



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.10656 of 2021

and

W.M.P(MD)Nos.8302 & 8303 of 2021

P.Anandharaj

... Petitioner

Vs.

The Registrar,
Manonmaniam Sundaranar University,
Abishekpatti,
Tirunelveli District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the respondent, dated 11.06.2021 in Ref.MSU/R/Estt (Admn)/NMR/Reply/2021 and quash the same as null and void and consequently direct the respondent to regularize and absorb the petitioner to the post of Junior Assistant from the date of his appointment in the respondent University and consequently direct the respondent to provide all the service benefits to the petitioner from the date of his appointment by considering the representation, dated 02.03.2021.

For Petitioner : Mr.J.Thomas Raja Durai

ORDER

The petitioner has filed the present writ petition to quash the impugned order of the respondent, dated 11.06.2021 in Ref.MSU/R/Estt (Admn)/NMR/Reply/2021 as null and void and consequently direct the respondent to regularize and absorb the petitioner to the post of Junior Assistant from the date of his appointment in the respondent University and consequently direct the respondent to provide all the service benefits to the petitioner from the date of his appointment by considering the representation, dated 02.03.2021.

2. The learned counsel appearing for the petitioner submitted that the petitioner has possessed B.Com., and Bachelor of Library and Information Science. He had completed Typewriting higher in Tamil and English and Office automation course in Computer. He registered his qualification with the District Employment Exchange from 04.10.2004. On coming to know the recruitment in the respondent University through the Tamil Daily 'Dinamalar', dated 06.07.2008, the petitioner applied for the post of Library Attendant. The respondent after conducting an interview and



verifying certificates of the petitioner, placed him as skilled NMR on 10.09.2009 in the respondent University for daily wages. By order, dated 07.01.2015, the petitioner was brought under consolidated pay from 10.09.2014. The petitioner made several representations to the respondent to regularize his service in the post of Junior Assistant. While so, the respondent, vide Memo No.MSU/R/Estt/Admn/NMR/18/2018, dated 28.08.2018, disengaged the petitioner from the service stating that the petitioner did not possess the statutory qualification as mandated by the statutes of the University and the petitioner is a backdoor appointee in the respondent University. The petitioner gave a representation, dated 29.08.2018, requesting the University to permit him to continue to work as temporary contractual employee in the University. The respondent did not reinstate the petitioner. While so, considering the experience of the petitioner, the respondent engaged the petitioner from 15.02.2019 and again disengaged the petitioner on 14.05.2019.

3. The learned counsel appearing for the petitioner submitted that the petitioner was reinstated as skilled NMR in the respondent University again on 17.02.2021. The petitioner gave representation, 02.03.2021 to regularize his service as Junior Assistant. The said representation was not considered. Hence, the petitioner filed a writ petition in W.P(MD)No.6487 of 2021. This Court, by order, dated 23.03.2021, directed the respondent to consider the representation of the petitioner, within a period of three months from the date of receipt of a copy of that order. The respondent, by the impugned order, dated 11.06.2021, rejected the representation of the petitioner. Therefore, the petitioner has come out with the present writ petition.

4. The learned counsel appearing for the petitioner further submitted that the petitioner had worked continuously for 9 years in the respondent University. The reasons given by the respondent, in the year 2018, for disengaging the petitioner, are contrary to his educational qualification. The respondent passed the impugned order mechanically without application of mind and rejected the representation of the petitioner, as if appointment of the petitioner was not done following the Constitutional Mandate. At present, the respondent University called for appointment of 52 posts of Junior Assistant on 31.07.2018, out of which, 8 posts are specified for SC community. Till then, the posts of Junior Assistant were not filled up by the respondent University. The impugned order of the respondent is not maintainable and prayed for setting aside the order of the respondent. The learned counsel appearing for the petitioner relied on the Judgment of the Division Bench of this Court, dated 29.04.2014 made in W.A(MD)Nos.351, 911 & 908 of 2012 [The Registrar, Manonmaniam Sundaranar University, Abishekapatti, Tirunelveli vs. S.Thendral and 19 others]. The relevant paragraph of the said judgment reads as under:



"19. The reliance placed by the learned Senior Counsel for the University upon the decision of the Constitution Bench of the Supreme Court in **Uma Devi**, cannot be applied *stricto sensu*, to cases of this nature. It is for the simple reason that Courts will have to distinguish between the appointments made through back door methods and appointments made by following the rigorous process of selection. The principles that would apply to back door appointments cannot be simply transported to the cases where a process of selection is strictly followed. "

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. From the materials on record, it is seen that the petitioner was engaged as skilled NMR on 10.09.2009 and he was working as Library Attendant. On 28.08.2018 he was disengaged on the ground that the petitioner did not possess statutory qualification as mandated by the statutes of the University as well as he is an improper and backdoor appointee in the respondent University. On being disengaged, the petitioner gave representation, dated 29.08.2018 to the respondent for permitting him to continue to work as temporary contractual employee. He was not engaged. The petitioner has not challenged the said order of disengagement. Subsequently, the petitioner was engaged by the University from 15.02.2019 to 14.05.2019 on contract basis. Thereafter, he was not engaged by the University. The petitioner also did not seek for any continuous employment. Again, the petitioner was engaged from 17.02.2021. At this stage, the petitioner gave representation, dated 02.03.2021 and filed writ petition in W.P(MD)No.6487 of 2021. In compliance of the order of this Court, dated 23.03.2021, in the said writ petition, the respondent passed impugned order rejecting the request of the petitioner for regularization. According to the respondent, the petitioner was engaged as skilled NMR on temporary basis in National Service Scheme cell of the University purely on contingent basis under the Scheme funds and not under the University funds. According to the respondent, the engagement of the petitioner is purely temporary and the very scheme is contingent on the fund and Scheme period and would automatically come to an end on the expiry of the Scheme. It is further seen that the respondent has also made an advertisement to the post of Junior Assistant. The petitioner was also participated in the selection, but, he was not successful. The petitioner has not denied the facts in the affidavit filed in support of the writ petition that now, he was engaged on temporary basis in National Service Scheme cell of the University. He also not denied the facts that he participated in the selection for appointment to the post of Junior Assistant and he was not successful. From the relief sought for in the writ



petition, it is seen that the petitioner is seeking absorption and regularisation for the post of Junior Assistant from the date of appointment in the respondent University.

7. From the averments in the affidavit filed in support of the writ petition, it is seen that the petitioner was engaged only as skilled NMR and subsequently, he was disengaged from the said post. It is not the case of the petitioner in his affidavit that he worked as Junior Assistant at any point of time. In any event, the petitioner is engaged only as skilled NMR on temporary basis for a particular scheme. According to the respondent, on completion of period and the scheme, the petitioner will be disengaged.

8. For the above reason, the judgment relied on by the learned counsel appearing for the petitioner does not advance the case of the petitioner and the petitioner is not entitled for the relief sought for in the writ petition. Accordingly, the writ petition is liable to be dismissed and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

W.P. (MD)No.10656 of 2021

28.06.2021

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KMK(CO)

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