz., Secretary to Government in G.O.(Ms.) No.99, Rural Development and Panchayat Raj (CGS.3) Department, dated 07.07.2015, wherein, the claim of the petitioners for regularisation of their services and for fixing time scale of pay to the petitioners was rejected and for a consequential direction to the 1st respondent to pass orders re-regularizing the service of the petitioners and to fix time scale of pay as per the recommendations made by the 3rd respondent viz., The District Collector, Pudukottai and the 5th respondent viz., The Joint Director/Project Officer, Pudukottai, dated 08.06.1999, 25.09.2000, 05.11.2001 and 27.12.2004 and as per the order of this Court, dated 04.04.2013, passed in W.P.No.9871 of 2008.

2. The case of the petitioners, even as admitted by the respondents, is that they were appointed as Store Keeper, Accountant, Junior Assistant-cum-Typist and Night Watchman, initially on consolidated pay basis. Their appointments were respectively made on 26.06.1995, 04.04.1995, 01.04.1995 and 01.04.1995. The consolidated pay initially fixed in the year 1995 for the petitioners 1 to 3 was Rs.1,500/- per month. The consolidated pay fixed for the 4th petitioner was

Rs.750/- per month. In the EC Meeting held on 30.03.2007 as per Resolution No.5, for the petitioners 1 and 2, the consolidated pay was increased to Rs.5,000/- per month. For the third petitioner, it was increased to Rs.4,500/- per month. For the fourth petitioner, it was increased to Rs.3,000/- per month. It is the admitted case even by the respondents that the petitioners were also re-designated to higher post, viz., petitioners 1 and 2 were re-designated as Marketing Officers Grade-I and Grade-II respectively. The 3rd petitioner was re-designated as Accountant and the 4th petitioner was re-designated as Office Assistant-cum-Salesman. It is the further admitted case even by the respondents that the petitioners have been continuing in service for nearly 20 years without any break. Therefore, the petitioners made representations for re-regularization of their service and in this regard, proposals were forwarded by the 5th respondent herein, viz., Joint Director/Project Officer, Pudukottai to the 2nd respondent herein viz., The Director of Rural Development and Panchayat Raj. The 3rd respondent herein viz., The District Collector, Pudukottai, has also forwarded the proposals to the 2nd respondent and the same was kept pending for quite some time. Later on, the petitioners' claim for re-regularization was rejected by the District Collector himself, by an order dated 20.12.2007. Even though, the District Collector himself had forwarded the proposal to the 2nd respondent, unfortunately, he himself had rejected the claim of the petitioners on 20.12.2007.

3. Challenging the order, dated 20.12.2007, the petitioners had earlier filed W.P.No.9871 of 2008. By order dated 04.04.2013, this Court has passed an order clearly stating that even though, the rejection of the proposals was made by the District Collector, the petitioners were not relieved from service and they were allowed to continue in service on consolidated pay basis even till date and citing that in various Departments, the services of the persons, who have completed ten years of service, were re-regularized, this Court gave a direction to reconsider the earlier proposals made by the District Collector and pass orders taking into account the development in the other Departments within a time frame. Challenging the same, the respondents in W.P.No. 9871 of 2008 took the matter on appeal in W.A.No.1587 of 2013, alleging that a positive direction for re-regularization had been given. By order dated 14.08.2014, a Division Bench of this Court dismissed the appeal contending that no positive direction is given by the learned Single Judge to grant re-regularization and directed the 1st appellant therein, viz., Government to comply with the order of the learned Single Judge, dated 04.04.2013, within a period of three months from the date of receipt of a copy of this order. Thereafter, the matter was again considered, but, unfortunately the District Collector, by an order dated 12.11.2014, once again rejected the request of the petitioners mainly contending that as per the bye-law of the Society, appointment orders were issued clearly stating that their services are temporary and they would be paid consolidated pay only. In the said order, dated 12.11.2014, the District Collector has further stated that salary is paid to the workmen on the basis of the meeting of the Governing body and as the profit earned by the Society and hence, there is no way to absorb them in Government

service as per G.O.Ms.No.22 P&AR, dated 28.02.2006.

4. The order of the District Collector, dated 12.11.2014, was challenged by the petitioners by filing a Writ Petition in W.P.No. 32884 of 2014. By order, dated 26.02.2015, this Court has categorically held that when the learned Single Judge as well as the Division Bench has passed a specific order, directing the 1st respondent therein viz., Government to consider the claim of the petitioners regarding re-regularization, the third respondent viz., District Collector had no business to consider the matter, therefore, the order, dated 12.11.2014, was set aside and the matter was remitted back to the 1st respondent, viz., the Government to consider the claim made by the petitioners for re-regularization, on merits and as per law and without reference to the reasons given in the order passed by the District Collector, which is impugned in this Writ Petition, within a time frame. Pursuant to the same, the impugned order had been passed by the 1st respondent viz., Government, on 07.07.2015, rejecting the claim made by the petitioners for re-regularization mainly on the ground that the petitioners are contract employees and their services cannot be re-regularized. Aggrieved against the same, the present Writ Petition had been filed by the petitioners.

