

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.01.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.496 of 2016
and Cont. P No.920 of 2016

- 1.The Pondicherry University,
Rep. by its Registrar,
R.V.Nagar, Puducherry-605 014.
- 2.The Principal
Pondicherry University Community
College, Lawspet, Puducherry-605 008. .. Appellants &
Respondents in
Cont.Petn.
- vs-
- 1.R.Tharakeshwari
2.D.Varalakshmi .. Respondents
& 2 in WA and
Petitioners in
Cont.P.
- 3.University Grants Commission,
No.9, Bahadur Shan Zafar Marg,
ITO, New Delhi 110 002.
(R-3 impleaded) Proposed Party
.. 3rd respondent
in WA.

Appeal filed under Clause 15 of the Letters Patent against the order dated 27.10.2015 passed in W.P.No.4178 of 2014 on the file of this Court and Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents for wilfully disobeying the order passed by this Court dated 27.10.2015 in W.P.No.4178 of 2014.

Prayer in W.P.No.4178 of 2014:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ to call for the records of the 1st respondent with Advt. No.RC/2014/21 dated 17.1.2014 and

to quash the same in respect of the vacancies notified in the faculty of Bio-Chemistry in the Community College and consequently to direct the respondents to regularize the services of the petitioners with effect from the date of their initial appointment with all other consequential benefits including difference of wages seniority etc.

For Appellants in WA : M/s.A.V.Bharathi
and Respondents in
Cont. Petn.

For Respondents in WA : Mr.S.R.Rajagopal
and Petitioners in Addl. Adv. General
Cont. Petn. assisted by M/s.V.J.Latha
for RR 1 and 2
: Mr.P.R.Gopinath
for R-3

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant University, who contends that the learned Single Judge could not have issued directions for regularising the services of the respondents-petitioners who had been appointed purely on contract basis against posts that were available on plan to plan basis, that too, even after sanctioned in the year 2009 by the University Grants Commission, as additional teaching staff that may be required by the institution. The contention in short is that the issue of regularisation that too even on the strength of the judgment in the case of State of Karnataka vs. Umadevi, (2006) 4 SCC 1, did not arise.

2.We have gone through the pleadings and the sanction of posts in the year 2009. It is evident that the continuance of the respondents-petitioners was purely on contract basis in the past and the same continued on contract basis even after 2009, keeping in view the nature of the sanction granted by the University Grants Commission through its letter dated 16.03.2009. In the given circumstances, we have not been able to decipher any law or any rule applicable so as to extend the benefit of regularisation to the respondents-petitioners as claimed by them. The findings recorded by the learned Single Judge on the basis of the judgment in the case of Umadevi (supra) appears to be misplaced, inasmuch as the learned Single Judge relied on paragraph 53 of the said judgment, which, in no way, extends any such benefit, that too even to the respondents-petitioners for appointment on a teaching post the sanction whereof is not substantive.

3.The subsequent judgment in the case of Amarendra Kumar Mohapatra vs. State of Orissa, (2014) 4 SCC 583, which simply relies on paragraph 53 of the judgment in the case of Umadevi (supra), equally does not extend any such benefit. The third judgment relied on by the learned Single Judge in the case of Arjun Singh and Others vs. State of Himachal Pradesh, 2015 (2) Scale 115, also does not appear to be applicable on the subject, keeping in view the fact that the nature of sanction, the nature of post available and the nature of the notifications, under which the appointment came to be accepted by the respondents-petitioners only upto the year 2014 remains undisputed.

4.It is only thereafter when a notification was issued in the year 2014 for fresh appointments that a challenge was raised in relation to the post in question.

5.This challenge, in our opinion, appears to be misplaced and is an afterthought, inasmuch as for the purpose of regularisation, there are other ingredients that have to be available, more particularly, in relation to the service in question, where the post is admittedly a matter of sanction by the University Grants Commission. There is nothing on record to indicate that the University Grants Commission has ever indicated an intention of regularising contract appointments against plan posts. As is evident from the facts brought on record, the respondents-petitioners were admittedly appointed on contract basis from time to time. When the posts came to be sanctioned on plan basis by the University Grants Commission in 2009, then too also, the respondents-petitioners accepted the said appointments without any demur as to their status of appointment. The same was purely temporary and was to last till the sanction of that particular year. This continued and was accepted without any challenge by the respondents-petitioners up to the year 2014. This undisputed position, therefore, nowhere entitles the respondents-petitioners to seek the benefit of regularization, either under any Rules for the time being in force or even on the basis of the judgments that have been relied upon by them.

6.It appears that on the entertainment of this writ appeal, the following interim order was passed on 03.06.2016,

"Heard the learned counsel for the appellants. There will be an order of stay of the impugned order and further permission is given to the appellants to proceed with the selection process, which will be subject to the result of the writ appeal. However, liberty is also given to the respondents, who can very well participate in the selection process. Notice to the respondents returnable in four weeks. List the matter after four weeks."

7.We find that the interim order was fully justified and this writ appeal deserves to be disposed of on the same terms, keeping in view the observations made by us hereinabove.

8.We, therefore, allow the appeal and set aside the impugned judgment dated 27.10.2015 and further leave it open to the respondents-petitioners giving them opportunity to participate in the selection process. The appellant University shall entertain the candidatures of the respondents-petitioners provided they fulfill the eligibility criteria and are otherwise eligible to appear for the post in question. No costs.

9.Learned counsel for the parties have agreed that Contempt Petition No.920 of 2016 arising out of the same proceedings be also disposed of. The files have been summoned by us from the office. In the wake of the final disposal of the appeal itself, nothing survives to be adjudicated in the contempt petition and the same is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra
To

The University Grants Commission,
No.9, Bahadur Shan Zafar Marg,
ITO, New Delhi 110 002.

2.The Registrar,
Pondicherry University,
Kalapet, Puducherry.

3.The Principal
Pondicherry University Community
College, Lawspet, Puducherry-605 008.

+lcc to M/s.V.J.Latha , Advocate SR.No. 3444

+lcc to M/s.A.V.Bharathi , Advocate SR.No. 3306

W.A.No.496 of 2016
and Cont.P.No.920 of 2016

A.SK(03/02/2020)