

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.7738 of 2012
1939 of 2013 and 13401 of 2013
and M.P.No.1 of 2013 in W.P.No.13401 of 2013

1. K.Raman
2. A.Saravanan
3. N.Kandasamy
4. S.Sampath
5. R.Arumugam
6. R.Govindasamy
7. U.T.Ananda Rajan
8. L.Thangaraj

...Petitioners in W.P.No.7738/2012

1. R.Govindasamy
2. U.T.Ananda Rajan
3. R.Arumugam
4. K.Pugalenth
5. P.Madesu
6. A.Elambarithi
7. P.Thirumurthy
8. Venkatachalam
9. L.Thangaraj

...Petitioners in W.P.No.1939/2013

1. R.Kulandaivel
2. M.N.Nelson
3. S.Rajamanickam
4. D.Senthilkumar
5. P.Rajasekaran

...Petitioners in W.P.No.13401/2013

सत्यमेव जयते

vs.

1. The State of Tamil Nadu
rep. by the Principal Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai-600 009.

2. The Registrar,
Periyar University,
Salem-636 011.

.. Respondents No.1 and 2
in W.P.Nos.7738/2012 and
1939/2013

3. M.N.Nelson
4. R.Kulandaivel
5. S.Rajamanickam
6. D.Senthilkumar
7. P.Rajasekaran

..Respondents 3 to 7 in
W.P.No.7738/2012

3. D.Senthilkumar
4. P.Rajasekaran
5. M.N.Nelson
6. R.Kulandaivel
7. S.Rajamanickam

..Respondents 3 to 7 in
W.P.No.1939/2013

1. The Vice-Chancellor,
Periyar University,
Salem-636 011.
2. The Registrar,
Periyar University,
Salem-636 011.
3. The Syndicate,
Periyar University,
Salem-636 011.

..Respondents in
W.P.No.13401/2013

Prayer in W.P.No.7738 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the resolution additional item No.2 dated 10.11.2011 passed by the second respondent for appointing and regularising the respondents 3 to 7, who are Non Mazdoor Rolls employees to the post of Junior Assistants and quash the same and consequently direct the respondents to promote the petitioners to the posts of Deputy Director-Pride/Deputy Controller of Examination/Section Officers/Assistants in accordance with the statute of the Periyar University.

Prayer in W.P.No.1939 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the second respondent having Ref.No.Pe.Pa.Pa./R6/017786/2012-4, dated 20.09.2012, appointing the respondents 3 to 7 as Assistant with retrospective effect and quash the same and consequently direct the second respondent to fix the interse seniority in the post of Junior Assistant in Periyar University for the purpose of promotion.

Prayer in W.P.No.13401 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents herein to appoint the first petitioner herein initially to the post of Assistant Registrar, the second petitioner herein to the post of Section Officer, the third petitioner herein to the post of Assistant, the fourth and fifth petitioners to the post of Junior Assistant, pursuant to the notification dated 03.06.1999, inviting applications for all the non-teaching posts, in accordance with their respective qualifications and regularise their services in the respective posts in accordance with their seniority with reference to their initial appointment along with all service and attendant benefits, emoluments including the backwages.

For Petitioners in : Mr.R.Singaravalan, Senior Advocate
W.P.Nos.7738/2012 & for M/s.R.Nalliyappan
1939/2013

For Petitioners in W.P.: Mr.M.Sekar
No.13401/2013

For Respondents : Mr.Zakir Hussain, Govt. Advocate
for R1 in W.P.Nos.7738/2012 and
1939/2013

Mr.P.Godson Swaminath
Standing Counsel for R2 in W.P.
No.7738/2012 & 1939/2013
and RR 1-3 in W.P.No.13401/2013

Mr.Naveen Kumar Murthi,
for RR3-7 in W.P.Nos.7738/2012
and 1939/2013

COMMON ORDER
सत्यमेव जयते

The issues raised in all these writ petitions are pertaining to the appointment, seniority and promotion to the petitioners in W.P.Nos.7738 of 2012 and 1939 of 2013, and the contesting private respondents. The said private respondents are the petitioners in W.P.No.13401 of 2013.

2. Since the issues raised in these writ petitions are inter-related to each other and if the issue raised by one set of employees, who are the petitioners in W.P.Nos.7738 of 2012 and 1939 of 2013, are resolved, that will automatically have a bearing on the grievance raised by the petitioners in W.P.No.13401 of 2013, who are none other than the private respondents in the other two writ petitions. Therefore, with

the consent of the learned counsel for the respective parties, all the three writ petitions are taken up for hearing together and are disposed of by this common order.

