

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.14885 of 2014
and M.P.No.2 of 2014

1. P.K.S.Madhavi
2. P.B.Arun
3. M.A.Victor
4. V.Magesh Kumar
5. K.Selvamani

...Petitioner

Vs.

1. The Vice Chancellor,
University of Madras,
Chepauk, Chennai 600 005.
2. The Registrar,
University of Madras,
Chepauk, Chennai 600 005.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the entire records of the second respondent in Official Communication No.F1(C)/Estt./Tech/2014/621, dated 14.3.2014 and quash the same and consequently, direct the respondents to appoint/regularise the services of the petitioners in the permanent post of Data Entry Operators in Computerised Result Processing Section (CRPS) in Madras University with time scale of pay.

For Petitioner : Mr.N.R.R.Arun Natarajan

For Respondents : Mr.Manisundaragopal

O R D E R

According to the petitioners, petitioners are working in Madras University on temporary basis from 20.2.2009 in the Computerised Result Processing Section (CRPS). Petitioners made a representation on 6.11.2013 to absorb them in the permanent post. The petitioners also filed W.P.No.4991 of 2014 before this Court. Pursuant to the order passed by this Court, the second respondent passed the impugned order, rejecting the claim of the petitioners by stating that request of the petitioners for absorbing them in the permanent posts cannot be accepted in the light of Clause 8 of the agreement entered into between the petitioner and the University.

2. The learned counsel appearing for the petitioners submitted that the petitioners have been temporarily appointed in the sanctioned post and he is entitled for regularisation of service. Petitioners' service have not been taken into consideration by the respondent University as directed by the Hon'ble Supreme Court.

3. The learned counsel appearing for the respondent University has submitted that in the service agreement entered into between the petitioners and the respondent University, it is stated that they will not claim any right for permanent position in the University. Therefore, the petitioners have no legal right to seek absorption in the permanent post. Hence, the respondent has rightly rejected the request made by the petitioners.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent University and perused the materials available on record.

5. The second respondent passed the impugned order by relying upon the Clause 8 of the agreement entered into between the petitioners and the University. However, the respondent University while passing the impugned order, failed to consider the service rendered by the petitioners. Further, no reason was stated in the impugned order for the request made by the petitioners for regularisation of their service, except showing Clause 8 of the service agreement. The Hon'ble Supreme Court in SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPT., CHENNAI AND OTHERS VS. THIRU R.GOVINDASWAMY AND OTHERS [(2014) 4 SCC 769], held as under:

"8.This Court in State of Rajasthan vs. Daya Lal [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 :

AIR 2011 SC 1193] has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC p. 435, para 12)

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years

of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

(emphasis supplied)

9. The present appeals are squarely covered by Clauses (ii), (iv) and (v) of the aforesaid judgment in Daya Lal Case [State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 : AIR 2011 SC 1193] Therefore, the appeals are allowed. However, in light of the facts and circumstances of the case as Shri P.P. Rao, learned Senior Counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected."

6. Therefore, without going into the actual position, in the light of the law laid down by the Hon'ble Supreme Court, the petitioners have to satisfy the parameters determined by the Hon'ble Supreme Court.

7. In view of the above, the impugned order is quashed and remitted to the second respondent to consider afresh in the light of the judgment of the Hon'ble Supreme Court cited supra and pass appropriate orders on merits and in accordance with law, within a period of 12 weeks from the date of receipt of copy of this order.

8. In fine, the writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

vaan

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

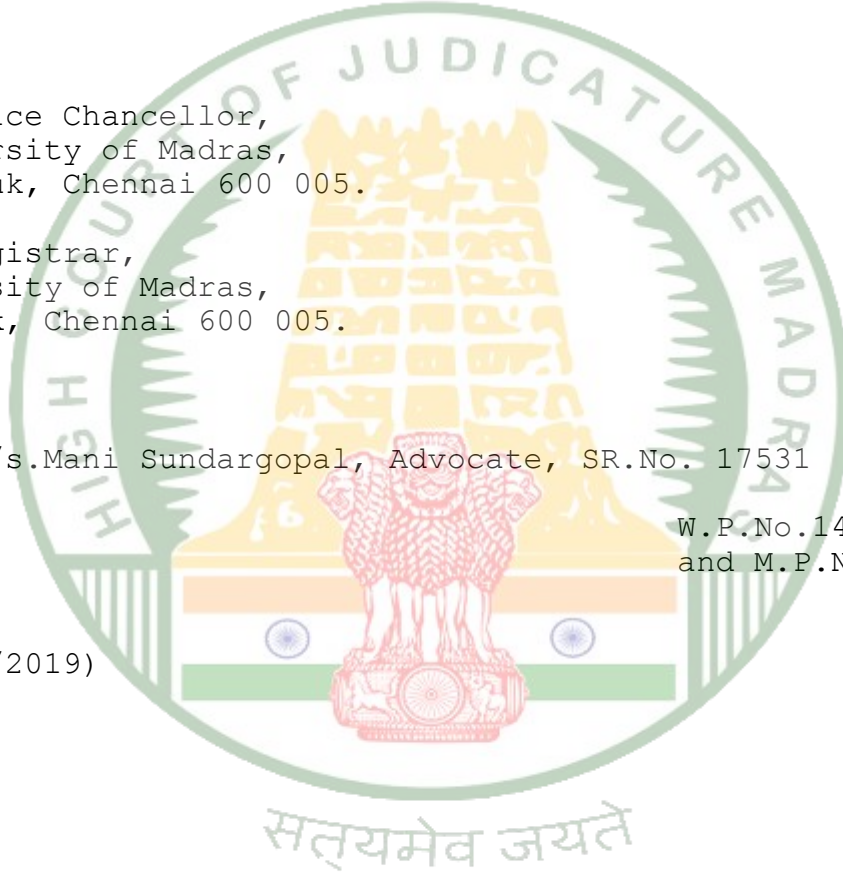
To

1. The Vice Chancellor,
University of Madras,
Chepauk, Chennai 600 005.
2. The Registrar,
University of Madras,
Chepauk, Chennai 600 005.

+1cc to M/s.Mani Sundargopal, Advocate, SR.No. 17531

W.P.No.14885 of 2014
and M.P.No.2 of 2014

Ssd(CO)
Kak(04/04/2019)



WEB COPY