

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2016

DATE OF DECISION : 06.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.38537, 38538, 38640, 38641, 38642, 38873, 38874, 38875, 40414, 40415, 40416, 40838, 40839, 40893, 40894, 40895 of 2015, 262, 263, 5424, 6450, 8884, 8885, 8886, 8887, 8888, 8889, 8890, 8891, 8892, 8893 of 2016

A.Jaisankar	..	Petitioner in W.P.No.38537 of 2015
M.Srinivasan	..	Petitioner in W.P.No.38538 of 2015
R.Meiyazhagan	..	Petitioner in W.P.No.38640 of 2015
M.P.Raja Siddharthan	..	Petitioner in W.P.No.38641 of 2015
S.Sridhar	..	Petitioner in W.P.No.38642 of 2015
A.M.Punitha Ramaraj	..	Petitioner in W.P.No.38873 of 2015
B.Sankar	..	Petitioner in W.P.No.38874 of 2015
K.Prakash	..	Petitioner in W.P.No.38875 of 2015
K.Arumugam	..	Petitioner in W.P.No.40414 of 2015
V.Rajiv Gandhi	..	Petitioner in W.P.No.40415 of 2015
R.Palanisamy	..	Petitioner in W.P.No.40416 of 2015
S.Kamaleswaran	..	Petitioner in W.P.No.40838 of 2015
P.Manikandan	..	Petitioner in W.P.No.40839 of 2015
P.Prabakaran	..	Petitioner in W.P.No.40893 of 2015
K.Babu	..	Petitioner in W.P.No.40894 of 2015
P.Somasundaram	..	Petitioner in W.P.No.40895 of 2015
K.Gopu	..	Petitioner in W.P.No.262 of 2016
A.Muthukumaran	..	Petitioner in W.P.No.263 of 2016
V.Santhakumar	..	Petitioner in W.P.No.5424 of 2016
V.Surendran	..	Petitioner in W.P.No.6450 of 2016
K.Sadagopan	..	Petitioner in W.P.No.8884 of 2016
P.Balamurugan	..	Petitioner in W.P.No.8885 of 2016
K.Sakthivel	..	Petitioner in W.P.No.8886 of 2016
T.Kumaragurubaran	..	Petitioner in W.P.No.8887 of 2016
A.Karnan	..	Petitioner in W.P.No.8888 of 2016
G.Mugundhankumar	..	Petitioner in W.P.No.8889 of 2016
R.Kanagaraj	..	Petitioner in W.P.No.8890 of 2016

K.Nandhakumar	..	Petitioner in W.P.No.8891 of 2016
K.Sivakumar	..	Petitioner in W.P.No.8892 of 2016
S.Vijayakumar	..	Petitioner in W.P.No.8893 of 2016

-vs-

1. State of Tamil Nadu

Rep by its Secretary to Government
Higher Education Department
Secretariat
Chennai 600 009

2. Registrar

Annamalai University
Annamalai Nagar
Chidambaram
Cuddalore District

.. Respondents 1 & 2 in all the W.P's
except W.P.Nos.40414 to 40416 of 2015

3. The Annamalai University

rep by its Registrar
Annamalai Nagar
Chithambaram 608 002

.. Respondent in W.P.Nos.40414 to
40416 of 2015

W.P.Nos.38537, 38538, 38640 to 38642, 38873 to 38875, 40838, 40839, 40893 to 40895 of 2015 are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in his University Order No.928/(C1)/2015 dated 28.11.2015 and quash the same in so far as the petitioners are concerned and direct the respondents to allow the petitioners to continue as Special Officers with all the consequential benefits.

W.P.Nos.40414 to 40416 of 2015 are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records relating to the proceedings of the Order No.928/(C1)2015 dated 28.11.2015 of the respondent and quash the order passed therein.

W.P.Nos.8884 to 8893 of 2016 are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent herein in order No.928/C1/2015 dated 28.11.2015, quash the same and consequently direct the respondents to continue the petitioners in the post of Special Officer in the pay band of Rs.15 600-39100+GP of Rs.5400/- with consequential service and monetary benefits.

W.P.Nos.262, 263, 5424 & 6450 of 2016 are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relevant to the University Order No.928/(C1)/2015 dated 28.11.2015 passed by the second respondent, quash the same in respect of the petitioners as improper, illegal, unreasonable against the natural justice and thereby direct the respondents to allow the petitioners to continue as Special Officers with all the consequential benefits.

For Petitioners	::	Mr.C.Selvaraju Senior Counsel for M/s C.S.Associates in W.P.Nos.38537, 38538, 38640 to 38642 of 2015 Mr.M.Sureshkumar in W.P.Nos. 40414 to 40416 of 2015 Mrs.Dhakshayani Reddy in W.P.Nos.8884 to 8893 of 2016 Mr.B.Sundara Pandiyan in W.P.Nos.38873 to 38875 of 2015, 262, 263, 5424 & 6450 of 2016 No appearance in W.P.Nos. 40893 to 40895, 40838 & 40839 of 2015
For Respondents	::	Mr.R.Suresh Kumar for Annamalai University Mr.S.Gunasekaran Additional Government Pleader for State

ORDER

These writ petitions have been filed by the petitioners challenging the impugned order dated 28.11.2015 passed in University Order No.928/(C1) 2015

by the Registrar of Annamalai University, Chidambaram, in and by which the petitioners have been re-designated as Special Officer Grade II in the revised pay band of Rs.9300-34800+Grade Pay of Rs.5100/- with admissible allowances with effect from 1.11.2015 from the post of Special Officer, on the ground that they have not possessed the minimum educational qualification of Post Graduate Degree with Second Class for holding the post of Special Officer, as per the University Calendar in Chapter XXVII-Standing Orders.

