



W.P.(MD)Nos.15885 & 15886 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.15885 & 15886 of 2016

and

W.M.P(MD)Nos. 11638 & 11639 of 2016

R.Mary Kanagamony

... Petitioner in W.P(MD)No.
15885 of 2016

Y.Mithila Padmini

... Petitioner in W.P(MD)No.
15886 of 2016

VS.

The Manonmaniam Sundaranar University,
represented by its Registrar,
Abhishekapatti, Tirunelveli.
Writ

... Respondents in both the

Petitions

COMMON PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Mandamus*, directing the respondent Manonmaniam Sundaranar University to sanction and disburse forthwith the pension benefits due to the petitioner viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18%.



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In both Writ Petitions

For Petitioners : Mr.K.Ragatheesh Kumar, for
M/s.Isaac Chambers

For Respondent : Mr.Mahaboob Athiff

COMMON ORDER

These Writ Petitions are filed for issuance of Writ of Mandamus to directing the respondent Manonmaniam Sundaranar University to sanction and disburse forthwith the pension benefits due to the petitioners viz., the General Provident Fund, Gratuity, Pension admissible to the petitioners with penal interest at the rate of 18%.

2. The brief facts as stated in the affidavit are that the petitioners were appointed in the respondent University as Tabulators, vide proceedings in Memo No.Estt/2/Adm/95, dated 08.05.1995. Thereafter, the respondent has absorbed totally 27 Tabulators, as Junior Assistant including the petitioners on regular basis w.e.f., 02.11.2002 and sanctioned monetary benefits from various dates. The petitioners were sanctioned the same from 24.08.2006 and 08.05.2007 respectively. In the



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meantime, the pension scheme which was in vogue i.e., 'the Old Pension Scheme', came to end on 31.03.2003 and the new pension scheme i.e., 'Contributory Pension Scheme' become operational from 01.04.2003. Since the petitioners were absorbed on regular basis in the year 2007, the petitioners were placed under Contributory Pension Scheme and the University has started deducting the monthly contributions from the monthly salary.

3. The contention of the petitioners is that, although they were absorbed on regular basis in the year 2007, the absorption was w.e.f. 02.11.2002, i.e., the Old Pension Scheme was in vogue. Hence, the petitioners along with other Junior Assistants submitted their representations to the University to bring the petitioners under the Old Pension Scheme and stop deducting monthly contribution under the Contributory Pension Scheme. The University Syndicate accepted the same, vide its resolution, dated 08.09.2008 and the petitioners were brought under the Old Pension Scheme. The University further resolved that the petitioners service rendered prior to the date of absorption i.e.,



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02.11.2002 would be reckoned as qualifying service for the purpose of pension. The above decision was implemented, vide Memo No.MSU/R/Estt/Admn/2008, dated 19.09.2008. In spite of the resolution to bring the petitioner under the Old Pension Scheme the respondent University surprisingly continued to deduct Rs.2,000/- per month to the Contributory Pension Scheme. The petitioners have protested against the said deduction and had filed a Writ Petition in W.P(MD)No.1218 of 2011, seeking direction to the respondent University to stop deducting the contributions. This Court vide its Order, dated 12.02.2014, directed the University to stop deducting the contribution and further directed to refund the said amount. In the said order, this Court held that the Contributory Pension Scheme is not applicable to the petitioners, as they were absorbed with retrospective effect from 02.11.2002 and as they are deemed to have been appointed and joined duty as Assistants from 02.11.2002. In order to implement the order passed by this Court, the petitioners have requested the respondent not to deduct any amount from the petitioners' salary. Since the same was not complied with by the respondent University, the petitioners have filed a Contempt Petition



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before this Court in Cont.P.(MD)No.1204 of 2014. After filing the Contempt Petition, the respondent/University had stopped deducting the amount from the petitioners' salary towards the Contributory Pension Scheme and also refunded the amount deducted to the individuals account.

4. The contention of the petitioners is that, on the eve of retirement, the petitioners have submitted a pension proposal with all relevant documents including the 'No Due certificate'. But the respondent/University directed the petitioners to mention their total years of service as only 12 years 6 months and 30 days. According to the petitioners, they were put in a total service of more than 20 years. Thereafter, they were retired from service on 31.05.2015 and also relieved from duty on the same day. The contention of the petitioners is that, inspite of the order passed in W.P(MD)No.1218 of 2011 and inspite of the repeated requests, the respondent did not sanction the retirement benefits to the petitioners. The petitioners have resubmitted the pension proposal on 26.02.2016 to sanction and disburse their pension and other terminal benefits by



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reckoning their total years of service period i.e., 20 years and 24 days. The respondent University in its Syndicate meeting held on 08.09.2008 has already recommended that the service rendered prior to the date of absorption would be taken as qualifying service. Since the respondent have not done so, the petitioners have come filed the present Writ Petitions.

