



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.04.2019

Delivered on : 02.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

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W.P.(MD)Nos.19209, 19216, 19217, 19218, 18044, 17521, 17522, 17523, 17524, 17525, 17526, 18725, 18726, 18727, 18728, 20754, 20222, 20223, 20224, 20225, 20226, 20227, 20228, 20229, 19588, 19589 of 2018 and 4848 of 2019

and

W.M.P.(MD)Nos.17043, 17049, 17050, 17051, 17052, 17053, 17054, 17055, 17056, 17057, 15930, 15389, 15390, 15391, 15392, 15393, 15394, 15395, 15396, 15397, 15398, 15399, 15400, 16571, 16572, 16573, 16574, 16575, 16576, 16577, 17976, 17977, 17978, 17979, 17980, 17981, 17982, 17983, 17984, 17985, 17986 of 2018, 17363, 17364, 17365, 17366, 17367, 17368 of 2018 and 3856 of 2019

W.P.(MD)No.19209 of 2018:

V.Srinivasan

: Petitioner

Vs.

1.The Principal Secretary to Government,
Higher Education Department,
Secretariat,
Chennai-600 009.

2.The Registrar,
Manonmaniam Sundaranar University,
Abhisekapatti, Tirunelveli District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent pursuant to disengagement memo issued by the second respondent in his proceedings in Memo No.MSU/R/Estt/Admn/NMR/25/2018, dated 28.08.2018 and quash the same as illegal and consequently, direct the respondents to regularize the petitioner's service.

For Petitioner : Mr.V.Balasubramanian

For Respondent No.1 : Mrs.S.Srimathy,
Special Government Pleader

For Respondent No.2 : Mr.M.Ajmal Khan,
Senior Counsel,
for Mr.M.Mahaboob Athiff



W.P. (MD) Nos.19216 to 19218 of 2018:

C.Senthil Kumar	: Petitioner in W.P. (MD) No.19216/2018
E.Venkatalakshmi	: Petitioner in W.P. (MD) No.19217/2018
R.Senthil Kumar	: Petitioner in W.P. (MD) No.19218/2018

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli - 627 012. : Respondent in all W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned orders passed by the respondent in Memo No.MSU/R/Estt/Admn/NMR/09/2018, Memo No.MSU/R/Estt/Admn / NMR/05/2018 and Memo No.MSU/R/Estt/Admn/NMR/22/2018, respectively dated 28.08.2018 and quash the same as illegal and consequently, direct the respondent to regularize the petitioners' service with all monetary benefits.

For Petitioners in all W.Ps.	: Mr.M.R.Sreenivasan
For Respondent in all W.Ps.	: Mr.M.Ajmal Khan, Senior Counsel, for Mr.M.Mahaboob Athiff

W.P. (MD) No.18044 of 2018:

Mookkandi : Petitioner

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the respondent pursuant to disengagement memo issued by the respondent in his proceedings in Memo No.MSU/R/Estt/ Admn/NMR/2018, dated 11.08.2018 and quash the same as illegal.



For Petitioner : Mr.B.Anandan

For Respondent : Mr.M.Ajmal Khan, Sr.Counsel
for Mr.M.Mahaboob Athiff

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W.P.(MD)Nos.17521 to 17526 of 2018:

Antony Devadoss	: Petitioner in W.P.(MD)No.17521/2018
Panneer Selvi	: Petitioner in W.P.(MD)No.17522/2018
Prem Rajkumar	: Petitioner in W.P.(MD)No.17523/2018
Mookkandi	: Petitioner in W.P.(MD)No.17524/2018
Leo	: Petitioner in W.P.(MD)No.17525/2018
Chellammal	: Petitioner in W.P.(MD)No.17526/2018

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli.

