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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.308 OF 2014

AND

M.P.NOS.1 OF 2014 & 1 OF 2015

Umarani

... Petitioner

..Vs..

1. The Government of Tamil Nadu,
Rep. Secretary to Government,
HR & CE Department, Chennai - 600 034.
 2. The Commissioner,
HR & CE Administration,
Nungambakkam High Road, Madras - 34.
 3. The Secretary,
Arulmigu Palaniandavar College of Arts & Culture,
Palani - 624 601.
- ... Respondents

PRAYER:

The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to appoint (regularize) the petitioner as the Assistant Professor of Zoology on at from the date of her appointment in July, 2002, together with all consequential benefits.

For Petitioners : Mr.V.Raghavachari

For Respondent
Nos.1 & 2 : Mr.C.Selvaraj
Government Advocate (Civil)

For Respondent No.3 : M/s.Ramesh Venkatachalapathy

O R D E R

The present Writ Petition has been preferred seeking a direction directing the third respondent to regularize the



petitioner as Assistant Professor (Zoology) from the date of her initial appointment in July, 2002.

2. The petitioner is a Post Graduate in Applied Biology having secured 74.5% in B.Sc., Zoology and 75.33% in M.Sc., Applied Biology. She has also completed M.Phil in Zoology with 74.17% and was awaiting for Viva Voce for Ph.D., in Applied Biology - Zoology on the date of filing of the Writ Petition.

3. In response to the Notification issued by the third respondent, she applied for the post of Lecturer in Zoology in June, 2002. She was called to attend an interview on 05.07.2002 and was appointed as Lecturer on 08.07.2002 on a consolidated salary of Rs.2,200/-. After her appointment, 13 persons were appointed on temporary basis and 12 persons out of above 13 persons have been regularized. The petitioner alone was not regularized.

4. It is seen from the records 2005 that there was a selection conducted to the post of Assistant Professor on a consolidated pay and around 13 persons were appointed. In proceedings Na.Ka.No.117/ 2004/A5, dated 23.06.2005, one Mr.C.Kandeepan, Ms.T.Jeyalalitha and Ms.N.Parameswari, were appointed on consolidated pay of Rs.4,000/- per month. It appears that in 2005, the appointment of one Mr.M.Mylsamy, Ms.N.Parameswari, and Ms.T.Jeyalalitha, were terminated. Against which, they have preferred Writ Petitions before this Court. However, the third respondent has appointed them on regular basis on condition that they shall withdraw the Writ Petition. Accordingly, the said Parameswari has withdrawn the Writ Petitions in W.P.(MD) Nos.2741, 3181 and 8714 of 2007, dated 15.11.2012. Likewise, the said Jeyalalitha also withdrew a Writ Petition filed by her in W.P.No.2751 of 2004 on 26.07.2006. Thereafter, the third respondent issued a Notification for appointment of Lecturers and called for applications from the open market and also from the Employment Exchange. The selection was conducted, wherein, five candidates were selected for appointment and five other candidates are wait listed in respect of terms of General Turn, Backward Class, Most Backward Class and Scheduled Caste based on the communal roster followed by the College.

5. Again, the records produced by the third respondent with regard to allotment of marks, does not appear to be aboveboard. The persons, who secured highest marks in Post Graduate were given meager marks by the Selection Committee, whereas, the persons, who have secured lesser marks in Post Graduate were given highest marks. However, I do not want to delve into the issue as it is based on interview. But, it is pertinent to note that even though the settled procedures earmark allotment of



marks for educational qualification, experience and additional qualifications, there are apparent manipulations. In the instant selection, 300 marks was earmarked for interview having five members of the Selection Committee with maximum 50 marks each. Except for the five selected candidates and five wait listed candidates, most of the other candidates have secured very meager marks. Awarding more marks to the interview process than written test and academic marks is against the well settled procedures laid down by the University Grants Commission and the orders of the Courts. Awarding more marks to interview than the academic qualification and teaching experience, will pave way for irregularities. It has happened in this selection also. For the instant, the petitioner has done her Under Graduation with 74.5% of marks, Post Graduation with 75.33% of marks, M.Phil with 74.17% of marks and also she was undergoing Ph.D. Even though the marks cannot be awarded to Ph.D, weightage should have been given for P.G. and M.Phil. Apart from this, she has been teaching in the very same College from 2002. The teaching experience should have also been considered for awarding weightage marks. None of these above settled procedures were followed in the interview. She was not given her due share.

6. Apart from this, the records produced before this Court by the third respondent would show that one Mayilathal, who was an wait listed candidate filed a Writ Petition, was given regular appointment on condition that she shall withdraw the Writ Petition. Likewise, one Latha Santhi, who was appointed in Proceedings Pa.Mu.No.4152-A5-2010-13, dated 21.05.2020, without following the selection procedures in the time scale of pay of Rs.15,600-39,100/- with effect from 08.07.2009. The selection was challenged before this Court and the same was subjected to the result of the Writ Petition. Likewise, Ms.B.Srigeetha, was selected and appointed as Lecturer of English, subject to the result of the Writ Petition pending before this Court.

7. From the above, it is seen that the third respondent has adopted various methods of recruitment according to his whims and fancies. Those, who approached the Court were given appointment without following any norms and obtained approval from the Joint Director of Collegiate Education and discriminated the candidates, who are continuously serving in the College with the very same qualification.

