

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Delivered On: 27.04.2018
Reserved On: 13.04.2018
CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
And
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.Nos.81 to 90, 137 and 138 of 2016
And
C.M.P.Nos.991 to 1009 and 1828 and 1829 of 2016

1 The periyar University
Rep. by its Registrar University Campus
Periyar Palkalai Nagar
Salem-636 011.Appellant in WA.No.81 to 88/16
90/16 &138/16
Ist appellant in WA 89,137/16

2. The Vice Chancellor
Periyar University
Periyar Palkalai Nagar
Salem 636 011 ...2nd Appellant in WA 89 & 137/16

Vs

1 D. Gayathri
Lecturer/ Assistant Professor Department of
Computer Science Periyar University College
of Arts & Science (PRUCAS)
Mettur Dam - 636 401 Salem Dt....Ist Respondent in
WA.No.81/2016

2 The State of Tamilnadu
Rep. by its Principal Secretary to
Government Higher Education Department
Fort St. George Secretariat
Chennai-9.2nd Respondent in
WA.Nos.81 to 84,86,87-90,
137,138/2016 &
8th Respondent in WA.85/2016

Dr.C.Vijayarani
C.Madesh
Dr.TMT.S.Sathya

..Ist Respondent in WA.82/2016
..Ist Respondent in WA.83/2016
..Ist Respondent in WA.84/2016

1.M.Sasikumar

..Respondents 1 to 7 in
WA.No 85 of 2016

2.V.Velvizhi
3.S.Anu
4.S.Malarvizhi
5.C.Gayathri
6.N.Priyadharshini
7.G.Nandakumar

Dr.A.Venkatesan ...Ist Respondent in
WA.No.86 of 2016
T.Lakshmi Narayanan ...Ist Respondent in
WA.N.o.87 of 2016
T.Chandra ...Ist Respondent in
WA.No.88 of 2016
B.Srinivasan ...Ist Respondent in
WA.No.89 of 2016
R.Madeswari ...Ist Respondent in
WA.No.90 of 2016

The Principal
Periyar University College
of Arts and Science (PRUCAS)
Mettur Dam 636 401 Salem District ...3rd Respondent in
WA.No.90 of 2016
P.B.Rukmani Devi ...Ist Respondent in
WA.No.137 of 2016
L.Maria Arulraj ...Ist Respondent in
WA.NO.138 of 2016

Writ appeal filed under clause 15 of Letters patent praying the
setaside the

(i) Order dated 14.10.2015 in WP.No.35127/2014 in WA.81/2016
(ii) Order dated 14.10.2015 in WP.No.35128/2014 in WA.82/2016
(iii) Order dated 14.10.2015 in WP.No.35129/2014 in WA.83/2016
(iv) Order dated 14.10.2015 in WP.No.885/2015 in WA.84/2016
(v) Order dated 14.10.2015 in WP.No.1177/2015 in WA.85/2016
(vi) Order dated 14.10.2015 in WP.No.1525/2015 in WA.86/2016
(vii) Order dated 14.10.2015 in WP.No.1526/2015 in WA.87/2016
(viii) Order dated 14.10.2015 in WP.No.2118/2015 in WA.88/2016
(ix) Order dated 14.10.2015 in WP.No.2586/2015 in WA.89/2016
(X) Order dated 14.10.2015 in WP.No.7082/2015 in WA.90/2016
(XI) Order dated 14.10.2015 in WP.No.37075/2015 in WA.137/2016
(XII) Order dated 14.10.2015 in WP.No.41007/2015 in
WA.138/2016 respectively.

WP.No.35127 of 2014:Petition filed under Article 226 of the Constitution of India, praying this court for the issuance of Writ of Certiorarified Mandamus To call for the records of the impugned Notification dated 9.12.2014 issued by the 2nd respondent herein and quash the same as far as Serial No.14 Computer Science as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to regularize the service of the petitioner as Lecturer/ Assistant Professor in Computer Science at Periyar University College of Arts and Science Mettur.

WP.No.35128 of 2014:To call for the records of the impugned Notification dated 9.12.2014 issued by the 2nd respondent herein and quash the same as far as Serial No.13 Commerce as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to regularise the service of the petitioner as Lecturer/ Assistant Professor in Commerce at Periyar University College of Arts and Science Mettur.