2. Mr.C.Selvaraju, learned senior counsel appearing for the petitioners in W.P.Nos.38537, 38538, 38640 to 38642 of 2015, leading the arguments, submitted that the petitioner in W.P.No.38537 of 2015, Mr.A.Jaisankar, having passed B.E.(Mechanical Engineering) course in the year 1995 conducted by Anna University, applied for the post of Special Officer in the respondent University and, on being selected, was posted at the Information Centre, Directorate of Distance Education, Padalur, Perambalur District on 23.3.2009. After declaration of his probation, he was confirmed in the said post on 24.3.2011. As he was appointed as Special Officer in the pre-revised time scale of pay of Rs.8000-275-13500, after introduction of the pay band as per the recommendation of the Sixth Pay Commission, his pay was fixed in the pay band of Rs.15600-39100 with a Grade Pay of Rs.5400/-. When the matter stood as above, the respondent Annamalai University was taken over by the Government in 2013, as such it

became a Government University, resultantly it has come under the control of the Administrator. However, the Administrator found some alleged irregularities in the Annamalai University and one such irregularity was that the University appointed the Special Officers without qualification. But as per the calendar of Annamalai University for the post of Special Officer, the minimum educational qualification is a Master's Degree with second class. While so, the petitioner was appointed with B.E. Degree. Hence a show cause notice was issued to him on 6.7.2013 mentioning that he did not have the qualification for the post of Special Officer, namely, a Master's Degree with second class, for the which the petitioner submitted an explanation on 17.7.2013 stating that after passing the B.E.Degree in 1995, he joined the M.B.A. Degree in 2005 and, although he completed the course in 2007, he could not get through in respect of some papers. However, he completed the M.B.A. Degree in May, 2014. This was also duly informed to the management with a request to make necessary entry in his service register. Since the respondent did not enter the same in the service register, the petitioner made another representation on 4.8.2015. But the impugned order has been passed on 28.11.2015 by the Annamalai University reverting him to the post of Special Officer Grade II in the pay band of Rs.9300-34800 with a Grade Pay of Rs.5100/-. Since his pay has been reduced with effect from 1.11.2015, he suffered deprivation of salary in a sum of Rs.17000/- per month. Therefore, he has challenged the impugned order on the ground that the same is per se

arbitrary, illegal and vitiated by errors of law and is liable to be set aside by this Court.

3. Arguing further, the learned senior counsel contended that when the petitioner was appointed as per the rules framed under the Annamalai University Act on 23.3.2009 and after the Annamalai University Act 20 of 2013 came into force with effect from 25.9.2013, as per the above Act, the status of the persons already appointed are protected as per Section 58(3)(e). Therefore, the respondent has no power or jurisdiction to take any action, particularly reversion from the post of Special Officer to the post of Special Officer Grade II, for the simple reason that all the appointed officers shall continue to hold the post in the University which is deemed to have been established under the Annamalai University Act 20 of 2013. The learned senior counsel also pleaded that in any event the impugned order is liable to be set aside, since no fault can be found against the petitioner, inasmuch as when the appointment was given by the University, at the time of appointment itself, they should have verified as to whether the petitioner has got the qualification for the post of Special Officer i.e., Master's Degree with second class and thereafter they should have passed the order of appointment, for, since B.E.Degree was also equivalent to the Master's Degree, the University appointed the petitioner as Special Officer, merely because there is a change of office, the petitioner cannot be penalized or

reverted to the lower post violating the principles of natural justice.

4. Continuing his arguments, the learned senior counsel submitted that since the petitioner was appointed in 2009, after allowing him to continue for a long time, the respondents are estopped from passing the impugned order, for one candid reason that the petitioner has not misrepresented to get the appointment, because even at the time of initial appointment, he has enclosed the B.E.Degree certificate and after verifying the same, the University appointed the petitioner as Special Officer. While so, it is no longer open for them to pass the impugned order applying the doctrine of estoppel. Proceeding further, the learned senior counsel submitted that taking into account the vast experience gained by the petitioner from the date of his appointment on 23.3.2009 and the subsequent acquisition of M.B.A. qualification in 2014, the respondent should have dropped further proceedings. Since the petitioner is now satisfying with the qualification of Master's Degree, taking support from the judgment of the Hon'ble Apex Court in the case of **Ram Sarup v. State of Haryana and others, (1979) 1 SCC 168**, it has been contended that even if the appointment of a person was irregular at the time of appointment, as he did not possess the requisite qualification, but as soon as he acquired the necessary qualification, his appointment must be regarded as having been regularised. Explaining further, he submitted that in that case when the appellant-Ram Sarup was appointed as a

Statistical Officer in the year 1961 and he was confirmed in that position during October, 1966, after sometime, he was appointed to the post of Chief Inspector of Shops. Subsequently, he was transferred from the post of Chief Inspector of Shops to the post of Labour-cum-Conciliation Officer on the ground that both the above posts were treated as inter-changeable. However, after some time, an order of reversion was passed on the ground that the appellant was not qualified to be appointed as Labour-cum-Conciliation Officer under the Punjab Labour Service Rules, because he did not possess one of the minimum qualifications required under Rule 4. When the said order of reversion was challenged by the appellant-Ram Sarup, the Apex Court has clearly held that although the appointment of the appellant therein was irregular, since he did not possess one of the three requisite qualifications, but as soon as he acquired the necessary qualification of five years' experience of the working of labour laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised. In the present case also, since the petitioner had acquired the post graduate degree in M.B.A in 2014 and this was also brought to the notice of the respondent University by a representation dated 4.8.2015 requesting them to record his qualification in the service register, the subsequent reversion order reverting him to the post of Special Officer Grade II, on the ground that he was not qualified on the date of passing the order of reversion, is clearly illegal, hence the same must be set

aside. It was also contended that the petitioner is now aged 42 years, a married man with two children, while so it will be difficult to run his family at this juncture with the reduction of salary, which will directly affect his net pay. Moreover, there is no post of Special Officer Grade II in the statutes, therefore the petitioner cannot be reverted/appointed in a lower post which is not in the statutes.

5. Again explaining the case of Mr.M.Srinivasan, the petitioner in W.P.No.38538 of 2015, who has passed B.E.(Electronics and Communication) in 2004 with Second Class from University of Madras, the learned senior counsel submitted that he was selected and appointed as Special Officer and posted at the Engineering Technology Golden Jubilee Hostel, Annamalai University on 22.11.2007. Thereafter, his probation was also declared satisfactorily and confirmed in the said post on 22.11.2009. While serving as Special Officer, he applied to the respondents seeking permission to undergo the M.B.A.Degree and accordingly permission was granted on 13.1.2011. Therefore he joined the M.B.A.Degree in 2011 and completed the same in 2013. While he was to appear for the examination, the impugned order has been wrongly passed on 28.11.2015 reverting him from the post of Special Officer to the post of Special Officer Grade II in the pay band of Rs.9300-34800 with a Grade Pay of Rs.5100/- depriving his salary to the tune of Rs.17,000/- per month.

