

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.06.2022

DELIVERED ON: 21.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.9300 of 2021

S.Mageswari

..Petitioner

vs.

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Tourism and Culture Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Commissioner / Director of Art and Culture,
Egmore, Chennai-600 008.
3. The Principal,
Government Architecture and Sculpture College,
Mamallapuram, Kancheepuram District.
- 4.The Principal,
Tamil Nadu Government Music College,
D.G.S. Dinakaran Salai,
Chennai-600 028.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relevant to the order in Proceedings Order No.6341/A1/2017 dated 26.09.2020 passed by the second respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby direct the respondents to regularize the services of the petitioner.

For Petitioner : Mr.K.Ravi

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader

ORDER

The petitioner, challenging the impugned order of the second respondent dated 26.09.2020, in and by which his claim for regularization has been rejected, has filed the present writ petition.

2. The case of the petitioner is that she has qualified in M.A.(Music) in May 2007, Diploma in Bharathanatiam in May 2017, Diploma in Music Teacher Training in May 2008 and passed M.Phil., (Fine Arts) in November, 2009. One Thiru.B.Srinivasan, who was working as an Instructor (Music and Dance) in the third respondent College retired in the year 2010 and as the said post became vacant, the third respondent invited application for Lecturer (Music and Dance) and the petitioner applied for the said post and joined as Part Time Lecturer on contract basis on 27.06.2011. The petitioner continued with the said job till 2015 with some artificial break. The petitioner made several representations to the respondents to regularize her service as full time Lecturer (Music and Dance) according to her qualification.

3. The representation of the petitioner dated 14.07.2015 was kept pending without any action and therefore, she has filed W.P.No.22833 of 2015 seeking for a Mandamus to consider her representation. During the pendency of the said writ petition, the petitioner was transferred from the third respondent College to Tamil Nadu Music College, Adyar, Chennai-600 028, as Lecturer in the same department on a monthly contract basis and she joined in the said post during September, 2015. The petitioner served in the said post till 2019 without being regularized. According to the petitioner, the second respondent had regularized many Part Time Lecturers from the date of their initial appointment, vide G.O.Ms.No.42, Tourism and Culture Department dated 28.03.2017 and G.O.Ms.No.112, Tourism and Culture Department dated 03.08.2011 and the same analogy applies to the petitioner, but the respondents 1 and 2 have not regularized the services of the petitioner inspite of several requests and representations.

4. The petitioner has filed another writ petition in W.P.No.30074 of 2017 and the same was dismissed on 23.11.2017 on the ground that she did not possess NET/SLET/SET, which is a compulsory requirement for appointment as Lecturer. The earlier writ petition filed by the petitioner in W.P.No.22833 of 2015 came up for hearing on 02.01.2020 and the same was disposed of by this Court with a direction to consider the petitioner's representation dated 14.07.2015 as expeditiously as possible and in compliance of the same, the present impugned order dated 26.09.2020 came to be passed by the second respondent, rejecting

the petitioner's request for regularization. Challenging the same, the petitioner has filed the present writ petition.

5.The second respondent has filed a counter affidavit wherein it has been stated as follows:

(i) As per the earlier orders of this Court, the petitioner was requested to appear in person with relevant documents on 08.09.2020, wherein she did not give proper reply to the questions raised and the second respondent, after scrutinizing the representations dated 14.07.2015 and 08.09.2020, has passed the impugned order dated 26.09.2020 rejecting her request on the reasoning that she was appointed as Part Time Teacher to handle 2 periods in a week and totally 8 classes in a month and therefore, her claim cannot be accepted due to the reason that the petitioner was appointed only on temporary consolidated basis only.

(ii) The question of shifting the petitioner by the respondents does not arise, in as much as the petitioner was working only on consolidated basis in the third respondent college as Part Time Instructor and not as Lecturer as contended by the petitioner.

(iii) The third respondent college and fourth respondent college are entirely different from one another with regard to syllabus of teaching and therefore, there is no need to shift her as Part Time Instructor from the third respondent college to fourth respondent college.