3. For the sake of convenience, the facts, as has been narrated in W.P.No.7738 of 2012, are culled out in a nutshell as hereunder :

(i) These petitioners had been appointed to the post of Junior Assistant at the second respondent University and after having worked for some years in that capacity, they had further been promoted as Assistants and subsequently, as Superintendents, and in fact, some of them are further promoted as Assistant Registrars and thereafter, as Deputy Registrars, and in those capacities they are presently working.

(ii) In so far as the private respondents are concerned, they had been initially engaged as NMRs and subsequently, they had also been appointed as Junior Assistants. Thereafter, on regularisation of their services, they had also been considered for promotion to the post of Assistants, Superintendents etc., and in those promoted capacities, these private respondents are also, as of now, working.

(iii) The main grievance, as has been projected on behalf of the petitioners in W.P.No.7738 of 2012 and 1939 of 2013, is that these petitioners had been appointed with qualification, on regular basis, whereas, the private respondents had not been appointed on regular basis, and they had been appointed irregularly, that too without qualification, and therefore, if at all any confirmation or regularisation already given to them that shall not take effect from the date of their original engagement/appointment, as they have not fulfilled the qualifications prescribed to hold the post, in which, they have been appointed or regularised, as per the Statute.

(iv) Therefore, primarily, in W.P.No.7738 of 2012, the petitioners have sought for a prayer to cancel the appointment made to the private respondents.

(v) In respect of other writ petition in W.P.No.1939 of 2013 filed by the very same petitioners of W.P.No.7738 of 2012, they wanted their seniority to be fixed in accordance with the statute, based on their qualification and length of service, etc.

(vi) Like that, in W.P.No.13401 of 2013, which was filed by the private respondents in W.P.Nos.7738 of 2012 and 1939 of 2012, they also, in turn, sought for fixation of their seniority, by placing them in appropriate places, considering their length of service, qualification, etc. The petitioners in W.P.No.7738 of 2013 are hereinafter called as petitioners or petitioners group and the private respondents in the said writ petition are called as private respondents/private respondents group, for the sake of convenience and brevity.

(vii) Though a number of issues had been raised by the petitioners and the private respondents regarding the method of

appointment, their qualification, their further promotion and the respondent University also has filed a counter-affidavit, the controversy now raised between these two groups, that, the petitioners in W.P.Nos.7738 of 2012 and 1939 of 2013 as well as the private respondents, can be resolved by a method of compromise, for which, the second respondent University has come out with a workable solution.

4. Mr.P.Godson Swaminath, learned Standing Counsel appearing for the second respondent University, by relying upon an affidavit filed by the Registrar of the second respondent University, has submitted that, whatever be the grievances of these two groups, the same can be resolved in the manner, as has been indicated at paragraph 3 of the said affidavit, whereby, the candidates in the group consisting of the petitioners in W.P.Nos.7738 of 2012 and 1939 of 2013 would be placed above in the seniority than the candidates in the private respondents group, who are the respondents in those writ petitions as well as the petitioners in W.P.No.13401 of 2013.

4.1. This compromise, according to the second respondent University, would be possible, as various provisions of the University Statute empower the Vice Chancellor as well as the Syndicate of the University to take appropriate decision in service matters of non-teaching staff working in the University, by giving suitable relaxation in respect of educational qualification as well as experience.

4.2. In this regard, learned Standing Counsel appearing for the second respondent University would submit that at any cost the basic educational qualification has not been compromised and the selection, promotion, fixation of seniority would be done in consonance with the University Statute only.

4.3. Learned Standing Counsel for the second respondent University, in this regard, wants this Court to dispose of these writ petitions, by taking on record the compromise formula, with which, the University has come forward to settle the issues now raised by both the groups in these batch of writ petitions.

5. Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioners in W.P.Nos.7738 of 2012 and 1939 of 2013, though had made elaborate submissions on the merits of the issues raised by the petitioners group, has ultimately, made his submission that once, the petitioners, for whom he is representing, have been placed above the private respondents group in the seniority as well as further promotions, the petitioners group would not have any grievance, and accordingly, these writ petitions can be disposed.

6. Mr.M.Sekar, learned counsel appearing for the private respondents group, i.e., the petitioners in W.P.No.13401 of 2013, who are the private respondents in other two writ petitions, for whom, Mr.Naveen Kumar Murthi, learned counsel represents before this Court, would also submit that, though as per the said compromise formula now placed before this Court by the second respondent University, their clients (private respondents group) would be placed below the writ petitioners group, the private respondents group would be agreed to such a formula, as in their service career in the second respondent University, they have travelled for a long way with number of promotions, and therefore, if the present status, in which, they are working is not disturbed, they would not have any further grievance. Therefore, learned counsel for the private respondents group would also submit that in the light of the solution (compromise formula), as has been projected by the second respondent University, the writ petitions can be disposed of.