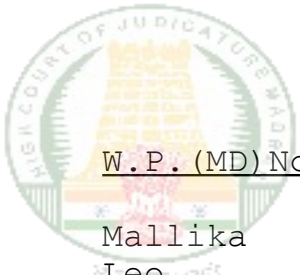
: Respondent in all W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent pursuant to rejection memo issued by the respondent in his proceedings in Ref.No.MSU/Estt/NMR/2018, dated 12.03.2018 and consequential impugned notification in daily newspaper in the respondent's proceedings in DIPR/961/DISPLAY/2018, dated 31.07.2018 and quash the same as illegal and further direct the respondent to absorb the petitioners to the post of Junior Assistant from the date of their appointment or date of their consolidated appointment by providing all the service benefits, which were given to the similarly placed persons in the respondent university.

For Petitioners : Mr.T.Lajapathi Roy
in WP(MD)Nos.17521 & 17522 of 2018

Mr.Prabhu Rajadurai for
Mr.B.Anandan WP(MD)17523 to 17526/2018

For Respondent : Mr.M.Ajmal Khan,
in all W.Ps. Senior Counsel,
for Mr.M.Mahaboob Athiff



W.P. (MD) Nos.18725 to 18728 of 2018:

Mallika : Petitioner in W.P. (MD) No.18725/2018
Leo : Petitioner in W.P. (MD) No.18726/2018
Saravanaperumal : Petitioner in W.P. (MD) No.18727/2018
Santhamani : Petitioner in W.P. (MD) No.18728/2018

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli. : Respondent in all W.Ps.

COMMON PRAYER in W.P. (MD) Nos.18725 and 18728/2018: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent pursuant to the impugned notification in daily newspaper in the respondent's proceedings in DIPR/961/DISPLAY/2018, dated 31.07.2018 and quash the same as illegal and further direct the respondent to absorb the petitioners to the post of Junior Assistant from the date of their appointment or date of their consolidated appointment by providing all the service benefits, which were given to the similarly placed persons in the respondent university.

PRAYER in W.P. (MD) No.18726 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the respondent pursuant to disengagement memo issued by the respondent in his proceedings in Memo No.MSU/R/Estt/Admn/NMR/2018, dated 14.08.2018 and quash the same as illegal.

PRAYER in W.P. (MD) No.18727/2018: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent pursuant to rejection memo issued by the respondent in his proceedings in Memo No.MSU/R/Estt/Admn/SNMR-NC/2015, dated 10.04.2015 and consequential impugned notification in daily newspaper in the respondent's proceedings in DIPR/961/DISPLAY/2018, dated 31.07.2018 and quash the same as illegal and further direct the respondent to absorb the petitioner to the post of Junior Assistant from the date of his appointment or date of his consolidated appointment by providing all the service benefits, which were given to the similarly placed persons in the respondent university.



Prayer in WP(MD).18728 of 2018:

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent pursuant to the impugned notification in daily news paper in the respondents proceedings in DIPR/961/DISPLAY/2018 date 31/07/2018 and quash the same as illegal and further direct the respondent to absorb the petitioner to the post of junior assistant from the date of his appointment or date of his consolidated appointment by providing all the service benefits, which were given to the similarly placed persons in the respondent univeristy.

For Petitioners	: Mr.B.Anandan in WP(MD).18725 to 18727 of 2018
	: Mr.T.Lajapathi Roy, in WP(MD).18728 of 2018
For Respondent in all W.Ps.	: Mr.M.Ajmal Khan, Senior Counsel, for Mr.M.Mahaboob Athiff

W.P. (MD) No.20754 of 2018:

Prema : Petitioner
Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent pursuant to impugned notification in daily newspaper in the respondent's proceedings in DIPR/961/DISPLAY/2018, dated 31.07.2018 and quash the same as illegal and consequential disengagement memo in Memo No.MSU/R/Estt/Admn/NMR/13/2018, dated 28.08.2018, further, direct the respondent to absorb the petitioner to the post of Junior Assistant from the date of his appointment or date of his consolidated appointment by providing all the service benefits, which were given to the similarly placed persons in the respondent university.

