



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2021

PRONOUNCED ON : 09.11.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.12785 TO 12788 OF 2015

Dr.P.Raja

... Petitioner in
W.P.No.12785 of 2015

S.Nagoorammal

... Petitioner in
W.P.No.12786 of 2015

Dr.T.Poovaisubramanian

... Petitioner in
W.P.No.12787 of 2015

V.Gayatri

... Petitioner in
W.P.No.12788 of 2015

.Vs.

1. The Union of India,
Rep. by its Secretary,
Ministry of Human Resources Development,
Shastri Bhawan,
New Delhi - 110 001.
2. The Director,
Central Institute of Classical Tamil,
IRT Campus, 100 Ft. Road,
Taramani, Chennai - 113.
3. The Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Ft. Road,
Taramani, Chennai - 113.
4. Tmt.V.G.Bhooma
5. Dr.M.Muthuvelu

... Respondents in
the above W.P.s.



COMMON PRAYER:-

Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of certiorarified mandamus calling for records in the impugned order in F.No.11-264/CICT/2014-15 dated 28.05.2014 issued by the 2nd respondent and the impugned charge memo in F.No.11-264/CICT/2014-15 dated 09.03.2015 issued by the 3rd respondent and F.No.11-264/CICT/2014-15, dated 31.03.2015 issued by the 2nd respondent herein and quash the same and consequently direct the 2nd respondent to pass orders to regularise the petitioners as permanent and regular employees.

(Prayer amended vide order dated 30.07.2019 in W.M.P.Nos.32706, 32725, 32726 and 32727 of 2018)

For Petitioner : Mr.N.G.R.Prasad
in the above W.Ps For Mr.V.Stalin

For Respondents : Mr.Karthik Rajan - R2 and R3
in the above W.Ps

Ms.N.K.Nithila Vaani - R1

No appearance - R4 and R5

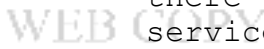
C O M M O N O R D E R

Three petitioners before me have their background in linguistics and were selected for the posts of Junior Resource Person (petitioners in W.P.Nos,12785 to 12787 of 2015) and the petitioner in W.P.No.12788 of 2015 was recruited for the post of Data Inputter in the Central Institute of Indian Languages, Mysore (hereinafter referred to as 'CIIL'), joining service on 01.11.2007, 09.10.2007, 27.10.2007 and 13.08.2007 respectively.

2. The Central Institute of Classical Tamil (hereinafter referred to as 'CICT')/R2/Institute had been formed in the State of Tamil Nadu and the petitioners had been deputed to work therein from 19.05.2008 onwards. Their appointments were on contract basis for a period of one year, to be extended periodically. The petitioners have been in employment from 2008 till 31.03.2015 when the impugned orders have come to be passed terminating their employment.

3. The relevant sequence of dates and events are as follows:

(i) A Notification had been issued by R2 calling for applications for post of Research Scholars on 23.05.2007. The



(ii) Their appointments were extended periodically and there were no charges or any allegations made in regard to their services till the year 2015.

(iv) According to the petitioners, there had been dissent within the organization for the last few years, based upon which, representations had come to be filed by the employees and this had caused a misunderstanding between the employees and the management.

(vi) Alleging their participation in the demonstration, charge memos dated 09.03.2015 had been issued to them. The petitioners, in response to the charge memos, tendered their explanation stating that they had not participated in any way in the protest and they were enroute to other destinations through the neighbourhood where the demonstration was taken place and hence, no adverse inference could be drawn in that regard.

(viii) Despite a specific request for documents based upon which the allegations were made to be supplied to the petitioners, no such documents had been supplied at any point in time.

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



as per which they were not to act in any manner that would be prejudicial to the Institute itself.

(x) Clause 12 of the terms of the conditions required the petitioners to abide by the code of conduct which included any act of commission or omission which amounts to misconduct and the petitioners were found guilty of misconduct by participating in the protest held on 07.03.2015.

(xi) The impugned orders proceed on the basis that the contract was not liable to be extended and their services would stand terminated forthwith. It is as against the aforesaid orders that the petitioners are before this Court.

