

**(2008) 01 MAD CK 0151**

**In the Madras High Court**

**Case No :** Writ Appeal No. 1308 of 2007 and M.P. No. 2 of 2007

The Director of Elementary Education and The Assistant  
Educational Officer

**APPELLANT**

**Vs**

S. Durairaj

**RESPONDENT**

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**Date of Decision :** 07-01-2008

**Acts Referred:**

Constitution of India, 1950 — Article 162

**Citation :** (2008) 01 MAD CK 0151

**Hon'ble Judges :** K. Raviraja Pandian, J; Chitra Venkataraman, J

**Bench :** Division Bench

**Advocate :** S. Rajasekar, AGP, for the Appellant; T.V. Sai Sanjan, (R1), for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K. Raviraja Pandian, J.—The correctness of the order dated 1.3.2006 passed by the learned single Judge in W.P. No. 27628 of 2005 is

questioned in this appeal, wherein the relief of regularisation of service of the respondent/writ petitioner with effect from 1.6.1981 has been granted

by the learned single Judge.

2. The said order came to be passed by the learned single Judge by placing reliance on a Government Order in G.O.Ms. No. 1279, Education

Department dated 29.6.1981 and the order passed by the second respondent in Na.Ka. No. 275/A1/90 dated 10.4.1990 in respect of one K.

Ramesbabu.

3. The case of the respondent/writ petitioner was that he was appointed as a night watchman with effect from 6.10.1980 by the Commissioner,

Panchayat Union in the contingent post in accordance with the rules in force. As

per G.O.Ms. No. 1279, Education Department dated 29.6.1981,

all the Basic Servants such as peons and watchmen working in Panchayat Union Schools throughout the State would become Government

Servants with effect from 1.6.1981. As per the said Government Order, the Assistant Educational Officers were to draw the pay and allowances

of Basic Servants of Panchayat Union Schools from the Treasury. The said Government Order has not been implemented in the case of the

respondent and he was given regularisation only from 6.10.1990 after the completion of ten years of contingency service. The respondent also

pointed out the order of the second respondent in Na.Ka. No. 275/A1/90 dated 10.4.1990 giving benefit covered in the said G.O.Ms. No. 1279

dated 29.6.1981 to one K. Ramesbabu and claimed the same benefit to him.

4. The learned single Judge after hearing the learned Counsel for the respondent/writ petitioner and taking note of the fact that in spite of repeated

time granted by the Court, the Government has not filed any counter and upon reading of the Government Order produced by the petitioner has

come to the conclusion that the said Government Order in G.O.Ms. No. 1279 dated 29.6.1981 established the right of the petitioner to get his

service regularised from 1.6.1981 and on that reasoning allowed the writ petition and directed the appellants to regularise the services of the

respondent from 1.6.1981 in accordance with the Government Order in G.O.Ms. No. 1279, Education Department dated 29.6.1981 and further

directed all consequential benefits shall be paid to the respondent within six weeks from the date of receipt of copy of the order.

5. The learned Government Pleader assailing the order of the learned single Judge has submitted that it is true that the respondent has not filed

counter affidavit. Thus, there was no occasion for the respondent to put forth the Government Order in G.O.Ms. No. 85 Education Science and

Technology Department dated 8.2.1994. Hence the order came to be passed by the learned single Judge without considering the Government

Order in G.O.Ms. No. 85 Education Science and Technology Department dated 8.2.1994. In that Government Order, it is very categorically

stated in paragraph No. 2 that the the contingent staff who had been appointed prior to 1.6.1981 and have completed ten years of continuous

service from the date of appointment should be brought into regular

establishment and that the monetary benefit should be granted from the date of issue of the Government Order in G.O.Ms. No. 85 Education Science and Technology Department dated 8.2.1994.

6. However, the learned Counsel appearing for the respondent/writ petitioner submitted that on a conjoint reading of G.O.Ms. No. 52 Finance

(FR.II) Department dated 14.1.1977, G.O.Ms. No. 1279, Education Department dated 29.6.1981 coupled with the proceedings of the second

appellant in Na.Ka. No. 275/A1/90 dated 10.4.1990 clearly established that the respondent is entitled to be regularised with effect from the date

of G.O.Ms. No. 1279 i.e., 1.6.1981. He alternatively contended that as the respondent is going to be retired by 2010, his right to approach the

Government for appropriate order for regularisation from 1.6.1981 may be preserved so as to enable the respondent to get some retirement

benefits. The respondent is willing to forego the monetary benefits.