(iv) Though the petitioner has placed heavy reliance on G.O.(Ms.)No.42, Tourism and Culture Department dated 28.03.2007 with regard to grant of regularization of contract based Instructors from the date of their initial appointment, the above instructors were appointed on contract basis, they handled full day classes and were engaged for more than 5 hours per day and they handled sections as if they were regular teachers with full responsibility and whereas the petitioner was not sponsored from Employment Exchange and she was asked to handle 2 to 3 classes per week. Therefore, taking part-time classes merely for 2 to 3 classes in a week will not tantamount to responsibilities of a regular contract lecturers, who takes minimum 5 hours a day and hence, the petitioner cannot claim parity with those Instructors, whose services were regularized vide G.O. (Ms.)No.42, Tourism and Culture Development dated

28.03.2007.

(v) The temporary committee formed in the Tamil Nadu Government Music College under the fourth respondent to select the Lecturers on consolidated basis for the academic year 2019-2020 on 24.07.2019 has given only 115 marks (lowest mark) to the petitioner and hence, the petitioner was not appointed for the academic year 2019-2020.

6.Mr.M.Ravi, learned counsel for the petitioner submits that the petitioner was working from 14.07.2011 to 24.04.2015 with the third respondent college which comes under the control of the second respondent and thereafter she was shifted to the fourth respondent college, wherein she worked from July 2015 to 2019 and the fourth respondent college also comes under the control of the second respondent and hence, the petitioner worked from 14.07.2011 to 2019 under those colleges coming under the second respondent. The learned counsel for the petitioner further submits that one Parimala, who was working as Part-Time Lecturer and appointed through the proceedings of the third respondent, got regularized by passing G.O.(Ms.)No.112, Tourism and Culture Department dated 03.08.2011 and therefore, the petitioner, who is similarly placed, is also entitled for similar relief. The learned counsel for the petitioner relied on the following judgments, in support of his submissions:

- (i) Order dated 10.03.2003 made in O.A.Nos.8941, 8990 & 8990 of 1998 -Tamil Nadu Administrative Tribunal, Chennai.
- (ii) Manish Gupta & another v. President, Jan Bhagidari Samiti and Others [Civil Appeal Nos.3084 - 3088 of 2022 dated 21.04.2022]
- (iii) N.Karunanithi v. Union of India and Others [Order dated 22.04.2022 ade in W.P.Nos.12887 of 2016 etc., batch].

7.Per contra, Mr.T.Arun Kumar, learned Additional Government Pleader for the respondents has drawn the attention of this Court to the counter affidavit of the second respondent and would submit that the petitioner was taking only 2 to 3 classes per week in the third respondent college for the 7th Semester students (Music and Dance Theory Paper) upto academic year 2014-15 and she did not work in the third respondent college from the year 2015-2016 and she was not sponsored through Employment Exchange and appointed on part-time basis only. The learned Additional Government Pleader further submits that a person claiming regularization have to be appointed in pursuance of regular appointment process in accordance with relevant rules in an open competitive process against sanctioned vacant posts and the petitioner was appointed temporarily in the fourth

respondent college only as Guest Lecturer on consolidated basis till a regular teacher is appointed and therefore, she cannot make preferential claim for future appointment, as per the term of appointment. The learned Additional Government Pleader also submits that Teacher and Lecture posts in Government Music Schools and Government Music Colleges are filled by following communal roaster and inviting applications from newspapers and State Level seniority list of candidates sponsored through Employment Exchange by subjecting them for the written test followed by interview for testing practical skills conducted by the duly constituted selection committee comprising of eminent musicians by the Government and the petitioner is at present neither working in the third respondent college nor working in the fourth respondent college after 28.04.2019 and therefore, prays for dismissal of this writ petition.

8.This Court has considered the submissions made and also perused the materials available on record.

9.The issue involved in the present writ petition is whether the claim of the petitioner, who was appointed as part time Instructor on contractual basis is entitled for regularization?

10.The undisputed fact remains that the petitioner joined the service as Part-Time Instructor in the third respondent College on temporary consolidated basis in the year 2010. According to the petitioner, she worked as Part Time Lecturer in the third respondent college till July 2015 and thereafter he was shifted to the fourth respondent college from September, 2015 and working in the said post as on 2019. According to the petitioner, the second respondent had regularized many Part Time Lecturers from the date of their initial appointment, vide G.O.Ms.No.42, Tourism and Culture Department dated 28.03.2017 and G.O.Ms.No.112, Tourism and Culture Department dated 03.08.2011 and the same analogy applies to the case of the petitioner also, but the respondents 1 and 2 have not regularized the services of the petitioner inspite of several requests and representations.

