

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	30.10.2020
Pronounced on	09.11.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.3175 of 2016, 4695 of 2016
and WMP Nos.4082, 2608, 2607 of 2016

WP No.3175 of 2016

1. R.Ezhilarasan
2. R.Srikanth
3. S.Palanisamy
4. S.Chandar
5. E.Thiyagarajan
6. G.Saravanan
7. P.Natarajan
8. G.Ranjith
9. S.Parvathy
- 10.N.Mohan Kumar
- 11.S.Kala
- 12.M.Kumar
13. U.Chinnaraj
14. G.Saravanan
15. K.Senthil
16. M.Lalitha
17. G.Pannerselvam
18. G.Sureshkumar
19. D.Balu
20. K.Sathish Kumar
21. R.Ananthakumar
22. L.Lingeshwaran
23. S.Sarasa
24. K.Komala
25. G.Sundaramoorthy
26. V.S.Shaju
27. G.Vaiyapuri
28. T.Thiruppathammal
29. M.Udaya Kumar

1. E.Gangadurai
2. M.Sridhar
3. B.Gopinath
4. A.Gunasekaran
5. S.Petchimuthu

...Petitioners in WP No.3175 of 2016

6. P.Subramanian
7. R.Karthikeyan
8. Ochhammal
9. J.Aravindh
10.E.Karthikeyan
11.V.Sathish Kumar

...Petitioners in WP No.4695 of 2016

Vs.

Anna University
Rep by its Registrar
Sardar Patel Road,
Chennai 600 025.

...Respondent in both WPs

Prayer in WP No.3175 of 2016 :- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to regularise the services of the petitioners as Office Assistant pursuant to the Circular No.001/PR 62 / 2013 dated 25.04.2013 and interview conducted on 28.01.2014 and thereafter fill up the remaining posts of Office Assistant pursuant to the Advt.No.001/PR 33/2016 dated 13.01.2016.

Prayer in WP No.4695 of 2016 :- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to regularise the services of the petitioners as Office Assistant pursuant to the Circular No.001/PR 62 / 2013 dated 25.04.2013 and interview conducted on 27.01.2014 and thereafter fill up the remaining posts of Office Assistant pursuant to the Advt.No.001/PR 33/2016 dated 13.01.2016.

For Petitioners : Mr.C.Selvaraj, Senior Counsel
in both Wps for M/s.C.S.Associates
For Respondent : Mr.P.H.Arvind Pandian
in both WPs Additional Advocate General
Assisted by
Mr.L.P.Shanmugasundaram
Standing Counsel

O R D E R

The issues involved in both the writ petitions are common and hence, they are taken up together and this common order is passed.

2. These cases were posted as Specially ordered cases on consent given by either side pursuant to the administrative order passed by the Hon'ble Chief Justice, which enabled this Court to hear this case on a declared holiday.

3. There are totally 40 writ petitioners involved in both the writ petitions put together. The writ petitioners have

sought for the issue of writ of Mandamus directing the respondent to regularize their services as Office Assistants and thereafter, fill up the remaining posts of office assistant, pursuant to the advertisement issued by the respondent dated 13.01.2016.

4. The case of the petitioners is that they were all appointed on a daily wage basis / consolidated pay in the respondent university from the year 1999 onwards on different dates. The further case of the petitioners is that their services have been utilized on a continuous basis for several years. According to the petitioners, steps were taken by the respondent University to regularize the services of the office assistants and interview was also conducted. However, the selection process was not concluded.

5. The further case of the petitioners is that a circular was issued by the respondent university on 25.04.2013 and this circular specifically contemplated a selection process for the internal candidates, who had put in service of not less than five years in the University as on 30.04.2013. The subsequent circular dated 28.11.2013 further relaxed the requirement of five years service up to 01.12.2013. It was pursuant to these circulars, the petitioners participated in the selection and the selection process was not completed by the respondent university.

6. In the meantime, an advertisement came to be published by the respondent university on 13.01.2016 calling for candidates from open market to fill up 45 vacancies in the post of Junior Assistant and 75 vacancies in the post of office Assistant. The claim made by the petitioners is that the respondent University should not go forward with this selection process without regularizing the services of the petitioners.

