



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.04.2019

Delivered on : 02.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. (MD) No. 19275 of 2018

and

W.M.P. (MD) Nos. 17106 and 17107 of 2018

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M. Maria Jeyanthi

... Petitioner

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abhisekapatti, Tirunelveli.

... Respondent

Petition 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 consequential disengagement Memo in Memo No.MSU/R/Estt/Admn/NMR/33/2018, 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.B.Anandan

For Respondent

: Mr.M.Mahaboob Athiff

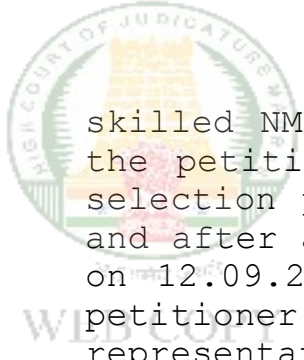
ORDER

The petitioner challenges the rejection memo issued by the respondent dated 12.03.2018, the consequential impugned notification dated 31.07.2018 and the disengagement Memo dated 28.08.2018. The petitioner also seeks a direction to the respondent to absorb her to the post of Junior Assistant from the date of her appointment or the date of her consolidated appointment by providing all the service benefits, which were given to the similarly placed persons in the respondent University.

2. The case of the petitioner, in brief, is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

(1) The respondent issued a notification on 26.03.2003 calling for applications from the candidates for the post of



skilled NMRs on daily wages. Having the prescribed qualification, the petitioner applied for the said post and after completion of selection process, she was appointed as skilled NMR on 01.06.2006 and after a period of three years, appointed on consolidated basis on 12.09.2009. Since similarly placed persons like that of the petitioner have got regularisation of their service and the representation sent by the petitioner seeking regularisation has not met with any fruitful result, she along with other skilled NMRs filed writ petitions before this Court in W.P.(MD)Nos.20377 to 20398 of 2014 and 4020 of 2015, which were disposed of by this Court, by a common order dated 22.07.2015, with a direction to absorb the petitioners, if they fulfil the conditions required by the University for getting regularised and also to consider their representation dated 14.11.2014.

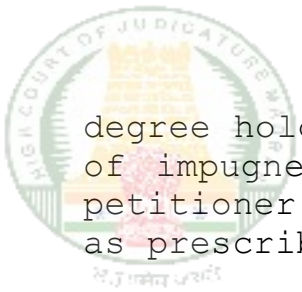
(ii) Pursuant to the said order, the Convener Committee has made a recommendation to the Syndicate to regularise 23 skilled NMRs service as Junior Assistant in the regular vacancies, but, the same has not been placed before the Syndicate for approval. Moreover, the University has not passed any order on the representation, which resulted in initiation of contempt proceedings.

(iii) In the meanwhile, the respondent passed the impugned rejection memo dated 12.03.2018 rejecting the claim of the petitioner, for which, the petitioner and others have given a reply. However, to the shock and surprise of the petitioner, the respondent issued the notification dated 31.07.2018 in daily newspaper calling for applications for various posts. Consequentially, a disengagement memo dated 28.08.2018 came to be issued against the petitioner. Those proceedings are under challenge in the present writ petition.

3. Though the writ petition was admitted and notice was taken on behalf of the respondent as early as on 06.09.2018, so far, no counter-affidavit has been filed on behalf of the respondent.

4. The learned counsel for the petitioner 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 petitioner was appointed as skilled NMR on 01.06.2006 through daily newspaper notification, after undergoing certificate verification, written examination as well as interview. Subsequently, she was appointed on consolidated basis on 12.09.2009 and she has completed nine years of her service in the respondent University.

<https://hcservices.ecourts.gov.in/hcservices>
5. The learned counsel for the petitioner further submitted that the petitioner was 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 memo, the respondent pointed out that the petitioner has not satisfied the requisite statutory qualification as prescribed by the statutes of the University.

6. It is further stated that having rendered more than nine years of service after consolidated appointment, the petitioner is eligible for absorption to the post of Junior Assistant, as the similarly placed persons including her juniors, were given absorption.

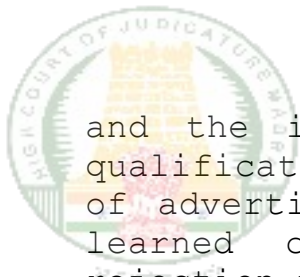
7. The learned counsel for the petitioner further contended that the impugned proceedings came to be issued with *mala fide* intention. Though the Convener Committee made a recommendation dated 08.09.2015 to the Syndicate Committee through Establishment (Admn.) Section for regularisation of the petitioner's service as well as other 22 skilled NMRs, the respondent, 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 to thwart the attempt of the petitioner in getting regularisation of her service.

