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Writ Appeal Nos.1063, 1019, 1028 & 1033 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM :

**THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

Writ Appeal Nos.1063, 1019, 1028 and 1033 of 2022

M.Ravichandran	... Appellant in W.A.No.1063 of 2022
N.Sivaraman	... Appellant in W.A.No.1019 of 2022
K.Rajalakshmi	... Appellant in W.A.No.1028 of 2022
L.Ragothaman	... Appellant in W.A.No.1033 of 2022

VS.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Department of Higher Education,
Fort St. George,
Chennai.
 2. The Commissioner,
Higher Education,
Directorate of Technical Education,
Sardar Patel Road,
Guindy – 600 025.
 3. The Principal,
No.128, Government Polytechnic College,
Arakandanallur,
Villupuram District.
- ... Respondents in all Writ Appeals



Writ Appeal Nos.1063, 1019, 1028 & 1033 of 2022

Writ Appeals filed under Clause 15 of Letters Patent against the common order dated **29.04.2019** passed by this Court in **W.P.Nos.16589, 16604, 16612 and 16590 of 2017.**

For Appellant in all Writ Appeals : Mr.K.Raja
for Mr.M.Kaviveerappan

For Respondents in all Writ Appeals : Mr.Abishek Murthy,
Government Advocate

COMMON JUDGMENT

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Aggrieved by the common order dated 29.04.2019 passed by the learned Single Judge in W.P.Nos.16589, 16604, 16612 and 16590 of 2017, in refusing to regularize their services on the ground that, the norms prescribed for regularization have not been followed, a few of the Writ Petitioners have come up with the above Writ Appeals.

2. Before the learned Single Judge, the Writ Petitioners contended that, their services are to be regularized in the sanctioned post in the regular time scale of pay and that, they are eligible for regularization and permanent absorption, as they are continuously working as part-time Lecturers/Guest Lecturers on hourly basis in the Government Polytechnic College.



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3. While so, it was the contention of the Respondent before the learned Single Judge that, the Writ Petitioners were engaged as part-time Lecturers on hourly basis and at no point of time, appointment orders were issued to them by the competent Authority and hence, the benefit of regularization or permanent absorption cannot be granted to them.

4. After hearing the arguments advanced on either side, the learned Single Judge dismissed the Writ Petitions by holding that, the benefit of regularization or permanent absorption cannot be granted to the Writ Petitioners in violation of Recruitment Rules in force. For better appreciation, relevant portion of the common order passed by the learned Single Judge is extracted hereunder:

“11. This being the legal principles consistently followed by the constitutional courts, the benefit of regularization or permanent absorption cannot be granted to these Writ Petitioners in violation of Recruitment Rules in force. However, there is no bar for the continuance of the Writ Petitioners as the Lecturers on hourly basis, whenever the need arises in the Government Polytechnic Colleges such services rendered by the Writ Petitioners and it cannot be the basis for the grant of regularization nor the Writ Petitioners can claim regularization or permanent absorption based on the length of services rendered by them as part time/guest lecturers on hourly basis.



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12. In view of these principles, this Court has no hesitation in coming to the conclusion that the relief sought for to appoint these Writ Petitioners in sanctioned posts as Lecturers cannot be considered, as the appointments are to be made strictly in accordance with the Recruitment Rules and by providing equal opportunity to all the candidates who all are aspiring to secure public employment through open competitive process.

13. This being the factum, the Writ Petitioners has not established any acceptable grounds to consider the case of the Writ Petitioners. Accordingly, Writ Petitions stand dismissed. ...”

5. Learned counsel for the Appellants contended that, when selection of the Appellants is made by the Screening Committee and when the Appellants have been extracted work for more than a decade, trying to divest their duties after a decade without regularization of service is illegal and that, appointments of the Appellants/Writ Petitioners may, at the most be considered as 'irregular' and not 'illegal'. Learned counsel went on to contend that, even though, no interim order was granted, the Respondent continued the services of the Writ Petitioners till the year 2019 and an advertisement was given in the year 2019 for the purpose of selecting fresh candidates as Lecturers by following proper norms/procedures in terms of UGC/AICTE Guidelines.



