



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)Nos.15043 to 15055 of 2014

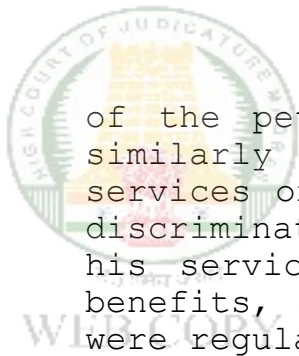
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P.Senthilvelan.	... Petitioner in WP(MD). No.15043/ 2014
A.Kathiresan	... Petitioner in WP(MD). No.15044/ 2014
G.Gopalraj	... Petitioner in WP(MD). No.15045/ 2014
P.Sivakumar	... Petitioner in WP(MD). No.15046/ 2014
S.Dhakshinamoorthy	... Petitioner in WP(MD). No.15047/ 2014
G.Rasa (Died)	
1. R.Kalaivani	
2. R.Venkatesh	
3. R.Devendhran	
(Petitioners 1 to 3 substituted as Legal heirs of the deceased petitioner G.Rasa in WMP(MD).No.14279 of 2019 in WP(MD).No.15048 of 2014)	
	... Petitioners in WP(MD). No.15048/ 2014
R. Jesuraj	... Petitioner in WP(MD). No.15049/ 2014
S. Nagaraj	... Petitioner in WP(MD). No.15050/ 2014
Filaminraj	... Petitioner in WP(MD). No.15051/ 2014
R. Nagarajan	... Petitioner in WP(MD). No.15052/ 2014
K. Sugumaran	... Petitioner in WP(MD). No.15053/ 2014
M. Amudha	... Petitioner in WP(MD). No.15054/ 2014
K. Elavarasi	... Petitioner in WP(MD). No.15055/ 2014
- Vs. -	
1. Tamil University, Rep. by its Registrar, Thanjavur - 613 010.	
	... Respondent in WP(MD). Nos.15043 to 15055/ 2014

Common Prayer in WP(MD). Nos.15043 to 15053/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declaring that the action of the respondent in not regularizing the services

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



of the petitioner on par with and from the date on which other similarly placed employees were regularised and regularizing his services only with effect from 19.05.2006 as illegal, arbitrary and discriminatory and consequently direct the respondent to regularize his services with time scale of pay and all other consequential benefits, from the date on which the other similarly placed persons were regularized , award costs and thus render justice.

Prayer in WP(MD). 15054/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declarig that the action of the respondent in not giving appointment to the petitioner on compassionate ground on regular basis with time scale of pay from the date of her initial appointment with effect from 09.03.1999 and giving her regular appointment as a Sweeper with time scale of pay only with effect from 18.10.2007 as illegal and consequently direct the respondent to give her appointment on compassionate ground on regular basis with time scale of pay w.e.f. 09.03.1999 with all consequential benefits, including arrears, award costs and thus render justice.

Prayer in WP(MD). 15055/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declarig that the action of the respondent in not giving appointment to the petitioner on compassionate ground on regular basis with time scale of pay from the date of her initial appointment with effect from 31.03.1999 and giving her regular appointment as a Sweeper with time scale of pay only with effect from 19.05.2006 as illegal and consequently direct the respondent to give her appointment on compassionate ground on regular basis with time scale of pay w.e.f. 31.03.1999 with all consequential benefits, including arrears, award costs and thus render justice

For Petitioners : Mr.Ajay Khose
for Mr.S.Arunachalam

For Respondent : Mr.B.Vijay Karthikeyan

COMMON ORDER

These Writ Petitions have been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring that the action of the respondent in not regularizing the services of the petitioners on par with and from the date on which other similarly placed employees were regularized and regularizing their services only with effect from 19.05.2006 as



illegal, arbitrary and discriminatory and consequently direct the respondent to regularize their services with time scale of pay and all other consequential benefits, from the date on which the other similarly placed persons were regularized, award costs.

2. The case of the petitioners is that the respondent University was started in the year 1981. The conditions of service for both Teaching Staff and Non-Teaching Staff are governed by the provisions of the Tamil University Act and the Statutes framed there under. Further, the Syndicate is vested with the power to determine and fix the conditions of service of the staff. The respondent University instead of appointing regular non-Teaching Staff with time scale of pay in the sanctioned posts and vacancies and by creating new posts, based on the requirement of staff strength, the respondent University started appointing persons to various Group-D Non-Teaching Staff posts on daily rated wages from the year 1984. The persons who were appointed initially on daily rated basis were later on brought to consolidated pay. Though the work was permanent, perennial and continuous in nature, the respondent University used to issue them appointment orders on consolidated pay for a fixed period of six months and they used to extend and issue fresh appointment orders at the end of every six months.

