



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

WEB COPY

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs. JUSTICE R.THARANI

W.A. (MD) Nos.1378 to 1386 of 2015

W.A. (MD) No.1378 of 2015

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P. (MD) No.2/2015 in W.A.SR.No.
58210/2014 by VRSJ & NKKJ)

Vs.

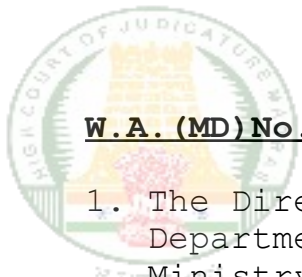
R.Navaneetha Krishnan

... Respondent

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to allow the present Writ Appeal by setting aside the order dated 09.09.2014 in W.P. (MD) No.3811 of 2011 on the file of this Court.

Prayer in WP(MD). 3811/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing them to regularize the services of the petitioner retrospectively, after completion of 5 years of services from 19.10.2005 with all consequential service and monetary benefits.

**W.A. (MD) No.1379 of 2015**

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(6th respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P. (MD) No.2/2015 in W.A.SR.No.
58209/2014 by VRSJ & NKKJ)

Vs.

John Peter (Died)

1.Devadayabari

2.Jos Peliks

3.Amul Selvi

4.Jennifer Angel

5.(Minor) Katsan Alex

(the 5th respondent is represented through
his mother Natural guardian as 1st respondent)

... Respondents

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to
allow the present Writ Appeal by setting aside the order dated
09.09.2014 in W.P.(MD) No.3812 of 2011 on the file of this Court.

Prayer in WP(MD). 3812/ 2011 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Mandamus, or any other orders or directions in the nature of Writ to
the respondents directing them to regularize the services of the
petitioner retrospectively, after completion of 5 years of services
from 19/10/2005 with all consequential service and monetary benefits
and to issue such other suitable orders or directions that may deem
fit and proper and thus render justice.

W.A. (MD) No.1380 of 2015

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.



2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P.(MD)No.2/2015 in W.A.SR.No.
58211/2014 by VRSJ & NKKJ)

Vs.

N.Mohan

... Respondents

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to allow the present Writ Appeal by setting aside the order dated 09.09.2014 in W.P.(MD)No.3813 of 2011 on the file of this Court.

Prayer in WP(MD). 3813/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing them to regularize the services of the petitioner retrospectively, after completion of 5 years of services from 19.10.2005 with all consequential service and monetary benefits.

W.A. (MD)No.1381 of 2015

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

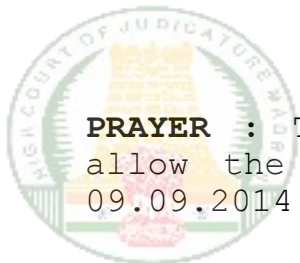
... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P.(MD)No.2/2015 in W.A.SR.No.
58212/2014 by VRSJ & NKKJ)

Vs.

<https://hcservices.ecourts.gov.in/hcservices/>
M.S.Gnanadhickam

... Respondent



PRAYER : The Appeal filed under Clause 15 of Letters Patent, to allow the present Writ Appeal by setting aside the order dated 09.09.2014 in W.P.(MD)No.3814 of 2011 on the file of this Court.

Prayer in WP(MD). 3814/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, or any other orders or directions in the nature of Writ to the respondents directing them to regularize the services of the petitioner retrospectively, after completion of 5 years of services from 19/10/2005 with all consequential service and monetary benefits and to issue such other suitable orders or directions that may deem fit and proper and thus render justice.

W.A. (MD)No.1382 of 2015

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P.(MD)No.2/2015 in W.A.SR.No.
58213/2014 by VRSJ & NKKJ)

Vs.

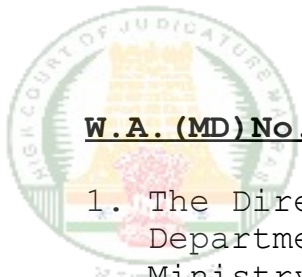
K.Subramanian

... Respondent

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to allow the present Writ Appeal by setting aside the order dated 09.09.2014 in W.P.(MD)No.3815 of 2011 on the file of this Court.

Prayer in WP(MD). 3815/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing them to regularize the services of the petitioner retrospectively, after completion of 5 years of services from 19.10.2005 with all consequential service and monetary benefits.

**W.A. (MD) No.1383 of 2015**

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P. (MD) No.2/2015 in W.A.SR.No.
58214/2014 by VRSJ & NKKJ)

Vs.