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6. On the other hand, learned Government Advocate appearing for the Respondents submitted that, in the light of G.O.(D) No.290, dated 04.11.2019, it has been made clear that, appointment of faculty is purely temporary and that, once necessity is ceased, they will be terminated from service by the Government. He further submitted that, the process of selection has already been completed and that, Writ Petitioners have also participated in the selection and cut-off marks have to be determined and in case, results are announced, Writ Petitioners may or may not get selected. It is his further submission that, persons who have been employed like that of the Writ Petitioners, have been allowed to participate in the selection process pursuant to the Notification dated 27.11.2019, and that, Writ Petitioners and other similarly placed have been given weightage marks for their experience and service, provided, they have put in minimum years of service required as per the said Notification. If they possess more qualification, additional marks are also given. That being the case, Writ Petitioners cannot seek regularization as prayed for in the Writ Petitions and that, Writ Petitions were rightly rejected by the learned Single Judge.



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7. In response, learned counsel for the Appellants vehemently contended that, the Apex Court decision in the case of **Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy, (2014) 4 SCC 769**, relied on by the learned Single Judge, would make it clear that, Writ Petitioners are entitled to regularization and that, the learned Single Judge has brushed aside the number of years of service rendered by the Writ Petitioners. It is his further contention that, though the Writ Petitioners were allowed to work as part-time Lecturers, they were discharging work as full time Lecturers and depriving them regularization of service after a decade, is unfair.

8. Learned counsel for the Appellants drew the attention of this Court to the decision rendered by one of us in **W.P.Nos.14782 and 19961 of 2020, dated 03.02.2021 (S.Sivakumar vs. The Principal Secretary to Government, Chennai)**, wherein, this Court has considered and directed regularization of System Analysts in the Transport Department who were engaged through contractors, as, allowing the employees to work for decades and thereafter depriving them permanent status is unfair labour practice and nonest in the eye of law and that, it amounts to victimization.



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9. Learned counsel for the Appellants also drew the attention of this Court to the decision rendered by the Apex Court in the case of **State of Karnataka vs. B.Suvarna Malini (CDJ 2001 SC 006)**, wherein, it has been held as under:

“9. ... Equality before law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though, they are the same. It of-course means denial of any special privilege by reason of birth, creed or the like. The legislature as well as the executive government, while dealing with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain any particular object and to achieve that object, it must have the power of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per se amount to discrimination. When the Absorption Rules are examined from the aforesaid stand point and when we consider the circumstances under which the said rules were made to solve a human problem and that the rules made were put to objection to the general public and even the Public Service Commission was consulted and finally was before the State Legislature to have their concurrence, we are of the considered opinion that the High Court committed error in striking down the rules on the ground that it is discriminatory. When this Court deprecates the regularisation and absorption, when it comes to the conclusion that such



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regularisation and absorption has become a common method of allowing back door entries and then regularising such entry, it is not that in every case, the Court would be justified in striking down the process of absorption or regularisation, more so when such absorption has been made as a legislative measure and that also as a one time measure, and at the same time insisting upon the essential qualifications to be duly complied with, by the persons intended to be absorbed on regular basis. In the aforesaid premises, we have no hesitation to come to the conclusion that the tribunal as well as the High Court committed serious error in striking down the impugned absorption rules. We, therefore, set aside the judgment of the Tribunal and the High Court and allow these appeals.”

10. It is further submitted by the learned counsel for the Appellants that, even the Constitution Bench judgment in the case of **Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1**, supports the case of the Appellants and that, having rendered more than a decade's service, depriving permanent status to the Appellants, is illegal. He reiterated that, at the most, Appellants' entry into service can be termed only as 'irregular' and not 'illegal'.