8. It is also pointed out that except the present employment, the petitioner is not having any other source of livelihood and she is also crossing the age limit for appointment to any other job.

9. With the above background, the learned counsel for the petitioner prays for appropriate relief.

10. Per contra, the learned counsel appearing for the respondent submitted that no doubt, the petitioner was appointed as skilled NMR through notification published in the daily newspaper by way of temporary arrangement. Since the representation seeking regularisation of service was not considered, the petitioner and others have approached this Court by filing writ petitions. Pursuant to the order passed by this Court in the writ petitions, the petitioner's representation as well as her service records were duly considered and the petitioner's claim was rejected on the ground that she did not satisfy the requisite statutory qualification, as prescribed by the Statutes of the University, on the date of her engagement. Further, 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.

<https://hcservices.ecourts.gov.in/hcservices>
11. The learned counsel for the respondent 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 counsel for the respondent justified the impugned rejection memo and the consequential proceedings.

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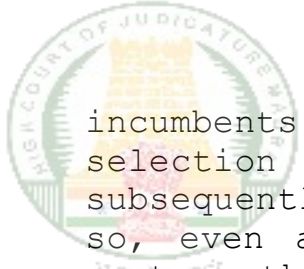
12. This Court has considered the rival submissions and perused the materials available on record carefully and meticulously.

13. It is the stand of the learned counsel for the petitioner that the petitioner was appointed as per the notification dated 26.03.2003, and only on satisfying the eligibility criteria, ie., a degree holder + certificate of computer knowledge, she was given appointment, but whereas, by way of impugned rejection memo, the respondent pointed out that the petitioner has not satisfied the requisite statutory qualification as prescribed by the statutes of the University. The second main contention put forth by the petitioner is that having rendered more than nine years of service after consolidated appointment, she is eligible for absorption to the post of Junior Assistant, as the similarly placed persons including her juniors, were given absorption.

14. The stand of the learned counsel for the respondent is that the petitioner was appointed as skilled NMR through notification published in the daily newspaper only by way of temporary arrangement and not otherwise. It is also emphatically submitted that only as per the direction issued by this Court, the petitioner's representation as well as her service records were duly considered and her claim was rejected on the ground that she did not satisfy the requisite statutory qualification, as prescribed by the Statutes of the University, on the date of her 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.

15. It is also submitted on behalf of the University 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.

16. At this juncture, it would be appropriate to look into the service records of the petitioner considered 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.

17. 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 petitioner 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 case, 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.

18. 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 incumbents will be appointed to a particular post.

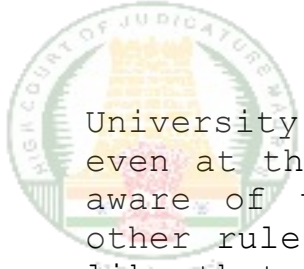
19. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner was originally appointed on a temporary basis and that apart from the grounds, Rules and Acts raised in the writ petition, the petitioner has additional grounds in her favour and hence submitted that she may be



permitted to prefer a representation to the respondents, for which course of action, the learned counsel for the University submitted that, if such representation is received, the same will be considered in accordance with law.

20. At this juncture, it would be appropriate to refer to the 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. Though the Hon'ble Supreme Court in the case of State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1] held that back door entries are not permitted, in the above quoted subsequent decision (U.P. State Electricity Board vs. Pooran Chandra Pandey and others, reported in (2007) 11 SCC 92), the Hon'ble Supreme Court has taken such a stand that if the incumbents' 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.

21. Though it is submitted that the appointment of the petitioner was 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 petitioner was appointed as skilled NMR on 01.06.2006 by public notification after undergoing certificate verification, written examination and interview. Thereafter, she was also appointed on consolidated basis on 12.09.2009 and she has completed 9 years of her 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 for consideration is, how long the emergent situation would remain. If the petitioner 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 petitioner, 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 petitioner 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 mind of the petitioner that she will 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 petitioner, if she is otherwise found eligible.

22. In view of the above, the petitioner is 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 her favour, to consider her 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 petitioner 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 petitioner for filling up the post of Junior Assistant or any other posts in the existing vacancy and also on the basis of the notification issued.

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

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar (CS)

SML/KM



To

The Registrar,
Manonmaniam Sundaranar University,
Abhisekapatti, Tirunelveli.

+1cc to Mr.B.Anandan, Advocate in SR.73404
+1cc to M/s.Ajmal Associates, in SR.72980

Order made in
W.P.(MD)No.19275 of 2018
W.M.P.(MD)Nos.17106 and 17107 of 2018
02.07.2019

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