7. A common counter affidavit has been filed in both the writ petitions. The relevant portions in the counter affidavit are extracted hereunder :-

6. It is submitted that the petitioners in both the writ petitions were appointed as Office Assistant / Junior Assistant on daily wage basis in the Anna University and their daily wage service has been extended from time to time with necessary breaks. It is submitted that the petitioners being daily wage employees they were not appointed on regular basis without following due procedures prescribed with the requirement of Articles 14 & 15 of the Constitutions have to right to claim permanent absorption. The present writ petitions filed by the petitioners are not sustainable either in law or on facts.

7. As regard the averments contained in Paragraph 2 to 4 of the affidavit. It is submitted that Th.Ra.Ezhilarasan and 28 others the petitioners in WP No.3175 /2015 and Th.E.Gangadurai and 10 others, petitioners in WP No.4695/2015 were appointed as Office Assistant /Junior Assistant on daily wage basis in the University and their daily wage service has been extended from time to time with necessary breaks and they were all engaged in the University with the background of their relatives who were/have been already working in the University and they were not sponsored through Employment Exchange and not applied through any proper channel.
8. It is submitted that they were engaged in the University with the recommendations of their relatives / friends with the support of their concerned HOD's / Directors and their wages were paid from out of the funds of the concerned Departments/Centers/Institutes. The appointment / engagement of the petitioners were purely on temporary basis, to meet the exigencies due to periodical increase of workload which are purely seasonal and were made without following any statutory rules. Their engagements were not against any sanctioned posts and were not made by any authority competent to make appointments against regular vacancies. The petitioners were engaged as Office Assistants / Junior Assistants for specific period. If it is necessary their daily wage service were extended every six months period with necessary break and they were not engaged against any sanctioned post/vacancy., without any statutory process of selection. The engagements of the petitioners were not made by any regular process of selection as per statute. Besides their terms and conditions were not uniform but varied from Centre to Centre / Institute /Departments, necessitating the constitution of a committee to frame uniform guidelines regulating the appointments fixation of daily wages.
9. It is submitted that in G.O.Ms.No.74 P&A R(F) department dated 27.06.2013, orders issued for regularization of staff members working in various department to be regularised, if they completed 10 years of service as on 01.01.2006 for those who sponsored through Employment Exchange. Th.R.Ezhilarasan and 28 others Tn.E.Gangadurai and 10 others were not sponsored

through employment Exchange. Hence their services were not yet been regularised, as per Government Instruction.

10. It is submitted that due to some administrative reasons, during the year 2012, 2013 & 2014, requirement to the post of Office Assistant was delayed. It is submitted that now, the Government of Tamil Nadu in its G.O.MS.No.44 Labour and Employment (T2) Department dated 11.03.2015 issued orders that the posts should be filled up by issuing advertisement in atleast 2 newspapers out of which one must be in vernacular language having wide circulation in the respective state, besides calling for the list of candidates from the Employment exchange.
11. It is submitted that the aforesaid G.O has been adopted by the Syndicate of Respondent University vide Resolution No.236.1.8 of 236th meeting held on 30.04.2015 amended in Rule No.14(ii) of Special service statute that the appointment to any category of posts in any class coming under direct recruitment mode shall be done through "Open advertisement" in addition to calling for a list from the Employment Exchange enabling all the eligible persons to participate in the selection procedures.
12. It is submitted that the existing Rule No.14(ii) & (iii) will be substituted by Rule 14(iii) - amended. Therefore, it is proposed to :
 - (a) to adopt the G.O.No.44 dated 11.03.2015 for the recruitment of Staff for administrative and non-teaching technical services in Anna University.
 - (b) accordingly, amend the existing Rule 14 (ii) and (iii) of procedure for Recruitment and Appointment under special service Statutes of Anna University as "Rule 14(ii) - amended and the same was given assent to the amendment proposed above by the Chancellor, in its letter No.2653/U2/2015 dated 29.06.2015, which was circulated vide Regr's Procs.No.351/PR32/Ext. Of Min/2013 dated 03.0.2015. Based on the above, to fill up the vacant post of Junior Assistant (45) and Office Assistant (75) the impugned advertisement was published in daily thanthi and Indian Express on 14.01.2016 vide Advt.No.001/PR33/2016 dated 13.01.2016 which is valid in law.
13. As regard the averments contained in Paragraphs 5 & 6 of the affidavit, it is submitted that the

Hon'ble Chief Minister of Tamil Nadu has announced on the floor of Assembly to regularise the service of the temporary employees working for more than 5 years in religious institutions. Based on the said announcement, the Government have issued orders in G.O.MS.No.128 dated 15.05.2015 to regularise the service of the temporary employees. It is humbly submitted that the said Government Orders have been issued only in respect of temporary employees who were working in religious institutions not for others.

