



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2021

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THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**WP(MD)No.15410 of 2012

B.Devaraju

... Petitioner

Vs.

The Gandhigram Deemed University,
Represented by its Registrar,
Gandhigram Rural Institute,
Gandhigram, Dindigul District.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondent to regularize the service of the petitioner from the date of his initial appointment ie., as on 18.12.1998 in the post of Senior Technical Assistant a renamed post of Instructor cum Lab Assistant as per the resolution of the Syndicate committee of the respondent University dated 30.07.2011 along with all consequential service and monitory benefits.

For Petitioner : Mr.B.Sathishsundar
for Mr.M.Gnanagurunathan

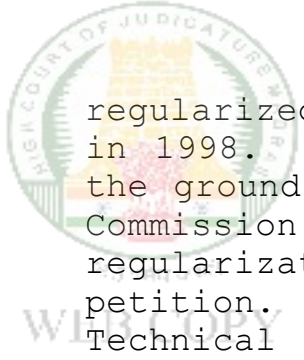
For Respondent : Mr.MA.P.Thangavel

ORDER

This writ petition is filed for issuance of Writ of Mandamus directing the respondent to regularize the service of the petitioner from the date of his initial appointment ie., as on 18.12.1998 in the post of Senior Technical Assistant which was originally named as Instructor cum Lab Assistant along with all consequential service and monitory benefits.

2. Heard Mr.B.Sathishsundar, learned counsel appearing for the petitioner and Mr.MA.P.Thangavel, learned counsel appearing for the respondent.

3. The Writ Petition is regarding the regularization of the petitioner's service with effect from the date of initial appointment. In this case, the petitioner's service was



regularized with effect from 2012. The petitioner was appointed in 1998. The petitioner's service was not regularized mainly on the ground that there was a ban order passed by University Grants Commission. This Court directed the respondent to consider the regularization of the petitioner's service in the earlier petition. Following that, the petitioner was appointed as Senior Technical Assistant (Agriculture) by an order dated 18.06.2012. Aggrieved by the same, the petitioner has filed the present writ petition seeking indulgence of this Court for a direction to the respondent to regularize the service of the petitioner with effect from the date of his initial appointment ie., on 18.12.1998.

4. The following dates and events are to be considered before appreciating the case of petitioner on merits. Petitioner completed M.Sc.(Agriculture) in 1994. On 07.07.1995, the petitioner joined as a Training Assistant (Agronomy) in Krishi Vigyan Kendra of ICAR and worked in a Project (ADP). As per the announcement of ICAR, the petitioner was retrenched on 06.10.1997. However, there was an effort by respondent to absorb retrenched staffs in Gandhigram Rural Institution. Hence, following the resolution passed by Finance committee and Syndicate, the petitioner was appointed in the respondent University in the post of Instructor cum Lab Assistant in the faculty of Agriculture and Animal Husbandry with a salary of Rs.1640/- per month, in the pay scale of 1640-2900, on 16.12.1998. It is admitted that the appointment was purely on temporary basis. It is also not in dispute that though the appointment was temporary, the post was permanent and sanctioned. From the annual report and other materials, it is seen that the petitioner was treated as a regular staff of the respondent University holding a permanent post. It is also admitted that the respondent framed service rules only in the year 2002.

5. It is the specific case of the petitioner that the post of Instructor cum Lab Assistant in the faculty of Agriculture is a sanctioned and permanent post and that the petitioner was fully qualified to hold the post right from the date of initial appointment. By order dated 07.01.1999, the petitioner was fitted in the pay scale of 5500-175-9000 with effect from 18.12.1998. It is stated that the petitioner's service was extended periodically without any break.

6. It is the case of the petitioner that the appointment was kept temporary till 2004 under the pretext that there was a ban by University Grants Commission. Since the petitioner was not paid salary from April 2006, he filed a writ petition before this Court in WP.No.4735 of 2006 claiming regularization of his service. This Court disposed of the writ petition filed by the petitioner by order dated 15.10.2006 after recording the statement of the



petitioner as well as the stand taken by the respondent elaborately. Having regard to the issues to be considered by this Court in this writ petition, this Court thinks it fit to extract the relevant portion of the Judgment of this Court in WP.No.4735 of 2006:

"2. The case of the petitioner is that inspite of the resolution passed by the Syndicate Committee in its meeting held on 27.03.2004, to continue the present status-quo position in the case of the petitioner as temporary Instructor-cum-Lab Assistant, till the ban is lifted by the University Grants Commission, the respondent is not permitting the petitioner to continue his work even in temporary capacity from 27.06.2006, i.e., after the filing of the writ petition.

3.The learned counsel for the respondent disputes the same. However, there is an endorsement made by the faculty incharge on 22.05.2006 to the effect that 'with an application of extension order to the petitioner from Registrar's Office, he is engaging the petitioner as his presence is very much required to look after the laboratory equipment and its maintenance'.