C.Sekar

... Respondent

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to
allow the present Writ Appeal by setting aside the order dated
09.09.2014 in W.P. (MD) No.3816 of 2011 on the file of this Court.

Prayer in WP (MD). 3816/ 2011 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Mandamus, or any other orders or directions in the nature of Writ to
the respondents directing them to regularize the services of the
petitioner retrospectively, after completion of 5 years of services
from 19/10/2005 with all consequential service and monetary benefits
and to issue such other suitable orders or directions that may deem
fit and proper and thus render justice.

W.A. (MD) No.1384 of 2015

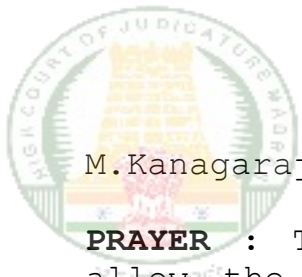
1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P. (MD) No.2/2015 in W.A.SR.No.
58215/2014 by VRSJ & NKKJ)

**Vs.**

M.Kanagarajan

... Respondent

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to allow the present Writ Appeal by setting aside the order dated 09.09.2014 in W.P.(MD)No.3817 of 2011 on the file of this Court.

Prayer in WP(MD). 3817/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing them to regularize the services of the petitioner retrospectively, after completion of 5 years of services from 10.07.2006 with all consequential service and monetary benefits.

W.A. (MD)No.1385 of 2015

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P.(MD)No.2/2015 in W.A.SR.No.
58216/2014 by VRSJ & NKKJ)

Vs.

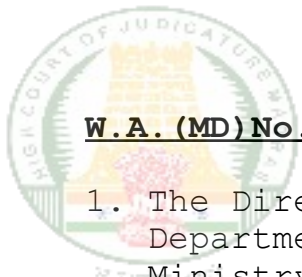
N.Vijayan

... Respondent

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to allow the present Writ Appeal by setting aside the order dated 09.09.2014 in W.P.(MD)No.3818 of 2011 on the file of this Court.

Prayer in WP(MD). 3818/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, or any other orders or directions in the nature of Writ to the respondents directing them to regularize the services of the petitioner retrospectively, after completion of 5 years of services from 19/10/2005 with all consequential service and monetary benefits and to issue such other suitable orders or directions that may deem fit and proper and thus render justice.

**W.A. (MD) No.1386 of 2015**

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.

2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

... Appellants

(2nd respondent transposed as 1st appellant
as per the order of the Court dated 02.11.2015
made in M.P. (MD) No.2/2015 in W.A.SR.No.
58217/2014 by VRSJ & NKKJ)

Vs.

K.Purushothaman

... Respondent

PRAYER : The Appeal filed under Clause 15 of Letters Patent, to
allow the present Writ Appeal by setting aside the order dated
09.09.2014 in W.P. (MD) No.3819 of 2011 on the file of this Court.

Prayer in WP (MD). 3819/ 2011 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Mandamus, directing them to regularize the services of the
petitioner retrospectively, after completion of 5 years of services
from 19.10.2005 with all consequential service and monetary
benefits.

For Appellant-1 : Mr.P.Subbiah, Central Govt.Counsel
(in all appeals)

For Appellants 2&3 : M/s.J.Maria Roseline
(in all appeals)

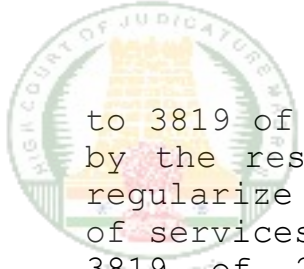
For Respondents : Mr.Niranjan S.Kumar
(in all appeals)

COMMON JUDGMENT

(Common Judgment of the Court was made by T.S.SIVAGNANAM, J.)

Heard the learned counsel appearing on either side.

2.The appellants / National Institute of Technology filed
these Writ Appeals aggrieved by the directions in W.P.(MD)Nos.3811

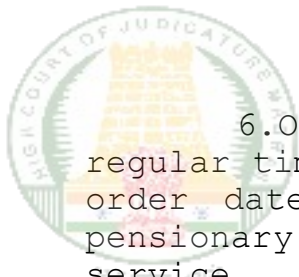


to 3819 of 2011 dated 09.09.2014. The said Writ Petitions were filed by the respondents / Writ petitioners to direct the appellants to regularize their services retrospectively on completion of 5 years of services from 19.10.2005 in W.P.(MD)Nos.3811 to 3816 and 3818 and 3819 of 2011 and from 10.07.2006 in W.P.(MD)No.3817 of 2011 respectively with all consequential service and monetary benefits. The respondents / writ petitioners were appointed as security staff in the appellants / Institution. At the time of appointment, the appellants / Institution was named as Regional Engineering College.

