



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P(MD) .No.14557 of 2019

and

W.M.P(MD)No.11006 of 2019

WEB COPY

Su.Cheran

... Petitioner

Vs.

1.The Registrar,
Anna University,
Sardar Patel Road,
Chennai-600 025.

2.The Director,
University Colleges,
Anna University,
Sardar Patel Road,
Chennai-600 025.

3.The Dean,
University College of Engineering,
Anna University,
Dindigul-624 001.

... Respondents

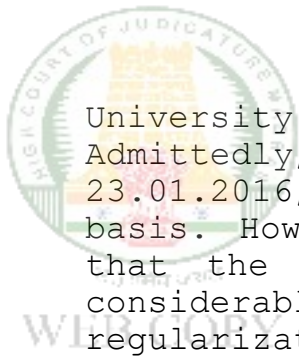
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, pertaining to the impugned order in letter Reference No.1300/AU/CCC-1/UCE/Dindigul/Court Order/Reply dated 07.05.2019 passed by the 1st respondent and to quash the same and to direct the respondents to issue regularization orders, regularizing the services of the petitioner in the post of Professional Assistant, Grade III on regular basis.

For Petitioners : Mr.J.Sanjoy Vignesh
For Respondents : Mr.K.Govindan

ORDER

The order of rejection rejecting the claim of the writ petitioner for regularization of temporary service in proceedings dated 07.05.2019 is under challenge in the present writ petition.

2.The petitioner states that he was engaged as a Professional Assistant, Grade III in the Civil Engineering Department of



University College of Engineering, Anna University, Dindigul. Admittedly, the order of appointment issued in proceedings dated 23.01.2016, states that the petitioner was appointed on daily wage basis. However, the learned counsel for the petitioner reiterated that the petitioner was allowed to continue in service for a considerable length of time and therefore, the benefit of regularization is to be granted.

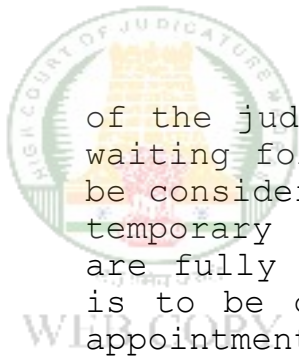
3.The petitioner states that he is fully qualified for appointment to the post of Professional Assistant Grade III and he possesses the qualification of diploma in Mechanical Engineering and already served in the respondent University as daily wage employee. Under these circumstances, the benefit of regularization is to be granted. The petitioner submitted a representation and filed a writ petition in W.P(MD)No.25072 of 2018 and this Court directed the authority to consider the petitioner's representation and pass orders. Pursuant to the direction, the Registrar, Anna University, issued the impugned order in proceedings dated 07.05.2019. It is stated that the petitioner was engaged as a daily wage employee and therefore, he is a temporary servant and hence, he cannot be regularized. It is further contended by the respondents that the petitioner is at liberty to apply for a regular post as and when the recruitment notifications were issued and if the petitioner is eligible to participate in the recruitment process on merits and in accordance with the norms of the University.

4.The question arises whether the temporary daily wage employee is entitled to get the benefit of regularization or not.

5.The Constitution Bench of the Hon'ble Supreme Court of India laid down the principles for grant of regularization in the case of ***the Secretary, State of Karnataka and others .vs. Umadevi(3) and others reported in (2006) 4 Supreme Court Cases 1***. All appointments are to be made strictly in accordance with the recruitment rules in force. Equal opportunity in public employment is the constitutional mandate. Appointments are to be made strictly through competent process and by affording opportunity to all the eligible persons, who all are anxious to get public employment on merits and in accordance with law. Thus, the Supreme Court stopped the back door entries forthwith by laying down the principles to be followed in public employment. Therefore, allowing to continue as a temporary employee on daily wage basis or direct basis and thereafter, granting the benefit of regularisation merely based on the length of service, undoubtedly would deprive the equal opportunity as contemplated under Articles 14 and 16 of the Constitution of India. Therefore, no one can be deprived of the right of equal opportunity, as it is a Fundamental Right ensured to the citizen of our Nation.

6.In such circumstances, the Constitution Bench of the Supreme Court of India in ***Umadevi's case*** made a rider clause in Para No.53

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of the judgment stating that the employees temporarily appointed is waiting for regularisation and the proposals if any, pending are to be considered. However, the Supreme Court has clearly said that the temporary employees served for 10 years prior to 2006 and if they are fully qualified for a particular cadre or post, then alone, it is to be considered as one time arrangement. However, the illegal appointments cannot be ratified and the benefit of regularisation not to be granted.

7.The petitioner in the present case, admittedly, was appointed at a later point of time on 23.01.2016 more specifically, after 10 years from the date of the judgment of the Constitution Bench of the Supreme Court of India. Therefore, he is not entitled to avail one time benefit granted by the Constitution Bench of Supreme Court in Para No.53 of the judgment.

8.As far as the appointment order of the petitioner is concerned, it is unambiguously stated that he has appointed only as a daily wage employee and therefore, the petitioner has to participate in the recruitment process, if any, notification for regular appointments issued. It is to be borne in mind by the competent authority that such temporary appointment cannot be allowed to continue for a longer period. In the event of unnecessarily continuing the temporary employment it will provide a scope for such employees for seeking the benefit of regularisation. A person appointed on temporary basis cannot claim permanent employment, after putting few years of service, as they are very much aware about the terms and conditions of their appointments. Once the employees are aware of the terms and conditions of the employment and accepted the terms and conditions, thereafter, cannot turn around and say that their services are to be regularized, which is in violation of service rules in force. In such circumstances, the benefit of regularisation cannot be granted in violation of such rules in force.

9.This being the principles to be followed, this Court is of the considered opinion that the petitioner has to participate in the recruitment process for regular appointment, if any notification for regular appointment, in consonance with the settled principles by the Constitution Bench of the Supreme Court of India in ***Umadevi's case***. The said judgment of the Supreme Court by the two Judges Bench cannot be followed as a precedent, even if some cases, the reliefs are granted based on the individual facts. The Constitution Bench of Supreme Court of India in Para No.54, in an unequivocal terms held that "*it is also clarified that those decisions which run continue to the principles settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.*" Therefore, all the subsequent judgments, even by the Hon'ble Supreme Court of India, more specifically, by the Hon'ble two Judges Bench, cannot be followed as



a precedent and those judgments are to be confined only in respect of the facts of the case dealt with by the Hon'ble Supreme Court of India and the judgment of the Constitution Bench of the Supreme Court alone is to be followed as precedent.

10.Regarding the precedents to be followed, again, another Constitution Bench of Supreme Court of India in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, reported in **2017 (2) TNMAC 609(SC)**, held that the judgment of the Constitution Bench shall prevail over all other judgments passed by the two Judges Bench of the Supreme Court of India or the High Court. Therefore, the petitioner being daily wage employee is not entitled for the benefit of regularisation and the reasons furnished in the order impugned is not perverse. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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+1 CC to M/s.J.SANJAY VIGNESH, Advocate (SR-6646[F] dated 17/02/2022)

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-6354[F] dated 16/02/2022)

W.P(MD).No.14557 of 2019 and

W.M.P(MD)No.11006 of 2019

15.02.2022

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