14.As regards the averments contained in Paragraphs 7 & 8 of the affidavit, it is submitted that following the TNPSC rule and as per G.O.Ms.No.16 BC MBC and Minorities Welfare (BC) Department dated 03.05.2002, the maximum age limit was fixed in the impugned advertisement for the post of Office Assistant / Junior Assistant.

15.It is submitted that the petitioners were engaged on daily wages for a fixed period and then services extended on temporary basis and their term of appointment would be terminated automatically after their service period is over and they were freshly engaged next time with necessary break.

8. Mr. C. Selvaraj Learned Senior counsel appearing on behalf of the petitioners made the following submissions :-

- The respondent University ought to have taken into consideration the continuous services rendered by the petitioners and their services should have been regularized and only thereafter, the remaining vacancies should be filled up by the University.
- The respondent University undertook the process of regularizing the services of the petitioners by virtue of the circulars dated 23.11.2012, 25.04.2013 and 28.11.2013 and the petitioners also received call letters and they attended the interview and thereafter, the selection processes was abruptly dropped.
- The petitioners had satisfied the conditions stipulated in the circulars and therefore, they are entitled for regularization to the post of office assistants.
- All the petitioners have crossed the age limit and it will be very difficult for the petitioners to get a job elsewhere if they are terminated and it involves the livelihood of the petitioners.
- The appointment of the petitioners cannot be termed as illegal and therefore, the judgement of the Hon'ble Supreme Court in Umadevi case will not apply to the case of the

petitioners.

- The respondent university can always formulate a scheme to absorb the petitioners into regular employment and the respondent can be directed to consider the case of the petitioners as a one time measure.
- Without prejudice to the above contentions even if the petitioners are going to be treated as temporary employees, they are entitled for equal pay as that of the regular employees since they do the very same work that is done by the regular employees.

9. Per contra, Mr.Arvind Pandian, learned Additional Advocate General, appearing on behalf of the respondent university made the following submissions :-

- The respondent university had engaged the services of the petitioners purely on temporary basis and that too on the basis of the requirements of the concerned department or Head of Departments and their wages were paid only from the funds of the concerned departments/ institutes. The petitioners were not appointed against any sanctioned posts and they were not selected by issuing any advertisement or by undertaking any regular selection process and therefore, the petitioners are not entitled for regularization. In order to substantiate this submission, the learned Additional Advocate General relied upon the following Judgements :-
 - (a) [The 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.
 - (b) [Upendra Singh Vs. State of Bihar and others] reported in 2018 3 SCC 680
 - (c) [The State of Bihar and others Vs. Devendra Sharma] reported in 2019 14 Scale 178
 - (d) [Secretary, State of Karnataka and Others Vs.Umadevi & others] reported in AIR 2006 Supreme Court 1806.
- The respondent University had adopted G.O.Ms.No.22 dated 28.02.2006 and G.O.Ms.No.74, dated 27.06.2013, with effect from 24.11.2014 and therefore, the regularization can be processed only in line with these two Government Orders. Therefore, unless the petitioners fulfill the requirements of these Government orders,. They cannot claim for regularization as a matter of right.
- The respondent University also adopted G.O.Ms.No.44 dated 11.03.2015 and therefore, the University is bound to issue an open advertisement and call for candidates from the

Employment exchange as well as from the Open market. Therefore, the impugned advertisement issued by the respondent on 13.01.2016 is in accordance with this Government Order.

