



W.P(MD)No.12554 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12554 of 2022

K.Ravikumar

... Petitioner

Vs

The Madurai Kamaraj University,
Represented by
The Register,
Madurai,
Madurai District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceeding issued by University in Ref.MKU/Esst-I/2021 dated 11.08.2021, QUASH THE SAME and further DIRECT the respondent University to regularise the petitioner's service as Clerk/Junior Assistant w.e.f. 14.11.2015 (Completion of 10 years of his appointment as Casual Labourer on Consolidated Pay (CPCLR) and sanction and release all attendant benefits therein.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondent : Mr.T.Sakthi Kumaran
Standing Counsel



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ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the respondent University.

2. The writ petitioner was appointed as casual labourer on consolidated basis on 14.11.2005. For the last 16 years, he has been working without any break. In the year 2016, he filed W.P(MD)No.20955 of 2016 seeking regularization. Vide order dated 30.11.2016, this Court directed the University to regularize his service as per existing norms under time scale of pay. Questioning the same, the University filed W.A(MD)No.464 of 2017. Vide order dated 28.04.2017, the Hon'ble Division Bench remanded the matter on the only ground that the University was not given opportunity to file counter affidavit. After remand, direction was given by the learned Single Judge for disposal of the petitioner's representation. Pursuant to the said direction, the present order came to be passed on 11.08.2021 rejecting the petitioner's request. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.



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4. The respondents have filed counter affidavit and the learned Standing Counsel took me through its contents. He raised very many objections. The first objection is that the present writ petition is not maintainable since the Government has not been made a party. He also would state that the University has merely borne in mind the principles laid down by the Hon'ble Supreme Court in *Umadevi's* case. That is why, decision has been taken to go for fresh recruitment process. It is also submitted that the University is facing serious financial crisis. According to him, the writ petitioner was appointed only as Casual Labourer and therefore, he cannot make any claim for regularisation merely because he has completed certain number of years of service. He pressed for dismissal of writ petition.

5. I carefully considered the rival contentions and went through the materials on record. Though the petitioner was appointed only as Casual Labourer in the year 2005, it was not a back door entry. The University had published notification calling for applications from eligible candidates seeking appointment as Casual Labourer on consolidated basis. The University issued call letter dated 13.10.2005 calling upon the petitioner to attend interview on 26.10.2005. The petitioner was subjected to selection process. Proper resolution was passed by the appointment committee and that is how the



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petitioner came to be appointed on 14.11.2005. The petitioner has been serving the University without any break for the last 17 years.

6. My attention is drawn to the resolution passed by the syndicate of the respondent University on 12.08.2005. The resolution reads that the consolidated pay Casual Labourers and Casual Labourers on daily wages be allowed regular time scale of pay if they completed 10 years of service. This resolution has not been rescinded till date. I can understand the objection of the University if it is claimed that the cadre strength will be exceeded. Admittedly, it is stated that regular vacancies were available when he completed 10 years and even as on date. It is well settled that relief of regularisation can be given only in favour of the person who is still in service. That apart, he has to bring his case within the extant norms. The petitioner is able to fulfil both the conditions.

7. The learned counsel appearing for the petitioner relies on order dated 29.04.2014 passed by the Hon'ble Division Bench in W.A(MD)Nos.351 of 2012 etc. The Hon'ble Division Bench had held as follows:

“18. If the posts sanctioned by the Finance Committee are to be filled up by the University on a regular basis, the University would have to go in for a fresh direct recruitment.



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As per the statutes of the University, such regular process of selection will be through a written examination followed by vivo voce. The respondents in these cases, were actually sponsored through employment exchange. They were made to appear for written examination. Those who were short listed in the written examination were interviewed and the respondents were selected. Therefore, despite the fact that they were appointed temporarily on daily wages basis, the respondents herein have fulfilled the qualifications prescribed for the posts and they were selected by the very same method of recruitment prescribed for regular selection.

19. The reliance placed by the learned Senior Counsel for the University upon the decision of the Constitution Bench of the Supreme Court in Uma Devi, cannot be applied stricto sensu, to cases of this nature. It is for the simple reason that Courts will have to distinguish between the appointments made through back door methods and appointments made by following the rigorous process of selection. The principles that would apply to back door appointments cannot be simply transported to the cases where a process of selection is strictly followed.”

This order was followed by another Hon’ble Division Bench to which I was a party (order dated 10.08.2017 in W.A(MD)Nos.919 and 920 of 2016).

8.The University which is the employer is receiving funds from the



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Government. The Government is not a necessary party to the present proceedings. I hold that the writ petitioners cannot be non-suited merely because the Government has not been impleaded. All the relevant norms are fulfilled. I direct the respondent University to regularise the services of the petitioner on completion of 10 years of service as casual labour. However, taking note of the contention advanced by the learned Standing Counsel for the respondent that the University is facing financial crunch, the petitioner will be eligible for monetary benefits only from the date of the impugned order. The order impugned in this writ petition is set aside.

9.This writ petition is allowed. No costs.

01.12.2022

Index : Yes / No
Internet : Yes/ No
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To

The Register,
Madurai Kamaraj University,
Madurai,
Madurai District.

G.R.SWAMINATHAN, J.



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