5. Mr. B. Singaravelan, the learned senior counsel appearing for Mr. V.S. Jagadeesan, the learned counsel for the petitioners, would firstly contend that the impugned order passed by the 1st respondent is liable to be set aside mainly on the ground that it is not a speaking order, as no reason whatsoever had been assigned for rejecting the petitioners' claim for re-regularization. He would nextly point out that before passing the impugned order, the 1st respondent has not taken into consideration the development made in the other Departments, viz., the services of the persons, who have completed ten years of service in almost all departments, were re-regularized, pursuant to the order of this Court or on their own motion. He would further submit that in respect of two persons, viz., M. Selvaraj and Umayal of Dharmapuri District, their services were re-regularized, pursuant to my order in W.P.Nos.3571, 3572, 5975 of 2009, dated 25.11.2010. In respect of persons working in Kattidamaiyam/Building Centre, their services were re-regularized in the light of G.O.Ms.No.139, dated 28.09.2013. In respect of persons working in Tsunami Centre, their services were re-regularized in the light of G.O.Ms.No.105, dated 26.02.2016. In respect of persons working in Pudukkottai DSMS, their services were not yet re-regularized and they are expecting orders. When this being the position, the 1st respondent cannot now contend that the appointment of the petitioners is neither illegal nor improper. The petitioners have been continuously working for nearly 20 years, without any break, on consolidated pay basis, till date. In the EC meeting held on 14.02.2011, as per Resolution No.3, the petitioners consolidated pay was increased and they are drawing at the rate of Rs.12,000/-, Rs.12,000/-, Rs.9,000/- and Rs.5,000/- respectively. Literally to say that for nearly 20 years, the petitioners are working continuously without any break and till date, they are continuing in service. Every time, their request for regularisation had been rejected without assigning proper reasons, hence, he would pray for allowing this

Writ Petition.

6. The 1st respondent has filed a detailed counter, wherein, he has stated that the petitioners are all working in District Supply and Marketing Society (DSMS), which is a Society registered under the Tamil Nadu Societies Registration Act, 1975. Next, he has stated that the District Supply and Marketing Society under Development of Women and Children in Rural Areas, which is not a part of the Government in the Rural Development Department, was created to support the Self Help Groups in marketing their products and assisting them in value addition, packaging etc. The 1st respondent has further averred in the counter that the petitioners are employed in the Scheme for the establishment of District Supply and Marketing Society to carry out a specific work and by efflux of time, when the Scheme for which the petitioners were appointed to carry out the specific work comes to an end, the employees working under the said Scheme cannot claim re-gularization. In the counter, the 1st respondent has further added that the petitioners cannot be absorbed in the main stream as funding was provided by the UNICEF and at present their salary is paid from the profit accrued by District Supply and Marketing Society and not by State or Central Government and therefore, they cannot claim any public employment.

7. Mr. S. Gunasekaran, the learned Additional Government Pleader, who took notice on behalf of the respondents, would rely on the judgment of the Hon'ble Apex Court reported in (2006) 4 Supreme Court Cases 1, Secretary, State of Karnataka v. Uma Devi, wherein, the Hon'ble Apex Court has laid down the parameters for consideration of re-gularization of the employees. In the said judgment, the Hon'ble Apex Court has held that even though temporary/seasonal workers continued in service for a number of years on daily wage basis or otherwise, there cannot be any directive for re-gularization. In Uma Devi's case (cited supra), the Hon'ble Apex Court in paragraph No. 43 has held as under:-

"43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the

State has a legal duty to make them permanent."

8. The learned Additional Government Pleader would further rely on the judgment of the Hon''ble Apex Court reported in 2000 (4) SCC 186, Council of Scientific and Industrial Research v. Dr. Ajay Kumar Jain, wherein, the Hon''ble Apex Court has held as follows:-

"....In the instant case employment of the respondent under the Quick Hire Scheme was on contract basis. He was not governed by CSIR Service Rules, 1994 for recruitment of Scientific, Technical and Support Staff as he would not be appointed under those Rules. An appointment under the Quick Hire Scheme cannot be equated with regular appointment as per the relevant recruitment rules of SCIR against a sanctioned post. To be eligible for re-regularization, the respondent had to come with the relevant rules. A Pool Officer or a Scientist Fellow under the Quick Hire Scheme cannot continue to hold on the job till superannuation."

