

In the High Court of Judicature at Madras

Dated : 23.2.2017

Coram :

The Honourable Mr.Justice P.N.PRAKASH

Writ Petition No.13144 of 2003

1.C.Iyyamperumal
2.K.Santha
3.C.Jaganathan
4.V.Valli
5.R.Saraswathy
6.N.Kalayanakumar
7.P.Balakrishnan
8.A.Ayyapillai
9.S.Santhi
10.R.Velammal
11.R.Subramanian

...Petitioners

Vs

The Registrar, Manonmaniam
Sundaranar University,
Tirunelveli-627012.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the proceedings of the Registrar, Manonmaniam Sundaranar University - the respondent herein in Memo No. MSU/Estt/Admn/2002 dated 20.11.2002 and quash para 3 of the said order in so far as it compels the petitioners to acquire qualification of typewriting higher both in English and Tamil.

For Petitioners : Mr.V.Vijay Shankar

For Respondent : Mr.B.Vishnu Chellaiya and
Mr.S.Venkatesh for M/s.Ajmal
Associates

ORDER

For better appreciation of the dispute at hand, it may be necessary to briefly narrate the past events that happened in this case.

2. Madurai Kamaraj University (for brevity Kamaraj University) was constituted under the Madurai Kamaraj University Act, 1965. Manonmaniam Sundaranar University Act (Tamil Nadu Act 31 of 1990) bifurcated Kamaraj University and constituted a separate university by name Manonmaniam Sundaranar University (for brevity Sundaranar University) to cover some southern districts in the State. The colleges in those southern districts that were earlier affiliated to Kamaraj University automatically became affiliated to Sundaranar University.

3. Section 60 of the Tamil Nadu Act 31 of 1990 reads as follows :

"Tamil Nadu Act 33 of 1963 not to apply

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(1) Subject to the provisions of Sub-Sections (2) to (9) of the Madurai Kamaraj University Act, 1965 (Tamil Nadu Act 33 of 1956) (hereafter in this section referred to as the 1965 Act) shall, with effect on and from the notified date, cease to apply in respect of the areas to which the provisions of this Act extend.

(2) Such cessor shall not affect -

(a) the previous operation of the 1965 Act in respect of the areas to which the provisions of this Act extend; or

(b) any penalty, forfeiture or punishment incurred in respect of any offence omitted against the 1965 Act; or

(c) any investigation, legal proceeding or remedy in respect of such penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(3) Notwithstanding anything contained in Sub-Section (1), all statutes, ordinances and regulations made under the 1965 Act and in force on the notified date, shall, in so far as they are not inconsistent with this Act, continue to be in force in the University area until they are replaced by the statutes, ordinances and regulations to be made under this Act."

(emphasis supplied)

4. As per the Kamaraj University Statute, the following are the qualifications prescribed for the post of Junior Assistant :

"Direct Recruitment :

- (1) Must possess a degree and
- (2) Must have passed the Government technical examination in English typewriting lower grade."

5. The petitioners herein were appointed as Tabulators via Employment Exchange on various dates some time in the year 1992 in Sundaranar University. At the time of their appointment, they possessed qualifications required for the post of Junior Assistant, as prescribed by the Madurai Kamaraj University Statute that has been extracted above. In other words, they were degree holders and had passed English typewriting lower grade examination.

6. Since they were not regularized in the post of Junior Assistant, they filed W.P.No.13615 of 1994 etc. cases seeking regularization of their services by Sundaranar University. During the pendency of the said batch of writ petitions, the Sundaranar University framed their own Statutes and prescribed a slightly different qualification for the post of Junior Assistant, which is as follows :

Category of employee	Method of recruitment	Qualifications & experience
Junior Assistant	By direct recruitment (or) by promotion from lower category of Record Clerk/ Attender having 10 years of experience	1) Bachelor's degree of a University (50 percent or II Grade) 2) Typewriting higher grade in Tamil and English 3) Knowledge of Tamil to the extent of carrying official correspondence and drafting reports (desirable : shorthand lower grade in English and Tamil) 4) Should not have completed thirty three years for direct recruitment

(Emphasis supplied)

7. The Syndicate of Sundaranar University met on 11.12.2001 and resolved to absorb persons like the petitioners as Junior Assistants. This was brought to the notice of this Court when the aforesaid batch of writ petitions were heard by a learned Single Judge and this Court recorded the same in the common order dated 21.12.2001, which is as under :

"7.

'Minutes of the meeting of the Convener's Committee held on 11.12.2001 to take a decision of the Tabulators issue :

Preamble : The Manonmaniam Sundaranar University is carved out of Madurai Kamaraj University during September 1990. The High Level Committee consisting of the Vice Chancellors of Madurai Kamaraj University and Manonmaniam Sundaranar University had agreed to deploy 132 staff from Madurai Kamaraj University. But only 57 had been deployed on various dates. In order to attend the day to day work, Tabulators were appointed through Employment Exchange. In order to take a final decision on the issue, a meeting was convened and

Resolved that

(i) the Tabulators will be absorbed as and when budgetary vacancies arise and such absorption will be on the basis of seniority list prepared by taking into account the date of first entry in the University as tabulators.

