

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.4739 of 2012

R.Vasanthi

... Petitioner

Vs.

1.The Secretary to the Government of Tamilnadu,
Higher Education Department,
Secretariat, Chennai 600 009.

2.The Registrar,
Anna University of Technology (Coimbatore),
Jothipuram and Post,
Coimbatore 641 047.

3.The Registrar,
Anna University,
Guindy, Chennai - 600 025.

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the second respondent to appoint the petitioner in any suitable post in the vacancies exist after taking into confidence of the 1st and 3rd respondents before issuance of fresh notification for filling up such vacancies by the University.

For Petitioner : Mr.R.Ramachandran

For Respondents : Mr.S.Karthikei Balan
Government Advocat (for R1)

For Respondents : Mr.L.P.Shanmugasundaram (for R2 & R3)

ORDER

The prayer sought for herein is for a writ of mandamus directing the second respondent to appoint the petitioner in any suitable post in the vacancies exist after taking into confidence of the first and third respondents before issuance of fresh notification for filling up such vacancies by the University.

2.The petitioner was selected and appointed on temporary basis for a period of six months to the post of Library Assistant in the School of Management Studies of the second respondent University which was a statutory University.

3.In that capacity, the petitioner was appointed on a consolidated payment of Rs.5,000/- per month which subsequently enhanced to Rs.7,000/- or Rs.7,500/- for some time. So in that capacity, nearly 1 1/2 years, the petitioner was working of course on temporary basis, subsequently when a merger was taken place between the second respondent University with the third respondent University, therefore, the third respondent University, being a parental University, has become an unified or combined University for the technical institution to the whole State and therefore, by virtue of the merger taken place between the second and third respondents, it seems that, the post of Library Assistant, School of Management Studies created on temporary basis at the second respondent University got abolished and by virtue of that, the petitioner also had been ousted from the said post after 1 1/2 years service.

4.Only in that context, in order to get continuation of the job or permanency or absorption in the said job where the petitioner was selected and appointed on temporary basis initially for six months period, by order dated 28.12.2007 at then existing second respondent University, the petitioner has moved this writ petition, before which, he has given a representation to the respondents for such a prayer on 25.08.2011 as the same since was not considered, the present writ petition has been filed.

5.Reiterating the aforesaid facts, the learned counsel appearing for the petitioner has submitted that, in the appointment order dated 28.12.2007, though it had been stated that, she was appointed as Library Assistant in the School of Management Studies on temporary basis for six months period, since it was a permanent post, where the petitioner was selected and appointed, the petitioner have been permitted to work for 1 1/2 years and therefore, in such a permanent position which was available before the second respondent, the petitioner could have been conferred. Therefore, in this regard, the representation given by the petitioner dated 25.08.2011 can be directed to be considered, he contended.

6.Per contra, Mr.L.P.Shanmugasundaram, learned Standing Counsel appearing for the second and third respondents, on instruction, would submit that, no doubt at the time of the second respondent was functioning, it was necessitated to have a Library Assistant in the School of Management Studies on

temporary basis, that is why the petitioner was selected and appointed and in this regard, he relied upon the appointment order dated 28.12.2007 which reads thus:

"Mrs.R.Vasanthi, appointed as Library Assistant in the School of Management Studies, Anna University, Coimbatore on a temporary basis for a period of six months from the date of her joining the post based on the recommendation of the Staff Selection Committee. She will be paid a consolidated salary of Rs.5,000/- per month. Mrs.R.Vasanthi is requested to sign and give the duplicate copy of this order as a token of her willingness to work as Library Assistant. She will be governed by the rules and regulations of the University."

and he would further submit that, the very appointment made to the petitioner itself is only on temporary basis for a period of six months. Therefore, that six months period was over, hence, the petitioner had to be ousted and because of the necessity that arose to give extension for some more months, the petitioner had been engaged for some more months and ultimately, when the second respondent University got merged with the third respondent University, the post of Library Assistant in the School of Management Studies even on temporary basis was not necessitated. Therefore, the posting itself created temporarily was abolished and accordingly, the petitioner was ousted and there is no lien over the appointment with the petitioner with regard to the said post which she held on temporary basis for a period of one year or more. Therefore, on that basis, the petitioner cannot seek indulgence from this Court to give a direction to give permanent status or to take back or to reinstate the petitioner in the said post on permanent basis.

7.I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8.As has been rightly pointed out by Mr.L.P.Shanmugasundaram, learned Standing Counsel appearing for the second and third respondents, the second respondent University, when it was functioning as a separate statutory University, might have thought of creating a temporary post called Library Assistant and accordingly, the petitioner was selected and appointed in the said post, that too for a tenure of six months.