6. Similarly, explaining the case of Mr.R.Meiyazhagan, the petitioner in W.P.No.38640 of 2015, it was contended by the learned senior counsel that he was appointed as Special Officer on 27.11.2009 with the qualification of B.E. (Mechanical Engineering) Degree. However, while serving as Special Officer, he joined the M.B.A.Degree in 2007 and acquired the Degree in December 2013. The same was also informed to the management to make necessary entry in his service register. However, when a show cause notice was issued on 6.7.2013, a detailed explanation was given on 17.7.2013. Since they did not enter the same, a representation was also given on 6.11.2015. But the second respondent has passed the impugned order on 28.11.2015, as though the petitioner, on the date of passing of the impugned order, has not possessed the requisite qualification, which is liable to be set aside. Arguing for Mr.M.P.Raja Siddharthan, the petitioner in W.P.No.38641 of 2015, it has been contended that he acquired the B.E.(Mechanical Engineering) in 2001 from Annamalai University and with that qualification, he was appointed as Special Officer on 16.2.2006 and subsequently his probation was also declared satisfactorily and his services were confirmed in the said post on 16.2.2008. In the meanwhile, he joined the M.B.A. Degree in 2005 and completed the same in 2008. This M.B.A. qualification was also entered in his service register and thereafter he again joined the course in Master of Social Work in 2011 and passed the same in May 2013. This was also brought to the notice of the second respondent to make necessary entry in the service

register regarding the acquisition of M.S.W. qualification. But the second respondent has not entered the higher qualification acquired by him. When the petitioner had explained the acquisition of M.B.A. qualification in his representation, the impugned order has been simply passed as though the petitioner failed to acquire the qualification on the date of passing of the impugned order. As the approach adopted by the second respondent in passing the impugned order is arbitrary, the same is liable to be set aside. In the case of Mr.S.Sridhar, the petitioner in W.P.No.38642 of 2015, it was contended by the learned senior counsel that he too passed the B.E.(Computer Science) in 1997 with Second Class from Annamalai University and got appointed as Special Officer in Ulundurpet Study Centre of Annamalai University at Ulundurpet on 2.2.2009. Even after declaration of his probation, he joined the M.A.Degree in 2013 and completed the same in 2015. When he was about to appear for M.A.Degree examination, he has visited with the impugned order dated 28.11.2015. Therefore, he pleaded that when the petitioner has never misrepresented his educational qualification, it is not open to the second respondent to pass the impugned order reverting him to the lower post. Taking into account the special circumstances that he has been allowed to work from 2009, he should be given reasonable time to acquire the qualification. As the said reasonable approach has not been adopted, the impugned order is liable to be set aside.

7. Mr.M.Suresh Kumar, learned counsel appearing for the petitioners in W.P.Nos.40414 to 40416 of 2015, namely, Mr.K.Arumugam, Mr.V.Rajiv Gandhi and R.Palanisamy has contended that since Mr.K.Arumugam and Mr.V.Rajiv Gandhi acquired the B.E.(Mechanical Engineering) Degrees and Mr.R.Palanisamy acquired the B.E.(Electrical and Electronics) Degree, on considering their educational qualification, the respondent appointed them in the year 2007 & 2009 as Special Officers. While continuing as such, their period of probation of two years were also confirmed. When they were functioning in that post without any adverse remarks, the State Government took over the administration of the respondent University with effect from September, 2013 by appointing an Administrator/Principal Secretary to Government and as per Section 58(3)(e) of the new Act, all appointment of the officers, namely, teachers and employees of the University shall continue to hold office in the University. While so, when the service conditions of the petitioners have been protected under Section 58(3)(e), the impugned order reverting them to a lower post which is not in existence is liable to be set aside, for the reason that the impugned order has been passed on the basis of the provisions under the repealed Act. Moreover, there is no post of Special Officer Grade II available in the sanctioned post of the University. Therefore, the respondent cannot revert the petitioners to the post which is not available in the University as per the Statutes. Adding further he submitted that the order of demotion stating that the petitioners are not having the post

graduate qualification is unsustainable, since the respondent gave the appointment orders to them after following the due and proper procedure. When the respondent cannot turn around now, the impugned order is liable to be set aside on the ground of estoppel. He also submitted that when all the petitioners have acquired the requisite post graduate qualification with due permission/intimation and the same were also recorded in the service registers of Mr.K.Arumugam and Mr.R.Palanisamy, it is not open for the respondent to say that the petitioners are not having the post graduate qualification to hold the post of Special Officer, which is unsustainable in law.

8. Mrs.Dakshayani Reddy, learned counsel appearing for the petitioners in W.P.Nos.8884 to 8893 of 2016, namely, Mr.K.Sadagopan, Mr.P.Balamurugan, Mr.K.Sathivel, Mr.T.Kumaragurubaran, Mr.A.Karnan, Mr.G.Mugundhankumar, Mr.R.Kanagaraj, Mr.K.Nandha Kumar, Mr.R.Sivakumar and Mr.S.Vijayakumar respectively, submitted that all of them were appointed as Special Officers with the qualification of B.E.Degrees in different branches and their probation were also declared satisfactorily and thereupon they were also confirmed in the said post of Special Officer by various orders passed by the second respondent. Thereafter, some of the petitioners, namely, Mr.K.Sadagopan, Mr.P.Balamurugan, Mr.K.Sakthivel and Mr.T.Kumaragurubaran have also acquired the post graduate qualification in M.B.A., between 2010 and 2014 after

obtaining prior permission from the University. When all these petitioners at no point of time have misrepresented their educational qualification and some of them, namely, Mr.A.Karnan, Mr.G.Mugundhankumar, Mr.R.Kanagaraj, Mr.K.Nanda Kumar, Mr.R.Sivakumar and Mr.S.Vijayakumar have also sought time to undergo the post graduate qualification, without considering the same, the second respondent has proceeded to pass the impugned order ignoring the fact that they were allowed to work for long number of years in the post of Special Officer. Adding further, Mrs.Dakshayani Reddy, learned counsel for the petitioners, referring to Rule 7(a) of the Service Rules applicable to the non-teaching staff of the University, has contended that admittedly in the case of the petitioners, before passing the impugned order of reversion to a lower post, no definite charge was framed against them and as per Rule 7(a), when the second respondent proposes to impose on a non-teaching staff any of the penalties specified for misconduct or incompetence, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge which shall be communicated to the person charged together with a statement of the allegations and he shall be required within a reasonable time to put in a written statement of his defence. Besides the rule demands that the person concerned should be given an opportunity to state whether he desires an oral enquiry and if such an enquiry is desired by the person charged, an oral enquiry shall be conducted with regard to the allegations. After the enquiry has been completed,

