IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.34079, 32875, 32882, 32889, 32895, 32897, 32899, 32911, 32916, 32923, 32924, 32930, 32940, 32941, 34024, 34031, 34037, 34041, 34128 of 2018

and

W.M.P.Nos. 38091, 38100, 38111, 38119, 38123, 38125, 38144, 38151, 38159, 38162, 38170, 38177, 38126, 39514, 39520, 39526, 39528, 39529, 39531, 39533, 39534, 39536, 39537, 39538, 39595, 39624, 39654, 39655, 38087, 38098, 38107, 38117, 38120, 38124, 38139, 38150, 38156, 38157, 38166, 38176, 38215, 39592 of 2018

DR.E.HEMANANTHAN ... PETITIONER in WP No.34079 of 2018

DR.M.DEVI ... PETITIONER in WP No.32875 of 2018

K.KANDASAMY ... PETITIONER in WP No.32882 of 2018

M.SOWMIYA ... PETITIONER in WP No.32889 of 2018

V.BHARANIDHARAN ... PETITIONER in WP No.32895 of 2018

J.G.PRAVEEN RAJ ... PETITIONER in WP No.32899 of 2018

V.KALAIPOONGUZHALI ... PETITIONER in WP No.32911 of 2018

P.SRINIVASAN ... PETITIONER in WP No.32916 of 2018

H.KAREEMULLAH ... PETITIONER in WP No.32923 of 2018

K.VENKATESWARAN ... PETITIONER in WP No.32924 of 2018

R.MANIKANDAN ... PETITIONER in WP No.32930 of 2018

R.SUNDHARESAN ... PETITIONER in WP No.32941 of 2018

D.IIAKKIASELVAN ... PETITIONER in WP No.32897 of 2018

S.CHANDRARAJAN ... PETITIONER in WP No.32940 of 2018

S.KALAIMANI ... PETITIONER in WP No.34031 of 2018

S.V.SASIKARAN ... PETITIONER in WP No.34024 of 2018

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R.RAMANATHAN ... PETITIONER in WP No.34037 of 2018

N.SATHEESH KUMAR ... PETITIONER in WP No.34041 of 2018

A.JENEFA

BLESSY SELVAM

R.S.RAMPRIYA

T.JAISON VIMALRAJ

M.REVATHY

R.SHAMINI ... PETITIONERS in WP No.34128 of 2018

Vs

1 THE STATE OF TAMIL NADU
REEP. BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT HIGHER EDUCATION DEPARTMENT
SECRETARIAT FORT ST.GEORGE CHENNAI-600 009

2 THE REGISTRAR
ANNA UNIVERSITY GUINDY CHENNAI - 600 025
... RESPONDENTS 1 & 2 in WP No.34079, 32875, 32882, 32889, 32895, 32899, 32911, 32916, 32923, 32930, 32941 of 2018
(*)..R1 in WP No.34031, 34024, 34037, 34041, 34128 of 2018

3 THE DEAN
REGIONAL CAMPUS COIMBATORE,
ANNA UNIVERSITY (CHENNAI)
COIMBATORE - 641046 .. 3rd RESPONDENT in WP No.34079 of 2018

4. THE DEAN,
THE UNIVERSITY COLLEGE OF ENGINEERING
ARNI, CONSTITUENT COLLEGE OF
ANNA UNIVERSITY (CHENNAI),
ARNI,
THIRUVANNAMALAI DISTRICT- 632 326.
..3rd RESPONDENT in WP No.32875/18, 32889/18, WP No.32916/18 and WP No.32923/18

5. THE DEAN
THE UNIVERSITY COLLEGE OF ENGINEERING
VILLUPURAM CONSTITUENT COLLEGE OF
ANNA UNIVERSITY (CHENNAI),
VILLUPURAM AND DISTRICT - 605 103.

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..3rd RESPONDENT in WP No.32882/18, 32897/18
..2nd RESPONDENT in WP No.34031/18, 34024, 34037, 34041, 34128/18

6. THE DEAN
THE UNIVERSITY COLLEGE OF ENGINEERING
KANCHEEPURAM CONSTITUENT COLLEGE OF
ANNA UNIVERSITY (CHENNAI),
KANCHEEPURAM AND DISTRICT – 631 552.
... 3rd RESPONDENT in WP No.32895/18 in WP No.32899/18, WP No.32924/18

7. THE DEAN
THE UNIVERSITY COLLEGE OF ENGINEERING
THIRUKKUVALAI CONSTITUENT COLLEGE OF
ANNA UNIVERSITY (CHENNAI),
THIRUKKUVALAI,
THIRUVARUR DISTRICT
...3rd RESPONDENT in WP No.32911/18, WP No.32941 of 2018

8. THE DEAN
THE UNIVERSITY COLLEGE OF ENGINEERING
PATTUKKOTTAI CONSTITUENT COLLEGE OF
ANNA UNIVERSITY (CHENNAI),
PATTUKKOTTAI,
THANJAVUR DISTRICT -614 701
... 3rd RESPONDENT in WP No.32930/18 in WP No.32940/18