For Petitioner : Mr.G.Prabhu Rajadurai for Mr.B.Anandan



For Respondent : Mr.M.Ajmal Khan,
Senior Counsel,
for Mr.M.Mahaboob Athiff

W.P. (MD) Nos.20222 to 20229 of 2018:

Antony Devadoss : Petitioner in W.P. (MD) No.20222/2018
S.Panneerselvi : Petitioner in W.P. (MD) No.20223/2018
Prem Rajkumar : Petitioner in W.P. (MD) No.20224/2018
Chellammal : Petitioner in W.P. (MD) No.20225/2018
Mallika : Petitioner in W.P. (MD) No.20226/2018
Saravanaperumal : Petitioner in W.P. (MD) No.20227/2018
Santhamani : Petitioner in W.P. (MD) No.20228/2018
Ramaraju : Petitioner in W.P. (MD) No.20229/2018

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli.

: Respondent in all W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the respondent pursuant to disengagement memo issued by the respondent in his proceedings in Memo No.MSU/R/Estt/Admn/NMR/42/2018, Memo No.MSU/R/Estt/Admn/NMR/40/2018, Memo No.MSU/R/Estt/Admn/NMR/41/2018, Memo No.MSU/R/Estt/Admn/NMR/43/2018, dated 31.08.2018 [W.P. (MD) Nos.20222 to 20225/2018], Memo No.MSU/R/Estt/Admn/NMR/ 03/2018 and Memo No.MSU/R/Estt/Admn/NMR/04/2018, dated 28.08.2018 [W.P. (MD) Nos.20226 and 20229/2018], Memo No.MSU/R/Estt/Admn/NMR/2018, dated 20.08.2018 [W.P. (MD) Nos. 20227, 20228/2018] respectively and quash the same as illegal.

For Petitioner : Mr.Prabhu Rajadurai for Mr.B.Anandan
in all W.Ps.

For Respondent : Mr.M.Ajmal Khan,
in all W.Ps. Senior Counsel,
For Mr.M.Mahaboob Athiff

W.P. (MD) Nos.19588 and 19589 of 2018:

M.Rameshkumar : Petitioner in W.P. (MD) No.19588/2018
P.Ponvizhi : Petitioner in W.P. (MD) No.19589/2018



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

: Respondent in both W.Ps.

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COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned rejection Memo No.MSU/R/Estt/Admn/NMR/15/2018 and Memo No.MSU/R/Estt/Admn/NMR/24/2018, respectively dated 28.08.2018 and consequential impugned notification in DIPR/961/DISPLAY/2018, dated 31.07.2018 issued by the respondent which was published in Daily Thanthi on 31.07.2018 insofar as it relates to the petitioners' case vide Advertisement No.MSU/R/JA/01/2018, name of the post Junior Assistant in the impugned paper notification and quash the same as illegal, against the equity and natural justice and further, direct the respondent to absorb the petitioners to the post of Junior Assistant from the date of their initial appointment or date of their consolidated appointment by providing all the service benefits, which were given to the similarly placed persons in the respondent university.

For Petitioners : Mr.S.Sivasubramanian
in both W.Ps.

For Respondent : Mr.M.Ajmal Khan,
in both W.Ps. Senior Counsel,
for Mr.M.Mahaboob Athiff

W.P. (MD) No.4848 of 2019:

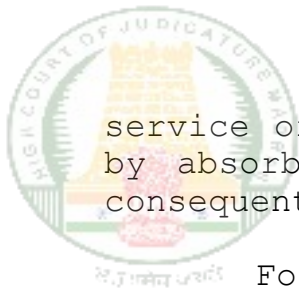
L.Maria Pushbam : Petitioner

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli-12,
Tirunelveli District.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the respondent in Memo No.MSU/R/Estt/Admn/NMR/23/2018, dated 28.08.2018 and quash the same and consequently, directing the respondent to regularize the



service of the petitioner from the date of her initial appointment by absorbing her in any one of the existing vacancies with the consequential benefits.

For Petitioner : Mr.V.Kannan

For Respondent : Mr.M.Ajmal Khan,
Senior Counsel,
for Mr.M.Mahaboob Athiff

COMMON ORDER

Since the issues involved in all these writ petitions are one and the same, they were heard together and are being decided by means of this common order.