(ii) Relaxation in age restriction will be given to the extent of service in the University.

(iii) This is subject to fulfillment of qualifications prescribed in the Statute of this University.

(true copy)

Sd. xx xx xx

Registrar

Manonmaniam Sundaranar University,
Tirunelveli-627012.'

8. Apart from the fair stand taken by the University in formulating a scheme,

learned counsel for the petitioners asserted that as on date, 28 sanctioned post of Junior Assistants (Tabulators) are vacant in the University. Mr.R. Thiagarajan, learned Senior Counsel for the petitioners would contend that some of the petitioners were initially appointed for a period of 2 months, in view of the pendency of the writ petition, their services were not terminated and they are working as Tabulators even now in the respondent University. Some of them were appointed in 1993, 1994, 1995 and 1996 and according to him, all the petitioners are even now working as Tabulators. He also asserted that 29 sanctioned posts of Junior Assistants are kept vacant and direction may be issued for absorption of the petitioners in the order of seniority, namely the date of first entry in the University as Tabulators. He also contended that as per Section 60(1) and (3) of the Act till the new Rules are framed (which had taken place on 29.6.1997), the provisions of Madurai Kamaraj University Act, 1965 are applicable and as per the Statute/Regulations, all the petitioners possess required qualification for the post of Junior Assistant. In other words, according to him, all the petitioners are degree holders and passed the Government technical examination in English typewriting lower grade. The higher qualification namely typewriting higher grade in Tamil and English has been prescribed by the University only in 1997 and all the petitioners satisfy the minimum qualification prescribed under the Statute of Madurai Kamaraj University Act, which stood applicable at the relevant time. In such a circumstance, I am of the view that there will not be any difficulty in issuing appropriate direction to the University in terms of the scheme as arrived at in the minutes of the meeting of the Convener's Committee held on 11.12.2001 of the University."

(Emphasis supplied)

8. After saying so, the learned Single Judge issued the following directions by order dated 21.12.2001 :

"(i) The minutes of the meeting of the Convener's committee held on 11.12.2001

regarding regularization of Tabulators' issue is recorded.

(ii) Among the 26 sanctioned posts of Junior Assistant, which are kept vacant, the petitioners in W.P.No.18547 of 2000 (six persons) are to be considered in preference to the others as per the resolution of the Syndicate dated 14.11.1997.

(iii) The University is to prepare a list of Tabulators appointed by them and they will be absorbed in terms of Resolution No.1 dated 11.12.2001 on the basis of seniority taking into account the date of first entry in the University as Tabulators.

Net result, W.P.No.18547 of 2000 alone is allowed whereas the other writ petitions are ordered on the above terms."

9. Thereafter, the Establishment Committee of Sundaranar University met on 30.3.2002 and passed the following resolution :

"To consider the judgment of Hon'ble High Court, Madras dated 21.12.2001 with regard to the appointment of Tabulators.

Resolved to recommend to the Syndicate to implement the judgment delivered by the Hon'ble High Court of Madras with regard to the appointment of Tabulators in W.P.No.18457 of 2000 and the appointment will be made according to the seniority taking into account the date of first entry of the tabulators in the University."

10. The Syndicate accepted the recommendations of the Establishment Committee and passed the following resolution on 02.11.2002 :

"Additional Agenda item No.2 :

Considered the absorption of the services of the 35 Tabulators permanently as Junior Assistants, in the scale of pay of Rs.3200-85-4900 plus usual allowances as against the vacancies available (seniority list is enclosed in the file) in the University, as per the judgment of the Hon'ble High Court, Chennai.

Resolved that the absorption of the services of the 35 tabulators permanently as Junior Assistants in the scale of pay of

Rs.3200-85-4900 plus usual allowances, as against the vacancies available as per the seniority list prepared by the Sub-Committee as enclosed in the annexure and as per the judgment of the Hon'ble High Court, Chennai be approved.

Resolved further that as the orders have come from High Court, it is not possible to follow the communal roster system in the absorption of the tabulators."

11. Consequently, the Registrar of Sundaranar University issued orders dated 20.11.2002 appointing the petitioners and others as Junior Assistants in which, paragraph 3 reads as follows :

"Similarly, all the 35 persons are graduates and qualified to hold the posts as per Statutes. But, some of them have not qualified the typewriting higher both in Tamil and English as required in Statute to hold the post. Such of those individuals, who have not acquired the typewriting qualification should qualify themselves within the period of probation. If the individuals do not acquire the above qualification within the period of their probation, they are liable to be discharged from service."

12. Challenging the above condition, this writ petition has been filed by those, who do not possess typewriting higher in English and Tamil.

13. At the time of admission, an interim prayer was made in the writ petition seeking stay of operation of paragraph No.3 of the order dated 20.11.2002. This Court, in WPMP.No.16499 of 2003 in W.P.No.13144 of 2003, passed the following order on 25.4.2003

"Interim stay only of the condition in paragraph 3 of the affidavit regarding the individuals to acquire higher qualification within a period of probation. Notice."