WP.No.35129 of 2014:To call for the records of the impugned Notification dated 9.12.2014 issued by the 2nd respondent herein and quash the same as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to regularise the service of the petitioner as Lecturer/ Assistant Professor in Commerce at Periyar University College of Arts and Science Mettur.

WP.No.885 of 2015:calling for the records pertaining to the order passed by the 2nd respondent in their Notification No.Nil dated 9.12.2014 and quash the same in so far as the post of Assistant Professor Commerce Department in Periyar University College of Arts and Science Mettur and direct the respondents to regularise the services of the petitioner and confer all the consequential benefits.

WP.NO.1177 of 2015:to call for the records of the impugned notification dated 09.12.2014 issued by the 2nd respondent herein and quash the same consequently direct the 2nd respondent to regularise the service of the petitioners as Lecturer/Assistant Professor in Commerce Economics Computer Science Tamil Commerce English and Geology respectively at Periyar University College of Arts and Science Mettur.

WP.No.1525 of 2015:
to call for the records of the impugned notification dt 9.12.2014 issued by the 2nd respondent herein through News Paper publication and quash the same as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to

regularize the service of the petitioner as Lecturer/Assistant Professor in Geology at Periyar University College of Arts and Science Mettur.

WP.No.1526 of 2015:to call for the records of the impugned notification dt 9.12.2014 issued by the 2nd respondent herein through News Paper publication and quash the same as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to regularize the service of the petitioner as Lecturer/Assistant Professor in Computer Science at Periyar University College of Arts and Science Mettur.

WP.No.2118 of 2015:to call for the records of the impugned notification dated 09.12.2014 issued by the 2nd respondent herein through Newspaper publication and quash the same as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to regularise the service of the petitioner as Lecturer / Assistant Professor in Tamil at Periyar University College of Arts and Science Mettur.

WP.No.2586 of 2015:To call for the records of the impugned Notification dated 9.12.2014 issued by the 2nd respondent herein through Paper Publication and quash the same as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to regularise the service of the petitioner as Lecturer/ Assistant Professor in Physics at Periyar University College of Arts and Science Mettur.

WP.No.7082 of 2015:To call for the records of the impugned notification dated 09.12.2014 issued by the 2nd respondent herein and quash the same as illegal and against livelihood of the petitioner consequently direct the 2nd respondent to regularize the service of the petitioner as Lecturer / Assistant Professor in Chemistry at Periyar University College of Arts and Science Mettur.

WP.No.37075 of 2015:calling for the records of the 2nd Respondent pertaining to the impugned Notification dated 09/12/2014 as notified through the News daily and quash the same as far as Serial No 20 Economics as illegal and against the livelihood the Petitioner herein and subsequently directing the second Respondent to regularise the Service of the petitioner herein in the post of Lecturer / Assistant Professor Department of Economics in Periyar University College of Arts and science Mettur among others by following the seniority from the date of appointment among the serving Assistant professors / Lecturers in the said periyar University College of Arts and Science mettur.

WP.No.41007 of 2015:calling for the records pertaining to the order passed by the 2nd respondent in their Notification No.Nil dated 9.12.2014 and quash the same in so far as the post of Assistant Professor Statistics Department in Periyar University College of Arts and Science Mettur and direct the respondents to regularise the services of the petitioner and confer all the consequential benefits.

For Appellant
in all : Mr. Isaac Mohanlal

For 1st Respondent
in W.A.No.81,82,
83,86,88/2016 : Mr.A.R.L.Sundaresan
for M.P.Jothimanian

For R2 in W.A.Nos.81
to 84/16, 86 to 90/16,
137/16 & 138/16,
R8 in W.A.No.85/16 :Mr.C.Munussamy
Special Government Pleader

For R1 in W.A. No.84
& 138/2016 : Mr.C.Selvaraj SC
for C.S.Associates

For R1 to R7 in
W.A.No.85/2016 : Mr.L.Chandrakumar

For R1 in W.A.87 &
89/16 : Mr.R.Marudhachalamurthy

For R1 in W.A. 90/16 : Mr.M.Gnanasekaran

For R1 in W.A.137/16 : Mr.S.S.Rajesh

C O M M O N J U D G M E N T

M.DHANDAPANI, J.

The facts of law involved in all these appeals are similar and hence, they are heard together and are disposed of by this common judgment.