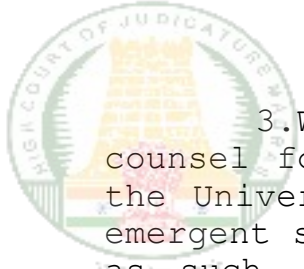
2.The facts leading to the filing of the present writ petitions are briefly stated as follows:

(i)The respondent University issued a notification in daily newspaper calling for the applications from the candidates for various posts including Skilled NMR on daily wages. The petitioners, having possessed the prescribed qualification, viz., Bachelor of Degree and Certificate of Computer Knowledge, applied for the post of Skilled NMR. The respondent University, after completion of selection process, such as, certificate verification, written examination and interview, appointed number of persons in various posts including Skilled NMRs and Non-Skilled NMRs. The petitioners were also appointed as Skilled NMRs and after sometime, they got consolidated appointment.

(ii)In the minutes of the meeting held on 07.02.2015, the Syndicate Sub Committee held that the consolidate skilled NMRs, on completion of five years of service, would be made permanent/regularized and in accordance with the recommendation made by the Committee, some persons including those who are juniors to some of the petitioners, got absorption as Junior Assistant on completion of five years service.

(iii)Quoting the above recommendation, the petitioners along with others made a request to absorb them as Junior Assistant by way of representation, for which, the respondent University orally informed that their representation would be considered as early as possible.

(iv)In the meanwhile, the respondent University passed the impugned rejection memos rejecting the claim of the petitioners, for which, the petitioners have given a reply. However, to shock and surprise, the respondent University issued the notification in daily newspaper calling for applications for various posts. Consequentially, disengagement memos came to be issued against some of the petitioners. Those proceedings are under challenge in the present writ petitions by way of separate Writ Petitions.



3. With the above factual scenario, the respective learned counsel for the petitioners submitted that the Vice Chancellor of the University has the authority to engage temporary employees in emergent situations, when regular recruitment would get delayed and as such, the petitioners were appointed as skilled NMRs, after undergoing certificate verification, written examination as well as interview. Subsequently, they were appointed as consolidated.

4. The learned counsel further submitted that the petitioners were appointed as per the notification dated 26.03.2003, wherein, the prescribed qualification was mentioned as degree holder + certificate of computer knowledge. Whereas, by way of impugned rejection memos, the respondent University pointed out that the petitioners have not satisfied the requisite statutory qualification as prescribed by the Statutes of the University.

5. It is further stated that having rendered service for years together, after consolidated appointment, the petitioners are eligible for absorption to the post of Junior Assistant, as the similarly placed persons including those who are juniors to them, were given absorption.

6. The respective learned counsel for the petitioners further contended that the impugned proceedings came to be issued with *mala fide* intention. Though the Convener Committee made a recommendation dated 08.09.2015 to the Syndicate Committee through Establishment (Admn.) Section for regularization of the petitioners service as well as other skilled NMRs, the respondent University, without any rhyme or reason, so far, kept the matter pending without placing the same before the Syndicate for approval. This shows the attitude of the respondent University to thwart the attempt of the petitioners in getting regularization of their service.

7. Lastly, it is contended by the respective learned counsel for the petitioners that except the present employment, the petitioners are not having any other source of livelihood and they are also crossing the age limit prescribed for appointment to any other job.

8. The petitioners, in support of their contention, placed strong reliance on the following judgments:

(i) Amarkant Rai v. State of Bihar reported in 2015(8) SCC 265; and

(ii) Satwati Deswal v. State of Haryana reported in 2010(1) SCC 126.

9. With the above submissions, the respective learned counsel for the petitioners pray for appropriate relief.

10. Per contra, the learned Senior Counsel appearing for the respondent University submitted that the 'Manonmaniam Sundaranar University' is a State run University established by the



Manonmaniam Sundaranar University Act, 1990 and administered strictly in accordance with the provisions of the said Act and the Statutes made thereunder. As per the said Act, the University is empowered to engage regular employees as well as temporary employees on contract basis for contingencies.

