



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.2872 of 2022 and
W.M.P.(MD) No.2516 of 2022

R.Devarajapandian

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep., by its Principal Secretary to the Government,
Higher Education Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Technical Education,
Directorate of Technical Education (DOTE),
53, Sardar Patel Road, Guindy, Chennai-600 025.

3.The Principal,
Bharathiyar Centenary Memorial
Government Women's Polytechnic College,
Ettayapuram, Thoothukudi District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings in Letter No.12650/I2/2014-10 dated 08.11.2018 issued by the 1st respondent and quash the same as illegal and consequentially directing the respondent to regularise the services of the petitioner with effect from the date of initial appointment (11.01.1999) with all consequential benefits.

For Petitioner : Mr.R.Thirumalai Murugan

For RR1 & 2 : Mr.V.Om.Prakash, Government Advocate

O R D E R

The order of rejection dated 08.11.2018, passed by the 1st respondent for grant of retrospective regularization in the post of Lecturer in Polytechnic College, is under challenge in the present writ petition.

2.The petitioner is now working as Lecturer at Bharathiyar Centenary Memorial Government Women's Polytechnic College, Ettayapuram, Thoothukudi District. He joined the services on



contract basis as Instructor on 11.01.1999 as per G.O.Ms.No.539 (World Bank Scheme), Higher Education Department, dated 06.10.1998, vide proceedings dated 04.09.1999 issued by the 2nd respondent.

3.The petitioner states that he was continuously working as contract Lecturer from the year 1999 onwards. However, the Government considered the cases of these contract Lecturers for grant of regularization and issued an order granting regularization with effect from 13.07.2006. Accordingly, the services of the petitioner was regularized from the date of the Government Order issued in G.O.Ms.No.169, Higher Education (I2) Department, dated 15.06.2006 i.e., with effect from 13.06.2006.

4.The question arises whether the petitioner is entitled for retrospective regularization.

5.Let us now consider the manner in which the petitioner was initially appointed as Contract Lecturer. G.O.Ms.No.539 provides appointment of Contract Lecturers for the new teaching posts created in Government Polytechnics under World Bank Project.

6.The Director of Technical Education is authorised to fill up these scheme related Contract Lecturer posts through Employment Exchange subject to the following conditions:-

"(i) Out of 109 posts of Lecturers 52 posts shall be filled up by Scheduled Caste/Scheduled Tribe candidates and the remaining vacancies shall be filled by other candidates as per rules.

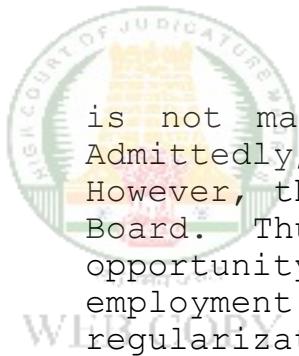
(ii) The period of contract is for one academic year or till the regular appointments are made to the posts through Teachers' Recruitment Board or necessity ceases whichever is earlier.

(iii) The appointment is purely temporary and is liable to be terminated without giving notice and without assigning any reason therefor.

(iv) The persons appointed on contract basis shall be paid the scale of pay of Rs.2200-75-2800-100-4000 with usual allowances i.e. the pay of Lecturer."

7.The period of contract has been specifically stated for one academic year or till the regular appointments are made to the posts through the Teachers' Recruitment Board. The appointment is purely temporary and the services may be terminated without any reason or assigning any reason.

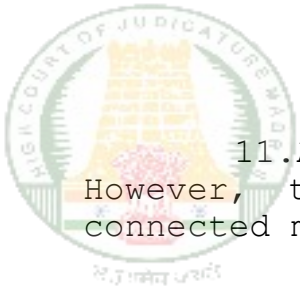
8.The contract appointees are not entitled to seek regularization. The initial appointment of the Contract Lecturers



is not made in accordance with the Recruitment Rules in force. Admittedly, they are appointed through Employment Exchange. However, the Rule provides recruitment through Teachers' Recruitment Board. Thus, a process of selection is to be conducted by providing opportunity to all the persons who all are aspiring to secure public employment. When the appointment itself is irregular, the regularization cannot be granted as per the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka vs. Umadevi** reported in **(2006) 4 SCC 1**. However, the Government took note of the fact that these Contract Lecturers, beyond the period of one year of contract, allowed to serve and finally in the year 2006, after a lapse of 7 years of contract services, granted the benefit of regularization. Thus, when the regularization granted to the petitioner itself is a concession as per the terms of contract appointment, the petitioner was not entitled for regularization.

9. When the persons are appointed on contract basis in violation of the regular public employment Recruitment Rules and their services are regularized depriving the opportunity of all other eligible persons, who all are aspiring to secure public employment through open competitive process, such appointments are to be construed as 'backdoor appointments'. However, in the present case, the services of the petitioner were regularized from the date of the Government Order as a concession. Such a concession cannot be extended for the purpose of granting retrospective regularization.

10. Concession will not provide any right to claim further concession with retrospective effect. This apart, the petitioner was appointed in the year 1999, his services were regularized in the year 2006 and he has submitted representation seeking retrospective regularization from the date of initial appointment and such representation was rejected in the impugned order dated 08.11.2018. Even the impugned order speaks about the judgment of this Court passed in W.A.(MD) No.555 of 2010 dated 25.11.2013. Further, the petitioner has chosen to give a representation belatedly, after a lapse of 17 years from the date of regularization. At the initial stage, when the services were regularized, the petitioner accepted the same and now after completion of many years of service, the petitioner seeks retrospective regularization and such belated claims cannot be entertained, which would affect and cause prejudice to the other employees even in the matter of seniority, promotion, etc. Therefore, such belated claims need not be entertained after a lapse of many years. This being the factum, the reasons stated in the order impugned are candid and convincing and the writ petitioner has waited for about 17 years from the date of regularization and thereafter, moved an application for retrospective regularization and even on merits, the petitioner has not established any acceptable fact for consideration.



11. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Technical Education,
Directorate of Technical Education (DOTE),
53, Sardar Patel Road,
Guindy, Chennai-600 025.

+1 CC to M/s.SPL GP (SR-6231[F] dated 15/02/2022)

W.P. (MD) No.2872 of 2022
14.02.2022

DP(26.02.2022) 4P 4C