2.The appellant in these appeals is the second respondent in the writ petitions. The first respondent in the respective appeals are the writ petitioners who filed writ petitions invoking the jurisdiction of this Court under Article 226 of the Constitution of India. The writ petitioners are Lecturers in various subjects in the Periyar University College of Arts and

Science at Mettur Dam, a Constituent College, established by the Periyar University. The second respondent in these appeals is the first respondent in the writ petitions. The orders impugned in W.A.Nos.81 to 90 of 2016 was passed by the learned

Single Judge by way of common order dated 14.10.2015 after discussing the issue elaborately. The orders impugned in W.A.Nos.137 and 138 of 2016 were passed by another learned Single Judge by way of separate orders dated 23.11.2015 and 29.12.2015 respectively, by following the common order dated 14.10.2015.

3.The facts of the case are as follows: The Government in G.O.Ms.No.308, Higher Education (G1) Department, dated 15.09.2006 permitted the University to offer three courses namely, Bachelor of Corporate Secretaryship (BCS), Bachelor of Commerce (B.Com) and Bachelor of Business Management (B.B.M.) and sanctioned one post of Principal and six posts of Lecturers besides sanctioning other posts.

4.After the said Government Order, the appellant University issued a paper publication dated 14.10.2006 inviting applications from eligible candidates for the faculty positions in the following disciplines namely, Tamil, English, Commerce, Computer Science and Economics on consolidated pay as per the Government norms. The last date for receipt of the applications for faculty positions was fixed on 17.10.2006. In that Notification, it was also notified that interested candidates with Ph.D/M.Phil/PG Degree (with 55% marks) in the concerned discipline can apply with bio-data to the Principal, Periyar University Arts and Science College, C/o. Government Higher Secondary School, Mettur. It was also notified that preference will be given to those who have qualified with SLET/ Net/ M.Phil/ Ph.D. and relaxation of 5% in the eligibility marks will be given to SC/ST candidates.

5.Based on the aforesaid Notification, the writ petitioners, who were appointed in the year 2006, along with others made applications and vide communication dated 04.11.2006, they were called to appear for interview before the Selection Committee on 12.11.2006. Based on the selection, the order of appointment dated 17.11.2006 was issued to six persons. In the order of appointment dated 17.11.2006, it is mentioned that they are appointed on contract as Lecturers in the concerned Department. It is also stated that they would be paid a consolidated pay of Rs.8,000/- per month. While so, in the minutes of the 19th Finance Committee Meeting held on 25.06.2008, approval was granted to 21 teaching posts in various subjects. The details of the 21 posts that were sanctioned by the Finance Committee are as under :

Tamil	5
English	5
Commerce	3
Computer Science	3
Maths	1
Chemistry	1
Geology	1
Economics	1
Statistics	1

Total	21

The said 21 posts were approved by the Syndicate in its 66th Meeting held on 11.07.2008.

6. Thereafter, the University issued a paper publication on 26.08.2008, calling for applications to fill up the posts of Lecturers in the following subjects: Tamil, English, Commerce, Computer Science, Mathematics, Chemistry, Geology, Economics, Statistics and Physics. The educational qualification required for making application to the said posts was notified as 50% of marks in P.G. Degree and they have to possess any one of the following namely, SLET/ NET/ M.Phil/ Ph.D. and relaxation of 5% of marks will be given to SC/ST candidates.

7. Prior to the above publication, the Syndicate in its meeting

held on 11.07.2008 has also stated about the roster position of those posts as per reservation. The roster position of those 21 posts are as under:

S. No.	Name of the University Departments	Assistant Professors	
		Total No. of Vacancy	Roster
1	Tamil	5	1 (GT) 1 (SC [A]) 1 (MBC/DNC) 1 (BC) 1 (GT)
2	English	5	1 (SC) 1 (MBC/DNC) 1 (BC) 1 (GT) 1 (BC)
3	Commerce	3	1 (GT) 1 (SC) 1 (MBC/DNC)

S. No.	Name of the University Departments	Assistant Professors	
		Total No. of Vacancy	Roster
4	Computer Science	3	1 (BC) 1 (BC M) 1 (SC)
5	Mathematics	1	1 (MBC/DNC)
6	Geology	1	1 (BC)
7	Chemistry	1	1 (GT)
8	Economics	1	1 (BC)
9	Statistics	1	1 (GT)
	Total	21	21

8. Based on the advertisement issued on 26.08.2008, the writ petitioners along with others, applied for the posts. They were, by the communication dated 11.06.2009, asked to appear for interview on various dates during July, 2009. Accordingly, they appeared for the interview before the Selection Committee duly constituted by the University as per the Periyar University Act, 1997 read with the Statutes and Regulations framed thereunder. They were appointed as Lecturers by the orders dated 30.07.2009 and 03.08.2009. In their appointment orders, it is clearly stated that they were appointed on consolidated pay.

