



WEB COPY

W.P.Nos. 9575 to 9580 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 9575 to 9580 of 2017

and

W.M.P.Nos. 16529 to 16540 of 2017

1. U.T. Anandarajan

... Petitioner
in W.P.No. 9575 of 2017

2. R. Arumugam

... Petitioner
in W.P.No. 9576 of 2017

3. Elamparithi

... Petitioner
in W.P.No. 9577 of 2017

4 . R. Govindasamy

... Petitioner
in W.P.No. 9578 of 2017

5. Meeradevi

... Petitioner
in W.P.No. 9579 of 2017

6. C. Sivakami

... Petitioner
in W.P.No. 9580 of 2017

Vs.



WEB COPY

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Higher Education Department, Fort St. George,
Chennai – 600 009.
2. The Vice-Chancellor,
Periyar University,
Periyar Palkalai Nagar,
Salem – 636011.
3. Dr. C. Swaminathan
The Vice-Chancellor,
Periyar University,
Periyar Palkalai Nagar,
Salem – 636011.
4. The Registrar,
Periyar University,
Periyar Palkalai Nagar,
Salem – 636011.
5. Mr. M. Manivannan,
The Registrar,
Periyar University,
Periyar Palkalai Nagar,
Salem – 636011.

... Respondents
in all WPs

Prayer in all WPs.: Writ Petitions filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records with respect of the impugned order passed by the fourth respondent herein dated 07.04.2017 in his proceedings in PU/R6/006425/2017-1 and quash the same.



For Petitioners	: Mr. V. Prakash Senior Counsel for Mr. R. Nalliyappan
For Respondents	: Mr. R.P. Murugan Raja Government Advocate for R1 Mr. P. Godson Swaminath for R2 to R5

COMMON ORDER

The writs on hand has been instituted questioning the validity of the order passed by the fourth respondent in proceedings dated 07.04.2017, reverting the petitioners back to the initial cadre of Lab Assistant and recovery of salary already paid in the promotional post, made by the respondents, which is sought to be quashed.

2. The petitioners were initially appointed as Lab Assistant in respondents Periyar University under direct recruitment in the second respondent University. The services of the petitioners were regularised from his initial date of appointment on 21.04.2005.

3. The petitioners were promoted to the post of Junior Assistant on 31.07.2006, during the decennial celebration of the university, by relaxing the provisions of the statutes and the same was approved by the Syndicate



and Establishment Committee. Since the Rule for appointment to the post of Junior Assistant was relaxed in accordance with the rules, the petitioners were further promoted to the post of Assistant on 27.01.2010 and to the post Assistant Section Officer/P.A. to Special Officer/Superintendent, on 31.12.2015. Audit objections were raised frequently calling for explanation regarding the illegal promotions granted to the writ petitioner in the year 2006. The petitioners filed W.P.Nos. 37739 to 37741 of 2016, challenging the proceedings of the fourth respondent, wherein this Court directed the fourth respondent to issue the copy of the said audit objection to the petitioners and granted liberty to the writ petitioners to submit their respective explanations and thereafter the fourth respondent was directed to pass final orders. Pursuant to the directions issued by the High Court, the fourth respondent communicated a copy of the audit objection to the writ petitioners on 08.11.2016. The petitioners submitted their explanations to the show cause notice and the audit objections. However, the fourth respondent has not considered the grounds raised by the writ petitioners in their explanations and passed the impugned order in proceedings dated 07.04.2017, cancelling the promotions granted to the writ petitioners from the post of Lab assistant to the post of junior assistant and the subsequent promotions to the post of Assistant and Assistant Section Officer/P.A. to



Special Officer/Superintendent and further imposed recovery of the salary already paid in the promotional posts. Thus, the petitioners are constrained to move the present writ petitions.