4.The learned counsel for the petitioner submits that from April 2006 onwards, the petitioner was not paid salary even as a temporary hand. In so far as the main claim of the petitioner for regularization is concerned, the respondent has filed a counter affidavit to the effect that the ban imposed by the UGC is not lifted till today. Only after the ban is lifted, the resolution earlier passed by the Syndicate can be implemented and till such time, if at all the petitioner wants, he can continue to work as a temporary hand.

5. The learned counsel for the petitioner is unable to dispute the said submission stating that the ban order issued by the UGC is not lifted.

6. In view of the said facts, the respondent is directed to continuously engage the petitioner, who was not permitted to work from 27.06.2006, from 01.11.2006, on the said terms and conditions. As per the Syndicate resolution dated 27.03.2004 which is incorporated in the proceedings of the Registrar dated 20.04.2004, the petitioner is directed to

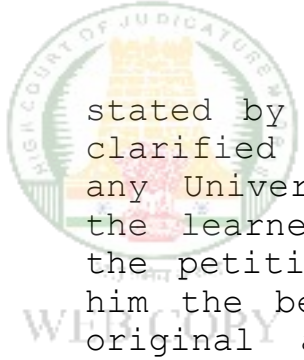


continue in the said post till the ban is lifted by the UGC and after obtaining appropriate permission from the UGC, services of the petitioner shall be considered for regularization on merits. The petitioner is entitled to get salary for the period for which he has worked i.e., from April 2006 to 26.06.2006. The salary for the above period shall be calculated and paid to the petitioner, within a period of two weeks from the date of receipt of a copy of this order."

Pursuant to the direction of this Court in the writ petition, the petitioner submitted a representation to the respondent seeking regularization on 04.03.2009. A few more representations were also submitted by the petitioner. Thereafter, it is submitted by the respondent that a committee was constituted by the respondent to finalize the roster for non-teaching staff. The said Committee was constituted by the Syndicate to fill up vacant positions to evolve modalities for direct recruitment of non-teaching staff technical cadres. As regards the petitioner who was holding the post of Senior Technical Assistant (Agriculture), the Committee recommended the post to be reserved to OBC and to regularize the service of the petitioner who was engaged as Instructor cum Lab Assistant in the meeting held on 30.07.2011. Again the Sub Committee in the meeting dated 24.10.2011 recommended to regularize the petitioner. In its meeting held on 16.11.2011, the Syndicate resolved to approve the decision of the Sub Committee. The Syndicate authorised the Vice-Chancellor to take immediate necessary steps to fill up the non-teaching positions according to rules and regulations taking into consideration the orders of the Government issued from time to time.

7. Recommendation of the Sub Committee to regularize the service of the petitioner is approved by the Syndicate in its 127th meeting. Though the recommendation was to regularize the service of the petitioner, the petitioner was appointed as Senior Technical Assistant (Agriculture) by an order dated 18.06.2012. The order dated 18.06.2012 suggests that the petitioner was recruited afresh. Aggrieved by the fact that the petitioner is deprived of the whole benefit of service from 1998, the petitioner has approached this Court with the present writ petition seeking regularization of his service with effect from the date of his appointment.

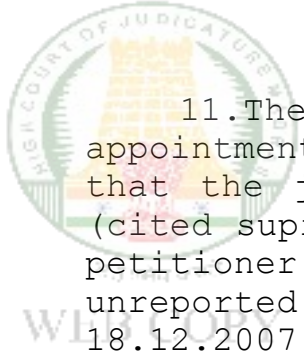
8. The learned counsel appearing for the petitioner submitted that the petitioner has come forward with a definite stand before this Court in the earlier round of litigation that they were unable to regularize the service of the petitioner because of the ban imposed by the University Grants Commission. It is further



stated by the counsel that the University Grants Commission has clarified that they have never imposed any ban on recruitment by any University including the respondent/University. Therefore, the learned counsel appearing for the petitioner submitted that the petitioner cannot take advantage of their own wrong to deny him the benefit of regularization with effect from the date of original appointment. When the Syndicate has approved the recommendation of the Sub Committee to regularize the service of the petitioner, the order appointing the petitioner afresh in the year 2012, without reference to his past employment with effect from 1998 is arbitrary. The learned counsel then relied upon a few Judgments of the Supreme Court and this Court and submitted that the appointment of this petitioner in 1998 is not an illegal appointment and that therefore, the petitioner is entitled to seek regularization following the principles laid down by the said precedents.

9. The learned counsel for the respondent relied upon the counter affidavit filed by the respondent and submitted that the writ petition without impleading the University Grants Commission or Ministry of Human Resource Development, Government of India is not maintainable. It is the case of the respondent that the institute constituted Roster Reserve Committee and resolved to constitute a Sub Committee for filling up the vacant positions to evolve modalities for direct recruitment. It is admitted by the respondent that the Syndicate of GRI approved the minutes of the meeting of Sub Committee which had resolved that the service of the petitioner can be regularized as per the order of this Court in the earlier writ petition filed by the petitioner.

