

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.30647 to 30649 of 2012

G.Punniyamoorthy ... Petitioner in WP.No.30647/2012

J.V.Baskaran ... Petitioner in WP.No.30648/2012

M.Muruganantham ... Petitioner in WP.No.30649/2012

Vs

1. The Secretary to the Government of India
Ministry of Human Resources Development,
Department of Higher Education (Languages
Division),
Shastri Bhawan, C Wing, New Delhi-110 115.
2. The Director,
Central Institute of Classical Tamil,
Chennai-600 113. ... Respondents in all Wps

PRAYER in 30647/2012: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to absorb the petitioner as Office Superintendent and regularize his services with all consequential benefits.

PRAYER in 30648/2012: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to absorb the petitioner as Junior Accounts Officer and regularize his services with all consequential benefits.

PRAYER in 30649/2012: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to absorb the petitioner as Upper Division Clerk and regularize his services with all consequential benefits.

For Petitioner : Mr.P.Rajendran
in all WPs
For Respondents : Mr.C.G.Kumar, ACGSC for R1
in all WPs Mr.S.Ramesh Kumar for R2
Addl. Govt. Pleader

COMMON ORDER

Since all these Writ Petitions raised identical issues and grounds, they are taken up together for common disposal.

2. The writ petitioners were originally appointed as Upper Division Clerks/Lower Division Clerks respectively on 21.4.2006. They were all appointed after following the recruitment procedure by calling for applications by issuing open advertisement. Before their appointment, they were subjected to rigorous selection process, namely, written test, interview etc. and duly selected by the Selection Committee after assessing the relative merit among all the candidates. Originally, the Central Institute of Indian Languages was located in Mysore and subsequently, it was shifted to Chennai and consequently, all the petitioners were relocated and reposted at Taramani, Chennai. Subsequently, the Writ Petitioners were upgraded to the post of Office Superintendent on temporary basis by order dated 12.3.2010. Though the upgradation was on temporary basis, however, the same was continued and extended from time to time on the same terms and conditions. While so, an advertisement was issued by the second respondent, calling for applications for appointment to the various posts including the posts held by the present petitioners. Aggrieved by the same, many similarly placed employees have approached this Court in various writ petitions, questioning the said advertisement issued by the second respondent, calling for fresh applications from the candidates from open market without regularizing them despite the fact that they have been employed for many years having been selected by the Selection Committee through regular selection process.

3. Similar writ petition, viz., in W.P.Nos. 29545 to 29556 and 33324 of 2012 came up for consideration before this Court and by a common order, dated 13.10.2017, this Court allowed all the writ petitions and directed the regularization of writ petitioners therein, within a period of four weeks from the date of a receipt of that order.

4. Learned counsel appearing for the petitioners would submit that the present writ petitions are identical and covered by the order passed by this Court, viz., dated 13.10.2017 passed

in W.P.Nos.29545 to 29556 and 33324 of 2012 and hence, sought to dispose of the present writ petitions with the same observation.

5. Learned Addl. Central Government standing counsel appearing for respondent No.1 and the learned counsel appearing for respondent No.2 also admitted that the issue involved in the present writ petitions has been squarely covered by the order of this Court dated 13.10.2017 passed in W.P.Nos.29545 to 29556 and 33324 of 2012.

6. It is appropriate to extract the relevant portion of the above said order as found in paragraphs 20 to 22, which read as under:

"20. The main argument of the learned counsel for the respondents 3 and 4 is that the initial appointments of the writ petitioners were illegal as there were no recruitment Rules in force and no sanctioned posts were available. Such arguments is on the fact of it, is fallacious and without substance for the simple reason that all the writ petitioners were admittedly selected through regular process by a Selection Committee of eminent persons from various fields. The writ petitioners were fully qualified for being selected to the posts both on academic and non-academic sides in terms of the Notification issued by the 3rd respondent which was circulated in the Website and after verifying all the credentials of the candidates concerned, the writ petitioners came to be appointed. The learned counsel appearing for the respondents 3 and 4 have lost the sight of the fact that terming the appointment of the writ petitioners as illegal presupposes the existence of any Rules for such recruitment. In the absence of existence of any Rules at the time of recruitment of the writ petitioners, their appointments cannot be construed to be illegal as there were no transgression of any Rules while making the appointment of the writ petitioners in the respective cadres. At the same time, it is also to be noted that the appointment cannot also be construed to be irregular for the simple reason again that the Institute had followed due process of selection while making the appointments of the writ petitioners. Any subsequent development that too after many years from the date of initial appointment of the petitioners, cannot take away the accrued rights of the petitioners for continuing in their