4. The learned Senior Counsel, appearing on behalf of the writ petitioners, mainly contended that Chapter VIII of the Statute applicable to the second respondent university deals with conditions of service and recruitment. The power of relaxation is conferred to the syndicate in Clause 3. Accordingly, " the syndicate may relax any of the provisions of these Statutes in exceptional cases in favour of an individual or a group of individuals as the Syndicate may deem fit", invoking the power of relaxation conferred on the statute, the syndicate passed a resolution in the meeting held on 31.07.2006 as under:

" Resolved to approve the minutes of the establishment committee meeting held on 24.06.2006.

Further resolved to approve the one time promotion scheme, with proposed relaxation of qualifications, presented before the Syndicate. Since it is a one time promotion, as a measure of goodwill gesture during the forthcoming decennial celebrations of the University. It is resolved to waive the evaluation process by a committee to be appointed as per para (3) of Section 4 of Chapter VIII of Periyar University Statutes. Further, it is resolved that the Lab



Assistants may be promoted to the post of Junior Assistant as was adopted in the proceedings of the Director of Collegiate Education Chennai vide No. 53797/B1/2003 dated 06.02.2004 and the scale of pay of drivers and telephone operator be fixed in the enhanced scale of pay of Rs.4,000-100-6000 as a one time good will measure to the present incumbents. "

5. The learned Senior Counsel for the petitioners made a submission that the relaxation regarding the qualification was granted in favour of the writ petitioners through the resolution passed by the Syndicate by invoking the powers conferred on them under the relevant statute and there was no infirmity in granting the promotion to the post of junior assistant in favour of the writ petitioners from their initial cadre of Laboratory Assistant. Once the rules relating to the qualification was relaxed in favour of the individual in accordance with the statute, thereafter, the audit objection raised cannot be a ground to revert the petitioners to the original cadre and thus actions of the respondents are not in consonance with the established principles and therefore the said impugned orders are to be set aside.

6. The learned counsel appearing on behalf of the respondents made a submission that the promotion to the post of junior assistant was granted to all these writ petitioners in violation of the recruitment rules in force. The



petitioners were not qualified to hold the post of junior assistants. There is no rule to grant promotion to the post of junior assistant from the cadre of laboratory assistant and the post of lab assistant, not a feeder cadre to the post of junior assistant and in order to remove the illegality, actions were taken based on the audit objection raised by the competent authorities. It is contended by the respondents that the writ petitioners are not possessing the requisite qualification to hold the post of Junior Assistant or Assistant or Assistant Section Officer/P.A. to Special Officer/Superintendent and such unqualified persons cannot be allowed to continue in the posts in an illegal manner, which is in violation of the service rules applicable to the second respondent university.

7. It cannot be disputed that appointments or promotions are to be granted strictly in accordance with the rules. Power to relaxation is conferred in the statute as an exception and cannot be adopted as a rule. Power to relaxation has to be exercised discretionally and on exceptional circumstances, where injustice occurred to a person or group of persons. Such relaxation power cannot be utilised for appointing person or to grant promotion and such exercise is illegal and in violation of the established principles of law. The exceptional power granted enabling the authorities to



mitigate the extraordinary circumstances cannot be utilised in a routine manner for grant of promotion or appointing a person and such exercise is to be considered as a colourable exercise of power and thus in the present case, the relaxation granted in favour of the petitioners cannot be said to be in accordance with the established principles of law.

8. Perusal of the resolution reveals that based on the request made by the writ petitioners, the Syndicate passed a resolution. However, the Syndicate exercising the power of relaxation conferred on the statutes and relaxed the educational qualification and promoted the petitioners to the post of junior assistant in the year 2006. The second respondent university also miserably failed to initiate appropriate action within a reasonable period of time from the date of promotion granted to the writ petitioners. Any such illegality are to be removed by initiating appropriate action within a reasonable period of time. However, in the present case, the petitioners were not only allowed to continue in the post of Junior Assistant but promoted to the higher post of Assistant and Assistant Section Officer/P.A. to Special Officer/Superintendent subsequently, knowing the fact that they were appointed as junior assistant by relaxing the rules of educational qualifications.