7. We heard the argument of the learned Counsel on either side and perused the materials on record, particularly, G.O.Ms. No. 1279, Education

Department dated 29.6.1981 and G.O.Ms. No. 85 Education Science and Technology Department dated 8.2.1994.

8. The Government Order in G.O.Ms. No. 1279, Education Department dated 29.6.1981 proceeded that the Government directed that all the

Basic Servants such as peons and watchman working in Panchayat Union Schools throughout the State would become Government Servants with

effect from 1.6.1981 and they would be eligible for all the benefits available to Government Servants from that date. In respect of other categories

of non-teaching staff who do not come under the category of Basic Servants such as Attenders, Conductresses, paid from contingencies and part

time employees working in Panchayat Union Schools the pay and allowances would be drawn adopting the old Panchayat Union Procedure as

already ordered in Government Order in G.O.Ms. No. 857 Education dated 13.5.1981. The Government Order in G.O.Ms. No. 85 Education

Science and Technology Department dated 8.2.1994 makes the position very clear. From the reading of the Government Order, it is very clear

that consequent on taking over of the Panchayat Union Schools by Government, the Basic Servants working in Panchayat Union Schools would

become Government Servants throughout the State with effect from 1.6.1981.

However, the non-teaching staff, who were paid from contingencies would be continued to be paid adopting the old panchayat union procedure. The question of bringing contingent workers in the panchayat union councils, panchayats, etc., was considered on par with the G.O.Ms. No. 52 P & A.R. (FR) dated 14.1.1977 and G.O.Ms. No. 878 R.D. & L.A.

Dated 15.5.1991. Upon considering the proposal of the Director of Elementary Education that the watchman in panchayat Union School, who were on contingent basis for five or more years might be brought into regular establishment and further taking into consideration of the further particulars about the total number of persons, who were paid under contingency were only 214 persons out of which 210 were night watchman, two were sweepers and two were gardeners, the Government has passed the said order i.e., G.O.Ms. No. 85 to the effect that the contingent staff, who have appointed prior to 1.6.1981 and have completed ten years of continuous service from the date of appointment have been brought into regular Establishment from the date of the order i.e. 8.2.1994. We are of the view that G.O.Ms. No. 85 Education Science and Technology Department dated 8.2.1994 is very categorical i.e., clarifying G.O.Ms. No. 1279, Education Department dated 29.6.1981.

9. From the undisputed facts as narrated above, as the respondent has been appointed on 06.10.1980 in the contingency post, the respondent is entitled to be regularised from the date of Government Order in G.O. Ms. No. 85 Education Science and Technology Department dated 08.02.1994.

10. The other ground of attack pointed out is that the second appellant has passed an order in respect of one Ramesbabu regularising the services from the date of Government order in G.O. Ms. No. 1279, Education Department dated 29.06.1981. It has been explained by the appellants in the affidavit filed in support of the stay petition in this appeal by the appellants to the effect that the said Ramesbabu was appointed on a compassionate ground by the Commissioner, Panchayat Union in the contingent post. However, the Collector ordered the Panchayat Union Commissioner to allow the said Ramesbabu in the regular scale of pay from the date of his appointment, as it was found that a compassionate appointment cannot be made in contingent post. The Assistant Elementary

Educational Officer without ascertaining the availability of regular post created by the Government allowed the appointment of Ramesbabu in the regular scale of pay in the contingent post itself, which is against the norms. For his irregularity, action is being taken against him. On this point also, we are not able to concur with the learned Counsel appearing for the respondent as the reasoning given by the appellant is correct that the Assistant Elementary Educational Officer has committed the mistake in the case of one Ramesbabu by appointing him in the regular scale of pay in the contingent post itself against the norms. The illegality cannot be taken advantage of by the respondent herein. It is well established legal principle of law that there is no equality in illegality. That solitary case of Ramesbabu cannot be cited as a precedent when the Government Order which has the statutory force under Article 162 of the Constitution of India provides otherwise. As per the Government Order in G.O. Ms. No. 85 Education Science and Technology Department dated 08.02.1994, the respondent cannot claim that he should be regularised from 29.06.1981. Hence, the order of the learned single Judge granting the relief has to be set aside and the same is set aside and thus the writ appeal is allowed. No costs. However, it is open to the respondent to make whatever representation he is legally entitled to make to the appellant Government. Consequently, the connected WAMP is closed.