4. Prior to filing of these Writ petitions, W.P.No.30399 of 2014 had been filed by one A.Arokiadoss, also a Research Fellow with the institute, challenging a similar charge memo issued to him and a learned single Judge of this Court, while granting an order of interim stay in that matter on 21.11.2014, referred to interim orders passed in the cases of similarly placed petitioners.

5. The present petitioners had not challenged the constitution of the Enquiry Committee at that relevant point in time, and the committee thus proceeded with the hearing and passed the impugned orders. On 28.04.2015, an order of interim stay had been granted in the present Writ Petitions. On 07.10.2015, the interim stay granted earlier was made absolute and the petition to vacate stay filed by the respondents came to be dismissed by the Court.

6. This Court has categorically noted the distinction between the termination of services upon expiry of contract and termination of services based on alleged misconduct by the petitioners. At paragraph 16, the Court has also recorded the submissions of R2 and R3 that the termination of services was on both grounds as aforesaid. At paragraph 24, the learned single Judge expressed his unambiguous opinion to the effect that the enquiry was not conducted in a proper manner and that actually the Writ Petitions could well have been allowed by him at that stage itself. However, he desisted from doing so, since service of notice had not been complete on R4 and R5.

7. The matter travelled in appeal to the Division Bench in W.A.Nos.1609 to 1612 of 2016 and by order dated 12.07.2016, the Division Bench directed the appellants therein, i.e., the respondents in the Writ Petition, to conduct enquiry afresh and complete the same within three months and till such time, they were directed to pay 50% of back wages to the petitioners.



8. The matter travelled in appeal to the Hon'ble Supreme Court and was listed on 25th and 26th of September, 2018. On 26.09.2018, petitions were filed before this Court for modification of prayer in the main Writ Petitions, which has come to be allowed on 30.07.2019.

9. In the meanwhile, the SLPs were listed before the Hon'ble Supreme Court which delivered its judgment on 27.09.2018 setting aside both the orders passed by the learned single Judge as well as the Division Bench of this Court in the Miscellaneous petitions and recording the joint concurrence of the parties to argue the Writ Petitions finally before the learned single Judge on merits. All contentions were left open to be considered by the learned single Judge.

10. In the meanwhile, a batch of Writ Petitions (W.P.Nos.29545 to 29556 and 33324 of 2012), had come to be filed by 13 other Writ Petitioners challenging Notification dated 12.10.2012 calling for advertisements for various posts in the institution. The petitioners prayed that there was no necessity to call for outside resources to people the institution in the presence of so many qualified employees within the institution itself, whose services must first be assessed and regularized prior to looking outside of the organisation. They also prayed for regularization of their services.

11. The above batch of Writ Petitions came to be allowed by Mr.Justice.V.Parthiban on 13.10.2017 accepting the contentions of those petitioners. While the Notification was struck down, their appointments were also directed to be regularized citing the ratio of the judgment of the Hon'ble Supreme Court in the case of Nihal Singh V. State of Punjab (2013 (14) SCC 65). The respondents were also directed to complete the process of regularization of services of the petitioners therein within a period of four months from date of receipt of that order.

12. Though a Writ Appeal is stated to have been filed challenging the aforesaid order, the respondents have not obtained an order of interim stay and hence ought to have complied with the directions of the learned single Judge within time. However, merely on the strength of the pendency of the Writ Appeal No.1170 of 2018 and batch, the respondents have blatantly disregarded the directions of the learned single Judge barring the case of one Senthilnathan, petitioner in W.P.No.29548 of 2012, in whose case the respondents have passed an order regularizing his services.

13. Mr.N.G.R.Prasad, learned counsel appearing for the petitioners would rely greatly upon the order passed by Mr.Justice V.Parthiban pointing out the similarities in the



circumstances of the petitioners therein as well as those before me. He would state that the services of the present petitioners was without blemish from dates of their appointments, i.e., 2007 onwards till 2014, and the impugned orders dated 31.03.2015 have been passed only citing the alleged participation in the protest.

14. As far as the protest itself was concerned, he would object to the allegation that the petitioners have participated therein, without prejudice to which he would urge that it was the constitutional right of employees of an organisation to participate in a peaceful protest pointing out various lacunae in the working of the institution and that they should not be punished for exercising such legitimate right.