8. It is pertinent to note that the information provided under Right to Information Act, reveals that the Director of Collegiate Education in his Letter Na.Ka.No.26637/G3/2007, dated 06.08.2007, permitted the third respondent to regularize the service of Lecturers, who were working on temporary basis. But, there is no whisper as to whether the petitioner, who is working from 2002, has been considered for regularization or not? In the



counter affidavit, there is no reply for the same. However, it is stated in the information that the said N.Parameswari was appointed on regular basis and in view of the pendency of the Writ Petition before this Court, the selection was conducted for the remaining 40 posts. The said method adopted by the third respondent is discriminatory. If at all, the third respondent had adopted uniform method, he should have considered all the temporary Lecturers, who have put in 10 years of uninterrupted service. Whereas, the persons, who have been appointed after 2004-2008 were regularized and the Lecturers like that of the petitioner, who were appointed even before them as early as in 2002, were left without regularization.

9. It is to be noted that when the regularization of the petitioner was taken up at some point of time by the respondents, the third respondent made a remark that the petitioner was eligible to be appointed as Lecturer in Zoology in view of P.G. qualification and M.Sc. Applied Biology offered by Gandhigram Rural Institute, which is an equivalent subject to M.Sc. Zoology as per G.O.(Ms) No.72, Higher Education (K2) Department, dated 30.04.2013. However, as per G.O.Ms.No.66, dated 24.04.2019, it is specified that M.Sc. Applied Biology offered by Gandhigram Rural Institute is not equivalent to M.Sc., Zoology for the purpose of employment in public service. Therefore, the equivalent qualification of the candidate was subject to the concurrence of the Teacher Recruitment Board at the time of certificate verification and interview. This remark was made at the time of issuing teaching experience certificate to the petitioner on 13.11.2019. Even though the petitioner was appointed after making an application and pursuant to the interview conducted by the respondent, she was shown as Guest Lecturer from 2013 to 2017. Whereas, in the present Writ Petition, an order of Status Quo was granted by this Court on 31.01.2014 in M.P.No.1 of 2014 and as such, with the strength of the interim order, she has been continuing in the post of Assistant Professor from the year 2014 onwards. At the time of her appointment, Post Graduate in M.Sc. Applied Biology is stated as required qualification. In fact, in G.O.(Ms) No.72, Higher Education (K2) Department, dated 30.04.2013, it has been stated that M.Sc Applied Biology issued by the Gandhigram Rural Institute is not equivalent to M.Sc. Zoology. There is no clarification given by the learned counsel for the respondent as to why it is stated as not equivalent. At the time of appointment, the petitioner was found fit to hold the post of Lecturer in Zoology. The subsequent development will not disqualify her for holding the post of Lecturer and thereby, she claims for regularization.

10. Apart from this, the remark made by the third respondent also appears to be not proper for the reason that the petitioner



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has studied B.Sc Zoology and M.Sc., Applied Biology and thereafter, completed M.Phil in Zoology and Ph.D in Applied Biology-Zoology. It is well known that Zoology is an integral part of Biology. Only because, 2019 G.O. states that Applied Biology is not equivalent to Zoology, it will not automatically disqualify the petitioner as she has been working as Lecturer in Zoology from the year 2002 onwards. There is no adverse remark about the performance of the petitioner in the counter filed and records also do not show any adverse entry about her performance. Therefore, it shall be inferred that the expertise of the petitioner in the field of teaching appears to be good, much less without complaints. Had her performance been poor, the third respondent would have certainly made a complaint, and the same would have relieved the petitioner from service. When the third respondent has appointed M.Parameswari, who was terminated for not having secured marks prescribed for appointment, the third respondent ought to have considered the appointment of the petitioner, who was placed better than most of the Lecturers, who were regularized in service.

11. From the over all facts, it is to be noted that the remarks made by the third respondent as to the qualification of the petitioner is not sustainable and peculiarly, in view of the fact that those who have approached the High Court were given regular appointment without undergoing regular selection process.

12. Considering the fact that the petitioner has put in 12 years of uninterrupted service till she approached this Court for regularizing her service and seven years thereafter till date with the strength of the interim order, totally 19 years, shows that there is no reason to discontinue the service of the petitioner. In fact, the third respondent shall consider the teachers having longer years of experience and their academic performance for the purpose of imparting education to the students. There shall not be discriminatory procedures in selection as well as regularization of the Lecturers.

13. Considering the facts and circumstances of the case and totality of the circumstances, which prevailed during the past selection and the appointment made by the third respondent, I consider it a fit case for regularization of the petitioner's service from the date of her initial appointment. However, it is made clear that the petitioner is entitled to the monetary benefits with effect from the date of filing of the Writ Petition. The petitioner is entitled to count her service for the purpose of attendant benefits like, Pension, Gratuity and Provident Fund from the date of her initial appointment and for actual monetary benefits from the date of filing of the Writ Petition i.e. on 03.01.2014.



14. The third respondent is directed to address the communication for regularization of the petitioner to the Secretary, Higher Education Department within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of such communication, the Secretary, Higher Education Department is directed to process the application and pass appropriate orders within a period of eight (8) weeks thereafter.

The Writ Petition is ordered with the above directions. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
HR & CE Department,
Chennai - 600 034.
2. The Commissioner,
HR & CE Administration,
Nungambakkam High Road, Madras - 34.
3. The Secretary,
Arulmigu Palaniandavar College of Arts & Culture,
Palani - 624 601.
4. The Secretary,
Higher Education Department,
Secretariat, Chennai.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.31555

+1cc to Mr.M.Sriram, Advocate, S.R.No.31895

+1cc to the Special Government Pleader (HR & CE), S.R.No.32273

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and M.P.Nos.1 of 2014 & 1 of 2015

CA(CO)
CS/24/09/2021