



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P. (MD) Nos.10673, 10674 & 10675 of 2019

and

W.M.P. (MD) Nos.8171, 8172, 8173, 8174, 8175, 8176, 8177, 8178 & 8179
of 2019

Dr.P.Bhuvaneswai	...	Petitioner in W.P.(MD) No. 10673 of 2019
Dr.R.Kalaiselvi	...	Petitioner in W.P.(MD) No. 10674 of 2019
Dr.L.Thaiyalnayagi	...	Petitioner in W.P.(MD) No. 10675 of 2019

vs.

1.The State of Tamil Nadu
rep.by its Principal Secretary to Government
Higher Education Department
Fort St.George, Chennai

2.The Registrar
Bharathidasan University
Tiruchirappalli

... Respondents in all W.Ps.

PRAYER (in W.P. (MD) No.10673 of 2019) : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order in G.O.Ms.No.36, Higher Education (G1) Department, dated 28.02.2019 and quash the same as illegal insofar as it relates to the services of the petitioner in Clause 3(vii) is concerned and consequently to direct the respondents to regularize the services of the petitioner as Assistant Professor (Commerce) with effect from the date of appointment within the period stipulated by this Court.

PRAYER (in W.P. (MD) No.10674 of 2019) : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order in G.O.Ms.No.36, Higher Education (G1) Department, dated 28.02.2019 and quash the same as illegal insofar as it relates to the services of the petitioner in Clause 3(vii) is concerned and consequently to direct the respondents to regularize



the services of the petitioner as Assistant Professor (Management) with effect from the date of appointment within the period stipulated by this Court.

PRAYER (in W.P. (MD) No.10675 of 2019) : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order in G.O.Ms.No.36, Higher Education (G1) Department, dated 28.02.2019 and quash the same as illegal insofar as it relates to the services of the petitioner in Clause 3(vii) is concerned and consequently to direct the respondents to regularize the services of the petitioner as Assistant Professor (Commerce) with effect from the date of appointment within the period stipulated by this Court.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
(in all W.Ps) for M/s.Ajmal Associates

For Respondents : Mr.G.V.Vairam Santhosh
(in all W.Ps) Additional Government Pleader for R1
Mr.V.R.Shanmuganathan for R2

C O M M O N O R D E R

Since the relief sought for in all the writ petitions are identical, they are clubbed, heard together and are being disposed of by this common order.

2. The Government Order in G.O.(Ms.) No.36, Higher Education (G1) Department, dated 28.02.2019, with reference to re-designation of 41 University affiliated Colleges, which was taken as a policy decision of the Government, is under challenge in the present writ petitions. The said Government Order was issued pursuant to the statement made by the Honourable Chief Minister of Tamil Nadu in the floor of Assembly. Accordingly, 41 University affiliated Colleges were redesignated as Government Arts and Science Colleges and accordingly, financial sanction was also accorded.

3. The learned Senior Counsel appearing for the petitioners contended that the petitioners are fully qualified for regular appointment to the post of Lecturers in Government Colleges. Admittedly, they were appointed as Guest Lecturers on temporary basis, but the appointment was made pursuant to the advertisement given in the newspapers calling for eligible candidates for appointment. Therefore, they were initially appointed by following the procedures as Guest Lecturers on temporary basis and thus, their services are to be regularized in the regular post of Lecturer. The petitioners are discharging functions as Guest Lecturers and they are performing their duties on par with the regular Lecturers working in the Colleges. By redesignating the 41 University



affiliated Colleges as Government Arts and Science Colleges, the petitioners are loosing their opportunity to get regularization of their services and thus, the petitioners were constrained to move the present writ petitions.

4. The learned Senior Counsel, in support of his contentions, relied on the decision of the Constitution Bench of the Honourable Supreme Court of India in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in (2006) 4 SCC 1 and submitted that Paragraph No.53 of the said decision provides an one-time arrangement for grant of regularization and therefore, by virtue of the said arrangement, the services of the petitioners are to be regularized.

5. Further, the learned Senior Counsel relied on the subsequent decisions of the Honourable Supreme Court regarding clarifications offered on the decision of **Umadevi's** case (supra). In **State of Karnataka and others vs. M.L.Kesari and others**, reported in (2010) 9 SCC 247, the Honourable Supreme Court has held in very clear terms that as per Para 53 of the decision in the case of **Umadevi's** case (supra), only illegal appointments are barred and other temporary appointments may be considered for the purpose of regularization as one-time measure. In **Amarkant Rai vs. State of Bihar and others**, reported in (2015) 8 SCC 265, the Honourable Apex Court has once again reiterated the principles laid down by the Constitution Bench in **Umadevi's** case (supra) and it is unambiguously held that the appellant has served in the University for more than 29 years in the post of Night Guard and he served in the College on daily wage basis and therefore, the relief of regularization was granted.

