



WEB COPY

W.P.(MD)No.20133 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P. (MD)No.20133 of 2021

and

W.M.P. (MD)Nos.16843 & 16844 of 2021

G.Kannan

: Petitioner

Vs.

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

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the respondent dated 29.10.2021 in Ref"MSU/R/Estt(Admn)/NMR-Dis/Repl/2021 and to quash the same as null and void and consequently, directing the respondent to regularize and absorb the petitioner to the post of Office Assistant from the date of his appointment in the respondent University and further directing the respondent to provide all the service benefits to the petitioner from the date of his appointment.

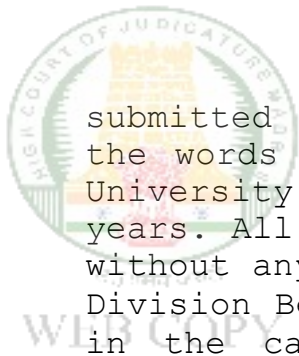
For Petitioner : Mr.J.Thomas Raja Durai
For Respondent : Mr.Mahaboob Athiff

ORDER

This writ petition is filed by the petitioner as against the order of the respondent dated 29.10.2021 in Ref:MSU/R/Estt(Admn)/NMR-Dis/Repl/2021, in and by which, the petitioner was disengaged from service. The petitioner has also sought for a direction to regularize him as Office Assistant from the date of his appointment in the respondent University.

2.According to the petitioner, he has been appointed as Attendant in the respondent University on 08.12.2008 and after completion of five years, he was placed under the consolidated pay by the respondent University by order dated 22.01.2014. He has been continuously served in the University for the past twelve years sincerely and without any bad remarks. He has also filed a writ petition before this Court in W.P.(MD)No.4061 of 2021 seeking regularization and the same is pending. For having filed the said writ petition, he was disengaged by the impugned order dated 29.10.2021.

3.Mr.J.Thomas Raja Durai, learned Counsel for the petitioner
<https://hcservices.ecourts.gov.in/hcservices/>



submitted that the petitioner is aged about 41 years and believing the words of the respondent, he has joined duty in the respondent University and has also served in the University for the past twelve years. All of a sudden, the respondent has disengaged the petitioner without any reason. He has also relied upon the judgment passed by a Division Bench of this Court in **W.A. (MD) Nos. 351, 911 & 908 of 2012**, in the case of **Registrar, Manonmaniam Sundaranar University v. Thendral and Others**, wherein, this Court has held as follows:

"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."

4. Mr. Mahaboob Athiff, learned Standing Counsel has taken notice on behalf of the respondent University and on instructions, submitted that the petitioner has been engaged for a limited period for a programme sponsored by the University Grants Commission. On the completion of the programme, the petitioner is supposed to be disengaged. However, considering his services, he has been utilized further in some other service. He has not been appointed on the regular basis and therefore, he is not entitled for any regularization. The learned Standing Counsel has also relied upon the decision of the Hon'ble Supreme Court in **Secretary, State of Karnataka v. Uma Devi**, reported in **2006 (4) SCC 1** and the order passed by this Court in **W.P. (MD) No. 2368 of 2012, dated 02.03.2018**.

5. This Court paid it's anxious consideration to the rival submissions and also perused the materials available on record.

6. The petitioner has been appointed as an NMR pursuant to the paper publication dated 06.07.2008. The respondent University has invited applications for filling up of certain posts in the UGC sponsored Centre for the Study of Social Exclusion and Inclusive Policy. No appointment order has been issued in the year 2008, however, an order was passed on 22.01.2014, fixing the petitioner on consolidated pay with effect from 08.12.2013 as an unskilled NMR. The petitioner has filed a writ petition for regularization and pending the writ petition, the respondent University has taken a decision to disengage him.

7. Since the petitioner has been accommodated under a scheme sponsored by the University Grants Commission, this Court is of the view that the petitioner cannot claim regularization as a matter of right. However, considering the period of service rendered by the



petitioner in the University and the fact that he has been disengaged from service all of a sudden, this Court suggested the learned Standing Counsel for the respondent University to give some breathing time to the petitioner enabling him to find out some other suitable job. Learned Standing Counsel has also conveyed the same to the respondent University and on instructions, assured that the petitioner will be accommodated for a further period of four months and that the petitioner has to find a suitable job in the meantime.

8. Recording the aforesaid submission made by the learned Counsel for the respondent University, this writ petition stands disposed of.

9. At this juncture, learned Counsel for the petitioner, by relying upon the order passed by this Court in **W.P.No.569 of 2021, dated 25.03.2021 [P.Gopi v. Registrar, Pondicherry University and another]**, prayed this Court for a liberty to approach the Labour Court under the Industrial Disputes Act.

10. In the aforesaid decision in **P.Gopi's** case, this Court has held as follows:

"14. ...the Respondent University is an "Industry" in terms of the Industrial Disputes Act, 1947, moreso, in the light of the judgment of the Apex Court in the case of A.Sundarambal vs. Government of Goa, Daman and Diu reported in 1988 (4) SCC 442. The Apex Court has held that, even though an Educational Institution has to be treated as an "Industry", Teachers in an Educational Institution cannot be considered as "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. In the case on hand, the petitioner is not a 'Teacher', but a 'Mess Manager-cum-Caretaker' covered under the principles of the Industrial Disputes Act, 1947."

11. Admittedly, in the case on hand, the petitioner is not a Teacher, but an unskilled NMR on consolidated pay. Therefore, it is always open to him to approach the Labour Court under the Industrial Disputes Act, if he is otherwise eligible and if he is so advised.

12. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)



TO

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

W.P. (MD) No.20133 of 2021
10.11.2021

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