



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.10551 of 2016

1.U.Ayubkhan
2.P.Chinniah
3.N.Rajendran
4.R.Pappathi
5.E.Velusamy
6.M.Movendran
7.G.Irulayee
8.M.Irulayee
9.V.Gopal
10.P.Palpandian
11.S.Alagumalai
12.N.Ravichandran

... Petitioners

vs.

The Management of Madurai Kamaraj
University rep. by its Registrar,
Palkalai Nagar,
Madurai-625 021.

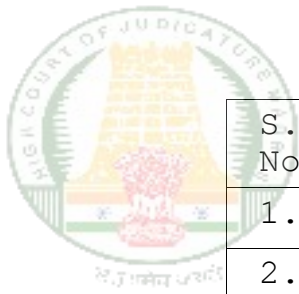
... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, directing the respondent to fix petitioners seniority from the date when they were originally appointed on daily basis in the respondent university and extend the benefit of pension under old pension scheme by taking into consideration of their individual representations dated 31.10.2015 and judgment of Hon'ble Division Bench of Hon'ble High Court of Madras reported in 2014(2) CTC 777.

For Petitioner : Mr.K.Lavan
For Respondent : Mr.T.Sakthikumaran
Standing Counsel

O R D E R

The petitioners herein were originally appointed as Gardeners in Madurai Kamaraj University (hereinafter referred to as "the University") between the years 1981 to 1990 in the following manner:-

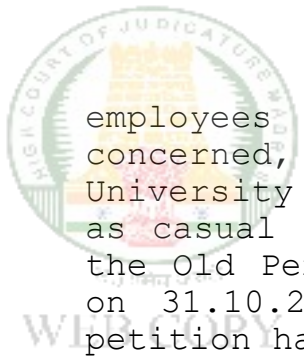


S. No	Name	Designation	Date of Original Appointment
1.	U.Ayubkhan	Gardener	17.07.1989
2.	P.Chinniah	Gardener	16.07.1988
3.	N.Rajendran	Gardener	01.04.1987
4.	R.Pappathi	Gardener	02.04.1989
5.	E.Velusamy	Gardener	01.04.1987
6.	M.Movendran	Gardener	01.04.1987
7.	G.Irulayee	Gardener	15.08.1981
8.	M.Irulayee	Gardener	19.08.1981
9.	V.Gopal	Gardener	15.08.1981
10.	P.Palpandian	Gardener	21.06.1988
11.	S.Alagumalai	Gardener	16.07.1988
12.	N.Ravichandran	Gardener	18.03.1990

2.The services of some of the petitioners were terminated owing to which, industrial disputes were raised and the common order passed therein came to be challenged before this Court in W.P.Nos.17337 and 17908 of 1998. This Court by an order dated 11.08.2004 passed in the writ petitions, directed the respondent University to reinstate the petitioners in service as permanent employees with continuity of service with effect from the date on which they were originally appointed. While holding so, the learned Single Judge had also clarified that the petitioners will not be entitled to any backwages and that they will be entitled to the salary only after they were reinstated in service.

3.Aggrieved against the order passed by the learned Single Judge, the University had filed appeals in W.A.Nos.1675 and 1676 of 2005. When the writ appeals came up for consideration, the University had represented that they were willing to give appointment orders insofar as the persons who approached the University, pursuant to the order passed by the learned Single Judge in W.P.Nos.17337 and 17908 of 1998. In view of such a submission made, the writ appeals came to be closed. Thereafter, appointment orders were issued to each of the petitioners in the year 2008. The appointment orders state that their appointment in the scale of pay mentioned therein, along with the usual allowances, would be with effect from the "date of joining".

4.When the Syndicate of the University resolved on 28.09.2008 to include half of the service rendered in the University prior to the regular appointment for pensionary benefits, insofar as the



employees who were appointed on 14.11.2005 and thereafter were concerned, the petitioners had given representations requesting the University to consider their original date of joining in the service as casual labourers for the purpose of inclusion of their names in the Old Pension Scheme. The representations which came to be made on 31.10.2015, were not acted upon and hence, the present writ petition has been filed.

5.The learned counsel appearing for the petitioners would submit that in view of the earlier orders of this Court, they will be entitled for fixation of seniority from the date when they were originally appointed on daily basis in the respondent University and thereby the benefit of pension under the Old Pension Scheme should also be extended to them.

6.The learned Standing Counsel appearing for the respondent University would submit that the petitioners were given appointment orders in the year 2008 itself and the same has been accepted by the petitioners. It is their further statement that the petitioners have been appointed on regular basis by orders dated 06.10.2008, insofar as relates to petitioners 1 to 8; 16.10.2008 insofar as relates to ninth petitioner; and 11.12.2008 insofar as relates to petitioners 10 to 12 and since they have been appointed for the first time in the service on the above dates, they would come under the new Contributory Pension Scheme. Having accepted the appointments made in the year 2008 and having waited for almost 8 years, the petitioners now cannot claim their services from the date of the original appointment as casual labourers.

7.I have given a careful consideration to the submissions made by the respective counsel.

8.This is a case where the petitioners who have been originally appointed as casual labourers, had approached this Court when their services came to be terminated and had obtained favorable order from this Court. When their award passed by the Industrial Tribunal came to be challenged in W.P(MD) Nos.17337 and 17908 of 1998, this Court by order dated 11.08.2004 allowed the writ petitions by observing as follows:-

With the result, the petitioners are entitled to succeed and the respondent is directed to reinstate the petitioners in service as permanent employees with continuity of service with effect from the dated on which they were originally appointed. However, it is made clear that the petitioners will not be entitled to any back-wages, considering the fact that the respondent-University is a public institution and that the employees have also not been performing or discharging any duty during the said period. They will be entitled to salary only after they are reinstated in service. (emphasis supplied)



The Writ Petitions are allowed subject to the above observation.