Placing reliance on the judgments cited supra, the learned Additional Government Pleader would contend that those employees who have secured employment by resorting to back door entry cannot be considered for re-regularization even though they have rendered long number of years of service on daily wage basis or otherwise and therefore, the impugned order passed by the 1st respondent is correct and it needs no interference at the hands of this Court.

9. Heard both sides and I have considered the rival contentions.

10. At the outset, I have to say about the plight of the petitioners, four in numbers, who are running from pillar to post from the year 1995 seeking regularisation. Even as admitted in the counter by the 1st respondent, as on date, the petitioners are continuing to work and they are still in service, dehors multiple orders passed by this Court to consider the claim of the petitioners for re-regularization, as they have got the right to seek for re-regularization as they have put in continuous service of nearly 20 years without any break and they are still continuing to work, if really, the petitioners are employees, whose service cannot be regularized, nothing prevented the respondents from terminating their service or relieving them from service. The fact that the petitioners are not thrown out of employment, but, still they are allowed to work till date, on consolidated pay basis, would go to establish beyond any reasonable doubt that the service of the petitioners are still required by the District Supply and Marketing Society, Pudukottai. When that being so, it cannot be said that the petitioners are contract employees and therefore, they have to be thrown out summarily. Under such circumstances, the argument of the learned Additional Government Pleader appearing for the respondents, relying on Uma Devi's case, is not legally sustainable.

11. In the case on hand, it is seen that though, the proposals for re-regularization of the service of the petitioners were forwarded by the 5th respondent to the 2nd respondent, it was simply rejected by the 3rd respondent, viz., District Collector,

though, he himself has forwarded the proposal to the 2nd respondent, and ultimately, after the orders were passed by the learned Single Judge in W.P.No.9871 of 2008, dated 04.04.2013, as well as the Division Bench of this Court in W.A.No.1587 of 2013, dated 14.08.2014, to consider the petitioners claim for re-regularization also, the District Collector has again simply passed the order of rejection. Against which W.P.No.32884 of 2014 was filed, in which, by order dated 26.02.2015, this Court directed the Government to consider the claim of the petitioners for re-regularization, but the Government, by impugned order, dated 07.07.2015, has rejected the claim of the petitioners for re-regularization.

12. In the above context, I have to say that, I myself had an occasion to deal with a similar circumstances in respect of two persons, viz., M. Selvaraj and Umayal, who are employed for the Livelihood Project on consolidated pay, in Dharmapuri District, controlled by Rural Development through DRDA, funds allotted by Government of India, their services were not re-regularized and hence, they have filed W.P.Nos. 3571, 3572 and 5975 of 2009, seeking to direct the Government to bring them into regular establishment with time scale of pay. In the said Writ Petitions in W.P.Nos. 3571, 3572 and 5975 of 2009, by order dated 25.11.2010, in paragraph Nos.18, 19, 20, 25 and 26, I have held as follows:-

"18. From these proceedings, it is clear that the petitioners have been employed as Field Officers from 1985 or 1986, as the case may be, only with the concurrence and knowledge of the successive District Collectors and other officers. But it is rather unfortunate that the petitioners service had been exploited and for all these years, they were made to work for a paltry and meagre amount of Rs.1,000/- per month. The petitioners have not even been paid the minimum wages all these years. Curiously, now, in the counter affidavit, the third respondent would contend that the petitioners original appointment itself are illegal and that after 1993, they were allowed to work without any orders. It was further contend that the performance of the petitioner in WP No. 3571 of 2009 is far from satisfactory. In fact, in the order dated 30.04.2008 relieving the petitioners to take charge as Field Officers in the Ponvizha Grama Suya Valai Vaippu Thittam, nothing was had been stated regarding their irregular appointment or that they were working without any orders or sanction from the Government. Contra, the District Collectors and other officers have recommended that the petitioners should be brought into regular time scale of pay and also issued certificates of appreciation in their favour for their work. While so, by a memo dated 09.02.2009 of the District Collector, Dharmapuri, the petitioner in WP No. 3571 of 2009 was sought to be terminated from his long length of service, which is unwarranted besides legally not sustainable. Only in that memo dated 09.02.2009, for the first time, certain deficiencies were allegedly pointed out in the service rendered by the petitioner K. Selvarasu. Whereas, in the earlier occasion, the District Collector of Dharmapuri District has given certificate in favour of the petitioners.

