

No.A.12016/2/1018/DPAR/GC/U.III (Part)
GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
(PERSONNEL WING)

Puducherry, dated the 11th July 2023

I.D.NOTE/MEMORANDUM

Sub: Public Services – Resorting to illegal or irregular regularization of casual labourers in violation of rules – Ensuring compliance of High Court Orders - Instructions – Issued.

Ref: Orders of Hon'ble High Court of Judicature at Madras dated 16.06.2023 in W.A. 69-72 and 74 of 2019 and CMP. Nos. 692, 698, 695, 696 and 703 of 2019.

Hon'ble High Court of Judicature at Madras in W.A. 69-72 and 74 of 2019 and CMP. Nos. 692, 698, 695, 696 and 703 of 2019, while setting aside the common order dated 07.09.2017 made in W.P.Nos. 4803, 12775, 24508, 26370 and 26371 of 2012 in connection with regularization of casual labourers engaged in Puducherry Women's Commission, has , inter alia, made the following observations:

“25. The State is bound to oversee the appointments made illegally or irregularly by the competent authorities and the same is to be construed as the fraud on the Constitution and such authorities are liable for prosecution under the Discipline and Appeal Rules and other relevant rules. The State shall be vigilant in this regard and the authorities indulging in such activities of exercising powers by issuing illegal or irregular appointments are to be punished under the Discipline and Appeal Rules. No leniency can be shown by the State in this regard, since these all are the Constitutional principles required for the State to be followed and the State being a model employer, has to implement the Constitutional perspectives and the principles scrupulously and without any deviation.

26. It is also to be noted that persons like the respondent/writ petitioners are working on part time / daily rated employees in non-sanctioned posts and they are continuously working in the said departments for several years and one fine morning, the respondent/Government disengage their services and as a result of which, several



families are left in lurch. While directing that appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for the 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 open eyes. It may be 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 a view that such 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 employment which is not permissible.

27. When a person enters a temporary employment or gets engagement as a contractual or casual workers 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 by following a proper procedure for selection. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. The State cannot constitutionally make such a promise.

28. In the light of the aforesaid decisions of the Hon'ble Supreme Court, we are of the view that positive direction cannot be given for regularizing the services of temporary employees, like the respondents/writ petitioners, merely based on a Government order and therefore, they are not entitled for any relief of permanent absorption as such sought for in the writ petitions. All appointments are to be made only under the Constitutional Schemes and by following recruitment rules in force. Equal opportunities in public employment is the constitutional mandate and therefore, the illegal appointments cannot be regularized merely on the ground of length of the services rendered, even after the principles settled. In the case on hand, the services of the writ petitioners were disengaged from March, 2011 and in the light of the ratio laid down by the Hon'ble Supreme Court in the decisions cited supra, they are not entitled for regularisation. This



Court finds considerable force in the contentions made by the learned counsel for the appellant and therefore, the impugned order of the Writ Court warrants interference and consequently, it is liable to be set aside.

29. In the light of the aforesaid discussions, these Writ Appeals stands allowed and the impugned common order dated 07.09.2017 made in W.P.Nos.4803, 12775, 24508, 26370 and 26371 of 2012 is set aside. No costs. Consequently, connected miscellaneous petitions are closed".

2. All the Administrative Secretaries/Heads of Departments/ Public Sector Undertakings, Autonomous Bodies, Societies, Corporations, etc. are directed to take note of the above observations of the Hon'ble High Court, Madras for guidance and strict compliance, without any deviation. It is the duty of the officers/officials concerned to comply with the orders issued on various occasions by the DP&AR on the subject including the observations made in the aforesaid order of the Division Bench of the Hon'ble High Court of Judicature at Madras, whenever they are dealing with such cases.

3. It is reiterated that in terms of the aforesaid order of the Hon'ble High Court, no leniency can be shown in this regard and for any non-compliance/deviation, disciplinary action as mandated by Hon'ble High Court shall be taken against the erring officers/officials.

/By order of the Chief Secretary/



(V. JAISANKAR)

UNDER SECRETARY TO GOVERNMENT

To

1. The Commissioner cum Secretary to Government/Secretaries to Government
2. All Heads of Departments/ Public Sector Undertakings/ Autonomous Bodies, Societies/ Corporations, Puducherry.
3. The District Collector, Karaikal
4. Regional Administrator, Mahe/Yanam

Copy to:

1. The Secretary to Lieutenant Governor, Puducherry
2. The OSD to Chief Minister/ Private Secretary to all Ministers.
3. The Private Secretary to Chief Secretary.