3. The petitioners were also appointed initially on daily rated wages (NMR) on various dates and later on consolidated pay with effect from 27.12.1994 in Group-D Non-Teaching Staff post/Gardener. From the date of his initial appointment, he was continuously employed without any break. Number of such consolidated pay Group-D Non-Teaching Staff strength as in the year 1997, including the petitioner was 84. All the consolidated pay Group-D Non-Teaching Staff including the petitioner made a demand for regularization of their services to the respondent. The respondent University agreed in principle to regularize the services of 84 Group-D Non-Teaching Staff and sought for approval from the Government to regularize the services of all the 84 Group-D Non-Teaching Staff, including the petitioner.

4. As per the recommendations of the Review Committee and the decision of the Syndicate of the Respondent University, the Government of Tamil Nadu issued G.O.(Nilai) No.214, dated 21.08.1997 and granted approval for regularization of the services of all the 84 Group-D Non-Teaching Staff. In the said Government Order, the Government permitted the Respondent University to regularize the services of 51 out of 84 staff, who have completed 6 years of service as on 1.4.96, in appropriate posts immediately, based on their educational qualification and experience.

5. Out of 51 persons, who were permitted to be regularized, one among them was a driver and another was in the cadre of Assistant Registrar. Therefore, actually the Government permitted the Respondent University to regularize the services of 49 Group-D Non-Teaching Staff immediately. For the remaining 35 employees, the



Government permitted the Respondent University to regularize their services as and when vacancy arises in permanent Non-Teaching Staff posts, based on their seniority. As per the said Government Order, 23 Group-D Non-Teaching Staff who have completed 6 years of service as on 1.4.96 were made permanent and their services were regularized and they were brought into time scale of pay, with effect from 12.09.1997. Similarly, 9 out of 49 Group-D staff, who have completed 6 years of service as on 01.04.1996 and for whom there were no appropriate posts were regularized in the same post and work in which they have been already working, w.e.f.12.09.1997. Simily, though 9 Group-D Non-Teaching staff who belong to Scheduled Caste, have not completed 6 years of service as on 01.04.1996 they were also regularized and brought to time scale of pay by an order dated 6.01.1998, by relaxing the condition regarding completion of 6 years of service as on 01.04.1996. Further, 11 more persons, who have not completed 6 years of service as on 1.4.1996 but were also regularized w.e.f.06.01.1998 in the consequential vacancies arose due to promotion of 4 Group-D Staff to higher posts and by creating 7 new Group-D posts.

6. He further submitted that when 9 persons were regularized by relaxing the condition of completion of 6 years of service as on 1.4.96 and when 7 more persons were regularized by creating new posts, by applying the very same logic and yardstick, the respondent University ought to have regularized the services of the remaining 35 persons including the petitioner also. Similarly, the respondent University regularized the services of 4 persons in 4 permanent vacancies which arose in Group-D posts. Therefore, as and when vacancies arose after 6.1.98 the respondent University ought to have regularized the services of remaining 35 persons including the petitioner. In fact, after 6.1.98 a large number of persons in permanent Group-D posts have either retired from service or died or have left the employment. But the respondent University did not regularize the petitioner's services in those vacancies from the date on which those vacancies arose, based on his seniority. However, the respondent University, by an order dated 19.05.2006 has regularized the services of 23 consolidated pay employees, including the petitioner from the date of the said order. The remaining consolidated pay employees who worked along with the petitioner have left the services of the University on their own volition. Since regularization of the petitioner's services was only w.e.f.19.05.2006 would affect the petitioner's pay, promotion, pension and other terminal benefits, he has made a representation to the respondent and requested to regularize the petitioner's services from the date on which the other similarly placed consolidated pay employees were regularized by relaxing the condition of completion of 6 years of service as on 1.4.1996 and also by creating new posts. He also pointed out that at least he should have been regularized from the date on which vacancies arose in permanent Group-D posts. The respondent University has power to relax the rules and also it

<https://hccs.courts.madras.gov.in/cases> to create posts based on requirement and necessity.