9.The aforesaid finding is self-explanatory. As such, the learned Single Judge had directed the respondent to reinstate these petitioners in service as permanent employees, with continuity of service with effect from the date on which they were originally appointed. When the University had chosen to challenge the order, a submission was made before the Hon'ble Division Bench stating that they were willing to issue appointment orders as directed by the learned Single Judge. The relevant portion of such a submission made before the Hon'ble Division Bench, which came to be recorded in the order dated 14.08.2008 in W.A.Nos.1675 and 1676 of 2005, reads as follows:-

In the above two appeals, the learned counsel for the management University submits that so far as the persons who approached them pursuant to the orders passed by the learned Single Judge, orders have been passed for their appointment. In respect of the respondents who have not approached, they are not able to pass orders. As and when the respondents appear before them, the appellant would pass orders. (emphasis supplied)

2.Recording the same, the Writ Appeals are disposed of. No costs.

10.It was the categorical submission of the University that they were willing to issue appointment orders "pursuant to the order passed by the learned Single Judge". As stated above, the learned Single Judge had already directed the University to reinstate the petitioners with continuity of service from the date on which they were originally appointed. As such, it can only be construed that the statement made before the Hon'ble Division Bench by the University was that they were willing to issue appointment orders by taking into account the date of original appointment of the petitioners, in accordance with the orders passed by the learned Single Judge.

11.In this background, the appointment orders came to be issued to the petitioners on 06.10.2008, 16.10.2008 and 11.12.2008. These appointment orders were also to the effect that the petitioners are being appointed as Gardeners temporarily in Madurai Kamaraj University on a pay of Rs.2,550/- p.m. in the scale of Rs.2550-55-2660-60-3200 plus usual allowances "with effect from the date of joining".

12.The submission of the University now seems to be that they did not intend to appoint the petitioners from the date of their

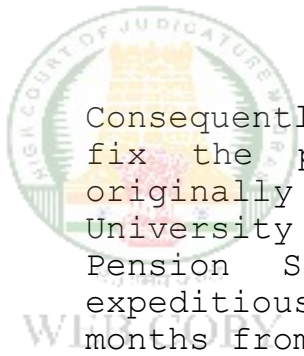


original appointments as casual labourers, but only from the date on which their appointments were given in the year 2008. This submission is also reiterated in the counter affidavit filed by the University. Such a statement is misconceived, for the reason that if the University intended to issue appointment orders to the petitioners from the year 2008 only, the very statement, made before the Hon'ble Division Bench while the final orders in W.A.Nos.1675 and 1676 of 2005, has to be considered as misguidance or false statement. Had the University made such a submission before the Hon'ble Division Bench when the writ appeals came up for consideration, this Court is able to comprehend that the writ appeals may not have been closed, but would have been taken up for further adjudication. When the university had submitted before the Hon'ble Division Bench that they were willing to issue appointment orders "pursuant to the order of the learned Single Judge" and when the learned Single Judge had already directed the respondent to reinstate the petitioners with continuity from the date of original appointments, the appointment orders issued by them in the year 2008, with effect from the "date of joining", can only be construed to have been from the "date of their original appointments" in the post of casual labourers, as observed by the learned Single Judge.

13.The learned Standing Counsel for the respondent would draw attention of this Court to the other clauses in the appointment orders stating that the appointment itself was subject to the condition that the petitioners should not seek for fixation of seniority. The submission seems to be that the University is trying to blow both hot and cold by representing before the Hon'ble Division Bench that they were willing to issue appointment orders with original appointments as a criteria and then issue orders retracting from such a statement. The appointment orders issued in the year 2008 can only be construed as orders in compliance of the order passed in W.P.Nos.17337 and 17908 of 1998 dated 11.08.2004 as well as their submissions made before the Hon'ble Division Bench in W.A.Nos.1675 and 1676 of 2005, dated 14.08.2008.

14.If that be the case, the pension scheme that was invoked prior to the new Contributory Pension Scheme passed in G.O.No.430, Finance Department, dated 06.08.2004, would be applicable to these petitioners. Since the order of the writ petitions in W.P(MD) No.17337 and 17908 of 1998 was to the effect that the petitioners would be made permanent employees with continuity of service from the date on which they were originally appointed and the subsequent orders of appointment issued by the University does not clearly stipulate that the order was with effect from the year 2008 only, but with effect from the "date of joining", such a phrase in the appointment order ought to be construed as "date of joining in the original post".

15.In the light of the above observations, this Court is of the view that the petitioners are entitled to succeed.



Consequently, there shall be a direction to the respondent herein to fix the petitioners seniority from the date when they were originally appointed on daily wage basis in the respondent University and thereby extend the benefit of pension under the Old Pension Scheme. Such an exercise shall be completed as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order.

16. With the above directions, this Writ Petition is allowed.
No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cp
To
The Registrar,
The Management of Madurai
Kamaraj University,
Palkalai Nagar,
Madurai-625 021.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-105447[F] dated 17/12/2019)

+1 CC to M/s.K.LAVAN, Advocate (SR-105867[F] dated 19/12/2019)

**Order made in
W.P. (MD) No.10551 of 2016**

_KK/SAR/07.01.2020/6P-4C/