9. While such being the position, the appellant University issued the impugned Notification dated 09.12.2014, calling for applications to fill up 21 posts of Lecturers, sanctioned by the Syndicate in the meeting held on 11.07.2008, though the writ petitioners are appointed in those posts. Hence, the writ petitioners have filed the writ petitions seeking to quash the impugned Notification and to issue a direction to the appellant University to regularise their service by granting them appropriate scale of pay applicable to their posts.

10. The appellant University filed counter affidavits in the writ petitions. The sum and substance of the counter affidavits are as follows: The University did not follow the selection norms prescribed by the University Grants Commission and the University also did not follow the Rules of Reservation specified by the State Government in appointing the petitioners. Further, some of the appointees i.e., writ petitioners are not even fully qualified as per the UGC norms and the appointments were not made against any sanctioned posts. The writ petitioners

were appointed on ad hoc basis and on consolidated pay. Accordingly, the writ petitioners are not entitled for regularization and the impugned Notification is a valid one.

11. Before the learned Single Judge,

(a) The following decisions were relied upon by the learned counsel appearing for the writ petitioners:

(i) The decision reported in 2007 (3) CTC 672 (V. Radhakrishnan Vs. The Registrar, Central Administrative Tribunal) ;

(ii) The decision reported in 2008 (5) MLJ 1073 (S. Jalajakumari Vs. Personal Assistant (General) to the Collector and Others) ;

(iii) The order dated 30.10.2012 made in W.P.No.2260 of 2012 (A. Bharathi Vs. The University of Madras rep. by its Registrar and others) ; and

(iv) The decision reported in 2013 (14) SCC 65 (Nihal Singh Vs. State of Punjab).

(b) The following decisions were relied upon by the learned counsel appearing for the University:

(i) The decision reported in 2006 (4) SCC 1 (Secretary, State of Karnataka Vs. Uma Devi (3) and Others) ;

(ii) The decision reported in 2006 (8) SCC 212 (M. Nagaraj V. Union of India) ;

(iii) The decision reported in 2010 (9) SCC 247 (State of Karnataka Vs. M.L. Kesari) ;

(iv) The decision reported in 2012 (2) CWC 750 (K.R. Shanthi Vs. The Secretary to Government) ;

(v) The decision reported in 2013 (14) SCC 65 (Nihal Singh Vs. State of Punjab) ; and

(vi) The decision reported in 2015 (3) MLJ 734 (SC) (P. Suseela Vs. University Grants Commission).

Since the learned Single Judge has discussed elaborately about the decisions

cited supra, considering the gravity of time, we refrain ourselves from discussing the same once again.

12. The learned Single Judge framed the following issues for consideration:

'(i) Whether the petitioners were appointed against sanctioned posts? ;

(ii) Whether they possessed the requisite qualification prescribed for the post? ; and

(iii) Whether they were appointed by following the duly established selection procedure?'

13. After elaborate discussions, the respective learned Single Judges answered all the issues in favour of the writ petitioners. The sum and substance of the conclusion arrived at by the respective learned Single Judges are as follows: The writ petitioners were appointed in the sanctioned posts. At the time of appointment, M.Phil., was the required qualification, as per the UGC Regulations to teach U.G. Course and the University has not disputed the said fact. In the paper publication also the University has notified that the qualification required for the post of Lecturer was a P.G. Degree and they have to possess any one of the following namely, SLET/ NET/M.Phil/ Ph.D. and relaxation of 5% of marks will be given to the SC/ST candidates.