11.However, it is the stand of the second respondent in the counter affidavit that the question of shifting the petitioner by the respondents does not arises, in as much as the petitioner was working only on consolidated basis in the third respondent college as Part Time Instructor and not as Lecturer as contended by the petitioner. The third respondent college and fourth respondent college are entirely different from one another with regard to syllabus and teaching and therefore, there is no need to shift her as Part Time Instructor from the third respondent college to fourth respondent college. According to the respondents, taking part-time classes merely for 2 to 3 classes

in a week will not tantamount to responsibilities of a regular contract lecturers, who takes minimum 5 hours a day and hence, the petitioner cannot claim parity with those Instructors, whose services were regularized vide G.O.(Ms.)No.42, Tourism and Culture Development dated 28.03.2007 and further, the temporary committee formed in the Tamil Nadu Government Music College under the fourth respondent to select the Lecturers on consolidated basis for the academic year 2019-2020 on 24.07.2019 has given only 115 marks (lowest mark) to the petitioner and hence, the petitioner was not appointed for the academic year 2019-2020.

12.A perusal of the initial order of appointment of the petitioner, vide proceedings of the third respondent dated 27.06.2011 would disclose that the said appointment order was issued, subject to the conditions that (i) she may be terminated from service without any prior notice, (ii) she cannot claim any other preferential right in future based on the said appointment, (iii) she was instructed to join duty immediately, without any payment of travelling allowance. The earlier writ petition filed by the petitioner in W.P.No.30074 of 2017 was dismissed by this Court on 23.11.2017 on the ground that the petitioner has not stated in the affidavit therein as to whether she has passed NET/SLET/SET, Assistant Professor, irrespective of the petitioner possessing degree in M.Phil., or Ph.D.

13.The well settled principles relating to regularization was elaborately enumerated by the Hon'ble Supreme Court in the decision in State of Rajasthan and Others v. Dayalal and Others [AIR 2011 SC 1193], wherein it was observed as under:

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

(i) The High Courts, in exercising powers under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation 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 regularisation of services of an employee which would be violative of the 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 regularised, back

door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(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 regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation 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 regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation 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 State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753], M. Raja v. CEERI Educational Society [(2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , S.C. Chandrav. State of Jharkhand [(2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]"

14. A learned Single Judge of this Court in the decision in Dr. R. M. Thirumaran v. The Administrator General and Others [2013 SCC Online Mad 346], has considered the question as to whether

guest lecturers are entitled for regularization. In the said decision, the learned Judge has observed as under:

"12...Regularisation is not a matter of right, unless the appointments are made through regular recruitment process. Therefore, the passage relied on by the petitioners, namely paragraph 53 of the judgement in State of Karnataka v. Umadevi has no relevance to the case on hand.

13. In this context, it must be necessary to hold that in similar Writ Petition in W.P. No. 24742 of 2012 dated 11.01.2012 in the case of R. Vimala v. Directorate of Collegiate Education, this Court negatived such contention. In paragraphs 4 to 20, this Court observed as follows:-

"4. In this context, as to whether guest lecturers, who were appointed on consolidated pay by the Principal of the College, are entitled to be regularized without any selection process has to be considered first. The colleges run by the second respondent Trust are private colleges within the meaning of Section 2(8) of the Tamil Nadu Private Colleges (Regulation) Act, 1976. The appointment of any teacher has to be necessarily made by the College Committee in terms of Section 14(1)(b) of the said Act. The teachers who are to be appointed must be fully qualified in terms of the qualification prescribed under Section 15 of the said Act. Under Rule 11, the number of teachers employed in the college should not exceed the number of posts fixed by the Director from time to time with reference to academic requirement and norms prescribed by the respective university and over all financial considerations. The same rule also provides that reservation as per communal roster will have to be followed. Therefore, it cannot be said that the petitioners went through the selection process as contemplated under the Private Colleges (Regulation) Act.