7. The learned counsel appearing for the respondent would submit that the Tamil University, Thanjavur is established under the Tamil University Act (No.9 of 1982) by the Tamil Nadu Government with the primary motive to develop the Tamil Language in all the fields. The petitioners were originally appointed on daily wage basis and subsequently converted into consolidated pay employees. All the employees who were on daily wages were later brought to consolidated pay through the resolution No.94.119 of the Syndicate meeting held on 08.12.1994. At the Syndicate meeting held on 03.08.1996 vide resolution No.96.66 it is resolved to write to the Government to regularize all the 84 consolidated pay workers in time scale of pay and accordingly a letter was addressed to Government which was replied by the Government vide G.O.Ms.No.214, dated 21.08.1997. In the said G.O., it is mentioned that as per the recommendations of Review Committee headed by Dr.V.C.Kulandaisamy, out of the 84 posts, the 51 posts which are vacant as on date, 50 posts have to be filled by the persons who are working as consolidated employees in the Tamil University and having requisite qualifications, good reputation and completed 6 years service as on 01.04.1996. It is further stated that the said consolidated employees will be appointed in the regular time scale of pay and the balance 33 consolidated pay employees will be regularized subsequently in the forthcoming vacancies on the seniority basis. As per the decision taken in the Syndicate of the Tamil University, Resolution No.2004.40 held on 04.11.2004 a Committee was constituted. The Committee report was placed before the Syndicate and the same was accepted by the Syndicate in its meeting held on 27.10.2005 and the Internal Committee was formed with 3 members to speak with Thiru.Murugesan, President of the SC/ST Staff Association and members and a Committee report. The Tamil University is functioning only with the financial support of the Government of Tamil Nadu and hence, the Tamil University should act only as per the rules and regulations of the Government of Tamil Nadu.

8. He further submitted that if regularization is effected retrospectively, it may not be possible for the University to get the amount retrospectively from the Government of Tamil Nadu. The University is also not in a position to pay the amount and pension. As per G.O.Ms.No.408, Pension Department, dated 25.08.2009 states when calculating the pension, 50% of service period of daily wages and consolidated service may be added. As per the Government rules who got recruited from 01.04.2003 no pension will be given. But the petitioners were appointed in the scale of pay only on 18.10.2007, so the University is not in a position and cannot give them pension as per the old pension scheme. The only issue arises for consideration in the petition is that the petitioners got permanent appointment after the implementation of the new pension scheme based on the order of the Government of Tamil Nadu dated 06.08.2004 <https://hcservicescourts.gov.in/hcservice/> pension with effect from 01.04.2003. As per the

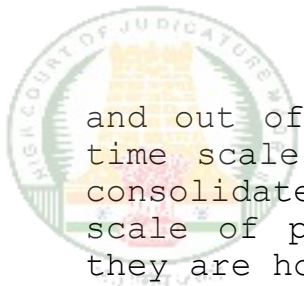


above G.O.Ms.No.408, it is held that persons appointed/recruited after 01.04.2003 are not governed under the Tamil Nadu Pension Rules, 1978.

9. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

10. It is seen from the petitions that even though these persons were appointed in the year 1990, they were brought under consolidated pay only on 27.12.1994. In the said consolidated pay list, these persons name are found. The submission of the petitioner that the juniors were all given promotions and these persons were left out is not proved. The petitioners contentions that 17 persons retired from the posts of watchman and Gardeners and they ought to have included the petitioner in those vacancies. As per the list produced only three persons were working as Gardeners and 10 persons were security and one person being a Watchman-cum-Cook and other three persons were Office Assistant's. The contention of the petitioners is that they have to be accommodate in the vacancies of those retired persons places and ought to have been given regularization. It is also further submitted that if they are regularised in earlier point of time they will be granted benefits. The persons, who are joining later will not be getting any pensionary benefits and all of them come under CPS scheme.

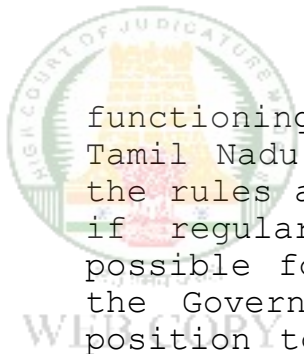
11. The respondent / University is an unique one and no college has been affiliated to the said University. Unlike other universities, this University has many specialized departments which are related to Tamil studies. The petitioners were originally appointed on daily wage basis and subsequently converted into consolidated pay through the Resolution No.94.119 of the Syndicate meeting held on 08.12.1994. The said Syndicate has recommended to the Government to regularize all 84 consolidated pay workers in the time scale of pay on 03.08.1996 by passing a resolution to the Government. The Government in G.O.No.214, dated 21.08.1997 has mentioned that as per the recommendations of review committee headed by V.C.Kulandaisamy, out of 84 posts, 51 posts which are vacant as on date (other than Deputy Registrar), 50 posts have to be filled by the persons who are working as consolidated employees in the Tamil University and having necessary qualifications, good reputation and completed six years of service as on 01.04.1996. The said consolidated employees will be appointed in the regular time scale of pay and the balance 33 consolidated pay employees will be regularized subsequently in the forthcoming vacancies on the seniority basis. On 12.09.1997, again the University passed the resolution on 12.09.1997 resolved to reserve 11 posts for SC/ST categories. As per G.O.No.214 dated 21.08.1997, out of 84 consolidated pay workers, 51 sanctioned vacant posts except the post of Deputy Registrar, 50 posts have to be filled by the persons who are working as consolidated employees in the Tamil University and having necessary qualifications, good reputation and completed six years of service as stipulated in the above said G.O.