14. The writ petitioners were selected by the Selection Committee constituted by the University as per the Act and the Statutes and Regulations framed therein. The Selection Committee consists of Vice Chancellor, a nominee of the Government, the Principal incharge of the Constituent College, three subject experts from the University affiliated College and a woman of SC/ST nominee. After the selection process, the writ petitioners were appointed as Lecturers. Accordingly, the respective learned Single Judges arrived at the conclusion that the writ petitioners were selected by the duly constituted Selection Committee and at the time of their appointment, they possessed the requisite qualification.

15. The learned counsel appearing for the appellant University would submit that the appointment of the writ petitioners were contractual, on ad hoc basis and on consolidated pay. Infact the appellant notifying advertisement for direct recruitment in the sanctioned posts is an indicator that the appointments of the writ petitioners were made as a stopgap arrangement in view of the formation of the Constituent College namely, Periyar University College of Arts and Science, Mettur. Their appointments were made on ad hoc basis so as to enable the University to run the College in its infancy. Only to wriggle out from the financial constraints such appointments were made as the College was established in the year 2006 at the instance of the State Government vide G.O.Ms.No.308, Higher Education (G1) Department, dated 15.09.2006.

16. The learned counsel appearing for the appellant University would further submit that the writ petitioners were not appointed in any sanctioned posts. The Government sanctioned only six posts for five years and after five years the University has to bear the financial burden. The Constituent College required sixteen Lecturers and hence the University decided to appoint Lecturers on contractual basis as an interim stopgap measure. In the year 2009, after three years of the establishment of the Constituent College, the College

appointed nineteen Lecturers again on contractual basis and on consolidated pay. Though the University decided to create twenty one posts, the same was not given effect to due to the financial constraints.

17.The learned counsel appearing for the appellant University would further submit that the budget estimates for the year 2008-2009 and 2009-2010 would reveal that the posts were not sanctioned and no financial allocation was made in this regard. Even in 2006-2007 and 2007-2008 there was no financial estimates or budgetary allocation for any sanctioned posts in the Constituent Colleges. The references in the Minutes of the Finance Committee and Syndicate of the University were only in relation to appointments on contractual basis.

18.The learned counsel appearing for the appellant University would further submit that the writ petitioners were not selected by the Selection Committee constituted based on the UGC Regulations, 2000 of University Statute. In view of the adoption of UGC Regulations, 2000 by the University, it has to follow UGC Regulations, 2000. However, the Selection Committee prescribed under the University Statute though not mandatory, due to the above adoption, even that Committee was not constituted to appoint the writ petitioners. Instead a non Statutory Committee selected the candidates. The resolutions of the Syndicate of the University were only in relation to their appointments on contractual basis and on consolidated pay.

19.The learned counsel appearing for the appellant University would further submit that the writ petitioners have not completed 10 years of service. Even the Hon'ble Apex Court in the decision reported in (2006) 4 SCC 1 (Secretary, State of Karnataka and others Vs. Umadevi (3) and others) has fixed a cut-off date for regularization. Hence, without completing 10 years of service challenging the direct recruitment Notification dated 09.12.2014 of the University for appointment in regular vacancies is not sustainable. Further the writ petitioners did not possess the requisite qualification for appointment to the posts of Lecturers/ Assistant Professors as prescribed by the UGC. Without the requisite qualification, challenging the direct recruitment Notification is not sustainable.

20.The learned counsel appearing for the appellant University would further submit that the Rule of Reservation by applying communal roster was not followed in the case of appointment of the writ petitioners and it is hit by Article 14 and 16 of the Constitution of India. The writ petitioners have no enforceable right to be regularized in the sanctioned posts.

21. In support of his contentions, the learned counsel appearing for the appellant University relied upon the following decisions:

(i) The decision of the Hon'ble Apex Court reported in (2011) 15 SCC 16 (Gridco Limited and another vs. Sadananda Doloi and others), the relevant portion of which reads as follows:

"37. To the same effect was an earlier decision of this Court in Central Inland Water Transport Corporation Ltd. & Anr. v. Brojo Nath Ganguly where the Court had refused to enforce an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who did not have equal bargaining power.

38. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by

the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.

40. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter.

42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise."

(ii) The decision of the Hon'ble Apex Court reported in (2010) 9 SCC 247 (State of Karnataka and others vs. M.L.Kesari and others), the relevant portion of which reads as follows:

"7. It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Umadevi (3), if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. Umadevi (3) casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi (3), directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite

qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi (3), cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi (3), will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi (3) has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3), the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi (3), are so considered.