19. It is seen from the proceedings dated 20.10.2008 of the District Collector, Dharmapuri that wages are being paid to the petitioners from the contingency fund for labourers under various categories. From that proceedings, it is seen that skilled labourers such as Carpenter, mason, Tailor etc., are paid Rs.155/- per day; unskilled labourers such as Head Mazdoor are paid Rs.105/- per day and other skilled menials such as Sweeper, Watchman etc., are paid Rs.100/- per day. Whereas, the petitioners who are highly qualified are being paid Rs.1,000/- per month as consolidated pay for the past more than 23 years. In spite of various proposals and recommendations made to bring them under time scale of pay, nothing could be done due to the inaction on the part of the Government. In fact, one of the petitioners Selvaraj is a Master Graduate having completed M.A., B.L., and the other petitioner Umayal had completed her graduation.

20. In this connection, the learned counsel for the petitioners relied on the decision of the Division Bench of this Court in WP Nos. 25490 to 25493 of 2002 etc., batch dated 25.08.2006 wherein in para Nos. 14, 15, 16 and 17, it was held as follows:-

"14. A reading of the above, it is clear that the issue in regard to regularising the service of the staff engaged in HRRCs as well as other research Projects of the ICMR had been under consideration with the Union Ministry of Health & F.W. even since 2000. It is very deplorable that even after years also, no effective steps were taken to regularise the services of the respondents/employees. Even on this day also, when the matter is taken up, the learned standing counsel for the petitioners brought to the notice of this Court the letter, dated 18.08.2000 said to have been sent by the ICMR stating that the said issue of regularisation is still under consideration with the Ministry of Health and Family Welfare. Therefore, having regard to all these aspects, we agree with the view taken by the Tribunal that the services of the respondents/employees have to be regularised.

15. The learned senior counsel appearing for the respondents/employees, by relying upon the Judgment of the Division Bench of this Court reported in 2005-II LLJ (cited supra) wherein also the appellant is ICMR, submitted that if a person is continued in a post for more than certain limited period, he is entitled to regularisation from the date of his initial appointment and therefore, the services of the respondents/employees ought to have been regularised from the date of their respective initial appointments. In similar facts of the present case, the Division Bench of this Court has held in para 28 and 29 as under:-

"28. In service jurisprudence, no post can be treated permanently as temporary. Temporary means only for a certain period. When a post being held by a person continues to be held for more than a certain limited period, it cannot be said that it is a temporary post. Such continuance, in a certain post, automatically takes away the character of temporary post and takes the character of permanent.

29. Even the project or department or whatever the name be, can function on yearly renewal basis, but the services of the persons working in such project or

any other departments cannot be kept as temporary for more than a certain limited period. Because the renewal of the project or departments on yearly basis would not affect its functions and objectives, whereas, the services of the person working in such project or departments are not regularised, if they are working for more than certain limited period, which would not only affect their career but also their entire life.

16. While holding so, the Division Bench has ultimately held that the services of the first respondent therein, have to be regularised from the date of her initial appointment.....

17. Therefore, applying the above ratio to the facts of the present case, we are of the view that the services of the respondents/employees have to be regularised from the date of their respective initial appointments. Accordingly, to that extent, we modify the order of the Tribunal."

.....

25. The learned Government Advocate appearing for the respondents would now contend that in the decision of the Honourable Supreme Court reported in (State of Karnataka v. Uma Devi) (2006) 4 SCC 1, it was held that contract employees are not eligible to seek permanent absorption. This is not a case where the appointment of the petitioners are illegal or improper. From the beginning, the petitioners were appointed and working as Field Officers by the Project Officer under UNICER scheme on a day to day basis and thereafter, they were brought into regular establishment under the IRDP programme and they continued to work there. Every time when the District Collectors or other officers recommended the case of the petitioners for bringing them into regular time scale of pay, it was simply kept on file without any orders being passed. Under those circumstances, the argument of the learned Government Advocate for the respondents, relying on Uma Devi's case, is not legally sustainable.

26. In view of the factual findings rendered above, the respondents are directed to consider the claim of the petitioners for bringing them into regular time scale of pay and pass orders on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly, WP Nos. 3571 and 3572 of 2010 are allowed."

13. In the order in W.P.Nos.3571, 3572 and 5975 of 2009, dated 25.11.2010 (cited supra), I have referred to a Division Bench judgment, wherein, it was observed that when a post being held by a person continues to be held for more than a certain limited period, it cannot be said that it is a temporary post. Such continuance, in a certain post, automatically takes away the character of temporary post and takes the character of permanent and ultimately, I directed the respondents therein to pass orders considering the claim of the petitioners for bringing them into regular time scale of pay within a time frame.

