(2014) 11 MAD CK 0472

Madras High Court

Case No: Writ Petition No. 3498 of 2013 and M.P. No. 1 of 2013, W.P. No. 1219 of 2013 and M.P. No. 1 of 2013, W.P. No. 35145 of 2012 and M.P. No. 2 of 2012, W.P. No. 2572 of 2013 and M.P. No. 1 of 2013, W.P. No. 1897 and 1898 of 2013 and M.P. Nos. 1 of 2013, W.P.

S. Sornalatha — APPELLANT

Vs

The State of Tamil Nadu — RESPONDENT

Date of Decision: Nov. 27, 2014

Hon'ble Judges: Satish K. Agnihotri, J; K.K. Sasidharan, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. In view of commonality of the issue involved in this batch of writ petitions, these writ petitions are being considered and decided by this common order.

2. These petitioners were appointed temporarily in different posts, viz., Typist/Steno Typist/Junior Assistant, etc. in their respective districts. While they were working as such, a proper selection was conducted by the Tamil Nadu Public Service Commission and regular incumbents were selected for appointment. The gist of the relief sought by the petitioners is that they should not be terminated from service and instead, their service in the Tamil Nadu Judicial Subordinate Service, should be regularised.

3. The identical issue came up for consideration in this Court in S. Girija and 11 others vs. The Registrar General, Madras High Court, Chennai 600 104 and another (W.P. No. 29656 of 2013). This Court, after having examined all aspects of the matter, by order dated 21.11.2014, dismissed the writ petition holding that the petitioners therein, appointed temporarily with a condition to be replaced by regular incumbents, have no right to continue in the post and also to be regularised in their respective posts. The operative portion of the said order reads thus:

"11. In view of the well settled provisions of law as discussed hereinabove and the factual matrix involved in the case on hand, no direction can be issued to regularise

the services of the petitioners and continue them on the basis of their continuity of service in the past, after their appointment till date.

In view of the foregoing, the writ petition is dismissed. No costs."

4. However, the learned counsel for the petitioners brought to the notice of this Court, a decision of this Court in Judicial Temporary Employees Welfare Association and another vs. State of Tamil Nadu, represented by Secretary to Government, Home (Courts) Department, Secretariat, Chennai - 9 and 19 others (W.P. Nos. 9710 of 2009 etc. batch), wherein, a Division Bench of this Court, by order dated 10.06.2009, observed that the State of Tamil Nadu should consider holding of a special examination for such employees. Thus, the same direction may be issued to the Government for conducting a special examination for the petitioners herein.

5. We have examined the said submission. We are of the considered view that such a direction cannot be granted for more than one reason. Firstly, the petitioners, while working in the post on temporary basis, had an opportunity to participate in the examination conducted by the Public Service Commission for appointment in the said post. Some of the candidates had appeared for the examination and also come out successfully. The petitioners, it appears, have not participated in the selection process. Secondly, the petitioners, while accepting the appointment on temporary basis, were conscious of the fact that their appointment was only till regularly appointed incumbents are available. Thirdly, the petitioners'' appointment was not in accordance with the Constitutional scheme of employment. Thus, it cannot be directed to conduct a separate examination for regularisation of the present employees.

6. However, to meet the ends of justice, we feel just and proper that in future, whenever selection takes place and the petitioners apply for the same post in which they are working, the Government may take into account, their work as temporary employees and grant age relaxation to them, to the extent of their service in the same post.

7. We also make it clear that if the petitioners make a representation to the employment exchange for maintaining seniority in the list, as on account of their appointment temporarily, their names have been struck off, the authorities will consider the same sympathetically to restore their seniority in the list.

8. In fine, the writ petitions are disposed of with the above observations and in terms of the order of this Court dated 21.11.2014 (supra). No costs. Connected Miscellaneous Petitions are closed.