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11.The learned Senior Counsel appearing for the respondent University further submitted that no doubt, the petitioners were appointed as skilled NMRs through notification published in the daily newspaper by way of temporary arrangement. Since the representations seeking regularization/absorption of service were not considered, the petitioners and others approached this Court by filing writ petitions one after another. Based on the order passed by this Court in the writ petitions filed at the instance of some of the petitioners, the petitioners' representations as well as their service records were duly considered and the petitioners' claim was rejected on the ground that they did not satisfy the requisite statutory qualification, as prescribed by the Statutes of the University, at the date of their engagement. Further, there is no provision in the Manonmaniam Sundaranar University Act, 1990 or Statutes framed thereunder to appoint by regularization/absorption. Therefore, in the absence of any such specific statutory empowerment, the University cannot regularize or absorb for appointment in any post.

12.The learned Senior Counsel appearing for the respondent University further contended that the vacancy in the University will be filled up only by public advertisement following the reservation policy of the State and the individuals who have acquired the requisite statutory qualification can also participate in the recruitment in the event of advertisement being issued for the said vacancies. Thus, the learned Senior Counsel for the respondent University justified the impugned rejection memos and the consequential proceedings.

13.In support of the contention, the learned Senior Counsel for the respondent University placed reliance on the following judgments:

(i)RV Thevar Memorial Girls High School v. The Director of School Education [2002(4) CTC 129];

(ii)W.P.(MD)No.2368 of 2012, dated 02.03.2018 [Dr.R.Sethu vs. The Manonmaniam Sundaranar University]; and

(iii)W.P.(MD)No.2626 of 2012, dated 02.03.2018 [D.Raju v. The Government of Tamil Nadu].

14.This Court has considered the rival submissions and perused the materials available on record.

15.It is the stand of the respective learned counsel for the petitioners that the petitioners were appointed as per the notification dated 26.03.2003, and only on satisfying the

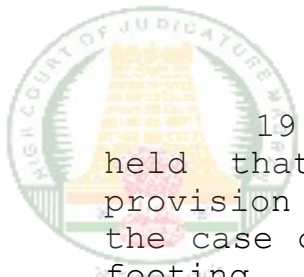


eligibility criteria, ie., a degree holder + certificate of computer knowledge, they were given appointment, but whereas, by way of impugned rejection memos, the respondent-University pointed out that the petitioners have not satisfied the requisite statutory qualification as prescribed by the statutes of the University. The second main contention put forth by the petitioners is that having rendered more than nine years of service after consolidated appointment, they are eligible for absorption to the post of Junior Assistant, as the similarly placed persons including their juniors, were given absorption.

16.The stand of the learned senior counsel for the respondent is that the petitioners were appointed as skilled NMR through notification published in the daily newspaper only by way of temporary arrangement and not otherwise. It is also emphasised that only as per the direction issued by this Court, the petitioners' representations as well as their service records were duly considered and their claim was rejected on the ground that they did not satisfy the requisite statutory qualification, as prescribed by the Statutes of the University, on the date of their engagement. It is mainly contended that there is no provision in the Manonmaniam Sundaranar University Act, 1990 or Statutes framed thereunder to appoint by regularisation/absorption. Therefore, in the absence of any such specific statutory empowerment, the University cannot regularise or absorb for appointment in any post.

17.It is also submitted on behalf of the University that the vacancies in the University will be filled up only by public advertisement following the reservation policy of the State and the individuals who have acquired the requisite statutory qualification can also participate in the recruitment in the event of advertisement being issued for the said vacancies.

18.At this juncture, it would be appropriate to look into the decision rendered by me in W.P.(MD)No.3444 of 2017 etc.batch. dated 14.06.2019. It is with regard to selection of drivers to the Madurai Corporation. The contention of the petitioners / incumbents therein was that they have successfully completed the selection process and appointed as Drivers and the same were subsequently approved by the Appointing Committee. When that being so, even after completion of four years of service in the said post, their services were not regularised and their representations in this connection were rejected. The contention of the Madurai Corporation was that they were appointed as Drivers purely on temporary basis and the same has been clearly mentioned in the order of appointment. It was also contended that even at the time of calling them for interview, it was specifically mentioned that the call has been made only for daily wages and hence they were very well aware of the same and that being the position, they cannot now contend that their services have to be regularised with time scale of pay.



