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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.7789 of 2021
and
W.M.P.No.8318 of 2021

S.Shakila

.. Petitioner

vs

1. The Registrar General,
High Court, Chennai 600 104.

2. The Principal Secretary to Government,
Home (Courts) Department,
Fort St. George, Chennai 600 009.

3. The Principal District Judge,
Coimbatore District, Coimbatore.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent in A.No.40/2021 dated ..02.2021 and quash the same and direct the respondents to reinstate the Petitioner in service and accommodate her in a regular post in accordance with the orders passed by this Court in W.P.Nos.9710 & 10189 of 2009 dated 10.06.2009, W.P.Nos.30329 to 30340 of 2017 dated 27.11.2017 and W.P.No.14287 of 2018 dated 7.12.2018 and grant her all consequential benefits.

For the Petitioner : Mr.P.Rajendran

For the Respondents : Mr.C.T.Mohan
for RR 1 and 3

: Mr.P.Muthukumar
State G.P. for R-2



ORDER

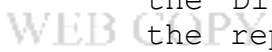
(Order of the Court was made by
the Hon'ble Acting Chief Justice)

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By this writ petition, a challenge is made to the order of termination dated 10.02.2021. The staff members appointed as typists on temporary basis under Rule 16(a)(i) of the Tamil Nadu Judicial Ministerial Service Rules, were ousted from service for want of vacancy with effect from 15.02.2021.

2. The learned counsel appearing for the petitioner submits that in the earlier litigation preferred by the petitioner, the case discussed by this Court threshold was for issuance of direction for consideration of the candidature of the petitioner for regularisation. It is in the light of the fact that a representation was given by the petitioner to seek regularisation of her service having completed more than seven years of service after temporary appointment. The Division Bench of this court had considered the nature of appointment and relevant other aspects before giving the direction for consideration of the representation for regularisation of service. But ignoring the aforesaid and to nullify the effect of the said judgment, the order of termination has been issued. It is ignoring the fact that the petitioner was otherwise required for the post of typist and her name was sponsored by the employment exchange, and thus her services could not have been terminated in the manner it has been done by the respondents. It is more so when the vacant post of the typist exists. The prayer is accordingly to set aside the order of termination with a direction to the respondents to reinstate the petitioner in service.

3. The writ petition has been opposed by the learned counsel appearing for the High Court. It is submitted that no vacant post of typist exists on which the petitioner can continue. It is looking into the fact that after the process of regular selection for the post in question, the candidates equivalent to the post were selected for appointment. They were given appointment and as a consequence of which, the petitioner was required to make a room for the regular selected candidates. It is more so when the petitioner did not even participate in the regular selection and thereby, if the prayer made in this writ petition is granted, it is nothing but endorsing a candidate who has not even participated in the regular selection and making the process of recruitment to be of no significance. The consequence of interference in the order of termination would be nothing but to even compromise the merit of other candidates at the cost of administration because the petitioner



7. The petitioner was appointed on the post of typist on temporary basis in the year 2011. She continued to be in service and thereupon, preferred a writ petition to seek appointment on any alternate post. However, while deciding the writ petition preferred by the petitioner herself, a direction for consideration of the representation was given mainly relying on the judgment in the case of S.Padmanabhan (supra). The learned counsel for the High Court is justified in saying that subsequent to the aforesaid judgment in the case of S.Padmanabhan (supra), the Apex Court decided the issue in Umadevi's case in the year 2006, but was not referred to by the learned counsel appearing for the parties in the said case



despite the fact that the practice to make appointment on temporary basis instead on regular basis has been deprecated in the judgment supra. The regularisation of service of those who had completed 10 years was given only as a one time arrangement. Para 53 of the judgment in the case of Umadevi is reproduced hereunder for ready reference:

" 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), 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."

8. The judgment in the case of Umadevi is very specific and does not permit regularisation of service to those who may have completed even 10 years of service subsequent to the judgment aforesaid, being a one time arrangement evolved therein. The aforesaid is only one part of the issue otherwise, the petitioner is the one who did not even participate in the regular selection despite an opportunity. Now that the selected candidates are available and are given appointments. In view of the above, the petitioner is not entitled to continue in service rather her services are rightly terminated by the impugned order. If an interference in the order of termination is made,



it would be nothing but to give premium to the petitioner who did not even face the regular selection despite an opportunity. The regular selection cannot be substituted by a temporary appointment and thereupon regularisation, otherwise the direction given by the Apex court in the case of Umadevi (supra) would remain of no impact. In the facts and circumstances of the case, we do not find any reason to interfere in the order of termination. It is not a case where the services of the petitioner have been terminated by casting a stigma but a simpliciter for the reason of non-availability of post. It is submitted by the learned counsel for the respondents that the selected candidates by the regular process are available and thus, the petitioner has to make room for them and accordingly, the termination of service cannot be interfered with.

9. Further, the appointment and the age of the petitioner, if seen, we find that the petitioner is now 50 years old in the year 2021 and thus, she must have been at the age of 40 in the year 2011 when she was appointed. She had thus admittedly crossed the maximum age for appointment even in the year 2011, yet was given appointment on temporary basis de hors the Rules. Her temporary appointment was otherwise not legal and otherwise also cannot be sustained now after the termination of service for the reasons indicated by the respondents.

The writ petition is, thus, found to be devoid of merit and is dismissed accordingly. No costs. Consequently, W.M.P.No.8318 of 2021 is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sra

To:

1. The Registrar General,
High Court,
Chennai 600 104.
2. The Principal Secretary to Government,
Home (Courts) Department,
Fort St. George,
Chennai 600 009.



3. The Principal District Judge,
Coimbatore District,
Coimbatore.

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+1cc to Mr.P.Rajendran, Advocate, S.R.No.2325

+1cc to the Government Pleader, High Court, Madras, S.R.No.2234

W.P.No.7789 of 2021

EV(CO)
SU(20/01/2022)