



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2022

CORAM:

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

W.P. (MD) Nos. 15638, 15654, 15656, 15659 15664, 15666 and 15668 of 2020
and WMP (MD) Nos. 13124, 13125, 13130, 13131, 13133, 13134, 13137,
13138, 13141, 13143, 13146, 13147, 13150, 13151 of 2020

S.Ruban Prince Vinoth Kumar

... Petitioner W.P. (MD) No. 15638 of 2020

V.Venkateswaran

... Petitioner W.P. (MD) No. 15654 of 2020

B.Esakkimuthu

... Petitioner W.P. (MD) No. 15656 of 2020

M.Chitra Devi

... Petitioner W.P. (MD) No. 15659 of 2020

C.S.Christopher

... Petitioner W.P. (MD) No. 15664 of 2020

A.Jeyaprakash

... Petitioner W.P. (MD) No. 15666 of 2020

P.Soundararajan

... Petitioner W.P. (MD) No. 15668 of 2020

Vs.

1.The State of Tamil Nadu

Rep. by its Secretary to Government
Higher Education Department
Fort St. George, Chennai

2.The Director

Directorate of Technical Education
Sardar Patel Road,
Guindy, Chennai 600 025.

3.The Principal

Government Polytechnic College,
Konam, Nagercoil
Kanyakumari District.

... Respondents in all the WP's

COMMON PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order of the 1st respondent in G.O.(2D) No.4, Higher Education (H1) Department dated 27.01.2020 and consequential proceedings of the 2nd respondent in proceedings No.45910/B3/2019 dated 14.09.2020 and quash the same.



In all WP's

For Petitioners : Mr.H.Arumugam
For Respondents : Mr.G.V.Vairam Santhosh
Addl.Government Pleader

WEB COPY

COMMON ORDER

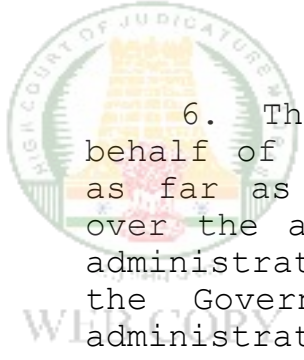
The writ on hand has been instituted questioning the validity of G.O.(2D) No.4, Higher Education (H1) Department dated 27.01.2020 and the consequential proceedings dated 14.09.2020.

2.The petitioners were appointed as Workshop Instructors at Government Polytechnic College. The petitioners acquired a qualification of BE., and ME., thereafter and therefore, state that they are fully qualified for promotion to the post of Lecturers in the teaching line in Polytechnic Colleges.

3.The Writ petitions have been filed challenging the Government order passed in G.O.(2D) No.4, Higher Education (H1) Department dated 27.01.2020 issued by the Government for accommodating the surplus non teaching staff of Annamalai University.

4. The Annamalai University was taken over by the Government. The Government found that excess teaching and non teaching staff were appointed by the erstwhile administration of the Annamalai University. Therefore, a policy decision has been taken at various levels to accommodate both teaching and non teaching staff at various institutions across the State. Considering the facts and circumstances, the G.O., impugned in the writ petitions provides appointment to the non teaching staff worked in Annamalai University as Lecturers in the existing vacancy with an agreement for a period of three years under Section 19 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as 'the Act').

5. The grievances of the writ petitioners are that when they are fully qualified for promotion to the post of Lecturers and they are working on permanent basis in Government Polytechnic Colleges, providing an appointment to the surplus non teaching staff of Annamalai University Lecturers would prevent them from getting promotion to the post of Lecturers on regular basis. The learned counsel for the petitioners reiterated that the petitioners are waiting for their promotion to the post of Lecturers as they are fully qualified. While so, the illegal appointees were provided with an opportunity to serve as Lecturers depriving the opportunity of the writ petitioners, which is in violation of the rules in force. This apart, these non teaching staff of Annamalai University were appointed as Lecturers post on higher scale of pay and thus, the impugned G.O, is liable to be set aside.



6. The learned Additional Government Pleader appearing on behalf of the respondents objected the contentions by stating that as far as Annamalai University is concerned, the Government took over the administration on account of serious illegalities in the administration. After taking over the University administration, the Government formulated various schemes for regulating the administration and to accommodate the teaching and non teaching staff, who were appointed excessively by the erstwhile administration of Annamalai University. While doing so, they have issued several Government orders and once such order is issued to accommodate the surplus non teaching staff of Annamalai University in G.O.(2D) No.4, Higher Education (H1) Department dated 27.01.2020, which is impugned in the writ petition.