15. On the aspect of regularisation of services, learned counsel for the respondents would cite the judgement of the Constitution Bench of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others V. Umadevi and others ((2006) 4 SCC 1) in support of his submission that the appointments of the petitioners were not made in a proper manner and there was thus no question of their services being regularised.

16. He would however concede to the position that at the time when the appointments were made in 2007, there had been no Rules in place to streamline the procedures for appointment. Such Rules do not appear to have been brought in till much later, since all appointment are on contract basis, extended from time to time.

17. These submissions do not appear to be correct seen in the context of a report of a Commission comprising Shri.N.Gopalaswami, Former Chief Election Commissioner of India constituted by the Kalashetra Foundation in that regard. This detailed report which also refers to the decision of the learned single Judge dated 13.10.2017 and the background in which the appointments were made over the years in the CCIL and the procedure followed. I advert to this aspect in more detail in the succeeding paragraphs.

18. Upon declaration of Tamil as a classical language and for the purpose of comprehensive understanding of the language, Central Government established the Central Institute of Classical Tamil (CICT) and the responsibility of formulating and implementing a central plan for this purpose was entrusted to the CCIL in 2005. After the Cabinet approved the plan in 2008, CICT was shifted to Chennai. It is a registered society acting under the auspices of the Chief Minister of Tamil Nadu as Chairperson.



19. 149 posts were sanctioned as per Cabinet Note dated 22.01.2008 which includes 6 posts of Reader-cum-Research Officer and 12 posts of Lecturer-cum-Junior Research Officer. Pending the framing of Recruitment Rules, it was decided to recruit persons from the time of its inception and it was pursuant thereto that advertisements were issued inviting applications for 25 posts, initially on consolidated pay.

20. Subsequent rounds of recruitment were conducted and an advertisement issued for 30 posts in the designations of Senior Research Fellow, Junior Research Fellow, Proof Reader - cum-Document Assistant and Data Inputter during May - July, 2007. These advertisements were only in the website of the CIIL, Mysore and not in newspapers. The petitioners in W.P.Nos.12785 to 12787 of 2015 were part of this round of recruitment; The applicants were invited to a three day workshop, thereafter short listed and interviewed, leading to recruitments. The Commission Reports refer to this procedure in extenso.

21. Though the hearing of these writ petitions was closed on 07.10.2021 and the matter directed to be listed for pronouncement of orders, in course of finalizing the orders, some clarifications were required as the full and complete report of the Commission had not been furnished and hence the matter was re-posted on 26.10.2021. The purpose of this was to obtain the Annexures to the Commission report that listed the employees recruited in the various rounds of appointments and ascertain the integrity of the procedure followed in effecting the appointments of the petitioners before me.

22. The appearance of Ms.Nithilavani, learned counsel for R1, i.e., Union of India, rep. by its Secretary, Ministry of Human Resources Development was specifically sought, as she had not appeared either on the earlier dates when the matter was heard or on 26.10.2021 when it was listed for clarification and she was asked to circulate a copy of the complete report of the Commission.

23. The text of the report refers to some appointments as having been made in a procedurally acceptable manner, whereas some others were found to have been entirely adhoc and without any basis whatsoever. A complete copy of the report has been placed on file by Ms.Nithilavani along with annexures. The Committee, at paragraph 5 has referred to the second round of recruitment in the following terms:

Second Recruitment

5. Another advertisement was issued by the Central Institute of Indian Languages, Mysore for study of



WEB COPY

Diachronic & Synchronic study of Tamil Dialects for 30 posts in the designations of Senior Resource Fellow, Junior Research Fellow, Proof Reader cum Document Assistant and Data Inputter. This advertisement was notified in the web site of the CIIL, Mysore and it was informed that this was circulated to all Colleges in Tamil Nadu for circulation among the researchers and scholars. These advertisements/circular were issued during May-July, 2007 (Annexure-3). However, no advertisement was issued in the newspapers. As against the earlier appointments which were on consolidated pay basis, these posts were on daily honorarium a fixed amount + conveyance. Following number of persons still continue in service who joined on the basis of this web advertisement circular