employment. The Rules which were brought in 2013 can at best have a prospective application for future appointment and the same cannot be used as yardstick for deciding the correctness of the appointment of these petitioners which had taken place much earlier to coming into force of the present Recruitment Rules. In the above circumstances, the arguments advanced by the learned counsel, Shri N.G.R.Prasad would assume larger legal significance in favour of the writ petitioners, particularly, the legal dictum expressed by the Hon'ble Supreme Court of India, in the matter of #Nihal Singh versus State of Punjab# (cited supra), which judgment has been extracted in extenso supra. The observations made by the Hon'ble Supreme Court in the said judgment would squarely apply to the factual matrix of the present case.

"21. During the course of arguments, it is brought to the knowledge of this Court that in 2017, a communication was addressed to the third respondent Institute by the first respondent requesting to carry out a comprehensive review of existing temporary posts into permanent one up to Deputy Secretary level and to forward such proposals to the Ministry. This communication was dated 4.1.2017. Thereafter another communication was issued by the 3rd respondent Institute on 31.1.2017 recommending conversion of these temporary posts into permanent in the Institution with the incumbent. Taking cue and strength from the said communication, Shri N.G.R.Prasad would submit that the proposals have already been sent and are under consideration for conversion of temporary posts into permanent one and therefore, there is no legal impediment in considering the claim of the petitioners herein for grant of benefit of regularization. This Court, after taking into account the contents of the communication as aforesaid, is in full agreement with the submissions made by the learned counsel for the petitioners. This Court does not find any impediment in taking forward such proposal and as far as these writ petitioners are concerned. There are only 13 employees before this Court, out of which, 8 are on academic side and 5 are on non-academic side and admittedly, these persons have been continued since their initial appointment from 2007 onwards. As rightly

contended by the learned counsel for the petitioners that the case was relied upon by the learned counsel for the respondents 3 and 4 would assume legal significance only when there were Recruitment Rules in force and such Recruitment Rules were not followed while making appointments. In the absence of Recruitment Rules, the appointment of the writ petitioners which were made by a due selection process, cannot either be termed as illegal or irregular and therefore, catena of decisions relied upon by the learned counsel for the respondents 3 and 4 cannot be of any help to him for advancing his case as against the writ petitioners. On the other hand, the writ petitioners have made out a case for grant of relief as prayed for.

"22. In the upshot, this Court has no hesitation to allow the writ petitions. The impugned Notification dated 17.10.2012 is set aside. The respondents are directed to take up the claim of the petitioners for regularization of their services in their respective cadres and for this purpose, if necessary, formulate a scheme for the writ petitioners by issuing necessary instructions. The respondents are directed to pass necessary orders regularizing the services of the writ petitioners with effect from their initial appointment with all attendant benefits. It is also made clear that the respondents are permitted to take recourse to any further recruitment for various posts in terms of the Recruitment Rules and man power requirement. The respondents are directed to complete the process of regularization of services of the petitioners within a period of four months from the date of receipt of this order.

Accordingly, all the Writ Petitions are allowed on the above terms. No costs. Consequently, connected MPs closed."

7. In view of the above, this Court is of the opinion that the above said order will hold good in all aspects in regard to the present Writ Petitions also. Accordingly, these Writ Petitions are disposed of. The respondents are directed to take up the claim of the petitioners for regularization of their services in their respective cadres and for this purpose, if necessary, formulate a scheme for the writ petitioners by issuing necessary instructions. The respondents are directed to

pass necessary orders regularizing the services of the writ petitioners with effect from their initial appointment with all attendant benefits. It is also made clear that the respondents are permitted to take recourse to any further recruitment for various posts in terms of the Recruitment Rules and man power requirement. The respondents are directed to complete the process of regularization of services of the petitioners within a period of four months from the date of receipt of this order. No costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Secretary to the Government of India
Ministry of Human Resources Development,
Department of Higher Education (Languages
Division),
Shastri Bhawan, C Wing, New Delhi-110 115.
2. The Director,
Central Institute of Classical Tamil,
Chennai-600 113.

+3cc to Mr.S.Rameshkumar, Advocate Sr.34804

+3cc to Mr.P.Rajendran, Advocate Sr.34698 & 34696, 34697

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ev[co]
srg 10/07/2018

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