19. After exhaustive analysis of the matter, this Court held that under the Municipal Corporation Service Rules, no provision is available to regularise the daily wage employees. But the case of the petitioners herein, absolutely lies on a different footing. There, in the appointment orders of the petitioners therein, it was so specifically mentioned that their engagement was only on daily wage basis, but in the present cases, the initial appointment in NMR category was subsequently modified into consolidated pay, only after following the due process of selection as per the University Regulations.

20. The respective learned counsel for the petitioners have submitted that these incumbents have been placed on a consolidated pay in the year 2009, after completion of 3 years service on a daily wage basis. It is also their specific submission that similarly situated persons have been regularised, by relaxing the service conditions. Quoting the Memo No. MSU/R/Estt/Admn/2008 dated 22.08.2008, of the Manonmaniam Sundaranar University, the respective learned counsel have submitted that the qualifications in respect of Typewriting Lower Grade in English and Diploma in Computer, have been relaxed, asking them to pursue the same within a period of one year. It is also stated that one Vanadurai, who was appointed as NMR like that of the petitioners herein, was not having the prescribed qualification and hence the University denied to relax his qualification. But on filing of a writ petition before this Court in W.P.(MD)No.14015 of 2011, this Court has passed an order on 23.11.2011 allowing the prayer made by the incumbent. It is also stated that the writ appeal filed against the said writ petition in W.A.(MD)No.906 of 2012 ended in dismissal on 29.04.2014. Subsequently, two more persons, viz. Pushpaveni and Kasthuri, have also filed writ petitions and got succeeded and the writ appeals challenging the same, ended in dismissal. It is stated that all these persons have been absorbed into service by the respondent University.

21. But, it is the stand of the learned senior counsel for the respondent University that the recruitment is governed by the Manonmaniam Sundaranar University Act and the statutes framed thereunder. Section 4 of the Act states that in respect of administrative and other non-teaching staff, the appointments shall be made by the Syndicate from the panel recommended by the Selection Committees constituted for this purpose by the Syndicate and such Selection Committees constituted shall consist of five members, viz. Chairman, two Syndicate members and two external members other than Syndicate members. The learned senior counsel, pointing out to Section 3 of the Act, submitted that all promotions will be based on seniority from among candidates possessing the qualifications prescribed, subject to evaluation by a Committee appointed by the Syndicate and that the seniority may be considered when merit and efficiency are approximately equal. Thus, according to the learned senior counsel, recruitment shall be decided only by the Syndicate and the entire process relies upon Statute-4 which



deals with recruitment. In these circumstances, the prayer of the petitioners cannot be considered, according to the learned senior counsel for the University.

22.As per Appendix-I - Method of Recruitment and Qualifications prescribed for various teaching and non-teaching posts in the Manonmaniam Sundaranar University, as prescribed under the Manonmaniam Sundaranar University Act, 1990 and Statutes, for the post of Junior Assistant by Direct Recruitment or by promotion from the lower category of Record Clerk / Attender having 10 years of experience, the qualification of a Bachelor's degree of an University (50 per cent or B Grade), Typewriting Higher Grade in Tamil and English, Knowledge of Tamil to the extent of carrying official correspondence and drafting reports with desirable qualification of Shorthand Lower Grade in English and Tamil, are required. It is also stated that the incumbent should not have completed thirty three years, for direct recruitment. It is also stipulated that the persons to be appointed by promotion, should have +2 certificate and must have typewriting qualification in English Lower Grade. The Act and Statutes, stipulate qualifications for various categories. Thus, only as per the qualifications stipulated under the Act / Statutes, the incumbent will be appointed to a particular post.

23.Now, this Court has to look into the judgments relied upon by the learned counsel on either side.