14. It is pertinent to note that pursuant to my order in the Writ Petitions in

W.P.Nos.3571, 3572 and 5975 of 2009, dated 25.11.2010, in Dharmapuri District, the services of two persons viz., M. Selvaraj and Umayal, were regularized. It is worthwhile to note that in Kattidamaiyam/Building Centre and Tsunami Centre, similar set of people, who are employed for the Livelihood Project on consolidated pay for quite a long number of years, controlled by Rural Development through DRDA, funds allotted by Government of India, services were re-regularized, without even the intervention of this Court by virtue of G.O.Ms.No.139, dated 28.09.2013 and G.O.Ms.No.105, dated 26.02.2016 respectively. In fact, Tsunami Centre office was started in the year 2005 and the service of the persons, who are employed there for the Livelihood Project on consolidated pay, have been re-regularized immediately on completion of ten years of service, whereas, the petitioners, who have been continuously working for nearly 20 years, without any break, till date were paid only on consolidated pay basis, and they were not given the benefit of re-regularization. The petitioners were paid on consolidated basis at the rate as under:-

S. No.

Details of Salary Enhancement

Mr. M. Sekar Rc.No.144/B/95

Mr. N. Rajagopal Rc.No.306/B/95

Mrs. S. Sarojini Sheela Rc.No.144/B/95

Mr. S. Anthony samy Rc.No.6/B/95

1

As per Chairman/Collector Note order

Designated as store keeper

Daily wage per day Rs.35 (w.e.f. 4.4.95) designated as Accountant

Daily wages Rs.30/- per day (w.e.f. 2.1.95) Designated as Junior Assistant-cum-Typist

Rs.750/- p.m. w.e.f. 10.3.95 Designated as Night watchman re-designated as OA from 2.8.95.

2

As per Chairman/Collector Note order

Rs.1500/- (w.e.f. 27.6.95)

Rs.1500/- (w.e.f. 1.1.96)

Rs.1500/- (w.e.f.18.4.95)

Rs.750/- (w.e.f. 10.3.95) Designated as Night watchman re-designated as OA

from 2.8.95.(w.e.f. 10.3.95)

3

As per Chairman/Collector Note order

Rs.2000/- (w.e.f. 18.3.96) Re-designated as Marketing Officer

Rs.2000/- (w.e.f. 1.4.2000) Re-designated as Marketing Officer II

Rs.1750/- (w.e.f. 1.10.2000) Re-designated as Accountant

Rs.1600 (w.e.f. 1.4.98)

4

GB Meeting on 30.5.2002 as per Resolution No.9

Rs.3000/-

Rs.3000/-

Rs.2250/-

Rs.1500/-

5

EC Meeting on 30.3.2007 as per Resolution No.5

Rs.5000/-

Rs.5000/-

Rs.4500/-

Rs.3000/-

6

EC Meeting on 14.02.2011 as per Resolution No.3

Rs.12000/-

Rs.12000/-

Rs.9000/-

Rs.5000/-

15. Having regard to all the above, firstly, I have to state that the impugned order, dated 07.07.2015, is liable to be set aside, as in the impugned order no specific reason had been assigned by the 1st respondent, viz., Government, for rejecting the claim of the petitioners for re-regularization. Secondly, I have to state that the 1st respondent has not taken into consideration that the petitioners have been working continuously for nearly 20 years, without any break, till date, under various funds allotted by the Government of India or otherwise. But, the

admitted fact remains that the petitioners have been continuously working for nearly 20 years, without any break, and till date, they are continuing in service. Thirdly, I have to state that even after the impugned order was passed by the 1st respondent, on 07.07.2015, rejecting the claim of the petitioners for regularization, the fact remains that the petitioners were not terminated from service or relieved from service and they were allowed to continue in service till date, on consolidated pay basis, and therefore also, the order passed by the 1st respondent is liable to be set aside.

16. For the foregoing discussions held, this Writ Petition is allowed and the impugned order passed by the 1st respondent, dated 07.07.2015, is set aside. This Court can only sympathetically say that the petitioners have been continuously toiling for the past 20 years, without any break, till date, without the benefit of regularization. Therefore, it is suffice to state that the 1st respondent, viz., Government has to consider the case of the petitioners for absorbing them in the Society, where they have been continuously employed for nearly 20 years without any break and continuing in service till date, and pass appropriate orders, on merits and in the light of the order passed by this court in W.P.Nos.3571, 3572 and 5975 of 2009, dated 25.11.2010, and also in the light of G.O.Ms.No.139, dated 28.09.2013 and G.O.Ms.No.105, dated 26.02.2016, as expeditiously as possible. There shall be no order as to costs.