Prayer in WP No.34079, 32875, 32882, 32889, 32895, 32899, 32911, 32916, 32923, 32924, 32930, 32941 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorified mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in

Procs. No.001/CCC-1/RCCBE/TF/2018
Procs. No.001/CCC-1/UCEA/TF/2018
Procs. No.001/CCC-1/UCEA/TF/2018
Procs. No.001/CCC-1/UCEA/TF/2018
Procs. No.001/CCC-1/UCEK/TF/2018
Procs. No.001/CCC-1/UCEK/TF/2018
Procs. No.001/CCC-1/UCETKV/TF/2018
Procs. No.001/CCC-1/UCEA/TF/2018
Procs. No.001/CCC-1/UCEA/TF/2018
Procs. No.001/CCC-1/UCEK/TF/2018
Procs. No.001/CCC-1/UCEPKT/TF/2018
Procs. No.001/CCC-1/UCETKV/TF/2018

respectively dated 05.09.2018 and to quash the same in so far as

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clause No.11 is concerned and consequently directing the respondents to allow the petitioner for further continuance of service on par with other similarly placed Teaching fellows on need basis as ordered, with consequential benefits.

Prayer in WP No.32897 and 32940 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorified mandamus, to call for the records relating to the impugned proceedings issued by the 2nd Respondent in

Procs.No.001/CCC-1/UCEV/VF/ 2018
Procs. No.001/CCC-1/UCEPKT/VF/2018

respectively dated 5.9.2018 and to quash the same in so far as clause No.11 is concerned and consequently directing the Respondents to allow the petitioner for further continuance of service on par with other similarly placed visiting faculty on need basis as ordered, with consequential benefits.

Prayer in WP No.34031, 34024, 34037, 34041 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorified mandamus, the writ directing the 1st respondent to regularise the post of the petitioner as Assistant professor from the date of joining as Teaching fellow in the 2nd respondent College.

Prayer in WP No.34128 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus, or any other appropriate writ or order or direction in the nature of writ directing the respondents to regularize the services of the petitioners as Assistant Professors.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.V.Kadhirvelu
Special Government Pleader for R1

Mr.V.Shanmugasundaram for R2 & R3
..in all WPs.

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COMMON ORDER

The order of appointments issued in favour of the third person is under challenge in these writ petitions.

2.However, the persons in favour of whom such appointment orders were issued are not even impleaded as party respondents in these writ petitions

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3.The order of appointments issued to the writ petitioners, was issued on certain terms and conditions. The writ petitioners were appointed on contract basis and the conditions imposed are extracted hereunder:

> "1.The appointment will be on contract basis from his date of joining to 31.05.2013. He will be paid a consolidated salary of Rs.20,000/- per month.
>
> 2.He is eligible for 12 days Casual Leave proportionately on a calender year.
>
> 3.He will be governed by the Anna University employees Conduct Rules as in force from time to time.
>
> 4.The Consolidated salary payable is for a full time assignment.
>
> 5.The nature of work and duties shall be assigned by the Regional Director i/c., Anna University Regional Centre, Coimbatore and authorities of the University from time to time.
>
> 6.The appointment does not confer any right or privilege for a regular, permanent or tenure appointment in the University.
>
> 7.The appointment is automatically terminated on 31.05.2013, or is liable for termination on notice for a period of not less than one month on either side without assigning any reason therefor.
>
> 8.He shall report to the Regional Director i/c., Anna University Regional Centre, Coimbatore for joining duty on or before 10.02.2013."

4. Thus, it is made clear that the writ petitioners were not appointed in a sanctioned posts in accordance with the recruitment rules in force. In view of the fact that the writ petitioners were appointed on contract basis for a consolidated salary and on certain terms and conditions, they are not entitled to seek the benefits of regularization or permanent absorption. Regularization and permanent absorption cannot be granted contrary to the recruitment rules in force. Regularization or permanent absorption can be granted only if the appointments are made by following the recruitment rules in force.

5.In these present cases on hand, though the writ petitioners has challenged the appointment orders of other persons, who all are also appointed on contract basis, the candidates were not even impleaded as respondents. This apart, the writ petitioners themselves have not established that their appointments were made strictly in accordance with the recruitment rules in a sanctioned post in accordance with law. This being the factum, the benefit of regularization or permanent absorption cannot be considered, in view of the legal principles settled by the Constitutional Bench of the Hon'ble

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Supreme Court of India in the case of State of Karnataka Vs. Umadevi and others reported in 2006 (4) SCC Page No.1 and the relevant paragraphs are extracted as follows:

> "4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the

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guardian of equal rights protection should not be forgotten.

5. This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

10. In addition to the equality clause represented by Article 14 of the Constitution, Article 16has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution,Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the

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State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of

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such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein,

"In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

14. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In STATE OF MYSORE Vs. S.V. NARAYANAPPA [1967 (1) S.C.R. 128], this Court stated that it was a mis-conception to consider that regularization meant permanence. In R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. [(1972) 2 S.C.R. 799], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:- "Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are

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terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only 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 regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

43.Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose

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period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45.While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some

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people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

"49.It is contended that the State action in not regularizing 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 a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered

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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."