24.In the case of Amarkant Rai vs. State of Bihar and others, reported in (2015) 8 SCC 265, the initial appointment of the appellant therein was an irregular one, but since the similar situated persons have been regularised and the appellant's case had fallen within the exception carved out in the case of State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], the appointment of the appellant therein was directed to be regularised. In the case of Satwati Deswal v. State of Haryana, reported in 2010(1) SCC 126, it has been held that an order of termination passed without issuing any show-cause notice and without initiating any Departmental Enquiry, is violative of the principles of natural justice and hence the same is unsustainable.

25.The above two judgments have been relied upon by the respective learned counsel for the petitioners. In Amarkant Rai's case, even though the initial appointment was irregular, the case had fallen within the category of irregular appointments of duly qualified persons in duly sanctioned posts, who had worked for 10 years or more. The appellant therein was duly qualified for the post. In the present case, it has been contended by the University that the petitioners are not qualified as per the Statute. In respect of the judgment of the Hon'ble Supreme Court in the case of Satwati Deswal v. State of Haryana, reported in 2010(1) SCC 126, it is only with regard to termination of employment without initiating any Departmental Enquiry or show-cause notice. In the case on hand,



the reason assigned by the University for termination is, the employees are no longer required, as they were appointed only on temporary / daily wage basis.

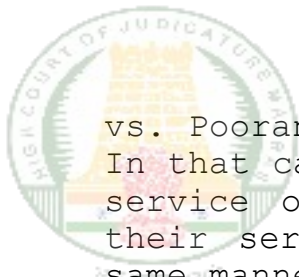
26. Next comes the judgments relied upon by the learned senior counsel for the University.

27. The judgment of this Court in RV Thevar Memorial Girls High School v. The Director of School Education, reported in 2002 (4) CTC 129, has been relied upon by the learned senior counsel to state that the incumbents are bound to invoke the provisions of Act and Rules to defend their case. Another judgment of this Court in W.P.(MD)No.2368 of 2012 dated 02.03.2018 (Dr.R.Sethu vs. the Manonmaniam Sundaranar University), has been relied upon to state that all appointments to the post are to be made only by following the selection procedures contemplated under the relevant Act and Rules; the posts cannot be filled at the whims and fancies of the authorities of the University; that the University is not empowered to pick and choose the candidates of their own choice and grant appointment by passing some resolution. In all, it has been held by this Court that the appointment of the writ petitioner therein was itself irregular and any appointment made without following the selection procedures are certainly irregular and such appointment can never be regularised.

28. The judgment of this Court in W.P.(MD)No.2626 of 2012 dated 02.03.2018 (D.Raju v. The Government of Tamil Nadu, Department of Higher Education, Chennai), has been relied upon by the learned senior counsel for the University to state that 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 and by doing so, it will be creating another mode of public appointment which is not permissible.

29. At this juncture, the respective learned counsel appearing for the petitioners submitted that the petitioners were originally appointed on daily wage basis and that apart from the grounds, Rules and Acts raised in the writ petitions, the petitioners have additional grounds in their favour and hence the petitioners may be permitted to prefer a representation to the respondents, for which the learned senior counsel for the respondent University submitted that if such representations are received, the same will be considered in accordance with law. The respective learned counsel for the petitioners have also relied upon the decision of the Hon'ble Supreme Court in the case of U.P. State Electricity Board vs. Pooran Chandra Pandey and others, reported in (2007) 11 SCC 92 and submitted that the said case applies to the facts of the present case for regularisation.

30. This Court has taken note of the said judgment of the Hon'ble Supreme Court in the case of U.P. State Electricity Board



vs. Pooran Chandra Pandey and others, reported in (2007) 11 SCC 92. In that case, the writ petitioners therein were daily wagers in the service of the Society and were appointed before 04.05.1990 and their services were taken over by the Electricity Board "in the same manner and position". Thereafter, the employees of the Society were treated to be the employees of the Electricity Board with continuity of service in the Society, without treating them as fresh appointees by the Electricity Board. Even though it is a case of taking over the services of the employees of the Society by the Electricity Board, they were not denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularisation of the employees of the Electricity Board who were working from 04.05.1990. Considering the long service put in by them, ie., about 22 years, it was held that if their claim for regularisation is denied even after such a long period of service, it would be violative of Article 14 of the Constitution of India on the ground of arbitrariness and unreasonableness.