the person charged shall be entitled to put in his further statement of defence. Only after observing the above procedure, it shall be competent for the Vice Chancellor to impose on him any of the penalties specified which is appealable to the Syndicate and that the decision of the Syndicate shall be final and no appeal suit or other legal proceedings shall lie against such decision of the Syndicate. As this procedure has not been followed, the impugned order is liable to be set aside. In any event, she submitted that when the petitioners have not misrepresented their qualification at the time of appointment and subsequently they have also acquired the ten years of valuable and rich experience, they cannot be reverted to the post of Special Grade II by the impugned order. In spite of the above objections and submissions, Mrs.Dakshayani Reddy submitted that her clients are thankful to the respondents for not terminating their services for not possessing the minimum educational qualification of post graduate degree with second class, as they have simply reverted them to the post of Special Officer Grade II. However, she pleaded that the petitioners' grievance can be taken as a special case, because some of them have acquired the qualification subsequently and some of them who have not acquired should be given time to acquire the qualification by allowing them to continue in the original post.

9. Mr.B.Sundara Pandiyan, learned counsel appearing for the petitioners in

W.P.Nos.38873 to 38875 of 2015, 262, 263, 5424 & 6450 of 2016, namely, Mr.A.M.Punitha Ramaraj, Mr.B.Sankar, Mr.K.Prakash, Mr.K.Gopu, Mr.A.Muthukumaran, Mr.V.Santhakumar & Mr.V.Surendran respectively, has submitted that although the petitioners were appointed as Special Officers with B.E.qualification between 2007 and 2009 and the petitioners in W.P.Nos.38873 to 38875 of 2015 have also completed the M.B.A. Degree between 2011 and 2013 and also acquired 6½ years of experience, the respondent should have dropped further proceedings, since they have already satisfied the qualification of Master's Degree on the date of passing of the impugned order. Similarly, when the petitioners in the other writ petitions, namely, Mr.K.Gopu, Mr.A.Muthukumaran, Mr.V.Santhakumar & Mr.V.Surendran have completed their post graduate degree subsequently, the second respondent ought to have dropped the further proceedings. When the second respondent has passed the impugned order ignoring the eight years of experience gained by them, the impugned order is liable to be set aside.

10. Similarly, the petitioners in W.P.Nos.40838, 40839 & 40893 to 40895 of 2015 were also appointed as Special Officers with the qualification of B.E. Degree and since they have also been reverted to the post of Special Officer Grade II by the impugned order, for the reason that they did not possess the requisite educational qualification of Master's Degree on the date of appointment,

they have filed the writ petitions challenging the same on the ground that they cannot be reverted since they have gained sufficient experience.

11. From the above arguments advanced by the respective learned counsel for the petitioners, three common arguments have been repeatedly placed before this Court. Firstly, all the petitioners were appointed as per the Rules framed under the Annamalai University Act and it is not the complaint of the respondent University that any of the petitioners had suppressed the educational qualification. Therefore, when there was no fault on the part of the petitioners for being appointed to the post of Special Officer and subsequently when the Annamalai University Act 20 of 2013 came into force with effect from 25.9.2013, the status of the persons already appointed under the old rules are also safely protected under Section 58(3)(e), the respondent University has no power or jurisdiction to take any action, particularly reversion from the post of Special Officer to the post of Special Officer Grade II. Secondly, at the time of appointment, the respondent University should have verified as to whether they possessed the requisite qualification for the post of Special Officer, namely, Master's degree with second class and since all of them had passed B.E.degree in various disciplines, which is equivalent to Master's Degree, the University rightly appointed them as Special Officer. Subsequently, due to change of office, the petitioners cannot be penalized by way of reversion to the lower post depriving a

huge monthly salary of Rs.17000/- when there is no such post in the statutes. Thirdly, most of the petitioners have acquired the M.B.A./M.A. qualification by the time the impugned order was passed. Therefore, when some of the petitioners are satisfying the qualification of Master's degree, the respondent University should have permitted the other persons who are not qualified with Master's degree to acquire the same within a reasonable time. Fourthly, without holding proper enquiry by issuing charge memo, no order of reversion can be passed denying the right of appeal.

12. Mr.R.Suresh Kumar, learned counsel for the first respondent University, replying to the above contentions, emphatically urging this Court to dismiss all the writ petitions, submitted that all the petitioners were appointed in violation of the service rules, which prescribes a post graduate degree with second class as the necessary minimum qualification for appointment as Special Officer. When all the 85 Special Officers were not appointed by way of single appointment order, as they were appointed to such posts at various points of time in different years against the rule prescribing the minimum educational qualification of post graduate degree with second class, all such appointments are illegal strictly in the sense of the University statutes. Therefore, it has been admitted by the petitioners that at the time of their appointment, they were not having the essential educational qualification for recruitment to the post of Special Officer.

When it is an admitted case that the appointment of all the petitioners is a nullity and all the appointment orders are to be construed as illegal, such illegality cannot be regularized, particularly when the statutes of the University in no unmistakable terms say that such illegality cannot be condoned and such appointments cannot be ratified. Only an irregularity can be regularized or ratified and when it is a well settled legal position that the illegal appointment of the petitioners cannot be ratified, the University has decided not to take the extreme step of terminating them. Instead the University has thought it fit to take a lenient view as per the suggestion made by the SpecialCommittee to retain them in service, but not as Special Officers with the pay fixed earlier for them, only to accommodate them in any lower grade post with reduced pay. Accordingly, all the petitioners who were not appointed through any selection process based on advertisement but appointed on the individual applications submitted to the University without having the minimum basic qualification, are accommodated in the post of Special Officer Grade II with reduced pay. Therefore, it is not open to them to say that their appointments have been terminated once and for all and they have been rendered jobless.

