

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.24358 of 2017

Pothula Lakshmi

... Petitioner

Vs

1.Union of India,
Government of Puducherry,
Rep by Chief Secretary,
Puducherry.

2.The Secretary (Education)
Government of Puducherry,
Puducherry.

3.The Under Secretary(H & TE)
Chief Secretariat, Puducherry.

4.The Principal,
Dr.SRK Government Arts College,
Yanam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of Writ of Mandamus, directing the respondents 2 and 3 to consider petitioner representation dated 18.08.2016 and appoint her to the post of Guest lecturer.

For Petitioner : Mr.V.V.Sairam

For Respondents : Mr.R.Syed Mustafa
Additional Government Pleader
(Puducherry)

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O R D E R

The relief sought for in this writ petition is for a direction to direct the 2nd and 3rd respondents to consider the petitioner's representation dated 18.08.2016.

2.The learned counsel appearing for the writ petitioner made a submission that the writ petitioner is now working as part-time lecturer in Economics in Dr.SRK Government Arts College, Yanam. The learned counsel further states that the permanent post of Lecturer is vacant in the 4th respondent

college and therefore, the case of the writ petitioner should be considered for regular appointment to the post of Lecturer.

3. All appointments for permanent posts have to be made only by following the Constitutional scheme and the regular recruitment process under the rules in force. A public post has to be filled up only by providing equal opportunity to all the eligible candidates through open competitive process. A mere representation by the writ petitioner cannot be a ground to issue any direction to the respondents to consider the case of the writ petitioner for permanent appointment to the post of Lecturer. The post of Lecturer is governed by the service rules and all permanent appointments are to be made by following the recruitment rules in force and by providing equal opportunity to all the eligible citizen of this great nation. Back door appointments by way of representations or special considerations or based on the length of temporary services have been prohibited by the Constitution Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi and others reported in 2006 (4) SCC 1, and the relevant paragraphs are extracted hereunder:

"33. In the earlier decision in Indra Sawhney Vs. Union of India [1992 Supp. (2) S.C.R. 454], B.P. Jeevan Reddy, J. speaking for the majority, while acknowledging that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant position of Articles 14 and 16 of the Constitution of India in the scheme of things. His Lordship stated:-

"6. The significance attached by the founding fathers to the right to equality is evident not only from the fact that they employed both the expressions 'equality before the law' and 'equal protection of the laws' in Article 14 but proceeded further to state the same rule in positive and affirmative terms in Articles 15 to 18

7. Inasmuch as public employment always gave a certain status and power --- it has always been the repository of State power --- besides the means of livelihood, special care was taken to declare equality of opportunity in the matter of public employment by Article 16. Clause (1), expressly declares that in the matter of public employment or appointment to any office under the state, citizens of this country shall have equal opportunity while clause (2) declares that no citizen shall be discriminated in the said matter on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. At the same time, care was taken to, declare in clause (4) that nothing in the said

Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizen which in the opinion of the state, is not adequately represented in the services under the state.."

(See paragraphs 6 and 7 at pages 544 and 545) These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College* [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

49. In the result, Civil Appeal Nos. 3595-3612 of 1999, Civil Appeal No. 3849 of 2001, Civil Appeal Nos. 3520-3524 of 2002 and Civil appeal arising out of Special Leave Petition (Civil) Nos. 9103-9105 of 2001 are allowed subject to the direction issued under Article 142 of the Constitution in paragraph 46 and the general directions contained in paragraph 44 of the judgment and Civil Appeal Nos. 1861-2063 of

2001 are dismissed. There will be no order as to costs."

4. Following the legal principles, once again the Hon'ble Supreme Court of India reiterated in the case of SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI v. R. GOVINDASWAMY AND ORS. [(2014) 4 SCC 769]. In paragraph No. 8 of the judgment is very much relevant for the purpose of the case on hand.

"8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for

regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." (Emphasis added) "

5. In the case on hand, admittedly, the writ petitioner is working as part-time Lecturer in Economics and for securing a permanent appointment of Lecturer, the petitioner has to participate in the open competitive process, by competing with other candidates in accordance with the rules and at the time, when the notification is issued in this regard. For issuing a direction as such prayed for in this writ petition under Article 226 of the Constitution of India, the writ petitioner has to establish a legal right. A semblance of legal right is a pre-requisite for granting the relief of writ of mandamus under Article 226 of the Constitution of India. In the absence of establishing such right, no such direction as sought for in this writ petition can be granted. Thus, this Court finds no merits on the prayer sought for.

6. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

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Union of India,
Government of Puducherry,
Puducherry.

2.The Secretary (Education)
Government of Puducherry,
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Dr.SRK Government Arts College,
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RSI (CO)
GN(25/10/2017)



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