6. Pertinently, in the **Amarkant Rai's** case (supra), the facts are that the appellant before the Supreme Court was appointed temporarily in Class-IV post of Night Guard on daily wage basis vide office order dated 04.06.1983 issued by the Principal, Ramashray Baleshwar College affiliated to Lalit Narayan Mithila University. The University vide letter dated 04.07.1985, took a decision to regularize the persons, who worked for more than 240 days and as per the letter dated 30.03.1987, as per which the employees who have been working for a period of more than one year, need to be regularized. However, looking into the facts of the case on hand, this Court is of the considered opinion that the said decision cannot be compared in respect of the petitioners herein as they were appointed as Guest Lecturers, which is a responsible position and it to be filled-up only by following the procedures as contemplated in the Recruitment Rules.

7. In **Amarkant Rai's** case (supra), the Honourable Supreme Court has considered that the appellant was appointed as Class-IV employee in the year 1983 and the University itself has taken an



initiative to regularize the service of the employees, who worked for more than 240 days as those employees were considered as workmen. Therefore, the said decision is of no avail to the petitioners herein.

8. In **Sheo Narain Nagar and others vs. State of Uttar Pradesh and others**, reported in (2018) 13 SCC 432, wherein the Honourable Supreme Court of India has considered certain situations, which were not envisaged in **Umadevi's** case (supra). Therefore, the distinct factors were considered by the Apex Court in the case of **Sheo Narain Nagar's** case (supra). However, in the said case, the High Court dismissed the writ petition relying on the decision in **Umadevi's** case (supra). But, the appellants therein were employed basically in the year 1993; they had rendered service for many years, which they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, it is clear that the facts before the Apex Court was that there was no Rules in force for offering such kind of appointment and further the appellants were employed in the year 1993 on daily wage basis and it was not a back door entry. Therefore, again, the Apex Court in an unambiguous terms reiterated the principles laid down by the Constitution Bench in **Umadevi's** case (supra).

9. This Court is of the considered opinion that every case is to be decided based on its own facts and circumstances and the principles, which are all to be followed. When the facts are distinguishable and not connected with the case on hand, then the principles adopted in the said case cannot be followed *mutatis mutandis* so as to deviate the principles laid down by the Constitution Bench in **Umadevi's** case (supra), even subsequent decisions of the Honourable Supreme Court clarified the scope of Paragraph-53 of **Umadevi's** case (supra). In **Narendra Kumar Tiwari and others vs. State of Jharkhand and others**, reported in (2018) 8 SCC 238, the Apex Court has referred the decision in **M.L.Kesari's** case (supra) relied on by the petitioners herein. Referring the decision in **M.L.Kesari's** case (supra), the concept of one-time measure was explained. Further, the Apex Court in clear terms held that the purpose and intent of the decision in **Umadevi's** case (supra) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The past indicates the irregular appointments made prior to 2006 and certainly not made after 2006. In the present case, admittedly, the petitioners were engaged as Guest Lecturers only in the year 2010 far beyond the period stipulated in Paragraph No.53 of the decision in **Umadevi's** case (supra).

10. Again, the Honourable Supreme Court reiterating all the decisions subsequent to **Umadevi's** case (supra) and referring the



Government Orders issued by the Government of Tamil Nadu in G.O.Ms.No.22, dated 28.02.2006 and G.O.Ms.No.74, dated 27.06.2013, has laid down principles in the case of **State of Tamil Nadu vs. A.Singamuthu**, reported in **(2017) 4 SCC 113** and the following observations of the Apex Court are relevant:

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

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

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

(iii) Even where a scheme is formulated for regularization 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



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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."

11. Therefore, the principles are well settled that the benefit of regularization of service cannot be continued beyond the scope of Paragraph No.53 of the decision in **Umadevi's** case (supra), only if proposals were pending during the relevant point of time when the Constitution Bench decided the case and those proposals were relating to irregular appointees, who have completed ten years of service prior to 2006 and not in respect of the appointments made subsequently.

