



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 19.09.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.19698 of 2018

and

W.M.P(MD)Nos.17474 and 17475 of 2018

E.Walter

..Petitioner

Vs

Manonmaniam Sundaranar University,
represented by the Registrar,
Abhishekapatti,
Tirunelveli - 627 012.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of declaration declaring that the order passed by the respondent vide his proceedings in Memo No. MSU/R/Estt/Admn/NMR/29/2018, dated 28.8.2018 as illegal as per Section 25(7) of the Industrial Disputes Act, 1947.

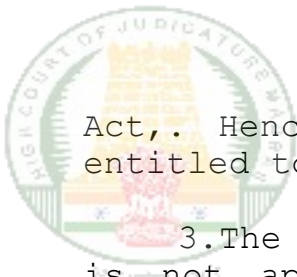
For Petitioner :M/S.D.Geetha for Mr.S.Sivathilakar

For Respondent :Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates

ORDER

The Petitioner has come forward with this Writ Petition challenging the order dated 28.8.2019, passed by the respondent.

2.The Petitioner's case is that he was appointed as Junior Assistant in the place of one J.Antony Xaveir Rex Raj and that the respondent/University has transferred the Petitioner to University Departments Section (UDS) in Respondent University premises. It is the case of the Petitioner that the Petitioner having been deputed to the above section of the respondent University and that in lieu of the parent University, in case of any excess or surplus teachers, the Petitioner ought to have been re-posted to the sundaranar University and ought not to have been disengaged from service. Several order has been issued to several persons including the Petitioner and the Petitioner was never a contract employee. It is only a contract of service and there is no contract for service and there was sanctioned post of Junior Assistant numbering three, in which, the Petitioner was appointed and as such, the respondent has violated the provisions of Section 25(N) of the Industrial Disputes



Act,. Hence, the termination is illegal and the Petitioner is entitled to the benefits.

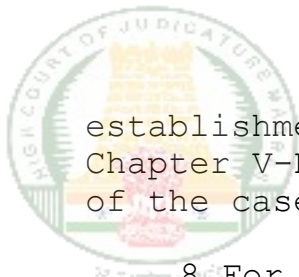
3.The case of the respondent is that Section 25(N) of the Act is not applicable to the case of the Petitioner and that the Petitioner was a contract employee and that the Petitioner is trying to enter through back-door and he has to compete with others, in case of, any future recruitment and if the petitioner satisfies all the necessary qualifications, the case of the Petitioner would be considered.

4.The contention that there is violation of Section 25(N) of the Industrial Disputes Act cannot be correct and that the respondent is willing to consider the case of the Petitioner along with others in terms of Section 25(H) and preference will be given to the Petitioner, for which, the respondent is not denying and that the Petitioner's case would be considered, If he satisfies all the requirements/qualifications.

5.Heard both sides and perused the materials placed before this Court.

6.It is not in dispute that the Petitioner was appointed in the place of one J.Antony Xavier Rex Raj on temporary basis and subsequently he was transferred to the University Departments Section in the respondent University premises. The Petitioner was disengaged from service on 28.08.2018 on the ground that the Petitioner was an employee on temporary contract basis as NMR and the contention of the respondent is that the Petitioner is trying to enter through back-door. The communication including the transfer order issued by the respondent would clearly show that the Petitioner was posted as Junior Assistant, which post was a sanctioned one. Whether the Petitioner fulfils the qualifications or not, this Court is not going into the same. In the present case, if the Petitioner satisfies all the qualifications as per the future notifications issued for recruitment to the post of Junior Assistant or any other post, preference shall be given to the petitioner. The provisions of Section 25(N) will not be applicable to the facts of the present case.

7.Chapter-V-B of the Industrial Disputes Act, 1947 applies to Industrial establishments. As per Section 25-K, the provisions will apply to an industrial establishment and if the strength employed is over and above 100 an average per work day preceding 12 months. The University and college to which the Petitioner has been transferred is not an industry for all employees except teachers . But it is an industrial establishment. The Apex Court in (1988) 4 Supreme Court Cases 42 (Miss A.Sundarambal .vs. Government of Goa, Daman and Diu) held that even though an educational institution has to be treated as an industry, teachers in an educational institution cannot be considered as workman. In the present case on hand, as the respondent does not fall under the category of industrial



establishment as per 25-L of the Industrial Disputes Act, 1947, Chapter V-B, Section 25(N) of the Act is not applicable to the facts of the case.

8. For the reasons stated supra, the relief sought for is modified to the extent that it is open to the Petitioner to compete with others in the future selection process, if any notified, as per the rules and guidelines issued by the respondent-University. It is represented that there is a vacancy in the constituent College. It is needless to mention that, in case, if the Petitioner is successful in the selection process, the respondent University can consider to post the Petitioner in that place or another post.

9. With the above observation, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/
Assistant Registrar(W)

/True copy/

Sub Assistant Registrar(CS-I)

To

The Registrar,
Manonmaniam Sundaranar University,
Abhishekapatti,
Tirunelveli - 627 012.

+1cc to Mr.S.Sivathilakar, Advocate, SR.No.85740

W.P (MD) No.19698 of 2018
and
W.M.P (MD) Nos.17474 and
17475 of 2018
19.09.2018

VSN
KK/SV/SAR-1/15.11.2018/3P-3C