10. In the counter affidavit, the respondent has stated in unmistakable terms that the University Grants Commission had imposed a ban and that therefore, the petitioner cannot be regularised earlier. It is contended that mere continuation of service on temporary basis, will not entitle the petitioner to claim regularisation. When the petitioner was appointed by virtue of the order of appointment, dated 18.06.2012, it is further contended that the appointment will be only prospective and cannot be given retrospective effect. Relying upon the judgment of Honourable Supreme Court in the case of **Umadevi**, reported in **(2006) 4 SCC 1** and the judgment of Honourable Supreme Court in the case of **State of Tamil Nadu and another vs A.Singamuthu**, reported in **(2017) 4 SCC 113**, it is contended in the counter affidavit that this Court will not issue direction for regularisation, unless, the employees like, the petitioner, had been appointed in pursuance of a regular recruitment in accordance with relevant rules.



11. The learned Counsel for the petitioner submitted that the appointment of the petitioner is not an illegal appointment and that the judgment of Honourable Supreme Court in Umadevi's case (cited supra), cannot be relied upon to deny regularisation to the petitioner. The learned Counsel for the petitioner relied upon an unreported judgment of Division Bench of this Court, dated 18.12.2007 in W.P.(MD)No.23479 of 2006, 12706 and 12707 of 2007, in the leading case of **S.Srinivasan vs Union of India and others**, wherein, the Division Bench has held as follows:

"No doubt, the Honourable Apex Court in its Constitutional Bench judgment in Umadevi's case (cited supra), which was followed in Surinder Prasad Towar's case (also cited supra) has held that the employees, who were appointed without following the procedure, cannot be directed to be regularised in service. But, as has already been held supra, the applicants were appointed following the procedure contemplated and the method permitted by the old Recruitment Rules, which were in vogue at the time of their selection."

12. The learned Counsel for the petitioner also relied upon a judgment of Honourable Supreme Court in the case of **Uttar Pradesh State Electricity Board vs Poorana Chandra Pandey and others**, reported in (2007) 1 SCC 92, wherein, the Honourable Supreme Court has held as follows:

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devis case (supra) is being applied by Courts mechanically as if it were a Euclids formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Uma Devis case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devis case (supra) inapplicable to the facts of that case."

17. In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-à-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board in the same manner and position. Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society before



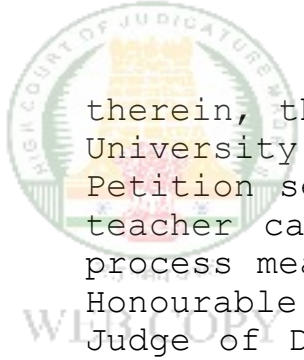
4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution. We have to read Uma Devis case (supra) in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution.

18. We may further point out that a seven-Judge Bench decision of this Court in *Maneka Gandhi vs. Union of India & Anr.* AIR 1978 SC 597 has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi's* case (supra) is a decision of a seven-Judge Bench, whereas *Uma Devis* case (supra) is a decision of a five-Judge Bench of this Court. It is well settled that a smaller bench decision cannot override a larger bench decision of the Court. No doubt, *Maneka Gandhi's* case (supra) does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face."

13. The learned Counsel for the petitioner also relied upon a judgment of Delhi High Court in the case of **Nalini Prabahakar vs Union of Delhi and another**, reported in **2011 SCC Online Del 3126**, wherein, the issue regarding regularisation was considered in a similar case. The Delhi High Court considered the case of a Lecturer, who was originally appointed on a temporary basis by a letter, dated 17.07.1996. Though the authorities of University

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therein, the service was not regularised due to the ban imposed by University Grant Commission. When the petitioner filed a Writ Petition seeking regularisation, the University contended that the teacher cannot escape the process of an open and fair selection process meant for regular appointment. Apart from the decision of Honourable Supreme Court in Umadevi's case, the learned Single Judge of Delhi High Court considered the issue with reference to several judgments and held as follows:

"16. The first question to be considered is whether the Petitioner has any right to be regularized as a permanent lecturer in English of Respondent No. 2. Learned counsel for Respondent No. 2 has placed considerable reliance on the observations of the Supreme Court in Umadevi to contend that the Petitioner had no such right to be regularized. It is submitted that unless the post in question is advertised for regular selection and the Petitioner applies pursuant to such advertisement, her case for regular appointment cannot be considered.