5. Today, when the matter is taken up for hearing, the learned counsel appearing for the respondent University submitted that the similar issue was raised by the teaching staffs in W.P.(MD)No.2368 of 2012 and the same was dismissed by this Court, vide order, dated 02.03.2018. In the said order, this Court has also issued directions. The relevant paragraph Nos.24 to 31 are extracted hereunder:

“24.This apart, the senate of the University, at the first instance, absorbed the writ petitioner as Lecturer without even including the agenda in the meeting. However, the subsequent senate found that the writ petitioner was not qualified and the writ petitioner had not undergone the



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selection process and even the application submitted by the writ petitioner to participate in the selection Board itself was rejected.

25.This Court is of an opinion that to regularize the appointment of writ petitioner, the senate of the University passed a resolution to constitute a selection Board. The very purpose is highly illegal. The University, having absorbed an administrative staff as Lecturer in the faculty in an irregular manner, had constituted a selection Board only for the purpose of ratifying the irregular absorption. Certainly such actions are illegal and contrary to the provisions of the Act itself. The manner in which the resolutions after resolutions are passed by the senate shows that the public authorities had not acted in accordance with law. This Court strongly place on record, the manner in which the syndicate passed resolutions, which are contrary to the provisions of the Act itself.

26.The University senate is an important body, the body must be neutral and unbiased. The body should always act in accordance with the provisions of law. The resolution passed by the senate are having wider implications. Thus, the



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responsibility, accountability and credibility are vital and they should be taken into consideration while passing a resolution. It is not as if they can pass a resolution and absorb certain unqualified staff as Lecturer in the University and thereafter, pass number of resolutions either for regularizing services or for reverting them to their original administrative cadre.

27.All such irregularities are made only on the basis of the killer principles of favoritism and nepotism. These principles are the greatest enemies of the noble equality principles enunciated under the Constitution. If such principles are followed, this Court is unable to visualize the adverse consequences in respect of the developmental activities of our great nation. It is for the competent authorities to think and realize that what they have done and they ought not to have been passed such irregular resolutions by simply absorbing these administrative cadre employees to the post of Lecturer without even adhering to the selection procedures contemplated under the provisions of law.

28.This Court would not stop with these observations. This Court is of a strong opinion



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that stern action to be taken against all the irregularities and illegalities caused because of certain ill acts of whims and fancies. The authorities who had involved in such activities are to be certainly prosecuted under law. In this regard, the competent higher authorities have to conduct a thorough investigation and find out the irregularities and illegalities and accordingly, initial appropriate action against all the officials, who had committed and are part of such irregularities and illegalities. If this action is not taken by the appropriate officials then the practice of such irregular and illegal appointments will continue in future also. A strong message in this regard to the University is also required that all appointments in future are to be made only by following the selection procedures and by providing equal opportunity to all the eligible citizens of our great nation.

29. After all, the young minds of our great country are working hard by burning midnight lamps, to secure public employment. This Court is unable to understand, why the great administrators are not even realizing the sense of feeling in the young minds of this great nation.



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They are the nation builders and the future of our nation lies on their hands. If these administrators are not taking care by providing equal opportunity of public employment then such young minds will end in frustration and the same is the root cause for all the illegal activities against the nation itself. Therefore, it is the duty of the public authorities to see that equal opportunity in public employment is ensured and the young people of this country should feel that they can work hard and secure employment. If any frustration is injected in their mind then it is dangerous for the developmental activities of our great nation.

30.This Court, with the said note, record that the manner in which the writ petitioner was absorbed as Lecturer is certainly illegal and further the continuous efforts taken by the University authorities to regularize the services are still fatal and the final decision alone seems to be a better one, atleast to cure the irregularities to some extent. Under these circumstances, this Court is of an opinion that the writ petitioner has not established any legal right for permanent absorption in the post of Lecturer or to continue in service beyond the age of 58 years.



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31. Even at the time of filing the present writ petition, the writ petitioner was aged about 58 years old and now, he would be around 63 years old. Thus, his continuance in service cannot be considered in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed”.

The learned Single Judge of this Court has held that the resolution was illegal and also directed the respondent University to take action against the erring officials of the University.

6. The learned counsel appearing for the petitioner vehemently opposed the above said contention and submitted that the respondent University has passed an order which is legally viable and the petitioners are entitled to the benefits.

7. The contention of the petitioners is that the petitioners and other 60 Tabulators were engaged in the University and have put in seven years of service and they are eligible for regularization. Instead of



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regularizing the petitioners, they were retained in the said post for more than seven years. The Tabulators have submitted a representation to the University and thereafter, the University has considered the case of the petitioners and passed resolution. Therefore, the petitioners are entitled to calculate the service after the petitioners' absorption. The claim of the petitioners was objected by the respondent University by referring the appointment order and other resolutions. It is seen from the appointment order that the petitioners were appointed on monthly basis. The relevant portion of the appointment order, dated 08.05.1985 is extracted hereunder:

“He/She is by direction informed that he/she is appointed as TABULATOR on temporary basis on a daily wage of Rs.31/-for a period of one month with effect from 08.05.1985 F.N.