12. The learned counsel for the petitioners relied on the decision of this Court in W.P.Nos.35127 of 2014 etc. batch (**D.Gayathri and others vs. The State of Tamil Nadu**) granting benefit of regularization in the year 2015. However, in the said decision, none of the principles laid down by the Constitution Bench of the Honourable Supreme Court has been considered. Further, the scope of **Umadevi's** case (supra) was subsequently clarified by the Honourable Supreme Court in other decisions and those clarifications were also not considered. Furthermore, after the year 2015, there are several decisions of the Honourable Supreme Court deciding the scope of regularization of service in the light of the decision in **Umadevi's** case (supra) and therefore, the order of this Court of the 2015 cannot be relied upon nor it will have any benefit for the petitioners and as rightly pointed out by the learned counsel for the second respondent - University, the facts in that case are distinguishable and therefore, the said decision is of no avail to the petitioners herein.

13. Going on regularizing the service of the irregular appointees would cause infringement of the right of equality to the rightful persons, who are all longing to secure public employment through open competitive process in accordance with the Recruitment Rules. The very purpose and object of the principles laid down by the Constitution Bench is to ensure that the public appointments are made under the constitutional schemes and by providing an opportunity to all the eligible persons, who are all aspiring to secure public employment. Therefore, the one-time arrangement is only for a limited period and it cannot be continued perpetually so as to regularize the service of the irregular appointees for a longer period. In such an event, the very principles laid down by the Constitution Bench will be defeated and the Constitution Bench never intended for such continuation in Paragraph No.53. That



unequivocally reiterated as follows:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

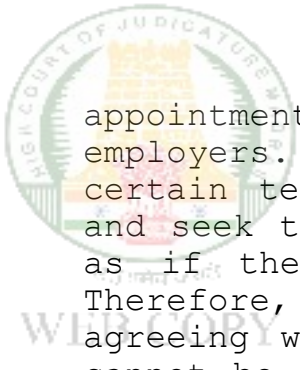
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14. Beyond the point of regularization of service, in the present case, the petitioners are challenging the policy decision taken by the Government to redesignate 41 University affiliated Colleges as Government Arts and Science Colleges. It is the policy decision taken by the Government and the petitioners have no *locus standi* to question the said decision as it is noway connected with their service conditions. As per the orders of appointments, the petitioners were engaged as Guest Lecturers on temporary basis and beyond the terms and conditions of their service, they cannot challenge the policy decision taken by the Government to redesignate the University affiliated Colleges as Government Arts and Science Colleges, which is for the benefit of the public at large.

15. This Court is of the considered opinion that the employers are expected to keep in mind that once temporary appointments are made to meet out the administrative exigencies or needs, they have to dispense with their services soon after the exigencies disappeared. Contrarily, the employers cannot allow such employees to continue in service for an indefinite period and such continuance would provide unnecessary hope to the appointees and after a period of some years, they will seek the benefit of regularization of service. Therefore, the employers are well within their powers to engage temporary employees, contract employees, daily wage employees or otherwise on need basis and to mitigate the emergency circumstances arising on account of the various factors. Whenever such circumstances arise and such temporary appointments are made, soon after the special circumstance disappeared, they should fill-up the post on regular basis.

16. The learned counsel appearing for the second respondent - University pointed out that the petitioners were not appointed in a sanctioned post and while they were engaging as Guest Lecturers on temporary basis, the communal roster as per the rules of reservation was not followed. Therefore, the recruitment itself is not in accordance with the Recruitment Rules in force. Thus, this Court is of the considered opinion that the recruitment, which was not done in accordance with law, cannot be approved and the benefit of regularization of service cannot be extended to such appointees, who were appointed on irregular basis and furthermore, the petitioners were appointed in the year 2010.

17. One more aspect to be considered is that all these temporary employees / temporary Lecturers have accepted the order of



appointment agreeing the terms and conditions stipulated by the employers. Once the employee accepted the offer of appointment on certain terms and conditions, thereafter, they cannot turn around and seek the benefit of regularization or confirmation. It is not as if the appointees were not aware of the temporary service. Therefore, such a practice of claiming regularization, after agreeing with the terms and conditions of the temporary service, cannot be approved by the High Court and these temporary employees are continuing in service knowing the terms and conditions of their service and therefore, they cannot claim regularization of service in violation of the Recruitment Rules and infringing the rights of eligible candidates, who are all waiting for recruitment notification for regular appointments in accordance with the Recruitment Rules in force.

18. In view of the reasons stated in the aforementioned paragraphs, the petitioners are not entitled to the relief as such sought for in the present writ petitions.

19. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

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To:
The Principal Secretary,
Higher Education Department,
Fort St.George, Chennai.

+3 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-6373[F] dated 16/02/2022)

+1 CC to M/s.SPL GP (SR-6463[F] dated 16/02/2022)

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