and out of 33 employees, 23 employees were to be appointed in the time scale of pay with effect from 12.09.1997. The remaining nine consolidated employees are to be appointed subsequently in time scale of pay with effect from 12.09.1997 in the same posts which they are holding.

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12. It is further seen that 36 staffs were made permanent on 12.09.1997 in first batch, 9 staffs were made permanent on 10.12.1997 in second batch with SC/ST category and 11 persons were made permanent on 01.04.1996 in third batch. As there were interim injunctions granted in the cases filed by the President of SC/ST staff association, Tamil University, Thanjavur, 23 persons were made permanent in fourth batch. In the meeting held on 12.09.1997, 36 persons have got completed six years of service as on 01.04.19996. Among 36 members, 23 persons were made permanent in the sanctioned posts and they were regularized with effect from 12.09.1997 and remaining nine persons were regularized in the un-sanctioned posts and the Government has not granted any approval in the un-sanctioned posts and therefore, the appointments are now facing audit problems. That apart, in the meeting held on 10.12.1997 in Resolution No.97.99, approved to fill remaining posts by relaxing the condition regarding the completion of six years of experience to all the staff in the vacant of 27 posts in which 9 posts for SC/ST and 18 post for other categories, but appointment order was approved on the syndicate resolution No.99.28 on 22.04.1999. The University has requested the Government to give approval for 31 posts to appoint the remaining persons. The Government vide proceedings dated 19.07.2001 and 20.03.2001 rejected the said requisition stating that they cannot accept the request for time being. Again on 28.02.2002, it was made clear that the University has to stop sending proposals for approval of the above said 31 posts and also directed the University to abolish the said posts and disciplinary action should be initiated against the persons concerned who are responsible for the said irregular appointments. The said consolidated workers could not be regularized due to the instructions given by the Government. In the year 2004, the Syndicate of the Tamil University has passed a resolution by constituting five members and the Syndicate has received the report of the committee on 27.10.2005 As per the Committee report, the remaining employees were appointed on 19.05.2006, wherein the consolidated pay worker posts were converted on regular basis. As per G.O.Ms.No.1033, Finance Department (Salaries) dated 13.11.1996, if an autonomous institution depends on Government grant to 25% or more of its, annual working expenses prior sanction of Government is necessary for any upward revision in the pay scale and allowance. Since this regularization of staff carrying on consolidated pay are made without getting prior sanction of Government, the pay allowance granted on the upward revised scales are not correct and audit objection is raised for the year 2006 to 2018 and objection are still pending till now. For the un-sanctioned posts, University is providing the fund for their salary services. apart, as it is seen that the University is



functioning only with the financial support of the Government of Tamil Nadu and hence, the Tamil University should act only as per the rules and regulations of the Government of Tamil Nadu. Moreover, if regularization is effected retrospectively, it may not be possible for the University to get the amount retrospectively from the Government of Tamil Nadu. The University is also not in a position to pay the amount and pension. When the petitioners were allowed to convert into permanent posts, they have not raised all these questions regarding the sanction from the day one they joined the service. As it is seen that the petitioners had waited for permanency from consolidated posts to permanent posts and the petitioners case were considered by the University only on sympathetic ground when the said posts were not granted approval by the Government. As there was no details provided by the authorities concerned that there are vacancies, so that they could be regularized. It is also made clear by the Government in G.O.Ms.No.408, Pension Department dated 25.08.2009 that while calculating the person, 50% of service period of daily wages and consolidated service also can be added. As per the Government rules those who got recruited from 01.04.2003, no pension will be granted, but the petitioners were appointed in the scale of pay only on 18.10.2007. Hence, the University was not in a position to grant old pension scheme. The petitioners got permanent appointment only after the implementation of the new pension scheme which came into effect from 01.04.2003, the petitioners cannot claim any right prior to 19.05.2006. As it is clear from G.O.Ms.No.408, the petitioners who were appointed after 01.04.2003 are not governed under the Tamil Nadu Pension Rules, 1978 and the petitioners cannot claim cannot be accepted and the same has to be rejected.

13. Accordingly, the Writ Petitions are dismissed. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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