3.The said appellants / Institution was named as National Institute of Technology pursuant to the National Institutes of Technology Act 2007. From the said date, the appellants / institution was governed by the provisions of the said Act and by notifications, directions were issued by the Government of India from time to time. The undisputed fact is that all the 9 respondents / Writ petitioners have been working since 2005 - 2006 onwards and except one respondent / writ petitioner, who has been working from 1996 onwards. The appointment orders issued to the respondents / Writ petitioners were all identical, stating that they were temporary appointed as Security Guard on a consolidated pay of Rs.1,200/- per month for a period of six months from their respective dates of appointment. The appointment orders reveal that the appointment is purely on temporary basis and the respondents / Writ petitioners shall be terminated at any time without prior notice. Though the appointments were only for a period of six months, the respondents / Writ petitioners have been continued till date.

4.The respondents / Writ petitioners being Ex-servicemen, had represented before the Ex-Service Men Welfare Board, requesting that their services should be regularised in the appellants / Institution. The Ex-servicemen Welfare Board had sent several communications to the appellants, requesting the appellants / Institution to consider the case of the respondents / Writ petitioners. By a proceedings dated 14.09.2010, the Assistant Director of the Ex-servicemen Welfare Board has pointed out that respondents / Writ petitioners have been working nearly 15 years and all of them have crossed 45 years old and if their services were dispensed with, after the period of 6 months, the Welfare Board would have sponsored the respondents / Writ petitioners to some other organisations, where they might be regularly appointed.

5.Though the said stand was taken by the Welfare Board not only in the year 2010, but also in the year 2015, the appellants / Institution did not consider the case of the respondents / Writ petitioner. However, even before, the appellants / Institution could become as a National Institution, there was a Regional Engineering College and 4 Security Staffs were regularised and they were brought into regular time scale of pay by proceedings dated 02.08.1999.



6. One such a person, namely, K. Mani, who was granted for regular time of scale of pay, had also retired from services and by order dated 04.04.2008 the appellants / Institution has granted pensionary benefits by treating 50% of NMR service as qualifying service. Similar orders passed in favour of other temporary Security Guards were produced to show that the appellants / Institution regularised the other similarly placed persons. Denying such benefits to the respondents / Writ petitioners amounts to discrimination and, is in violation of the Article 14 of the Constitution of India.

7. The appellants / Institution are before us contending that after the year 2007, the Institute has become a National Institute and the Government of India fixed the cadre of strength for all the National Institutes and such an exercise was done in the year 2012 and the Government of India by proceedings No.19-13-2008-TS-III found that there were 13 excess staff in the posts of Security guard as per the ratio fixed by the Government of India.

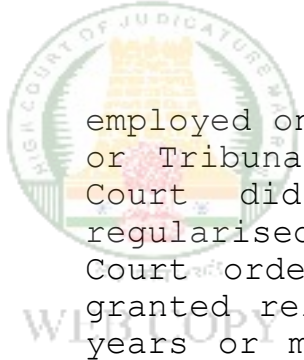
8. Further, it is submitted that in terms of the Section 32 (2) of the Act, the council of NIT fixes the cadre strength and hence, the Court exercising power under Article 226 cannot issue directions to fix the cadre strength in a particular manner. The respondents / Writ petitioners have been appointed purely on temporary basis and therefore, the question of regularization does not arise.

9. The learned counsel for the appellants / Institution relies the decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi reported in 2006(4) SCC 1.**

10. The learned counsel for the respondents / Writ petitioners submitted that the Division Bench of Alahabad High Court considered the effect of the statue which have been framed by the Central Government with regard to fixation of staff strength and has granted certain interim orders. The learned counsel drew the attention of this Court to the communication sent by the Ex-Service Men Welfare Board stating that orders of the regularization have been passed by REC to the similar placed persons.

11. Further it is submitted that similar disputes were considered and Over Sight Committee was formed which has taken a decision and submitted a report which gives protection to the services of the respondents / Writ petitioners. Based on the report submitted by the said committee, the Government of India has passed an order dated 20.12.2017, granting one time age relaxation for those employees, who are engaged on temporary / contract basis.