- The petitioners are not entitled to claim for regularization only based on the fact that they have put in long period of service.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. The respondent university has approved and adopted G.O.Ms.No.22 dated 28.02.2006 and G.O.Ms.No.74 dated 27.06.2013 and therefore, regularization of the services of the petitioners can be considered only in line with these two Government Orders. These two Government Orders prescribe that the daily wage employee should have rendered ten years of service as on 01.01.2006. The scope and ambit of these two Government orders were considered by the Hon'ble Supreme Court in State of Tamil Nadu through Secretary to Government, referred Supra. The relevant portions in the judgement are extracted hereunder :-

10. In the present case, it is available on record that the State Government vide G.O. Ms. No.22 dated 28.02.2006, issued by the Personnel and Administrative Reforms Department, directed the services of daily wage employees working in all Departments of Government, who have rendered ten years of service as on 01.01.2006 to be regularised by appointing them in the time scale of pay of the post concerned subject to they being otherwise qualified for the post. G.O.Ms.No.22 Personnel and Administrative Reforms dated 28.02.2006 reads as under:-

"ABSTRACT Public Services Employees working on daily wages-Bringing into regular establishment on completion of ten years of service as on 01.01.2006-Orders issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (F) DEPARTMENT
G.O. Ms. No.22 Dated 28.02.2006 ORDER:

The Hon'ble Chief Minister had announced during the Tamil Nadu Government Officials Union and Government Servants and Teachers Associations General Conference held on 08.02.2006, that the services of employees working in various Government Departments on daily wages basis who have completed more than 10 years of service as on 01.01.2006 will be regularized.

2. Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of

service as on 01.01.2006 be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.

3. The Departments of Secretariat may therefore, be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006 as ordered in para 2 above in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required proposal shall be sent to Government.

4. This order issues with the concurrence of Finance Department vide its U.O. No.985/FS/P/2006 dated 28.02.2006."

11. In G.O. Ms.No.22 P & AR Dept. dated 28.02.2006, only full-time daily wage employees were directed to be regularized on completion of ten years of continuous service as on 01.01.2006. This was clarified by the Government in the Government Order passed subsequently G.O.Ms.No.74 P & AR Dept. dated 27.06.2013 clarifying that G.O.Ms.No.22 P & AR Dept. dated 28.02.2006 is applicable only to the full-time daily wage employees, who had completed ten years of continuous service as on 01.01.2006. In G.O.Ms.No.74 dated 27.06.2013, it was made clear that the part-time employees are not entitled for regularization and that full-time daily wage employees, who had completed 10 years of service after 01.01.2006 are also not entitled for regularization of services. G.O.No. 74, Personnel and Administrative Reforms Department, dated 27.06.2013, reads as follows: "6) In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full time daily wage employees working in all Government departments as detailed below:

This Order shall be deemed to have been come into force with retrospective effect from 01.01.2006.

The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and complete 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength.

In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.

In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23 (a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularisation;

(vi) The part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved." In G.O. Ms. No.74, it was thus, made clear that the part-time employees are not entitled for regularization and that full-time daily wage employees, who had completed ten years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned post. It was also made clear that the services of daily wage employees who have completed ten years of service after 01.01.2006 are not entitled for regularization.

12. The Hon'ble Supreme Court has categorically held that the part time employees are not entitled for regularization and that only full time daily wage employees, who had completed 10 years of service as on 01.01.2006 can only be regularized against regular vacancies in the sanctioned post. It was also made clear that the ten years of service must have been rendered as on 01.01.2006.

13. It is true that the respondent university was undertaking the process of regularization of the office assistants and call letters were also issued to the petitioners.

However, in view of the adoption of the Government Orders, the regularization can take place only if the petitioners had rendered 10 years of service as on 01.01.2006. Admittedly, none of the petitioners have fulfilled this mandatory requirement as on 01.01.2006. A careful scrutiny of the judgments cited by the learned Additional Advocate General makes it very clear that sympathy and sentiment on the ground that the employee has put in long period of service by itself cannot be a valid ground for regularization of services in the absence of a legal right . The petitioners will get that legal right only if they satisfy the requirements of the above said Government Orders. Admittedly, in this case none of the petitioner has rendered 10 years of service as on 01.01.2006. It is a settled position of law that mandamus can be issued in exercise of jurisdiction under Article 226 of the constitution of India only if the petitioner is able to show a legal right. Only where there is a legal right, there can be a corresponding legal duty. Unfortunately such a legal right is absent in the present case and therefore, this Court cannot come to the aid of the petitioners, who are seeking for regularization.