5. The question as to whether the guest lecturers without going through the selection process can be directly regularized came to be considered by a division bench of this court in M. Saravanakumar v. The Secretary to Government, Education Department, Fort St. George, Chennai reported in 2005 (3) L.W. 329, wherein the division bench dealt with the demand of the Guest Lecturers (ad hoc lectures) for regularization. In paragraphs 28, 32 and 33, the division bench had observed as follows:

"28.It may be noted that Guest Lecturers are appointed by the Principals of the Colleges. There is no guarantee that such an appointee is competent. The Principal may have various considerations for making such an appointment, not necessarily merit. Suppose one of such appointees is wholly incompetent and undeserving. Why can he not be replaced by a bright and deserving candidate? After all we have to see the matter from the point of view of the students. An incompetent teacher may adversely affect the future career of the students, while a bright teacher can greatly uplift it. Hence, in our opinion, if a deserving and competent candidate is available then he can certainly be appointed as Guest Lecturer in the place of another Guest Lecturer, who is incompetent and undeserving"

6.After rejecting similar claims, in paragraph 37, the division bench gave the following directions:

"37.We therefore direct that after 31.03.2006 all appointments of Lecturers, and other teaching posts, including Principals, in Government Colleges in Tamil Nadu shall be made on a regular basis by selection through the Teachers Recruitment Board or any other legally constituted selection body and not by appointing Guest Lecturers. Such regularly selected teachers will be paid the U.G.C. grade salaries and guaranteed security of tenure. They shall also be given all benefits and perquisites allowable to regularly selected teachers. No Guest Lecturers or adhoc Lecturers will be appointed or continued after 31.03.2006."

7.Therefore, such a recruitment has to be made by regular selection process. The Supreme Court in State of Karnataka v. Uma Devi(3) reported in (2006) 4 SCC 1 has clearly laid down that the appointment for all government employments will have to be made in terms of the recruitment rules and any other recruitment will be against Articles 14 and 16 of the Constitution of India. Though certain attempts were made to reinterpret the judgment in Uma Devi(3) case, supra, such attempts were frowned upon by the Supreme Court in Uttaranchal Jal Sansthan v. Laxmi Devi reported in (2009) 7 SCC 205.

8.Even if ad hoc appointees, who were appointed directly, work for ten years, the Court cannot show any misplaced sympathy of protecting such ad hoc employees only because they have worked for long time and the Supreme Court held that in such cases, the

decision in Uma Devi (3) case, supra, is binding and has to be applied, vide judgment in State of West Bengal v. Banibrata Ghosh reported in (2009) 3 SCC 250.

9.The Supreme Court also took a similar view in Raghavendra Rao v. State of Karnataka reported in (2009) 3 SCC 25 and held that such candidate has no right to be absorbed or made permanent.

10.Similarly, in Harminder Kaur v. Union of India reported in (2009) 13 SCC 90, the Supreme Court held that the long service rendered by ad hoc employees cannot be a ground for regularisation and regularisation cannot be a mode of appointment. Even on the question of age relaxation of such appointees for being considered for future recruitment, the Supreme Court only gave a non binding direction to the respondents/State to consider such issues on their own."

The decisions cited supra emphasize the principle that No Guest Lecturers or adhoc Lecturers will be appointed or continued after 31.03.2006 and the long service rendered by adhoc employees cannot be a ground for regularization and regularization cannot be a mode of appointment. Back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

15.Admittedly, in the case on hand, the petitioner is serving as part time Guest Lecturer from 2010. Though the petitioner seeks regularization based on G.O.(Ms)No.42, Tourism and Culture Department dated 28.03.2007 and G.O.Ms.No.112, Tourism and Culture Department dated 03.08.2011, granting regularization in respect of similarly placed persons, the said persons worked in full time capacity and whereas it is informed in the counter affidavit that the petitioner was taking only 2 to 3 classes per week in the third respondent college for the 7th semester students (Music and Dance - Theory Paper) upto the academic year 2014-15 only and she has not worked in the third respondent from the year 2015-2016 and further the petitioner was not sponsored through Employment Exchange and when the petitioner was interviewed by the temporary committee formed under the fourth respondent to select the Guest Lecturer on consolidated basis, the petitioner scored lowest mark of 115 out of 500 marks and hence, she was not called for the academic year 2019-2020.The petitioner also did not produce any substantive material / document to prove that he has been continuously engaged in full time capacity. The claim of the petitioner is nothing but back-door entry and such a relief cannot be granted.

16.In the light of the decision cited supra and the reasons assigned above, the claim of the petitioner seeking regularization of service cannot be granted. This Court finds no merit in the writ petition.

17.The writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Secretary to Government,
The State of Tamil Nadu,
Tourism and Culture Department,
Secretariat, Fort St.George, Chennai-600 009.
2. The Commissioner / Director of Art and Culture,
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+1cc to M/s.B.Gopalakrishnan, Advocate, S.R.No.37726

W.P.No.9300 of 2021

NRL(CO)
RGA(11/07/2022)