9.When a post is created for a particular period, wherein a person has been selected and appointed on temporary basis and made in the appointment order itself that, it is a temporary post for a period of six months, it cannot be treated as a

substantive vacancy or post created in this regard, for which, such selection was made and appointment was given.

10. Merely because the petitioner had been permitted to work on temporary basis for more than six months i.e. upto one year or more, that would not confer any right on the petitioner who was never appointed or whose services never absorbed on permanent basis. If it is a substantive vacancy, then only the question of permanency or absorption or regularisation would arise, for which, the petitioner should have been called and selected and have been put in probation and after completing the probation, she should be absorbed.

11. Here in the case in hand, it is only a tenure post on temporary basis for six months, therefore, in that post, if at all the petitioner was selected and appointed and subsequently the post itself got abolished by virtue of the merger taken place between the second respondent and the third respondent, no right can be said to be accrued for seeking any benefit of permanency. Therefore, on that ground, the plea raised by the petitioner, in the considered opinion of this Court, cannot be accepted.

12. In this regard, though the petitioner has made a representation dated 25.08.2011, in view of the principle as has been underlined or reiterated more than once by the order of the Hon'ble Apex Court as well as this Court that, in public employment, there cannot be any direction by way of mandamus to select any 'X' or 'Y' merely because the said person had been working in the same organisation for some time on temporary basis, because the public employment is meant for everyone, therefore, selection shall be made in the manner known to law i.e. based on the service regulations after inviting applications from eligible candidates in the open market and therefore, that kind of relief also cannot be granted, as claimed by the petitioner through his representation dated 25.08.2011. Accordingly, this writ petition fails, hence, it is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Secretary to the Government of Tamilnadu,
Higher Education Department,
Secretariat, Chennai 600 009.

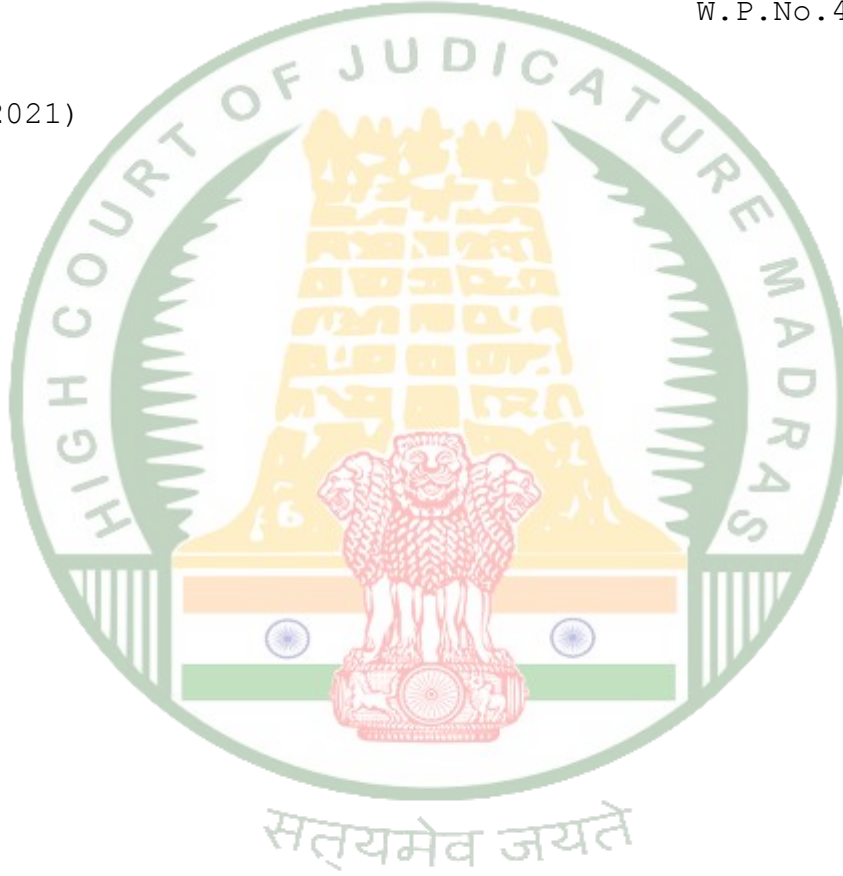
2.The Registrar,
Anna University of Technology (Coimbatore),
Jothipuram and Post,
Coimbatore 641 047.

3.The Registrar,
Anna University,
Guindy, Chennai - 600 025.

+1cc to Special Government Pleader(CO-OP),S.R.No.20782

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PPA(CO)
CB(09/07/2021)



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