14. Subsequently, on 29.8.2003, the interim order dated 25.4.2003 was made absolute :

"Interim order granted on 25.4.2003 is made absolute."

15. Sundaranar University entered appearance and filed their counter.

16. Heard Mr.V.Vijay Shankar, learned counsel for the petitioners and Mr.B.Vishnu Chellaiya and Mr.S.Venkatesh, learned counsel appearing for the respondent.

17. Mr.V.Vijay Shankar, learned counsel for the petitioners submitted that at the time when the petitioners joined the Sundaranar University in the year 1992, the University did not have their own Statute and the Statute framed by the Kamaraj University was made applicable to Sundaranar University by Section 60(3) of the Manonmaniam Sundaranar University Act. The petitioners were appointed through the Employment Exchange and they had the qualifications prescribed by the Statute of Kamaraj University at the time of their initial appointment in the year 1992. When they were not regularized, they filed the above writ petition. Only during the pendency of this writ petition, Sundaranar University framed their own Statute in the year 1997, in which, a slightly different qualification for the post of Junior Assistant was prescribed namely that the candidate should have passed typewriting higher in both English and Tamil. This cannot be made retrospectively applicable to the petitioners, who joined way back in the year 1992.

18. Per contra, the learned counsel for the respondent submitted that even in the order dated 21.12.2001 in W.P.No.13615 of 1994, this Court directed Sundaranar University to absorb the tabulators in terms of resolution No.1 dated 11.12.2001 and that the said resolution clearly states that their appointment will be subject to fulfillment of qualifications prescribed in the Statute of the University. Therefore, he contended that unless the petitioners acquire qualifications prescribed by the Statute of the University, they cannot be regularized merely on the strength of the order dated 21.12.2001 passed by this Court.

19. This Court gave its anxious consideration for the rival submissions.

20. The fact remains that the petitioners were degree holders and were having typewriting lower grade in English as prescribed by the Kamaraj University Statute for the post of Junior Assistant. This was brought to the notice of the learned Single Judge and the same has been referred to in paragraph 8 of his order, which has been extracted above. At the risk of repetition, this Court is constrained to quote the following lines from paragraph 8, which reads as under :

"The higher qualification namely typewriting higher grade in Tamil and English has been prescribed by the University only in 1997 and all the petitioners satisfy the minimum qualification prescribed under the

Statute of Madurai Kamaraj University Act, which stood applicable at the relevant time. In such a circumstance, I am of the view that there will not be any difficulty in issuing appropriate direction to the University in terms of the scheme as arrived at in the minutes of the meeting of the Convener's Committee held on 11.12.2001 of the University."

21. This clearly shows that the learned Single Judge was aware of the fact that these petitioners satisfied only the qualifications prescribed by Madurai Kamaraj University Statute and not the higher qualification prescribed that was introduced by Sundaranar University in the year 1997. Despite this, the learned Single Judge directed the absorption of the petitioners as Junior Assistants.

22. It was submitted by the learned counsel on either side that in the meantime, out of 11 petitioners, eight of them have acquired additional qualifications namely typewriting higher in Tamil, one person died and two of them have not been able to acquire the higher qualification. This Court was further informed that some of them have been promoted to higher posts, but increments payable to them have been withheld on the ground that they had not acquired the higher qualification.

23. In the considered view of this Court, the stand taken by the University that the petitioners can be given all the benefits only if they acquire the qualifications prescribed subsequently in the year 1997, does not appear to be just and fair in as much as it amounts to change in the rules of the game midway and therefore, offends Article 14 of The Constitution of India. It would also amount to taking away the accrued rights vested on the petitioners.

24. In this regard, it may be profitable to extract the following passage from the judgment of the Supreme Court in the case of Chairman, Railway Board Vs. C.R.Rangahdamaiah [reported in 1997 (6) SCC 623] :

"In many of these decisions, the expressions 'vested rights' or 'accrued rights' have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to

be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon Vs Union of India [AIR 1967 SC 1889], B.S. Yadav Vs. Union of India [AIR 1969 SC 118] and State of Gujarat & Anr. Vs. Raman Lal Keshav Lal Soni & Ors. [1983] 2 SCR 287."

25. As far as the promotional posts are concerned, the petitioners should possess the necessary qualifications prescribed by the Sundaranar University Statute to qualify for the same.

26. In the result, this writ petition is allowed and paragraph 3 of the proceedings dated 20.11.2002 in respect of the petitioners herein is hereby quashed and the petitioners shall be given increments and all other benefits. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Registrar, Manonmaniam Sundaranar University,
Tirunelveli-627012.

+1cc to M/S. V. Vijay Shankar, Advocate SR. 11855/17
+1cc to M/S. Ajmal Associates in SR. 11831/17

WP.No.13144 of 2003

NRI (CO)
VR(10/03/2017)