17. In *State of Karnataka v. Umadevi* the Supreme Court was concerned with the problem arising from the appointment of a large number of employees by the State government on ad hoc basis without following the applicable rules for appointments. The persons appointed on ad hoc basis through the "back door" continued for several years. In this context it was observed in *Umadevi* that the mere continuation of such persons for a large number of years on ad hoc basis did not give them an automatic right for regularization. The Supreme Court made a distinction between such backdoor appointments contrary to the rules and appointments made consistent with the applicable rules but to temporary posts or on temporary basis. A clear exception was made in such cases as is evident from the following observations in para 44 of the decision in *Umadevi* (AIR, p. 1826):

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* AIR 1967 SC 1071, *R.N. Nanjundappa* (1972) 1 SCC 409, and *B.N. Nagarajan* (1979) 4 SCC 50, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State



Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

18. It is plain from the above observations in para 44 that the Supreme Court cast an obligation on State and entities of State to take steps to regularize as a one-time measure services of those who had been irregularly appointed and worked on duly sanctioned posts for a large number of years "but not under cover of orders of Courts or Tribunals". Further such process of regularisation had to be "set in motion within six months from now." The judgment in Umadevi was delivered on 10th April 2006 and was binding on all state entities including Respondent Nos 1 and 2. However, they appear to have misconstrued the judgment as preventing them from regularizing the services of the Petitioner. They made no effort to initiate the steps to regularise her services.

19. The Respondents overlooked the fact that the Petitioner was appointed through a process of selection consistent with the rules. A duly constituted Selection Committee found her to be suitable for appointment to both a permanent post as well as a temporary post. It was after this selection that the Petitioner was appointed on a temporary basis in Respondent No. 2 as lecturer in English way back in July 1996. Consequently, this is not a case where the appointment was made contrary to the Rules. The Petitioner was at that stage not appointed to a permanent post only because there were already persons working in permanent posts in the department and there was no vacancy available. The Petitioner continued as such thereafter. She remains a lecturer in English on a temporary basis till date, i.e., more than 15 years after her initial appointment.

20. It is not as if the Petitioner has avoided any process of selection for appointment as a lecturer on a



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regular basis. It is not denied that applications received by Respondent No. 2 pursuant to an advertisement issued in October 1996 for appointment on regular basis to the permanent post were not processed only because Respondent No. 2 decided that it should await the restructuring of Respondent No. 2. This reason was not known to the Petitioner till she was provided with the minutes of the MC which met in October 2003. However, the documents produced reveal that the MC as well as the Department of English were supporting the Petitioner's case for regularization. Way back on 14th December 2001, the Teacher In-charge of the Department (English) made a strong recommendation for regularization of the services of the Petitioner. The In-charge informed the Principal that the Petitioner had worked in the Department for more than five years and had performed her duties "efficiently and with a rare commitment in spite of being under tremendous mental strain due to uncertainty concerning her career". The Teacher In-charge further noted, "the Department noted the fact that there have been many precedents in the University where the services of temporary Lecturers have been regularized through the circulation of papers including that of Dr. Tapan Biswal whose services were regularized in the Department of Political Science of Correspondence Courses through the circulation of papers in 1999-2000." The MC which met on 27th September 2002 also considered the Petitioner's case sympathetically and decided that the Petitioner would nevertheless have to face a new selection committee. It recommended that all the posts of lecturers lying vacant in the School be advertised immediately. Yet the post was not advertised. In the meeting of the MC on 10th April 2003, it was noted that the Chairman of the MC had stayed the selection process midway "in view of the pending restructuring of the set up of the School of Correspondence Courses". Therefore, for no fault of the Petitioner's she could not apply for appointment on a regular basis to a permanent post.

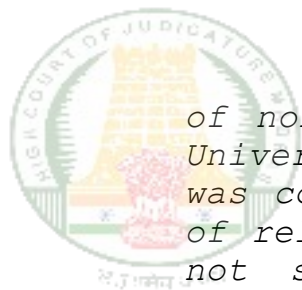
21. Ms. Soni, learned counsel for the Respondents was unable to inform this Court when exactly this process of restructuring, which began sometime in October 1996, would come to an end. It seems unreasonable that on the pretext of restructuring Respondent No. 2 all appointments to permanent posts that have been falling vacant over the years in the various departments of Respondent No. 2 would not be filled up indefinitely. This by itself renders arbitrary the omission of Respondent No. 2 to keep its teachers on a temporary basis for a long number of years. Respondent No. 2 has



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been unable to deny that over the years several posts have fallen vacant in the Department of English. As is clear from the reply of Respondent No. 2 to the Petitioner, pursuant to her application dated 11th February 2010 under the RTI Act, ten posts had fallen vacant since 1st May, 1996 due to retirement, resignation or death. It is indeed inexplicable why Respondent No. 2 would not want to fill up the vacant posts. In the affidavit filed by Respondent No. 2 in *Sambhavana v. Delhi University* it was admitted that of the total sanctioned strength of 95 teachers, there were only 41 teachers in place and there were 54 vacant posts. Even accounting for the quota meant for the disabled, it is inconceivable that none of these vacant posts could be filled up by Respondent No. 2. The non-availability of vacancies was clearly, therefore, an incorrect premise as has been rightly pointed out by the Petitioner. The statements made earlier by the ED of Respondent No. 2 in the affidavit dated 23rd January 2010 did not give the correct picture. The explanation offered by Respondent No. 2 in the affidavit dated 17th September, 2010 that the statements made in paras 5 and 6 of the affidavit dated 23rd January, 2010 were typographical mistakes is not at all convincing. The excuse of non-availability of vacant posts was factually incorrect and, therefore, not acceptable.