13. Adding further, he submitted that when the University was experiencing disastrous state of affairs, the State Government, in exercise of the powers conferred under Section 28(4) of the Annamalai University Act 1928,

appointed a senior I.A.S. officer as the Administrator of Annamalai University in G.O.Rt.No.1401, Public (Special) Department dated 4.4.2013, to carry out the directions and also to administer the University in fulfillment of the purpose for which it was established, so that the administrative and financial crisis can be successfully overcome, without causing problems to the teaching and non-teaching staff and the circumstances leading thereto. Pursuant to the assumption of charge by the Administrator on 4.4.2013, several initiatives were taken to streamline the functioning of the University. In this direction when hundreds of appointments made by the previous administration were unjust, it was found that out of 591 Special Officers, 85 Special Officers (72 Special Officers and 13 House Wardens) have been appointed without the minimum requisite educational qualification. But as per the University calendar, in Chapter XXVII of the Standing Orders, the minimum requisite qualification for the post of Special Officer is a post graduate degree with second class. Hence, show cause notices were issued to the 72 Special Officers and 12 House Wardens on 2.7.2013 including the petitioners and when they submitted their explanation, the same were placed before the Syndicate for their decision. Finally the Syndicate, vide Resolution No.30 dated 7.5.2014, resolved to appoint a two member committee comprising of an officer from Higher Education department and another officer from Finance Department to go through all similar cases in which appointments were made. Since Rule 6 of the service rules provides for the method of appointment to

various positions of non-teaching staff of the University and the respective minimum educational qualification for each post, the Committee constituted to look into this matter found that all these 85 persons have not been appointed by way of single appointment order, but were appointed to such posts at various points of time in different years. Moreover, it was found that such appointments were given based on the individual application submitted to the University and not by way of selection made by inviting applications from the eligible candidates through public notification. Since these appointments were made between 2004 and 2012 and the rule prescribing the minimum educational qualification also was not followed and finally all these 85 persons including the petitioners had been appointed as Special Officers only with the qualification of U.G. degree, it was found that their appointments are not irregular but illegal appointments. Therefore, the University thought it fit to initiate appropriate action as contemplated under the University Act and the Rules made thereunder. On this basis, show cause notices were issued to all the petitioners asking them to explain as to why their services as Special Officers should not be terminated on the ground that they did not possess the qualification for the post of Special Officer. The petitioners also responded to the notices and some of them have given their explanation stating that they did not have the basic minimum educational qualification to get appointment to the post of Special Officer at the time when they were appointed as Special Officers. However, their only prayer

was that they were permitted to continue from the date of appointment, thereafter some of them have acquired the post graduate qualification and therefore they should be considered accordingly. Some of the persons even explained that although they were appointed by the University without any misrepresentation from their side, as a result they were permitted to continue till date, and if any further time is given by the University to acquire the requisite qualification, they would qualify themselves to acquire the post graduate qualification. Therefore, it is the clear case of the petitioners that they did not have the necessary minimum qualification of post graduate degree with second class before or on the date of appointment and so it was decided to proceed against them.

14. Accordingly, the University appointed a two member committee, one each from Higher Education department and Finance department of the Government of Tamil Nadu by a resolution passed in the University Syndicate meeting on 7.5.2014. Pursuant to the said decision, a two member committee consisting of Mrs.A.Suguna, Deputy Secretary to Government, Higher Education Department and Mr.M.Samikannu, Regional Joint Director, Local Fund Audit were appointed and the issue was referred to them for consideration and suggestions. The said Committee, after due deliberations, came to know that for the post of Junior Assistant the qualification prescribed being a post graduate degree with

second class or an under graduate degree with high second class with typewriting both in English and Tamil and knowledge of computer desirable, the higher post of Special Officer had been wrongly filled up with the persons without the post graduate degree qualification, the Committee decided to reject the representations given by each individual by suggesting to the University that instead of sending them out, they can be accommodated in a lower post with revised pay scale. Although the University has got ample and enormous power to initiate departmental proceedings against all the petitioners including to dispense with their services by terminating them from service, for the simple reason that it is their admission that they did not have the minimum requisite educational qualification at the time of their appointment, fairly showing some sympathy to the petitioners since they have put in long number of years of service, the University thought it fit to take a lenient view to retain these incumbents including the petitioners in the University service, but not as Special Officer, only to accommodate them in any lower post with revised pay. Moreover, since the Special Committee had also suggested that these persons may be put in a revised pay from Rs.15600-39100 with Grade Pay of Rs.5400 to Rs.9300-34800 with Grade Pay of Rs.5100. Since the present scale of pay for the Assistants working in the University is the Grade Pay of Rs.4600/- and the next higher pay fixed for the Superintendent is the Grade Pay of Rs.5400/- and in between the Grade Pay of Rs.4600 and Rs.5400, there is no other pay structure

in the University, the Pay Grievance Redressal Cell of the Government of Tamil Nadu for pay hierarchy as per the Sixth Pay Commission has suggested to have the grade pay of Rs.5100/- and it was accepted. Accordingly, G.O.Ms.No.318 Finance Department dated 22.7.2013 has been passed. Since the Special Committee of the University, in order to minimize the financial loss to the petitioners, has suggested a better solution, the suggestion of the Special Committee was placed in the University Syndicate meeting and after detailed deliberations, the Syndicate of the University decided to accept the suggestion made by the Special Committee to place all the petitioners in the pay scale of Rs.9300-34800 with Grade Pay Rs.5100/- with effect from 1.11.2015 prospectively on par with the pay fixed in G.O.Ms.No.318 Finance Department dated 22.7.2013. Besides, this position of Special Officer Grade II has not been made a permanent entity to be followed in the University service hierarchy and this position would be attached to personnel and the same would lapse automatically against the individuals including the petitioners at a later date, therefore, he pleaded that when the University has taken a very conscious decision considering the plight of the individuals including the petitioners so sympathetically to safeguard their interest and livelihood, otherwise a drastic decision to terminate all these people could have occurred, the petitioners ought not to have come to this Court challenging the impugned order, which is not only fully justifiable but also legally sustainable.