7. It is contended that the said G.O., is no way connected with the regular employees working in the Government polytechnics. But promotional opportunities were not taken away by these non teaching staff, who were appointed on agreement basis for a period of three years and the counter filed by the respondents also states that they are not appointed on regular basis and they may be relieved from this department on completion of the term of three years as per the agreement with reference to the impugned G.O.(2D) No.4.

8. Considering the arguments, let us consider the nature of appointment made in favour of those non teaching staff, who are all appointed as Lecturers on agreement basis for a period of three years under Section 19 of the said Act. First of all, those appointed Lecturers on agreement basis for three years pursuant to G.O.(2D) No.4 dated 27.01.2020 are not impleaded as party respondents in the present writ petitions.

9. In the event of allowing the writ petitions by quashing the impugned G.O.(2D) No.4, their rights are also taken away. Therefore, they are the necessary parties.

10. Beyond the above fact that the impugned G.O.No.4 unambiguously stipulates that those non teaching staff of Annamalai University, who possesses first class BE/ME to the Directorate of Technical Education are appointed in the existing vacancies of Lecturers on agreement basis for a period of three years under Section 19 of the Tamil Nadu Government Servants (Condition of Service) Act, 2016.

11. Let us now look into the scope of Section 19 of the Act, which reads as follows:

"19(1) When in the opinion of the Government, special provisions inconsistent with any of the provisions of this Act or any other rules made under the proviso to Article 309 of the Constitution or continuing by Article 313 of that Constitution (hereinafter referred to in this section as the said rules) are required in respect of



conditions of service, pay and allowances, pension, discipline and conduct with reference to any particular post, or any of them, it shall be open to the Government to make an appointment to such post otherwise than in accordance with this Act or the said rules and to provide by agreement with the person so appointed for any of the matters in respect of which in the opinion of the Government special provisions are required to be made and to the extent to which such provisions are made in the agreement, nothing in this Act or the said rules shall apply to any person so appointed in respect of any matter for which provision is made in the agreement."

12. Section 19(1) unambiguously states that it is only an appointment made by agreement. Sub section 2 to Section 19 stipulates that a person appointed under sub section (1) shall not be regarded as a member of the service in which the post to which he is appointed is included and shall not be entitled by reason only of such appointment to any preferential claim to any other appointment in that service or any other service.

13. Therefore, sub section 2 is crystal clear that such persons, who are all appointed on agreement basis for a period of three years under Section 19 of the Act cannot claim any preferential claim or otherwise for any other appointment in that service or any other service.

14. In the present case, in order to mitigate the circumstances arose on account of the sudden taking over of the Annamalai University by the Government, G.O.(2D) No.4 was issued to safeguard the livelihood of the non teaching staff, who were appointed in excess and further clarified that for the appointment to the post of Lecturers in Polytechnic, in order to safeguard their exigencies arose on account of sudden taking over instead of ousting their service with immediate effect, the Government thought it fit to provide appointment on agreement basis so as to provide some breathing time for those employees. Accordingly, Section 19 of the Act was invoked and those non teaching staff, who are all qualified for appointment to the post of Lecturers were provided with appointment on agreement basis only for a period of three years.

15. The counter filed by the Directorate of Technical Education clearly reiterates that the appointment is made under Section 19 of the Act and **"when their term comes to an end, those staff may be relieved from the department"**. In view of the said factum, this Court do not find that the right of promotion of other regular employees are not taken away. It is only an arrangement in order to mitigate the emergent circumstances arose on account of the taking over of the administration of the Annamalai University by the

Government. Thus, the relief as such sought for in the present writ petition need not be considered. But, however, it is made clear that the right of opportunity for promotion to the petitioners are to be considered in accordance with Rules in force. As far as the agreement appointees are concerned, they cannot claim any preferential claim either in that service or any other service as per sub section (2) to Section 19 of the Act and this position is made clear by the respondents in the counter statement also. This being the factum, the rights of the petitioners are not infringed or taken away and therefore, the grounds raised deserve no merit consideration. However, it is made clear that the authorities/respondents cannot act beyond the scope of Section 19 of the Act or beyond the scope of the terms and conditions of the agreement appointment made pursuant to G.O.No.4.

16. With these observations, the writ petitions stand disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

RR

To:

1.The Secretary to Government
Higher Education Department
Fort St. George, chennai

2.The Director,
Directorate of Technical Education
Sardar Patel Road, Guindy, Chennai 600 025.

3.The Principal
Government Polytechnic College,
Konam, Nagercoil, Kanyakumari District.

+1 CC to M/s.SPL.GP. (SR-19751[F] dated 20/04/2022)

+1 CC to M/s.P.P.ALWIN BALAN, Advocate (SR-19922[F] dated 20/04/2022)

W.P. (MD) Nos. 15638, 15654, 15656, 15659 15664, 15666
and 15668 of 2020

19.04.2022

RD(06.05.2022) 5P 6C