22. It has been urged by learned counsel for the Respondents that in view of the ban imposed by the UGC and the orders of Respondent No. 1 University, no advertisement for filling up of regular vacancies has been issued by Respondent No. 2. Reference has been drawn to a letter dated 6th November, 2008 written by the Assistant Registrar of Respondent No. 2 in which while admitting that nine posts were lying vacant in the Department of English, a statement has been made that "correspondence has been going on since 2002 with the UGC regarding filling-up of posts." It is not clear if in terms of the letter dated 17th June 2004, prior approval of the UGC was in fact sought by Respondent No. 2. Such ban on appointment of persons to vacant posts could not continue indefinitely. The UGC could not have intended that for over seven years none of the regular vacancies in the posts of teaching and non-teaching staff and in particular the posts of lecturer in the Department of English in Respondent No. 2 should be filled up. The Petitioner has produced a copy of a letter dated 16th November 2009 from the Respondent No.2 informing the Secretary of the Staff Council of Respondent No.2 that since 2004 three persons had been appointed to the posts



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of non-teaching staff after obtaining approval from the University. Likewise, the Expert Committee which was constituted way back in 2003 to examine the question of release of grants to Respondent No. 2 appears to have not submitted its report for over eight years. The failure of that Expert Committee to make its recommendations cannot indefinitely prevent Respondent No. 2 from appointing teaching staff on regular basis to fill up the vacant posts. Moreover, the connection between recommendations for release of grants and filling up of regular vacancies in permanent posts of teaching staff has not been explained by Respondent No. 2. All these factors have resulted in an avoidable situation of a large number of vacancies in the teaching posts in the Department of English in Respondent No. 2 remaining unfilled. If indeed, Respondent No. 2 wants to offer quality education, there cannot be a situation where a large number of permanent posts of teaching staff remain vacant for a large number of years. It appears to be the collective failure of Respondents 1 and 2 as well as the UGC that has brought about this unfortunate situation. Meanwhile, teachers duly selected by a selection committee, like the Petitioner, have served for more than 15 years on a temporary basis, and have been denied the benefits of regularization.

23. There is merit in the contention of the Petitioner that for no fault of hers she has been unable to seek regular appointment. When there are no advertisements for filling up of regular vacancies/permanent posts, the Petitioner has little choice but to seek regularization on the basis of long years of temporary service. The failure to advertise the permanent posts for being filled up through a process of regular selection is attributed variously to the ban imposed by the UGC, the non-submission of report of the Expert Committee and the non-conclusion of the process of restructuring of Respondent No.2. As already noticed, these processes cannot possibly continue indefinitely. Keeping a person who was fully qualified on a temporary post for over 15 years is apart from being arbitrary also unreasonable as it obviously denies such person the benefits of a regular pay scale, the security of tenure, and all other attendant benefits. Further, as the Petitioner pointed out, since she was not a permanent lecturer, she could not avail of study leave for doing further research and perhaps a Ph.D. Consequently, the failure of the Respondents to regularize her services for over 15 years by their own inaction as explained



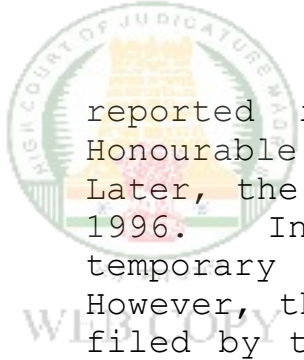
Petitioner's fundamental rights under Articles 14 and 21 of the Constitution.

24. As regards the case of Dr. Biswal, the explanation offered by Respondent No. 2 is not convincing at all. If indeed the services of Dr. Biswal who was also appointed on a temporary basis could have been regularized on the recommendation of the MC which was accepted by the University, it is not understood why the case of the Petitioner should be treated any differently. At the time when she applied for regularisation, there were permanent vacancies in the Department of English. The excuse of there being no vacancy was, as explained hereinbefore, factually incorrect. The other excuse of Respondent No. 2 being restructured could not have indefinitely postponed the decision to regularize the services of the Petitioner. Despite the MC's recommendation the post was not re-advertised. The ban of the UGC came only sometime in April 2004. Consequently, the denial of regularisation of the Petitioner's services was also discriminatory.