15. Mr.R.Suresh Kumar, learned standing counsel, while replying to the contention of the petitioners that once they were appointed as per the rules framed under the Annamalai University Act, after the present Annamalai University Act 20 of 2013 came to be introduced with effect from 25.9.2013, the status of the persons already appointed under the old rules are protected under Section 58(3)(e), hence the respondent has no power or jurisdiction to take any action, particularly reversion from the post of Special Officer to the post of Special Officer Grade II, has further submitted that it is the clear admitted position that on the date of their appointments as Special Officers, all the 85 Special Officers were appointed without the minimum required educational qualification as contemplated by the service rules themselves. Moreover, Serial No.2 under Rule 6 of the service rules of the University mentions about the post of Special Officer and the minimum required qualification for appointment as Special Officer is a post graduate degree with second class. When it is abundantly clear and also admitted by the petitioners that they failed to possess the minimum requisite educational qualification for the post of Special Officer at the time of their appointments, it is a well settled legal position that a person who does not possess the requisite qualification for a post cannot even apply for recruitment, for the reason that his appointment would be contrary to the statutory rules and therefore the same shall be void in law even if he was appointed. Moreover, lacking of eligibility for the post cannot be accepted at any

stage and appointing such person would amount to serious illegality and not mere irregularity and such person also cannot approach the Court for any relief for the reason that he does not have a right which can be enforced through a Court of law.

16. Again he has submitted that if the appointment of the petitioners for not getting the requisite minimum educational qualification is bad in law from its inception, it does not get sanctified at a later stage, because the subsequent action or development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order and it would be beyond the competence of any authority to validate such an order. Moreover, it would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. In support of his submissions, he has relied upon a decision of the Supreme Court in **State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 436**, wherein it is candidly held that if an order is bad in its inception, it does not get sanctified at a later stage, because a subsequent action or development cannot validate an action which was not lawful at its inception. Again Mr.R.Suresh Kumar, learned standing counsel contended that when it is also a well settled legal position that no person can be appointed even on temporary or adhoc basis without inviting applications from all the eligible candidates, all the petitioners were appointed without their names

being sponsored by the employment exchange or putting a note in the notice board. Therefore their appointments will not meet the requirement of Articles 14 and 16 of the Constitution of India, because a person employed in violation of this settled legal provision is not legally entitled to any relief. When all the 85 persons were appointed based on their individual applications submitted to the University and not based on any advertisement which is unknown to law, they cannot even approach the Court, for the reason that they do not have any right which can be enforced through a Court of law. This stand of the University, he pleaded, has been endorsed by the judgment of the Apex Court in **Pramod Kumar v. U.P.Secondary Education Services Commission and others, (2008) 7 SCC 153**, holding that if the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Moreover, such an act cannot be ratified, inasmuch as an appointment which is contrary to the statute/statutory rules would be void in law. Adding further he submitted that an illegality cannot be regularised, particularly when the statute in no unmistakable terms say so. Only an irregularity can be regularised.

17. Mr.R.Suresh Kumar, learned standing counsel, relying heavily on the judgment of the Apex Court in *Mamata Mohanty's case (supra)*, submitted that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Once all the petitioners have admitted before this Court that they did

not possess the basic requisite educational qualification at the time of appointments, namely, post graduate degree with second class for the post of Special Officer, it goes without saying that the impugned order reverting them from the post of Special Officer to the post of Special Officer Grade II is legally valid. Therefore it becomes the solemn duty of the Court not to perpetuate an error which has already been rectified by the University. Again clearly exposing the case of the petitioners that they do not have a case even for original appointment, as they failed to possess the minimum educational qualification, he submitted that a candidate becomes eligible to apply for a post only if he fulfills the required minimum benchmark fixed by the rules, therefore, none of the petitioners could even submit the application to the post of Special Officer, because all of them did not face any advertisement from the University nor faced the interview/test before the selection board. Once an order of appointment itself is illegal in the beginning and when this also has been admitted by them in their written explanations submitted to the University and also before this Court in their affidavits, there is no obligation on the Court to protect the illegal appointments merely on the ground that they were allowed to work for some time. Further, lacking eligibility for the post cannot be cured at any stage. Hence the respondent University had reverted them to the lower post. While so, appointing such persons again to the post of Special Officer would amount to serious illegality. As a matter of fact, he pleaded that the petitioners cannot even

approach this Court for any relief, for the reason that they do not have a right which can be enforced through Court of law. In support of his submissions, he has also relied upon a judgment of the Apex Court in the case of **Rakesh Kumar Sharma v. State (NCT of Delhi) and others, (2013) 11 SCC 58.**

18. I find merits in the submissions made by the learned counsel for the respondent University. It is a well settled legal position that once an order of appointment itself is bad on the date of appointment, it cannot be sanctified at a later stage. The admitted fact from both sides would show that all the petitioners were appointed as Special Officers without possessing the post graduate degree. When the service rules of the respondent University make it clear that the requisite qualification for appointment as Special Officer is a post graduate degree with second class, admittedly none of the petitioners possessed the basic educational qualification at the time of their appointment. However, when the respondent University was taken over by the State Government, a senior I.A.S. Officer was appointed as Administrator in G.O.Rt.No.1401, Public (Special) Department dated 4.4.2013 to carry out the directions issued by the Government and while the remedial and corrective measures were initiated by the Administrator to reform some of the departments on all fronts, such as administrative, financial and academic sides, it was found that 85 Special Officers have been appointed without possessing the minimum educational qualification.

Therefore, when show cause notices were issued to them to show cause as to why action should not be taken against them for not possessing the basic qualification for the post, all the petitioners and the other Special Officers and House Wardens had submitted their explanations admitting that they did not possess the educational qualification at the time of appointment. However, it is their case that they have not misrepresented their educational qualification. Nonetheless, their claim is that as per Section 58(3)(e) of the Annamalai University Act 20 of 2013, their appointments are all protected and they cannot be disturbed. In this context it is relevant to extract Section 58(3)(e) of the above Act as follows:-

“(3) Notwithstanding such repeal--

(a) to (d).....

(e) all appointment of the officers (other than the Vice Chancellor and the Registrar), teachers and employees of the said University and subsisting immediately before the date of commencement of this Act shall be deemed to have been made under, and for the purposes of this Act, and such officers, teachers and employees shall continue to hold office, in the University which is deemed to have been established under this Act, subject to the conditions governing the terms of their office of employment, and

(f)...”