7. This Court has considered the contents of the affidavit, dated 09.12.2016, filed by the Registrar of the second respondent University, as well as the respective submissions made by the learned counsel appearing for the parties.

8. At the outset, for the sake of convenience, the relevant portion of the affidavit dated 09.12.2016 filed by the Registrar of the second respondent University is reproduced hereunder :

"3. I humbly submit that the respondents 3 to 7, namely, Mr.M.N.Nelson, Mr.R.Kulandaivel, Mr.S.Rajamanickam, Mr.D.Senthilkumar and Mr.P.Rajasekaran would be placed below the petitioners 1 to 8, namely, Mr.K.Raman, Mr.A.Saravanan, Mr.N.Kandaswamy, Mr.S.Sampath, Mr.R.Arumugam, Mr.R.Govindaswamy, Mr.U.T.Anandarajan and Mr.L.Thangaraj in seniority subject to the required qualification of the Statutes of the University being possessed by respondents 3 to 7 and petitioners 1 to 8 in the event of respondents 3 to 7 are promoted in different stages, if the promotion is not selection based but based on seniority."

8.1. As per the said undertaking given by the second respondent University in paragraph 3 of the affidavit, as has been extracted above, certainly, the seniority of the petitioners group, that is, petitioners in W.P.Nos.7738 of 2012 and 1939 of 2013, will be reckoned from the date of their regular appointment, whereas, the seniority of the private respondents group, who are petitioners in W.P.No.13401 of 2013, will be reckoned from the date of their original regularisation

of service, for the purpose of fixing inter-se seniority as well as further promotional avenues.

8.2. If the initial appointment of the persons in the petitioners group and the initial regularisation of the service of the persons in the private respondents group are taken as the basis for fixing seniority and further promotions, the issue raised in these three writ petitions can very well be resolved, and in fact, that is what has been intended in paragraph 3 of the affidavit filed by the second respondent University, as has been extracted hereinabove.

9. Therefore, considering these aspects as well as the submissions made by the learned respective counsels, this Court is inclined to pass the following order :

(i) Paragraph 3 of the affidavit of the second respondent University dated 09.12.2016, is taken on record and the same shall be acted upon.

(ii) While implementing the said paragraph 3 of the affidavit of the second respondent University, as indicated above, the date of regular appointment of the petitioners in W.P.Nos.7738 of 2012 and 1939 of 2013, shall be taken as the basis for the purpose of fixing inter-se seniority and promotion. Likewise, in so far the private respondents group is concerned, who are the petitioners in W.P.No.13401 of 2013, the date of their regularisation in the initial appointment shall be the basis for fixing inter se seniority and further promotional avenues.

(iii) It is made clear that this arrangement of taking into account the initial appointment / regularisation is only meant for fixation of inter-se seniority and promotion of the parties (both groups) alone. This fixation will in no way prejudicial to the members of the private respondents group, who are petitioners in W.P.No.13401 of 2013, for getting any monetary and financial benefits, including pension. In other words, this arrangement will not stand in their way to claim such benefits, except inter-se seniority and promotion, from the date of their initial appointment.

(iv) It is also made clear that this arrangement, as has been agreed to by the parties, would be continued in every step of their promotion. In other words, in every category of posts, where, both the groups are travelling, the petitioners group shall not, under any circumstances, be surpassed by the private respondents group.

(v) As indicated above, this measure is only a special arrangement by way of compromise, as has been projected by the

second respondent University, and it shall not be shown/treated as a precedent, in any other future appointment/promotion in the second respondent University and this arrangement will be applicable only to the parties in these batch of writ petitions.

10. With these directions, all the three writ petitions are disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Principal Secretary,
Higher Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Vice-Chancellor,
Periyar University,
Salem-636 011.
3. The Registrar,
Periyar University,
Salem-636 011.
4. The Syndicate,
Periyar University,
Salem-636 011.

+1cc to Mr.K. Ramasamy, Advocate Sr. 18883

+1cc to M/S. P. Godson Swaminath, Advocate Sr. 18360

+1cc to Mr.R. Nalliappan, Advocate Sr. 18263

W.P.Nos.7738 of 2012,
1939 and 13401 of 2013

ARV(CO)
VR(26/4/2017)