25. For the aforementioned reasons, this petition succeeds. A direction is issued to Respondent No. 2 to convene a meeting of its MC and consider the case of the Petitioner for being regularized in terms of the observations of the Supreme Court in para 44 in State of Karnataka v. Umadevi within a period of four weeks from today. The Petitioner's regularization without any benefit of arrears of pay or allowances will be from the date on which the first vacancy for a permanent post in the Department of English in Respondent No. 2 occurred after her appointment. This will also be the date for the purposes of her seniority and calculation of qualifying service for pension, if any. The MC will proceed on the basis that the Petitioner's initial appointment was properly made and that she continued as a temporary lecturer for over 15 years not on account of any interim order of a Court or Tribunal. Within a period of two weeks thereafter, the MC will forward the Petitioner's case to the EC for approval. The EC will take a decision on the said recommendation in accordance with law within a period of four weeks thereafter and convey it forthwith to Respondent No.2 with a copy to the Petitioner. The consequential orders will be issued by Respondent No.2 within a further period of two weeks."

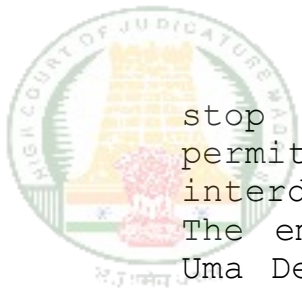
14. The learned Counsel for the petitioner also relied upon yet another judgment of Honourable Supreme Court in the case of **Sheo Narain Nagar and others vs State of Andhra Pradesh and another**,

<https://hccourts.org/cases>



reported in **(2018) 13 SCC 432**. The appellants before the Honourable Supreme Court were engaged on daily wage basis in 1993. Later, the appellants were appointed on contract basis in the year 1996. In 2006, the appellants were conferred the status of temporary employees with retrospective effect from 01.10.2002. However, their services were not regularised. Though the petition filed by the appellants before the High Court was dismissed, the Honourable Supreme Court allowed the appeal in the following lines:

"7. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new device of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to



stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

9. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the



arrears of pay also to be paid to the appellants within a period of three months from today.

15. The learned Counsel for the respondent relied upon the judgment of Honourable Supreme Court in the case of **State of Tamil Nadu and another vs A.Singamuthu**, reported in (2017) 4 SCC 113. The respondent before the Honourable Supreme Court was appointed as a part time Masalji on 01.04.1999 and continuously working as part time Masalji. The respondent completed ten years of service as part time Masalji on 31.03.1999. Vide G.O.Ms.No.22, Personnel and Administration Reforms, dated 28.02.2006, the State of Tamil Nadu directed that the service of full time daily wage employees working in all the departments, who have completed 10 years of service as on 01.01.2006, should be regularised by appointing them with time scale of pay. When there is no provision in the relevant rules for regularisation of service of temporarily appointed part time Masalji on completion of ten years of service, the Honourable Supreme Court considered the issue elaborately in the light of several precedent and held as follows:

"15. In *State of Rajasthan and Others Vs. Daya Lal and Others* (2011) 2 SCC 429, this Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and this Court clearly laid down that part-time employees are not entitled to seek regularisation as they do not work against any sanctioned posts. It was also held that part-time employees in government-run institutions can in no case claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Relevant excerpt from the said judgment is as under:

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to



the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

See: Secretary, State of Karnataka v. Uma Devi 2006 (4) SCC 1, M. Raja v. CEERI Educational Society, Pilani 2006 (12) SCC 636, S.C. Chandra v. State of Jharkhand 2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd v. Mehar Chand 2007 (15) SCC 680, and Official Liquidator v. Dayanand 2008 10 SCC 1." (emphasis added)

16. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O. Ms. No.22 dated 28.02.2006 and directed the appellants to grant regularisation of respondent's service from the date of completion of ten



years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O. Ms.No. 22 dated 28.02.2006, the services of employees working in various government departments on full-time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularised and not part-time Masalchis like the respondent herein. In G.O.Ms. No. 84 dated 18.06.2012, the Government made it clear that G.O.Ms. No. 22 dated 28.02.2006 is applicable only to full-time daily wagers and not to part-time daily wagers. Respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part-time Masalchi, cannot compare himself to full-time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under the G.O.Ms. No.22 dated 28.02.2006.

17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned senior counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/- (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned senior counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

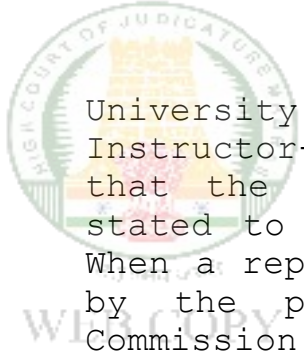
18. It is pertinent to note that even the regularisation of services of part-time employees vide G.O.(Rt.) No.505



Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A. 2)Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No. 22 P &AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside."