6. Subsequently, the Hon'ble Supreme Court of India reiterated the legal principles settled by the Constitution Bench in the case of Secretary TO Government, School Education Department,Chennai v. R.Govindaswamy and Others.[(2014) 4 SCC 769]. In paragraph No.8, the Hon'ble Supreme Court has observed as follows:

"8.this Court in State of Rajasthan & Ors. v. Daya Lal & Ors., 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:

"(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 5 Page 6 cannot be grounds for passing any order of regularisation in the absence of a legal

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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 added) "

7. Even, the Hon'ble Supreme Court of India, in a recent case of State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another Vs. A.Singamuthu reported in 2017 [4] SCC 113 and the relevant paragraphs 18, 19 and 20 are extracted hereunder:-

"18. The learned Single Judge erred in extending the benefit of GOMs No. 22 dated 28-2-2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 1-4-1989 and completed ten years of service on 31-3-1999. As rightly contended by the learned Senior Counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is, from 1-4-1999 till the date of his regularisation, that is, 18-6-2012, the financial commitment to the State would be around Rs 10,85,113 (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned Senior Counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularised under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of

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completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularisation of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

19. It is pertinent to note that even the regularisation of services of part-time employees vide G.O. (Rt.) No. 505 Finance (AA-2) Department dated 14-10-2009 and G.O. (2D) No. 32 Finance (T.A. 2) Department dated 26-3-2010 was effected by extending the benefit of G.O. dated 28-2-2006 only from the date of government orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that GOMs No. 22 P & AR Dept. dated 28-2-2006 is applicable only to full-time daily-wage employees and who had completed ten years of continuous service as on 1-1-2006 and not to part-time employees. As per G.O. (Rt.) No. 84 dated 18-6-2012, the respondent is entitled to the monetary benefits only from the date of issuance of government order regularising his service, that is, 18-6-2012. The impugned order [Commercial Taxes and Registration Deptt., State of T.N. v. A. Singamuthu, Writ Appeal No. 1209 of 2012, decided on 4-7-2012 (Mad)] of the Division Bench affirming the order [A. Singamuthu v. Commercial Taxes and Registration Deptt., State of T.N., WP No. 26702 of 2010, order dated 26-11-2010 (Mad)] of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.

20. In the result, the impugned order is set aside and this appeal is allowed. No costs."

8.Equal opportunity in public employment is the constitutional mandate. In the event of granting regularization and permanent absorption in respect of the persons who were not appointed in accordance with the regular time scale of pay and in violation of recruitment rules will infringe the rights of all other citizens who all are eligible and aspiring to secure public employment by participating in the open competitive process.

9.Thus, the appointments to the public posts in the sanctioned post on regular basis must be done strictly by following the recruitment rules. The persons who were not appointed in accordance with the recruitment rules cannot claim the benefit of regularization or permanent absorption.

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10.High Court cannot issue any direction to grant regularization under Article 226 of the Constitution of India. This being the legal principles settled by the Apex Court, this Court is of the considered opinion that the writ petitioners were appointed on contract basis for a consolidated salary and the initial appointments were not made in accordance with recruitment rules of the Annamalai University.

11.Under these circumstances, the writ petitioners are not entitled to claim the relief as such sought for in these writ petitions.

12.Accordingly, all these writ petitions stands dismissed. No costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)
Dated : 13.06.2019

***Corrected order to be issued**

Sd/-
Sub Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

Pns

To

1.The State of Tamil Nadu,
Rep.by its Principal Secretary
to Government,
Higher Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.

To be Substituted to the Order already dispatched on 21/06/2019.

2.The Registrar,
Anna University,
Guindy,
Chennai - 600 025.

3. The Dean,
Regional Campus Coimbatore,
Anna University (Chennai),
Coimbatore - 641 046.

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4. The Dean,
   The University College of Engineering Arni
   Constituent College of
   Anna University (Chennai),
   Arni,
   Thiruvannamalai District- 632 326.

5. The Dean
   The University College of Engineering Villupuram
   Constituent College of
   Anna University (Chennai),
   Villupuram and District - 605 103.

6. The Dean
   The University College of Engineering Kancheepuram
   Constituent College of
   Anna University (Chennai),
   Kancheepuram and District - 631 552.

7. The Dean
   The University College of Engineering Thirukkuvalai
   Constituent College of
   Anna University (Chennai),
   Thirukkuvalai,
   Thiruvarur District

8. The Dean
   The University College of Engineering Pattukkottai
   Constituent College of
   Anna University (Chennai),
   Pattukkottai,
   Thanjavur District -614 701

+4ccs to Mr.J.Ravindran, Advocate SR.No.38603, 38604, 38605, 38898 (27/06/2019)

+14ccs to Mr.G.Sankaran, Advocate SR.No.38934

+1cc to Mr.S.Selvathirumurugan Advocate SR.No.38898

W.P.Nos.34079, 32875, 32882, 32889, 32895, 32897, 32899, 32911, 32916, 32923, 32924, 32930, 32940, 32941, 34024, 34031, 34037, 34041, 34128 of 2018

VBA(CO)
GMY(19/06/2019)
GMY(28/06/2019)

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