He/She is also by direction informed that his-her appointment is purely temporary and liable to be terminated at any time without prior notice. He/She cannot claim privilege or seniority for appointment in this University on permanent basis.”



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8. From the said evident, there is a post is named as Tabulator, the petitioners were engaged only for a period of “one month” w.e.f. 08.05.1995. Thereafter, periodically their services were extended by the respondent. It is an admitted fact that the petitioners and the similarly placed persons were appointed in the year 1995 and some of them were 1996, 1997 and 1998. In the resolution, dated 08.09.2008, the Syndicate Minutes stated “to consider and recommend the request of Junior Assistants to count the past temporary services rendered in the University as Tabulators, with effect from the date of entry into University, without any monetary benefits, but only for pensionary benefits”. It was also recommended that 24 Junior Assistant are eligible under Old Pension Scheme instead of Contributory Pension Scheme, vide memo, dated 19.09.2008. The University has sent a communication to the individuals, by stating that based on the resolution of the Syndicate and the Order of the Vice Chancellor the 28 Junior Assistants are eligible for Old Pension Scheme, instead of the Contributory Pension Scheme and the post on temporary services rendered by them in the University, with effect from



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the date noted thereunder, by taking into account the qualifying service for the pension benefits, without any notional or monetary benefit.

9. Thereafter, vide memo, dated 09.06.2009 the University has regularized the service from 02.11.2002 and the relevant portion is extracted hereunder:

“In accordance with the resolution of the Syndicate called under reference, the following Junior Assistants promoted from Tabulators are by direction informed that their services are regularized with notional effect from 02.11.2002 and monetary benefit from 28.04.2009 i.e., the date of Syndicate without affecting the existing seniority”.

10. By referring all these resolutions, the learned counsel appearing for the respondent University submitted that the Syndicate has resolved, thereafter it was decided by the University to grant the same. However, when the pension proposal was submitted to the Audit Authorities had objected to the resolution by stating that there was no



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sanctioned post for Junior Assistants or for Tabulators and also raised various other objections and relied on a communication in memo, dated 06.06.2007, wherein it is stated as under:

“3. Rules of reservation in respect of all 25 Tabulators (Sl.No1 to 25) has not been followed as was done earlier in respect of 35 Tabulators already absorbed as Junior Assistants based on the orders of the High Court, Madras dated 23.12.2001 (W.P.No.13615 of 1994]. ”

In the said communication it is further stated that,

“In accordance with the resolution of the Syndicate cited under reference 2, the following multiple Tabulators are by direction informed that they were absorbed as Junior Assistants w.e.f., 08.05.2007, i.e., the date of Syndicate for the scale of pay Rs.3200-85-4900 under regular budget fixation for the budget year 2007-2008.”

When the Junior Assistant post was created under Budget for the Academic year 2007-2008, absorbing the petitioner from the post of Tabulators to the post of Junior Assistant prior to 2007-2008 is illegal, since there was no sanctioned post until 2007.



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11. Thereafter, this Court is of the considered opinion that the learned Single Judge of this Court has rendered Judgment in W.P.(MD)No.2368 of 2012 is absolutely right. The Syndicate resolution passed to regularize and bring Tabulators under the Old Pension Scheme is illegal and there is prima facie evidence on serious irregularities.

12. At this point of time, the learned counsel appearing for the petitioner submitted the earlier order passed in WP(MD)No.1218 of 2011 has attained finality since the respondent have not preferred any appeal. In the Judgment rendered in the above Writ petition, the learned Single Judge has held that the petitioners are entitled to regularization. This Court is not inclined to accept the plea, since without sanctioned post, the Syndicate has no power to absorb or regularize any person. Therefore, the Syndicate resolution is illegal and this fact was not brought to the notice of the learned Single Judge and hence the order passed in W.P.(MD)No. 1281 of 2011 was passed based an error ofv facts. Therefore, the said order cannot relied for granting relief to the petitioners.



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13. In view of the above, these Writ Petitions are devoid of merits and the same are liable to be dismissed.

14. The learned counsel appearing for the respondent submitted that based on the order passed by the learned Single Judge of this Court in W.P(MD)No.2368 of 2012, the University has already initiated proceedings to rectify all the mistakes that was committed by the University. Based on those proceedings, notice will be issued to the petitioners and similarly placed persons. Therefore, this Court directs the respondents to conduct an inquiry and pass an order, after issuing notice to the petitioners. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of the order. No Costs. Consequently, connected miscellaneous petitions are closed.

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S.SRIMATHY, J

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Common Order in
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