	Designation: (when initially appointed)	No. of persons still in service	Date of joining
(i)	Sr. Resource Person	5	Oct & Nov 2017
(ii)	Jr. Resource Person	12	Oct & Nov 2017
(iii)	Date Entry Opr.	1	Aug 2017

On the basis of web advertisement and circulars issued to universities/colleges about 300-400 applications were received. A three-day workshop was arranged in Bharathiyar University, Coimbatore in which these applicants were called. After the workshop, these candidates were interviewed/ tested and selections were made. These selected candidates were required to work in each District of Tamil Nadu to list out new Tamil words spoken in those areas. The work was a project and the positions were co-terminus with the project. It is not clear whether the project was completed successfully. However, after one-two years, persons recruited for the project were diverted to other areas of work of the Institute and continued.

6.1. As on date 24 persons still continue in service who were appointed following open advertisement / web advertisement / circular to Universities, written test, interview, performance in workshops etc. These appointments were made when



WEB COPY

the Institute was functioning from Mysore. It may be noted that as long as the Institute was functioning from Mysore, transparent procedure was followed while making appointments. The details of these 24 persons are indicated in the statement at Annexure-4.

24. The Committee report has been perused, specifically Annexures 3, 4 and 5. Annexure 3 contains a call for applications and Annexure 4 contains the details of 24 persons who continued in service following open advertisement. The aforesaid appointments were made when the Institute was functioning from Mysore following transparent procedure.

25. All petitioners aver that they form part of this process and there is no dispute put forth on this account. I however find from Annexure 4 now circulated that only Ms.Nagoorammal and Ms.Gayatri are part of the list. The petitioners have also circulated a document styled as Annexure 4 and I find some variations in the same when compared with Annexure circulated by learned counsel for R1. Annexure 5 of the report contains the details of 22 persons, styled as 'arbitrary appointments' made on recommendations of V.I.Ps or senior functionaries.

26. For the purpose of these Writ Petitions, it would suffice to state that none of these petitioners are part of that list. Since the petitioners' claim that they are part of the second round of recruitment at Mysore is not disputed, I hold that their appointments are sanctioned and valid, despite the differences in the Annexures placed on record. If at all their services were found lacking in any manner, such inadequacy would surely have been part of the in service records, but this is not the position.

27. Mr.Karthik Rajan, learned counsel for R2 and R3 was requested to circulate copies of assessments of the petitioners to verify whether the non-continuation of their services was for reasons on poor performance or on the allegation of their participation in the protest. Copies of the yearly assessments have been placed on record, which reflect nothing untoward. Thus, the only conclusion would be that the termination of their services is solely on account of their alleged participation in the protest.

28. As far as the protest is concerned, no case whatsoever has been made by the respondents to justify their termination on this ground. In fact, no evidence has been placed on record to establish beyond doubt that the petitioners were involved in the protest. No material of any nature which would indicate that the



petitioners were speaking in, or engaging in the protest are part of the enquiry report or the impugned orders.

29. Except for a bald allegation that the petitioners were seen in the vicinity of the protest, there is nothing further. In my view, this would not suffice to lead to the conclusion that the petitioners had acted contrary to the terms of their appointment so as to prejudice the interests of the institution. The petitioners are at liberty to observe the protest proceedings, if they so choose and this would not tantamount to their participation or engagement with the protest in any way.

30. Since the assessment records do not indicate poor performance and the petitioners being in the vicinity of the protest is also not fatal to their employment, I see no justification for the impugned orders of termination to have been passed as impugned the orders are silent in this regard. No doubt, the terms of employment were contractual, however, continued the employment in a sanction post is the norm except if the respondents are in a position to justify either violation of the terms of employment or poor performance.

31. Learned counsel would make a tentative suggestion that the staff were in surplus, but this is not borne out from the impugned order and it is trite to state that an order must stand or fall on its own merit and cannot be sought to be sustained either by counter or oral arguments. The impugned order of termination is thus liable to be quashed and I do so. The petitioners will be reinstated in service forthwith with all consequential benefits including continuity in service.