12. We have to point out that in the light of the decision of the Hon'ble Supreme Court in **Umadevi's** case (cited supra), regularization or permanent absorption of the employees, who are



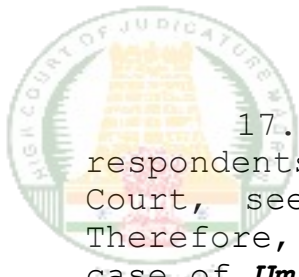
employed on temporary basis, cannot be directed to done by the Court or Tribunals. Further, in the said decision, the Hon'ble Supreme Court did not take action against organisations, who have regularised the temporary employees, some of which were based on Court orders. As a one time measure, the Hon'ble Supreme Court granted relief for certain temporary employees, who had put in 10 years or more in duly sanctioned post. But their continuance in employment should not have been on account of interim orders granted by the Court or Tribunals. In cases, where the High Court issued directions to grant relief of regularization of the services, the Hon'ble Supreme Court modified the said orders and only directed to follow the legal principles set out by the Hon'ble Supreme Court in **Umadevi's case**.

13.Examining the orders passed in the Writ Petition's, the conclusion was arrived at as if a positive direction was issued by the Writ Court in granting permanent employment to the temporary staff, the Court could not be justified in re-structuring the cadre strength. These directions are clearly violated the paramount laid down by the Hon'ble Supreme Court in a case of **Umadevi**.

14.All the respondents / Writ petitioners were Ex-servicemen, though they were appointed by the appellants / Institution, they were continued in service on temporary basis and nothing prevented the appellants to take a decision as regards the services of the respondents / Writ petitioners, after the Institution has become a National Institution pursuant to Central Act 29 of 2007. However, that consideration had not been done. In the interregnum, some of the temporary employees, like petitioners, were granted with regular time scale of pay. There is no acceptable explanation given as to why some of the temporary employees were brought into regular time scale of pay and the said benefits have not been extended to the respondents / Writ petitioners.

15.Though there is recommendation by Over Sight Committee, which was constituted to go into certain error which was occurred while fixing the staff strength, the recommendations of the said committee cannot support the case of the respondents / Writ petitioners. There is an allegation that the appellants / Institute by way of out sourcing private agency are availing the service of Security Officer / Security. However, we do not wish to examine those aspects at this juncture. We are of the view that the appellants have to consider the case of the respondents / Writ petitioners on merits, because they have been continued in employment for several decades.

16.The learned counsel for the appellants / Institution submitted that the Writ petitions filed in the year 2011 and therefore, the exception drawn by the Hon'ble Supreme Court would apply to the case of the respondents / Writ petitioners, therefore, they are not entitled for any benefits.



17. However, we find that there is no order, ousting the respondents / Writ petitioners from service and they approached the Court, seeking Writ of Mandamus, to regularise their services. Therefore, the exception drawn by the Hon'ble Supreme Court in a case of **Umadevi** will not apply to the case of the respondents / Writ petitioners. As observed earlier, the Writ Court would not issue directions to restructure the cadre strength or to create supernumerary posts nor the Court can issue a positive directions to the appellants / Institution to regularise the services of the respondents / Writ petitioners. However, the case of the respondents / Writ petitioners cannot be left to rest at this stage on account of long employment as well as the fact that some of the similarly placed persons were regularised much earlier i.e., in the year 2003 after the appellants / Institution became a National Institution. Thus, we are inclined to issue appropriate directions by substituting the directions issued in the Writ Petitions.

18. In the result, this Writ Appeals are partly allowed and the directions issued by the Writ Court in paragraph no.9 of the impugned order dated 09.09.2014 are set aside and we direct the appellants / Institution to consider the case of the respondents / Writ petitioners for providing regular time scale of pay in the post of Security Guard or any other equivalent post and permit them continue in service till the age of superannuation and the said orders shall be passed by the appellants / Institution, within a period of three months from the date of receipt of a copy of this judgment.

19. It is made clear that the decision has been rendered by considering the facts and circumstances of the case and it is not applicable to the other employees / workmen, who are working in the appellants / Institution, who has stated to be nominal muster roll candidates.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Director of National Institute of Technology,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi-110 001.



2. The Chairman,
National Institute of Technology,
Tiruchirappalli-15.

3. The Director,
National Institute of Technology,
Tiruchirappalli-15.

+ 2 CC TO Mr.P.SUBBIAH, ADVOCATE IN SR No. 57450
+ 1 CC TO M/s.J.MARIA ROSELINE, ADVOCATE IN SR No. 56831
+ 1 CC TO Mr.NIRANJAN S.KUMAR, ADVOCATE IN SR No. 57151

GNS

TE/SV-MMS/SAR-1 : 19/06/2018 : 12P/8C

W.A. (MD) Nos.1378 to 1386 of 2015
21.03.2018