

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.4178 of 2014
and M.P.Nos.2 and 3 of 2014

1.Tharakeshwari
2.D.Varalakshmi

.. Petitioners

Vs.

1.Pondicherry University,
Rep by the Registrar,
Pondicherry University,
Kalapet, Puducherry.

2.Principal,
Pondicherry University Community College,
Lawspet, Puducherry.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent with Advt.No.RC/2014/21 dated 17.01.2014 and to quash the same in respect of the vacancies notified in the faculty of Bio-Chemistry in the Community College and consequently to direct the respondents to regularize the services of the petitioners with effect from the date of their initial appointment with all other consequential benefits including difference of wages, seniority etc.

For Petitioner : Mr.Vijayanarayanan,
Senior Counsel for Mrs.V.J.Latha

For Respondents : Mr.R.Sankaranarayanan

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O R D E R

By consent, this writ petition is taken up for final disposal.

2. The first petitioner would state that she possesses the qualification of M.Sc., M.Phil and also doing Ph.D. in Bio-Chemistry and has cleared National Eligibility Test (NET) examination during the year 2010 and she joined the services as Lecturer in August 1998 and on 19.07.2004, her pay was converted into Consolidated Pay basis and she belongs to Other Backward Class Community (OBC) and she is entitled to the benefit of reservation. The second petitioner would state that she possesses qualification of M.Sc. (Bio-Chemistry), and

doing Ph.D. and passed the NET examination in 2003 and joined the services of the respondents as Lecturer on consolidated pay basis and prior to joining service, she was working as Lecturer, ADM College, Nagapattinam, from August 1998 to December 2000 and in Thiruvalluvar Arts and Science College, Kurinjipadi from August 2002 to 2004 and she also belongs to Other Backward Class community and she is also entitled to the benefit of reservation.

3. The claim of the petitioners is that they are entitled to get appointment as Assistant Professor (Pre-revised post of Lecturer) on regular basis and their selection and appointment as Lecturer was based on interview conducted by the respondents in pursuant to the notification calling for applications for the post of Lecturer and after following due selection process only, the petitioners have been selected and appointed as Lecturers and the selection process includes conducting of interview and therefore, the petitioners claim that they have undergone full selection process and were selected on merit and they are discharging their duties as regular Lecturers except the fact that they have not been paid the regular salary. It is further stated by the petitioner that the respondents had issued notification dated 09.05.2011 calling for applications for filling up the vacancies of Assistant Professor (Formerly Lecturer) in the faculty of Bio-Chemistry along with other faculties and the petitioners along with other six similarly placed lecturers approached this Court by filing W.P.No.26197 of 2011 and this Court granted interim orders to not to fill up the vacancies and the said interim order was extended periodically and it is still pending and consequently, as on date, the petitioner continues to remain in service.

4. The petitioners would further aver that the respondents have issued fresh notification on 17.01.2014 (impugned notification) inviting vacancies for recruitment of faculty and other academic posts in 42 subjects/disciplines and Sl.No.42 is Bio-Chemistry and the recruitment is for two posts of Assistant Professor and one post is reserved for OBC category. The grievance expressed by the petitioners is that though the petitioners are working as Lecturers and discharging their duties as that of the regular Lecturers, who are getting time scale of pay, for more than 10 years, the respondents did not chose to regularize their services, but instead resorted for recruitment through open market and hence, came forward to file this writ petition.

5. Mr.Vijayanarayanan, learned Senior Counsel assisted by Mrs.V.J.Latha, learned counsel appearing for the petitioners would contend that since the services of the petitioners are continued for more than ten years as Lecturers on consolidated pay basis and they also gained sufficient experience as Lecturers, in all fairness, their services should have been regularized by the first respondent before resorting for recruitment through open market by issuing the impugned notification. The learned Senior Counsel appearing for the

petitioners, in support of his submissions, placed reliance upon para 53 of the Constitution Bench judgment of the Hon'ble Supreme Court of India in Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1].

6. Per contra, Mr.R.Sankaranarayanan, learned standing counsel appearing for the respondents has invited the attention of this Court to the counter affidavit and would contend that even in the order of appointment it has been stated very clearly that the appointment of the petitioners was on contract basis and on consolidated pay and therefore, as a matter of right, the petitioners cannot claim regularization for the reason that their entry into service was through back door. It is further submitted by the learned standing counsel appearing for the respondents that in response to the impugned notification, the petitioners can participate in the selection process and if they come out successfully, their claim would be considered and prays for dismissal of this writ petition.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. A careful scrutiny and analysis of the materials placed before this court would disclose that though the petitioners were appointed temporarily as Lecturers on consolidated pay basis and also undergone the regular selection process in the form of interview and they have also put in 10 years of service as Lecturers, they are having necessary and requisite qualification, namely M.Sc., M.Phil. and NET and also doing Ph.D in Bio-Chemistry and therefore, prayed for consideration of their claim for regularization in the post of Lecturer Bio-Chemistry.

9. It is relevant to extract para 53 of the judgment in Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1]:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa [(1967) 1 SCR 128], R.N. R.N.Nanjundappa v. T.Thimmiah [(1972) 1 SCC 409] and B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as one of the measure, the services of such irregularly

appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

10. The said judgment was also considered in yet another decision rendered by the Hon'ble Supreme Court of India in *Amarendra Kumar Mohapatra and Others v. State of Orissa and Others* [(2014) 4 SCC 583] wherein it has been held as follows:

"The next issue is whether regularization under the 2002 Act is legally valid. The decision in *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1], in para 53 permitted a one-time exception for regularising services of such employees as had been irregularly appointment is not longer res integra. Three essentials for regularisation under the exception carved out in para 53 of *Umadevi* (3) case are : (1) the employees should have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to those three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularization."

11. In *Arjun Singh and Others v. State of Himachal Pradesh and Others* [2015 (2) Scale 115], the facts of the case would disclose that appointments were made for the post of Assistant Accounts Officer on contract basis after following all procedure for selection including recommendation of Public Service Commission and the appellants therein filed writ petitions for regularization of service and it was dismissed by the High Court of Himachal Pradesh and further challenge was made before the Hon'ble Supreme Court of India, wherein it has been held that the appellants therein were entitled for regularization in view of the fact that their appointment was made following the procedure for allotment and continuing as

12. In the considered opinion of this Court, the above cited decisions are fully applicable to the facts of this case and therefore, the respondents 1 and 2 ought to have considered the claim made by the petitioners for regularization of their services.

13. In the result, this Writ Petition is partly allowed and the first respondent notification in No.RC/2014/21 dated 17.01.2014 is set aside in respect of the vacancies notified in the faculty of Bio-Chemistry in the Community College and the respondents are directed to consider the claim of the petitioners for regularization of their services in the light of the findings/observations made in this writ petition and pass orders as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

jvm

To

1.The Registrar,
Pondicherry University,
Pondicherry University,
Kalapet, Puducherry.

2.Principal,
Pondicherry University Community College,
Lawspet, Puducherry.

+1 cc to M/s.V.J.Latha, Advocate, sr.58372

+1 cc to Mr.R.Sankaranarayanan, Advocate, sr.58704

ak co
kra 06/11/2015

W.P.No.4178 of 2014