31. While this Court agrees that the authorities are bound to follow the rules and regulations for appointment, it has to be borne in mind that depending upon the facts and circumstances of each case, the same has to be decided, under the principles of equality and also under the doctrine of principles of natural justice and there should not be any arbitrariness or unreasonable violative of Article 14 of the Constitution of India.

32. Though it has been submitted that the appointment of the petitioners in the present case, are not in accordance with the constitutional scheme of employment and the constitutional scheme of employment requires public notification, inviting applications from all eligible candidates including candidates referred to by the Employment Exchange, the fact remains that the petitioners were appointed as skilled NMRs by public notification, after undergoing certificate verification, written examination and interview. Thereafter, they were appointed on consolidated basis in the year 2009 and completed 9 to 10 years of service in the respondent University. Even though it is stated on the side of the University that the University has the authority to engage temporary employees in emergent situations, the question now arises for consideration is, how long the emergent situation would remain. If the petitioners had been appointed in an emergent situation, this Court is unable to understand as to why the University has not taken steps to fill up the regular vacancies, even at this length of time. The authorities would have very well aware of the statutory rules of the University as well as the other rules in force, which may come to the aid of the incumbents like that of the petitioners, if they put up their service upto a certain period. In the circumstances, the University should have been cautious enough, and had they been cautious, this type of situation would have been avoided. The University has all along been permitting the petitioners to work all these years, coupled with the fact that the similarly situated persons have been given regular appointment.



This led to a legitimate expectation in the minds of the petitioners that they would be given regular appointment,. In these circumstances, this Court is of the view that a duty is cast upon the respondents to review their orders impugned herein by considering the plight of the petitioners, if they are otherwise found eligible.

33.In view of the above, the petitioners are directed to prefer a representation along with supportive documents to the respondents herein, in line with the Government Orders / Standing Rules / Rules (apart from the Rules or Acts raised in these writ petitions, if any), in their favour, to consider their claim, within a period of four weeks from the date of receipt of a copy of this order. The respondents, on receipt of such representation from the petitioners shall consider the same and pass appropriate orders, on merits and in accordance with their own scheme and law and also in the light of the regularisation made in respect of similarly situated persons, within a period of four weeks thereafter. It is also made clear that the respondents shall look into all the aspects while considering the case of the petitioners for filling up the post of Junior Assistant or any other posts in the existing vacancies and also on the basis of the notification issued.

34.With the above observations and directions, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

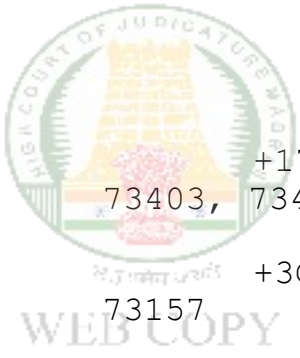
SML/KM

To

1.The Principal Secretary to Government,
Higher Education Department,
Secretariat,
Chennai-600 009.

2.The Registrar,
Manonmaniam Sundaranar University,
Abhisekapatti, Tirunelveli District.

+6 CC TO MR.T.LAJAPATHY ROY, Advocate Sr. No.73407, 73136,
73406, 73405, 73134



+17 CC TO MR.B.ANANDAN, Advocate Sr. No.73413 TO 73424,
73403, 73402, 73408, 73410 & 73409

+3CC TO MR.M.R.SREENIVASAN, Advocate Sr. No.73159, 73158 &
73157

Common Order made in
W.P. (MD) Nos.19209, 19216, 19217, 19218, 18044, 17521, 17522, 17523,
17524, 17525, 17526, 18725, 18726, 18727, 18728, 20754, 20222,
20223, 20224, 20225, 20226, 20227, 20228, 20229, 19588, 19589 of
2018 and 4848 of 2019

Delivered on:
02.07.2019

AVS (CO)
TR (16.07.2019) 17P 29C