32. Coming to the question of regularisation of their services, the Hon'ble Supreme Court has, in V.Umadevi' case (supra) held that however long the duration of employment may be, whether temporary, contractual, casual, daily wage or adhoc, if such employment were outside the constitutional scheme of public employment, then such employment is not liable to be regularized. Irregular appointments would be those which were contrary to Rules and without sanction of regular posts. Such appointments cannot be regularized as that would defeat the constitutional scheme for public employment.

33. The judgment in the case of Umadevi (supra) was referred to by the Hon'ble Supreme Court in the case of Nihal Singh (supra) to state that longstanding services of employees must be recognized and regularized, subject of course, to the appointments being in accordance with applicable Rules and Regulations. The Bench held that it was only if the employment was outside the constitutional scheme of employment or was motivated by factors extraneous to known and accepted norms of



employment, that such recruitments would not be liable to be regularized.

34. More recently, in the case of Direct Recruits, Class II Engineering Officers Association V. State of Maharashtra (AIR 1990 SC 1607), the Hon'ble Supreme Court has reiterated that the appropriate determinant of whether the employment was within or outside the constitutional scheme would have to be seen in the context of the applicable rules and regulations that governed the recruitments at that relevant point in time.

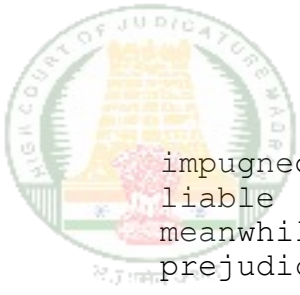
35. If the violations were merely procedural, but largely confirming to the applicable Rules, then, such appointments would be liable to be accepted. Per contra, if the appointments were unsanctioned and contrary to Rules or motivated by malafides and extraneous considerations, such appointments were liable to be eschewed and ignored and there was no question of regularizing the same.

36. The answer to the issue of regularization of the petitioners' services must be seen in the context of whether the mode of appointment of the petitioners is proper, and I have in the above paragraphs held that the appointment of the petitioners was in sanctioned posts and followed acceptable and transparent procedure, in the absence of codified recruitment rules at that time. The Commission report would reveal that there was a procedure in place as far as the first and second rounds of recruitment were concerned, but not in the third.

37. Materials placed on record by R1 duly supported by materials furnished by the petitioner lead me to the conclusion that the petitioners have been appointed in the second round of recruitment for which there was a call for applications on the website of the Institute at Mysore. It is admitted that the petitioners were recruited when the Institute was in Mysore and the Commission Report clarifies unambiguously that all appointments that were made in Mysore were transparent and followed a procedure that was put in place for that purpose.

38. A distinction sought to be made between the present cases and those dealt with by Mr. Justice V.Parthiban is that in the present batch, the employment of the petitioners had been terminated at the juncture when they approached this Court, whereas, the appointments of the petitioners in the other batch had not yet been terminated when they approached the court.

39. It was for the aforesaid reason that the employment of those employees were being extended from time to time, though their services are yet to be regularized. This is a distinction without a difference. As a consequence of my holding that the



impugned orders are not justified in law, the petitioners are liable to be reinstated in service. The elapse of time in the meanwhile was on various accounts and the petitioners cannot be prejudiced by the same.

WEB COPY

40. In light of the aforesaid discussion, I am of the view that the petitioners are liable to be reinstated and their appointments regularized from dates of their respective initial appointments. These Writ Petitions are allowed. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

sl

To

1. The Union of India,
Rep. by its Secretary,
Ministry of Human Resources Development,
Shastri Bhawan,
New Delhi - 110 001.
2. The Director,
Central Institute of Classical Tamil,
IRT Campus, 100 Ft. Road,
Taramani, Chennai - 113.
3. The Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Ft. Road,
Taramani, Chennai - 113.

+8ccs to M/s.Row and Reddy, Advocate, S.R.Nos.58077, 57388
to 57390

+4ccs to M/s.Memon, Karthik, Mukundan, Advocate, S.R.Nos.58344

W.P.NOS.12785 TO 12788 OF 2015

SSV(CO)
PBS/18/11/2021