19. A careful reading of the above shows that all the appointments of

officers, namely, teachers and employees subsisting immediately before the date of commencement of the Act shall continue to hold the post in the University subject to the conditions governing the terms of their office of employment. This provision will apply to all those appointments made in accordance with law or rules made by the University, more particularly when all of them possessed the requisite qualifications for the respective post. In the cases on hand, the petitioners had obtained the orders of appointment without having the basic qualification, therefore their appointments from the beginning are bad. Hence this provision cannot be invoked by the petitioners. Accordingly the first issue is answered. While moving to the next question that the petitioners cannot be penalised by reversion without proper enquiry, it is more pertinent to recall an adage "Kjy; nfhdY; Kw;wpYk; nfhdY;" i.e., if any order is bad in its inception, then anything done subsequently will be non est in the eye of law. It is also a well settled legal position that if the essential educational qualification for recruitment to a particular post has not been satisfied, the same cannot be condoned or ratified. Hence the appointments given to the petitioners contrary to the statute cannot be allowed to be ratified, because an illegality cannot be regularised, particularly when the statutes do not permit so, for the reason that from the date of initial appointment, the orders of appointment issued to them were bad in law. In this regard, it is pertinent to refer to the judgment of the Hon'ble Apex Court in the **State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC**

436, wherein the Apex Court, in paragraphs 37 to 41, has held as follows:-

"Order bad in inception

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: Upen Chandra Gogoi v. State of Assam & Ors., AIR 1998 SC 1289; Mangal Prasad Tamoli (Dead) by L.Rs. v. Narvadeshwar Mishra (Dead) by L.Rs. & Ors., AIR 2005 SC 1964; and Ritesh Tiwari & Anr. v. State of U.P. & Ors., AIR 2010 SC 3823).

38. The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour. (Vide Dr.M.S.Patil v. Gulbarga University & Ors., AIR 2010 SC 3783).

Eligibility Lacking

39. In *Dr.Prit Singh v. S.K.Mangal & Ors.*, 1993 Supp (1) SCC 714, this Court examined the case of a person who did not possess the requisite percentage of marks as per the statutory requirement and held that he cannot hold the post observing: (SCC pp.718-19, paras 12-13)

"12.....It need not be pointed out that the sole object of prescribing qualification that the candidate must have a consistently good academic record with first or high second class Master's Degree for appointment to the post of a Principal, is to select a most suitable person in order to maintain excellence and standard of teaching in the institution apart from administration..... The appellant had not secured even second class marks in his Master of Arts Examination whereas the requirement was first or high second class (55%). The irresistible conclusion is that on the relevant date the appellant did not possess the requisite qualifications.

13.....on the date of the appointment the appellant did not possess the requisite qualifications and as such his appointment had to be quashed."

(emphasis added)

40. In *Pramod Kumar v. U.P.Secondary Education Services Commission & Ors.*, AIR 2008 SC 1817, this Court examined the issue as to whether a person lacking eligibility can be appointed and if so, whether such irregularity/illegality can be cured/condoned. After considering the provisions of the U.P. Secondary

Education Services Commission Rules, 1983 and U.P. Intermediate Education Act, 1921, this Court came to a conclusion that lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, thus cannot be cured. A person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be enforced through court.

41. This Court in Pramod Kumar further held as under: (SCC p.160, para 18)

"18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. (See Secy., State of Karnataka v. Umadevi(3), (2006) 4 SCC 1; National Fertilizers Ltd. v. Somvir Singh, (2006) 5 SCC 493; and Post Master General, Kolkata v. Tuti Das (Dutta), (2007) 5 SCC 317)."

20. A reading of the above observations would spell out two important things. A right in law exists only when it has a lawful origin. In the present batch, the appointment of the petitioners were not made by way of single appointment order, but were made at various points of time in different years by entertaining

individual applications submitted to the University. Firstly, when the law says that no person can be appointed on temporary or adhoc basis without inviting applications from all the eligible candidates, in the case of the petitioners, their appointments will not meet the requirement of Articles 14 and 16 of the Constitution of India, because it deprives the candidates who are eligible for the post from being considered. When a person employed in violation of these provisions is not entitled to any relief including salary, the second infirmity indicated by the respondent University shows that when the petitioners were appointed to the post of Special Officer through back door method without inviting applications from all the eligible candidates, they were not having the requisite qualification, namely, post graduate degree with second class for appointment to the post of Special Officer as per Rule 6 of the service rules of the University, therefore it is crystal clear that the appointment of the petitioners is bad from its inception and they cannot get it sanctified at a later stage on the ground that they have been allowed to work for long years, namely, seven to eight years and in the meanwhile they acquired the minimum requisite educational qualification, that is after ten years, therefore they should not be reverted back. Paragraph-40 of the judgment of the Apex Court in Mamata Mohanty's case (supra) categorically holds that a person lacking eligibility cannot approach the Court for the reason that he does not have a right which can be enforced through Court of law. This legal position has been further supported by

yet another judgment of the Apex Court in the case of **Mohd.Sartaj and another v. State of U.P. and others, (2006) 2 SCC 315**, wherein a similar contention raised by the appellants therein that once appointed their services could not have been cancelled without affording them an opportunity of being heard and giving them a chance to explain their position, has been negated by the Apex Court on the basis of the ratio laid down in the case of **S.L.Kapoor v. Jagmohan (1980) 4 SCC 379**, as follows:

“13. In the matter of S.L.Kapoor v. Jagmohan and Ors., (1980) 4 SCC 379, this Court has observed that a separate showing of the prejudice caused is not necessary and the non-observance of natural justice is in itself a prejudice caused. The Court has relied upon the decision given in State of Orissa v. Ms.Binapani Dei, AIR 1967 SC 1269 for the proposition that even if an administrative action involves civil consequences it must observe rules of natural justice. Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, AIR 1978 SC 851, has also been cited, as civil consequences undoubtedly cover infraction of not merely property or personal rights but of the civil liberties, material deprivation and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. The Court has also cited the observation of one of the judges of House of Lords in Ridge vs. Baldwin, 1964 AC 40 for the purpose that the

administrative body may in a proper case be bound to give a person who is affected by their decision, an opportunity of making representation. But all depends on whether he has some right or interest or some legitimate expectation of which it would not be fair to deprive him. Similarly, the Privy Council's decision in the *Alfred Thangarajah Jaurayappah vs. W.J. Fernando*, (1967) 2 AC 337 has also been referred to show that there are three matters which should always be borne in mind while considering whether the principle *audi alteram partem* should be complied with or not? First, what is the nature of property, the office held, the status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when the right to intervene is proved, what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined.