14. The respondent University having adopted G.O.Ms.No.44, dated 11.03.2015 , are bound to to fill up the vacancies by calling for applications from the open market both through Employment exchange as well as through newspaper advertisement. This Court is not able to find any illegality in the advertisement issued by the respondent University on 13.01.2016. The respondent University will have to necessarily fill up the vacancies towards sanctioned posts only in accordance with the relevant Act / Regulation. When it comes to public employment, this is the only mode that has to be adopted for making appointments.

15. Insofar as the claim made by the learned Senior Counsel for a direction to the respondent University to formulate a scheme and to take a one time measure to safeguard the livelihood of the petitioners, it is left open to the respondent University to take a decision in that regard, if it is within its powers. This Court cannot issue any positive direction in this regard.

16. Insofar as the claim made by the learned Senior Counsel on the Principal of Equal pay for Equal work, it is always left open to the petitioners to make a representation to the University in this regard and if the University decides to continue with the services of the petitioners, the representation can be considered strictly in accordance with law.

17. In view of the above discussion, this Court is not in a position to grant the relief as prayed for in these writ petitions and both the writ petitions are accordingly dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

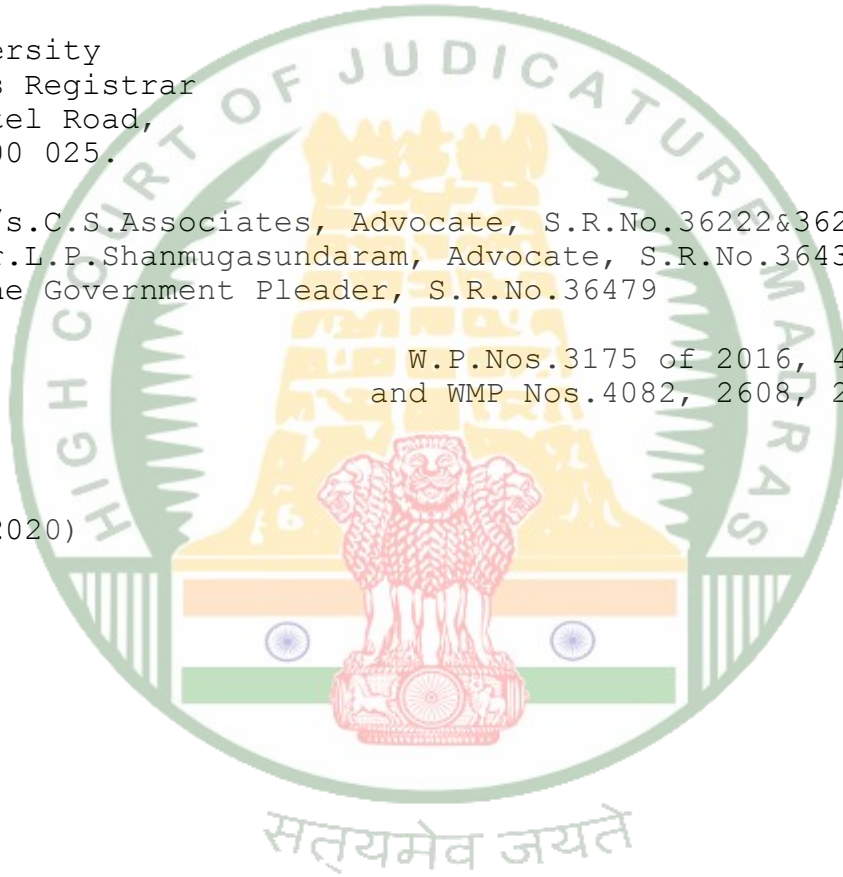
To

Anna University
Rep by its Registrar
Sardar Patel Road,
Chennai 600 025.

+2cc to M/s.C.S.Associates, Advocate, S.R.No.36222&36223
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.36430
+1cc to the Government Pleader, S.R.No.36479

W.P.Nos.3175 of 2016, 4695 of 2016
and WMP Nos.4082, 2608, 2607 of 2016

MG(CO)
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