11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/ instrumentalities do not perpetuate the practice of employing persons

on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3) as a one-time measure.

12. These appeals have been pending for more than four years after the decision in Umadevi (3). The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision in Umadevi (3) or thereafter.

13. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of Umadevi (3), is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one-time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfil the requirements mentioned in para 53 of Umadevi (3). If they fulfil them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said

one time exercise within three months. It is needless to say that if the respondents do not fulfil the requirements of Para 53 of Umadevi (3), their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts."

(iii) The decision of the this Court reported in 2016 Writ L.R.682 (Sajitha, T. and others vs. Union of India rep. by the Chief Secretary to Government, Government of Puducherry and others), the relevant portion of which reads as follows:

"10. In the case on hand, although the petitioners were appointed on contractual basis, in view of the ratio laid down by the Hon'ble Apex Court in Uma Devi's case [supra] they cannot seek regularisation as has been done in the case of hourly paid lecturers. Further, they have been selected only on contract basis to fill up the stop gap arrangement and that their services were extended from time to time. However, they have not been absorbed while regular vacancies arose. According to them they have put in three to four years of continuous service at the time they were terminated.

11. In view of the ratio laid down by the Hon'ble Apex Court in the cases cited supra, we are of the view that the stand taken by the respondents that there is a policy decision and therefore, the petitioners services could not be regularised cannot be found fault with in the facts and circumstances of the case. However, taking into account the fact that the petitioners herein have worked on contractual basis for three to four years continuously at the time they were terminated from the service, if any future vacancies arise and pursuant to the said vacancies, if any notification is issued, and that if the petitioners apply for the same and found successful, due weightage may be given for the services rendered by them as contractual employees in the selection process."

22.Repudiating his arguments, Mr.A.R.L.Sundaresan, learned senior counsel appearing for the first respondent/ writ petitioners in some of the writ appeals would submit that the respective first respondents and other teaching faculties were appointed by the very same method of recruitment after following the Rule of Reservation. The writ petitioners and others were appointed in the sanctioned and regular post as per the Rules of appointment of teaching faculties of appellant University. The writ petitioners are fully eligible as per the UGC norms and therefore, their services ought to have been regularised as per the judgment made in W.A.(MD) No.127 of 2011 dated 28.04.2014. The writ petitioners are having sufficient experience and qualification in the respective discipline.

23.The learned senior counsel would further submit that the appellant University by its letter dated 17.09.2010 addressed to the writ petitioners has conveyed that at the time of filling up of vacancies, their services will be regularized as per their seniority and educational qualification. Now the University cannot turn around and say that the writ petitioners are not entitled for regularization and they were not appointed in the sanctioned post. The writ petitioners were selected through the Selection Committee and the same was approved by the Syndicate as per the Rules of the appellant University.

24. The learned senior counsel would further submit that there is no error in the appointment and its selection method. Even the appointment method stated in the impugned Notification was already followed by the appellant University while selecting the writ petitioners as Lecturers in the Constituent College. Even at the time of appointment, the Rule of Reservation has been followed and they were appointed and the same was approved by the Syndicate of the appellant University. Hence, the stand now taken by the University that Rule of Reservation has not been followed is illegal, not valid and unsustainable in law. The writ petitioners are working for more than 9 to 12 years respectively and they are also having qualification as per the UGC norms. Accordingly, the writ petitioners are entitled to be regularized in the service of the University. Accordingly, he prayed for dismissal of the writ appeal.

25.We have considered the submissions of the learned counsel on either side and perused the entire materials on record.

26.It is relevant to mention here the stand of the second respondent. The second respondent admitted that the appellant University was established in the year 1997 vide the Tamil Nadu Periyar University Act, 1997. The said Act is applicable to all

the Constituent Colleges functioning under the Periyar University. The University established its first Constituent College at Mettur Dam. The second respondent Government vide G.O.Ms.No.308, Higher Education (G1) Department, dated 15.09.2006, permitted the College to offer three courses and sanctioned one post of Principal and six posts of Lecturers besides sanctioning other posts.