14. However, in *S.L.Kapoor v. Jagmohan and Ors.*(supra), this Court has also observed as under: (SCC p.395, para 24)"

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made

any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because courts do not issue futile writs."

21. A reading of the above observations would make it clear that non observance of the principles of natural justice cannot be vitiating every order if admitted or indisputable facts are involved. In the present batch, applying the said principle, if the contention of the petitioners that without affording them an opportunity of being heard they have been reverted to the post of Special Officer Grade II and if the impugned order is set aside with a direction to the respondent University to provide them an opportunity, is accepted, again the admitted and indisputable fact that the petitioners did not possess the minimum requisite educational qualification, namely, post graduate degree with second class at the time of getting appointment as Special Officer in the second respondent University, cannot be altered. Therefore, when the above fact is clearly admitted, an enquiry would be only an empty formality and in such cases,

the principle of estoppel that they cannot be disturbed, since they were appointed without verification of the requisite rule, would be of no avail. In another judgment in **State of U.P. v. Neeraj Awasthi, (2006) 1 SCC 667**, the Apex Court, while hearing the arguments that the principles of natural justice have been ignored before terminating the services of the employees and therefore the order terminating the service of the employees was bad in law, on consideration of the principles of natural justice and the circumstances in which they are protected, finally found that if the services of the workmen are governed by the U.P. Industrial Disputes Act, they are protected under that law. Rules 42 and 43 of the U.P. Industrial Disputes Rules lay down that before effecting any retrenchment, the employees concerned would be entitled to notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If retrenchment is to be effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise.

22. Applying these principles to the present batch, it can be very well seen that though the petitioners did not possess the requisite qualification as per the service rules for the post of Special Officer, namely, post graduate degree with second class at the time of appointment, when the University have got ample powers to terminate them from service, taking a sympathetic view, a two

member committee comprising officers from the Higher Education department and Finance department of the Government of Tamil Nadu was constituted by a decision taken in the meeting of the University Syndicate on 7.5.2014. Pursuant to the said decision, a two member committee consisting of A.Suguna, Deputy Secretary to Government and M.Samikannu, Regional Joint Director was appointed and the issue was referred to them for consideration. Moreover, as per the University calendar, the qualification prescribed for Junior Assistant being post graduate degree with second class or undergraduate degree with high second class with typewriting both in Tamil and English and knowledge of computer desirable, the Special Committee recommended to reject the explanation given by each individual against the show cause notices issued by the University. However, the Committee suggested to the University to consider them for putting in a lower pedestal with revised scale of pay. Accordingly, when the Special Committee had suggested that these petitioners may be put in the revised pay scale from Rs.15600-39600 with Grade Pay of Rs.5400 to Rs.9300-34800 with Grade Pay of Rs.5100/-, again showing more sympathetic approach that the Assistants are getting the Grade Pay of Rs.4600/- and the next higher pay fixed for the Superintendent being Rs.5400/- and in between the Grade Pay of Rs.4600 and 5400, there is no other pay structure in the respondent University, the Pay Grievance Redressal Cell had suggested to have the grade pay of Rs.5100 as per the Sixth Pay Commission. Accordingly, the Government also to

that effect issued a G.O.Ms.No.318, Finance Department dated 22.7.2013. That shows that the University without terminating the services and without even fixing the Grade Pay of Rs.4600/-, which is equivalent to the post of Assistant, has rightly fixed the Grade Pay of Rs.5100/-. Finally, when the suggestion of the Special Committee was accepted by the University in its Syndicate meeting held on 16.10.2015 to fix the scale of pay of Rs.9300-34800 with Grade Pay of Rs.5100/- with effect from 1.11.2015 prospectively on par with the pay fixed in G.O.Ms.No.318, Finance department dated 22.7.2013 very sympathetically to safeguard the interest and livelihood of these incumbents, the contentions made by Mrs.Dakshayani Reddy that without following the procedure under Rule 7(a) of the service rules, the impugned order has been passed, when the Vice Chancellor is the competent authority to pass final orders, as a result the petitioners have been deprived of their right to appeal to the Syndicate, have no legal legs to stand.

23. As a matter of fact, I could foresee more risks would besiege the petitioners in the event of remand, for, if the impugned order on the ground of violation of the principles of natural justice or on the ground of violation of Rule 7(a) or that the Vice Chancellor who is the competent authority has not passed the order is to be interfered with, the respondent University may even go to the extreme extent of terminating the services of the petitioners, which would be

causing much prejudice not only to the petitioners but to their families at this stage. Hence, I decline to remand the matters back. Moreover, as highlighted above, when none of the appointments have been made pursuant to the notification issued to the public calling for applications from the eligible candidates, since the appointments were based on individual applications without inviting applications in the manner known to law, the said approach will not meet the legal requirement of Articles 14 and 16 of the Constitution of India. Secondly, they do not have the minimum requisite educational qualification of post graduate degree with second class for the post of Special Officer. Therefore, when their appointments were bad from the inception, they do not get sanctified at a later stage. Finally, it is a well settled legal position that any person lacking eligibility cannot approach the Court for the reason that he does not have a right which can be enforced through Court. Hence the claims of the petitioners are negatived.

24. For all the aforementioned reasons, this Court, fully agreeing with the impugned order, has no hesitation to reject the prayer of the petitioners. Accordingly, all the writ petitions fail and they are dismissed. Consequently, interim order stands vacated and the M.P.Nos.1 & 2 of 2015, W.M.P.Nos.151, 152, 4723, 5733, 7882, 7884, 7886, 7888, 7890, 7892, 7894, 7896, 7898, 7900 of 2016 are also dismissed. There shall be no order as to costs.

Index : yes

06.06.2016

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To

1. The Secretary to Government
Higher Education Department
Secretariat
Chennai 600 009
2. The Registrar
Annamalai University
Annamalai Nagar
Chidambaram
Cuddalore District

T.RAJA, J.

SS

Order in
W.P.Nos.38537 of 2015 etc.

06.06.2016