16.From the admitted facts, the question of regularisation does not arise for consideration, as the respondent has passed an order appointing the petitioner in 2012. The issue is whether the petitioner should be regularised in service with retrospective effect in view of the fact that the petitioner was absorbed and continuously working from 1998. From the facts, it is admitted that the the petitioner was originally appointed as Training Assistant in a project undertaken by the respondent in 1995. After the retrenchment of petitioner, there was a move to absorb the retrenched staff in regular vacancy in the respondent institution. It was pursuant to a decision of respondent, the petitioner was appointed as Instructor-cum-Lecturer Assistant in the Agriculture and Animal Husbandry. Though this appointment was stated to be on temporary basis for a period of six months and same is terminable on a month notice, it is not in dispute that the petitioner was continuing in service by periodical extension. It is also not in dispute that the post, in which the petitioner given appointment, is a permanent and sanctioned post. The salary of the petitioner was enhanced by order, dated 07.11.1999. The petitioner also submitted several representations for regularisation of his service with effect from the date of appointment. However, the respondent failed to proceed under the pretext that there was a ban imposed by the University Grant Commission and decided to maintain status-quo in the case of petitioner.

17.The learned Counsel for the petitioner relied upon several internal communications to show that the respondent was seriously considering the request of the petitioner for regularisation, pursuant to the direction of this Court in the earlier Writ Petition filed by the petitioner in W.P.(MD)No.4735 of 2006. As it was understood by the petitioner as well as the respondent, there was a ban to appoint non-teaching staff in the respondent



University by the University Grant Commission. Though the post of Instructor-cum-Lab Assistant was a sanctioned post, it is seen that the respondent found itself helpless in view of the ban stated to have been imposed by the University Grant Commission. When a representation was made to the University Grant Commission by the petitioner, a reply was given by University Grant Commission stating in unmistakable terms that the University Grant Commission has not imposed any ban on filling up non-teaching/teaching posts in central and deemed University under OBC category.

18.The learned Counsel for the petitioner filed a typed set of papers containing the communication of University Grant Commission in August 1999, which reads as follows:

"The Department of Expenditure, Ministry of Finance, has circulated an office Memorandum No.7(3)E/(Coord)/99 dated 5th August, 1999 with the direction that the following austerity measures shall be implemented with immediate effect by all the Institutes/Universities and the Colleges affiliated to it.

All these measures are MANDATORY and are required to be implemented COMPULSORILY, with immediate effect. The Vice Chancellors/Registrars will be held personally responsible for non-compliance of these measure in universities and Principals in case of Colleges.

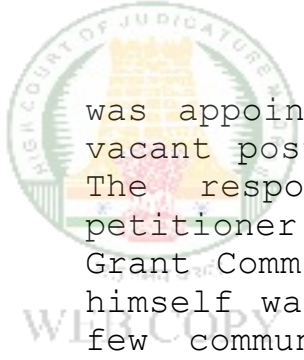
(1)Ban on creation of plan and non-plan posts.

The existing ban on creation of non-plan posts will continue and should be strictly in enforced. Any unavoidable proposals for the creation of plan posts including Group 'B', 'C' and 'D' posts shall continue to be referred to the University Grants Commission for approval.

(2)Ban on filling up of vacant posts.

Every University/College shall undertake a review of all the posts, which are lying vacant in the Universities and in the affiliated Colleges and subordinate offices, etc., in consultation with the University Grants Commission. Financial Advisers will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Universities etc., are available. TILL THE REVIEW IS COMPLETED, NO VACANT POSTS SHALL BE FILLED UP EXCEPT WITH THE APPROVAL OF THE UNIVERSITY GRANTS COMMISSION."

19.The said communication indicates that there was a ban on creation of plan and non plan posting. With regard to filling up of vacant posts, the University and Institutions were asked to undertook to review of all posts, which are lying vacant in University and in the affiliated colleges. When the petitioner

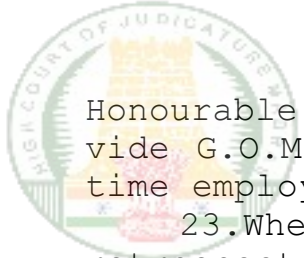


was appointed in 1998, there was no ban and the ban to fill up vacant posts by the communication in August 1999 is not absolute. The respondent cannot deny regularisation in the case of petitioner on the strength of the said communication of University Grant Commission in August-1999. It is true that the petitioner himself was under the impression that there was a ban based on a few communication. If the petitioner was appointed in 1998 against a permanent sanctioned post, the respondent is not justified to deny regularisation on account of a communication, which was in the year 1999.