27.After the Government Order in G.O.Ms.No.308, Higher Education (G1) Department, dated 15.09.2006, the appellant University issued a paper publication dated 14.10.2006 inviting applications from eligible candidates for the faculty positions in the following disciplines, namely, Tamil, English, Commerce, Computer Science and Economics on consolidated pay as per the Government norms. Subsequently, in the Minutes of the 19th Finance Committee Meeting held on 25.06.2008, approval was granted to 21 teaching posts in various subjects and the said 21 posts were approved by the Syndicate in its 66th Meeting held on 11.07.2008. Thereafter, the University issued a paper publication on 26.08.2008, calling for applications to fill up the posts of Lecturers in various subjects. Accordingly, the writ petitioners were appointed on consolidated pay basis in the Periyar University College of Arts and Science, Mettur Dam.

28.The learned Single Judge elaborately discussed each and every point and the same was argued before us.

29.The primary issues raised in these writ appeals are that the

writ petitioners were not appointed in the sanctioned post and their appointment was not in consonance with the UGC norms and that they were appointed only on consolidated pay. Even the Rule of Reservation was not followed and their appointments are contrary to the decision of the Hon'ble Apex Court reported in 2006 4 SCC 1 (Secretary, State of Karnataka Vs. Umadevi). The writ petitioners were not selected by the Selection Committee constituted based on the UGC Regulations, 2000 of University Statute and they have not completed ten years of service. The writ petitioners have no enforceable right to be regularized in the sanctioned posts.

30.The undisputed facts are that the appellant University was established in the year 1997 vide the Tamil Nadu Periyar University Act, 1997. The said Act is applicable to all the Constituent Colleges functioning under the Periyar University. The University established its first Constituent College at Mettur dam, where the writ petitioners were appointed as Lecturers. Initially 6 posts of Lecturers were sanctioned and thereafter, 21 posts of Lecturers were sanctioned and

accordingly, advertisements inviting application for the post of Lecturers were published on 14.10.2006 and on 26.08.2008. Perusal of the said advertisements discloses that the applicants are required to possess 55% and 50% of marks in P.G.Degree respectively and they have to possess any one of the following namely, SLET/ NET/M.Phil/ Ph.D. and relaxation of 5% of marks will be given to SC/ST candidates. Thereafter, they were called for interview and after the selection process, the writ petitioners were selected and appointed as Lecturers on consolidated pay.

31.Perusal of the appointment orders reveal that the writ petitioners will be governed by the Periyar University Employees' Conduct Rules and Professional Ethics as in force from time to time. If the writ petitioners desires to leave the services of the University or the University finds it necessary to relieve them from the services of the University, the prevailing rules being followed from time to time by the University shall apply. The appointment of the writ petitioners were made by the respective appointment orders of the Periyar University and conditions were imposed on par with the regular employees of the College. Though the writ petitioners were appointed on consolidated pay, their services were not restricted to a particular period. The advertisement shows only on consolidated pay. Hence,

the appellant has no right to say that their appointments are only for restricted engagement. Admittedly, all the writ petitioners have served as Lecturers for more than nine to twelve years and subsequently, they have possessed the Ph.D qualification as per the present UGC norms. Accordingly, we are satisfied that the respective first respondents/ writ petitioners are fully qualified at the time of initial appointment and thereafter, as per the present UGC norms.

32.Though the writ petitioners were appointed on consolidated pay, they have served for more than nine to twelve years in the University Constituent College. The writ petitioners were appointed by the very same method of recruitment as stated in the impugned Notification. The writ petitioners/ respective first respondents possess the qualification as prescribed by the Recruitment Rules. When the writ petitioners are in service, the University issuing the impugned Notification without taking any decision of their service is un-sustainable one.

33.The appellant University published advertisements inviting eligible candidates for the posts of Lecturers. The writ petitioners along with the others applied and participated in the selection process and got selected and appointed after

the Selection Committee's decision and the same was approved by the Syndicate. The Selection Committee was formed under the UGC norms. The Selection Committee consists of Vice Chancellor, a nominee of the Government, the Principal incharge of the Constituent College, three subject experts from the University affiliated College and a woman of SC/ST nominee. The above said Selection Committee selected the writ petitioners as Lecturers.