9. The learned counsel for the respondents states that the petitioners are not possessing the requisite qualification, even in such circumstances, the second respondent may not consider the case of the writ petitioners for grant of promotion. However, they cannot retrospectively cancel the appointments, which were made in the year 2006 to the post of junior assistant, which was granted pursuant to the relaxation granted by the Syndicate, in accordance with the provisions of the statutes, which was in force, at that point of time.

10. In such circumstances, the second respondent university is bound to examine whether the relaxation was granted in a genuine manner and in order to mitigate the injustice if at all occurred to a group of employees. If at all any audit objection is raised in this regard, the respondents are bound to initiate action against the members of the Syndicate, who passed such resolution. It is needless to state that responsible members of the Syndicate have to pass resolution, taking note of the facts and circumstances and the legality regarding the promotions to be granted to the employees. Granting promotion to unqualified persons to be avoided at all circumstances. Promotions are to be granted strictly in accordance with the rules in force as the very purpose and object of prescribing qualification is to ensure efficient



public administration. Thus, by promoting unqualified persons to the posts, the authorities are committing unconstitutionality and therefore, the subsequent action regarding the illegality cannot be normally interfered with by the Courts.

11. However, in the present case, the relaxation regarding the educational qualification was granted by the Syndicate in the year 2006 in the meeting held on 31.07.2006. Consequently, the writ petitioners were promoted to the post of junior assistant and thereafter to the post of assistant and no actions were taken by the competent authorities, despite the fact that the audit objections were raised periodically by the competent authorities of the audit department. That being the factum, the first respondent has to initiate all appropriate actions against the Syndicate members, who have committed such illegality or granted promotions on ex gratia consideration or otherwise. All these issues are to be enquired into comprehensively by the Government and appropriate actions are to be initiated against the persons, who are all responsible and accountable for such irregularities on various reasons.



12. As far as the writ petitioners are concerned, the learned Senior Counsel appearing on behalf of the petitioners made a submission that the promotions were not only granted to the writ petitioners, it was granted to other employees bringing about 36 and no actions were taken against those employees, who were also promoted by granting relaxation of service rules. While correcting the irregularities in the matter of appointment or promotions, if it is brought to the notice of the competent authorities that many such illegality occurred, then they are bound to initiate appropriate action against all such illegal appointments or promotions made in favour of the other persons and there cannot be discrimination in the matter of initiation of action against the illegal promotion or appointments. In this regard, the respondents are bound to look into the issues regarding the illegal promotions and appointments and take appropriate actions in accordance with the rules and by following the rules as contemplated.

13. As far as, the impugned order is concerned, the services of the petitioners in the post of junior assistant and assistant which were made long back alone are to be promoted. With reference to the further promotions to the post of Assistant Section Officer/P.A. to Special Officer/Superintendent, which were made in the year 2015-2016 and 2016-2017, the learned



counsel for the respondents brought to the notice of this Court that actions were taken without causing any undue delay and such actions must be allowed to continue.

There is a force in the said contention in respect of the further promotion to the post of Assistant Section Officer/P.A. to Special Officer/Superintendent. Therefore, it is made clear in respect of the last promotion granted to the post of Assistant Section Officer/P.A. to Special Officer/Superintendent, in the year 2015, the second respondent is at liberty to issue a fresh show cause notice setting aside the facts and circumstances enabling the effected persons to respond and in the event of receiving any such show cause notice, the petitioners are at liberty to submit their explanations along with documents if any and to establish their qualification to hold the promotional post and thereafter considering the facts and circumstances, the second respondent is directed to pass appropriate orders on merits and in accordance with the statute and rule in force. However, the promotions already granted to the post of junior assistant and assistant need not be interfered with as it was granted pursuant to the relaxation granted by the Syndicate in the year 2006 and the petitioners were allowed to serve in the said post for many number of years. The salary paid to the



employees cannot be recovered at this length of time, since they have performed the duties and responsibilities attached to the said posts. The writ petitions are allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

01.11.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order

To

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Chennai – 600 009.
2. The Vice-Chancellor,
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S.M.SUBRAMANIAM, J.

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