20.From all the communications and the resolution of authorities of respondent, it is seen that the respondent has treated the petitioner as a regular employee and stated in unmistakable terms that the petitioner is entitled to regularisation, but for the so called ban presumed to be in force at the instance of University Grant Commission. The communication received from University Grant Commission in August-1999, cannot be cited as the only reason for denying regularisation to the petitioner, who was appointed long prior to the said communication of University Grant Commission. Therefore, this Court is of the view that the regularisation of the petitioner was delayed due to administrative reasons, because the respondent was under the bona fide impression that the petitioner cannot be regularised in view of the instructions received from University Grant Commission in August-1999.

21.The petitioner was appointed afresh in 2012, despite the fact that the Syndicate has approved the recommendations of a Special Committee to regularise petitioner in service. By giving fresh appointment order in 2012, the petitioner is deprived of the benefit under the pension scheme, promotion and other service benefits, though he had been working for the respondent in a permanent sanctioned post. The question to be decided is whether the petitioner is entitled to be regularised in service with effect from the date of original appointment in 1998. This Court is convinced that the appointment of petitioner is not by adopting any back door method.

22.All along, the petitioner is doing the service in a permanent post. Since the service rules were not framed till 2002, the petitioner's service condition cannot be defined with reference to the service rules. The petitioner's entitlement to get the service benefit for the period from 1998 to 2012 cannot be disregarded by treating the petitioner as a person, whose appointment was illegal. The judgment of Honourable Supreme Court in A.Singamuthu case (cited supra) was in respect of a person, who was appointed as a part time Masalji, who was held to be entitled to the benefit of Government Order prospectively. The decision of



Honourable Supreme Court was on the basis of a Government Order vide G.O.Ms.No.22, dated 28.02.2006 and its applicability to part time employees.

23. Whether the petitioner should be given appointment with retrospective effect has to be considered in the light of several facts and peculiar circumstances. As pointed by Delhi High Court and this Court in W.P.(MD)No.23479 of 2006 and batch, the petitioner's entitlement for regularisation cannot be denied on the basis of judgment of Honourable Supreme Court in Umadevi's case. From the whole facts, this Court is unable to find a valid reason for denying regularisation with reference to the petitioner, except the wrong option conceived on the basis of a communication received from University Grant Commission in August-1999. The authorities of University were always in favour of regularisation. In effect, it is only the administrative delay that was the reason why the petitioner was denied the benefit of service for the continuous period of more than 14 years. The inaction on the part of the respondent has caused the delay and put the petitioner in a precarious position. When the petitioner applied for regularisation, he was holding a permanent post, which was sanctioned. A decision was taken to regularise the service of the petitioner by the Special Committee for the said purpose. Hence, this Court is of the view that the denial of regularisation of petitioner's service ignoring his engagement over a period of 14 years is unlawful and arbitrary.

24. This Court disposed of the earlier Writ Petition on the basis of the counter affidavit filed by the respondent to the effect that the ban imposed by University Grant Commission is not lifted by then. Even earlier, it was reported that a resolution was passed by the Syndicate Committee in its meeting held on 27.04.2004 to continue the status-quo in the petitioner's case till the ban is lifted by University Grant Commission. Therefore, this Court is of the view that the respondent would have regularised the service of the petitioner even in 2004, but for the ban imposed by University Grant Commission, which was presumed to be in force. Since the University Grant Commission has clarified that there was no ban imposed by them in the communication received in August-1999, the petitioner cannot be denied the benefit of regularisation, who was appointed long before the said communication in a permanent post.

25. The unfortunate situation created by the respondent for the petitioner was due to a wrong impression, the respondent had in the light of a communication from University Grant Commission. The Syndicate of respondent in a proceedings, dated 20.04.2004, has stated that the University Grant Commission has informed by a letter, dated 11.02.2004 that there was a ban to fill up non-teaching posts and to maintain status-quo in the case of



petitioner till a decision is taken after a ban lifted by University Grant Commission. It is unfortunate to notice that the service of the petitioner was extended periodically. Therefore, this Court is of the view that the petitioner is entitled to be regularised at least with effect from the date of communication issued by the respondent, ie., on 20.04.2004, by which, the respondent passed a resolution of the Syndicate to maintain status-quo in the case of petitioner for the reason that the Syndicate cannot consider the issue regarding regularisation in view of the ban.

26. For all the above reasons, this Court is of the view that the petitioner is entitled to succeed. However, the respondent is directed to regularise the service of the petitioner with effect from 20.04.2004, when the respondent has informed the petitioner about their inability to regularise the service of the petitioner due to the ban stated to have been imposed by University Grant Commission. The petitioner is entitled to all other service and monetary benefits. The respondent shall pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order and disburse the monetary benefits within a period of six weeks from the date of order regularising the service of the petitioner with effect from 20.04.2004. The Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

cmr/mbi

To

The Registrar,
Gandhigram Deemed University,
Gandhigram Rural Institute,
Gandhigram, Dindigul District.

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-33500[F] dated 01/11/2021)

WP (MD) No.15410 of 2012
01.11.2021

RK(06/12/2021) 23P 3C