11. Heard the learned counsel on either side and perused the material documents available on record.



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12. It is not in dispute that, Appellants/Writ Petitioners have been employed as part-time Lecturers through Screening Committee. Admittedly, Respondent has recruited regular teaching staff. It is no doubt true that, the Government has given a go-bye to **Umadevi's** case (supra) and continued the employment of Appellants/Writ Petitioners on temporary basis with break in service during summer vacation.

13. It appears that the break in service of the Appellants is an artificial break, as, no course will be conducted in Colleges during summer vacation. Now, we are not going to render a finding as to whether the Appellants should be regularized or not, as admittedly, selection procedures prescribed in G.O.(D) No.290, dated 04.11.2019 have not been followed. However, having extracted work from the Appellants/Writ Petitioners for more than a decade, they shall be given preference over others in the selection process which has already been concluded and that, after cut-off marks, in case any of the Writ Petitioners or all the Writ Petitioners have come within the cut-off date, they shall be given first preference before appointing others, based on the Rules and Reservations.



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14. Having extracted work from the Appellants for more than a decade, normally, this Court would have granted relief to the Writ Petitioners, had they not been Lecturers. It also needs to be borne in mind that, the role of a Teacher is very crucial in moulding children and youth, who are the future of this nation. Importance and relevance of ensuring appointment of qualified and sincere Teachers cannot be over-emphasized.

15. The decision relied on by the learned counsel for the Appellants in the case of **State of Karnataka vs. B.Suvarna Malini (CDJ 2001 SC 006)** may not be applicable to the case on hand, as, in that case, the Court has deprecated the practice of regularization and absorption apart from the fact that, equality before Law does not mean that, things which are different shall be treated as though, they are the same. That apart, in **Suvarna Malini's** case (supra), there were absorption Rules which are absent in this case. In G.O.Ms.No.290, dated 04.11.2019 referred to by the Respondent, it has been clearly stated that, appointment of faculty is purely on temporary basis. However, under different nomenclatures, Appellants/Writ Petitioners have continued in service for a decade.



16. It is also seen that, the Apex Court in **Govindasamy's** case (supra) has categorically held that, the Court cannot give direction for regularization/absorption unless the employee claiming regularization has been appointed in pursuance of a regular recruitment in accordance with law with relevant Rules in an open competent process against sanctioned vacant posts.

17. Though the Respondent has vehemently opposed that, apart from preference of marks, no other preference shall be given to employees, moreso, in the light of the observations of the Apex Court, we are not inclined to accept the same, as, Appellants/Writ Petitioners have been working as temporary Lecturers in a sanctioned post. Hence, we are of the view that, first preference shall be given to these employees before accommodating other persons, however, subject to the cut-off marks within within the Rules and Regulations. Preference would mean that, when both are equally placed, preference shall be given to other persons; however, they are entitled to age relaxation.

18. Hence, we are not inclined to interfere with the order of the learned Single Judge and while confirming the order of the learned Single



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Judge, we are of the view that, certain modifications as mentioned supra, need to be considered and adhered to by the Respondent.

This Writ Appeal is ordered on the above terms. No costs.

Consequently, connected C.M.P.Nos.6669, 6556, 6536 and 6508 of 2022 are closed.

[S.V.N.,J.] [M.S.Q.,J.]
20.04.2022

Index : Yes/No
Speaking Order : Yes/No

(aeb)

To:

1. The Secretary,
Government of Tamil Nadu,
Department of Higher Education,
Fort St. George, Chennai.
2. The Commissioner,
Higher Education,
Directorate of Technical Education,
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3. The Principal,
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**S.VAIDYANATHAN,J.
AND
MOHAMMED SHAFFIQ,J.**

(aeb)

Common Judgment in
**Writ Appeal Nos.1063, 1019, 1028
and 1033 of 2022**

20.04.2022