34.To substantiate his claim, the learned counsel appearing for the appellant University relied upon the decision of the Hon'ble Apex Court reported in (2010) 9 SCC 247 (State of Karnataka and others vs. M.L.Kesari and others). What was under challenge in the said case was that the respondents 1 to 3 therein were appointed on daily wage basis by the Zila Panchayat, Gadag and their services were utilized as Typist, Literate Assistant and Watchman etc. They made representation for regularization of service. The Hon'ble Apex Court held that if the respondents 1 to 3 therein do not fulfill the requirements of para 53 of Umadevi (3)'s case, their services need not be regularized. If the employees completed ten years of service, but do not possess prescribed qualification, they may be considered for regularization in suitable post. However, in the present case, the writ petitioners are not appointed on daily wages and their appointment is not irregular. Hence, this decision is not applicable to the present case on hand.

35.The learned counsel appearing for the appellant University has also relied upon the decision of the Hon'ble Apex Court reported in (2011) 15 SCC 16 (Gridco Limited and another vs. Sadananda Doloi and others). In the said case, the respondents therein were appointed by the Corporation as Senior General Manager on contract basis for a period of three years subject to renewal on the basis of their performance. In that background, the Hon'ble Apex Court held that the appointment letter was limited in tenure and terminable by three months. It is only in the nature of providing outer limit to which the contract has to be extended and it did not suggest that there was any specific or employee condition till they attain the age of superannuation. The respondents therein was in the service of another employee before contract was awarded to them. In that background, the Hon'ble Apex Court refused the regularization of the respondents therein. Hence, this decision is also not applicable to the present case on hand.

36.Similarly, the other decision of this Court reported in 2016 Writ L.R.682 (Sajitha, T. and others vs. Union of India rep. by the Chief Secretary to Government, Government of Puducherry and others), relied upon by the learned counsel appearing for the appellant University, wherein, one of us is a

party, is also not applicable to the present case on hand, because, the petitioners therein were appointed only on contractual basis and they cannot seek regularization as has been done in the case of hourly paid Lecturers. There, they are challenging the termination order passed and this Court has confirmed the same and refused to regularize the petitioners therein on the ground that they are only contractual employees for a particular period and their services were terminated after the expiry of the contract period. The said case cannot be compared to the present case. In the present case, the respective first respondents/ writ petitioners are in service continuously from the date of their appointment.

37. It is relevant to extract hereunder the relevant portions of the decision of the Hon'ble Apex Court reported in 2006 4 SCC 1 (State of Karnataka Vs. Umadevi (3) and others):

"49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents, would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life

or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

52. 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 *Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College*. 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.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa, R.N. Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement

and regularising or making permanent, those not duly appointed as per the constitutional scheme."

38. In the decision cited supra, the Hon'ble Apex Court in order to maintain the Rule of Equity in public employment, has elaborately discussed about the backdoor entry and held that illegal appointments cannot be regularised, however, irregular appointments can be regularized for one time measure if they have put more than ten years of service. The Hon'ble Apex Court further held that temporarily employed or contractual casual worker engagement if not based on proper selection they are not entitled for regularization. Even they have no right to claim on the ground of legitimate expectation.

39. However, in the present case, the writ petitioners were selected through paper publication and they are continuously in service and they are appointed through the Selection Committee of the appellant University and the said appointment was also approved by the Syndicate of the appellant University. Hence, we are of the view that they are entitled for regularization of their services.

40. We have also carefully perused the appointment orders. The appointment orders of the respective writ petitioners do not reflect the period of employment. The period of appointment is not restricted. It only reflects that the salary is consolidated pay. Though some of the writ petitioners were appointed on contractual basis, their services were extended from time to time and they are continuously in service.

41. In view of the above, we do not find any illegality or infirmity in the order passed by the respective learned Single Judges and therefore the well considered order of the respective learned Single Judges need not be interfered with.

42. In view of the above discussions and the decisions cited supra, the writ appeals are dismissed and the order passed by the respective learned Single Judges are confirmed. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 600 009.
2. The Registrar
Periyar University
Periyar Palkalai Nagar, Salem-636 011.
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+15 ccs to M/S.P.Godson Swaminathan, Advocate Sr.31492
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+1cc to M/S.M.Gnanasekar, Advocate Sr.31671
+2ccs to Mr.S.S.Rajesh, Advocate Sr.31664
+1cc to the Government Pleader Sr.32313

W.A.Nos.81 to 90, 137
and 138 of 2016
And

C.M.P.Nos.991 to 1009 and
1828 and 1829 of 2016

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