



W.P.No.10877 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.10.2023
Pronounced on	06.11.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.10877 of 2020 and
W.M.P.Nos.13199 to 13201 of 2020

1.P.B.Arun
2.M.A.Victor
3.V.Magesh Kumar
4.K.Selvamani

... Petitioners

Vs.

1.The University of Madras,
Rep by its Vice Chancellor,
Chepauk, Chennai 600 005.

2.The Registrar,
University of Madras,
Chepauk, Chennai 600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in having Ref.No.Regr.Sec/2019/452 dated 12.07.2019 and quash the same and consequently direct the respondents to appoint / regularise the services of the petitioners in the permanent post of Data Entry Operators in Computerised Result Processing Section (CRPS) in Madras University with the time scale of pay.



For Petitioners : Ms.C.Uma
For Respondents : Ms.V.Sudha for R2
No appearance for R1

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in having Ref.No.Regr.Sec/2019/452 dated 12.07.2019 and quash the same and consequently direct the respondents to appoint / regularise the services of the petitioners in the permanent post of Data Entry Operators in Computerised Result Processing Section (CRPS) in Madras University with the time scale of pay.

2. Heard Ms.C.Uma, learned counsel for the petitioners and Ms.V.Sudha, learned counsel appearing for the second respondent.

3. The brief facts of the case are as follows:

The petitioners were appointed as Temporary Technical Assistants / Data Entry Operators in Computerised Result Processing Section in the Madras University on contract basis. Prior to their appointment, a proper



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recruitment process was adopted by the Madras University as per the judgment of the Hon'ble Supreme Court in the case of ***The Secretary to Government, School Education Department, Chennai and others Vs. Thiru.R.Govindasamy and others, reported in (2014) 4 SCC 769.*** However the second respondent by order dated 12.07.2019, rejected the petitioners' request for regularisation of their services. Hence this Writ Petition has been filed with the above prayer.

4. The learned counsel for the petitioners submitted that as per the Judgment of the Hon'ble Supreme Court in the above case, if the initial contract for appointment satisfies the following conditions *viz.*, a) in pursuant to a regular recruitment; b) in accordance with relevant rules; c) in an open competitive process; d) against the sanctioned vacant posts, the regularisation can be considered; A five members Committee of Madras University scrutinised the applications, conducted interview for selecting the candidates and only thereafter, the petitioners were selected and appointed on 05.02.2010. The petitioners competed with the other candidates after the notification was issued by the Madras University in



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accordance with its rules. There were nine permanent vacancies in the post of data entry operators at the time of initial appointment and even now there are nine permanent vacancies available.

4.1. One L.Niranjan Kumar and 3 others who were appointed as temporary Computer Operators in Computerised Result Processing Section in Madras University filed W.P.Nos.11654 to 11657 of 2004 before this Court for regularisation of their services in the permanent post as Computer Operators. A direction has been given in the above said Writ Petitions by this Court in its order dated 21.12.2004 by allowing the said petitions and consequently, the said persons were regularised. Despite the petitioners were also similarly placed, the petitioners' services were not regularised.

4.2. Earlier the petitioners filed W.P.No.14885 of 2014, in which a specific direction has been given to consider the representation of the petitioners afresh in accordance with the judgment of the Hon'ble Supreme Court held in the case of *The Secretary to Government, School Education Department, Chennai and others Vs. Thiru.R.Govindasamy*



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and others, reported in (2014) 4 SCC 769. Hence, the petitioners once again gave a representation on 13.06.2019, but the respondents did not consider and rejected the same. So the petitioners filed a Contempt Petition in Cont.P.No.339 of 2020 for not complying the orders of this Court in W.P.No.14885 of 2014 in its letter and spirit. The said petition was closed with liberty to the petitioners to challenge the rejection order dated 12.07.2019 passed by the second respondent. Hence, the petitioners are before this Court.

5. The second respondent has filed a counter and stated that as per G.O.Ms.No.1138, Labour and Employment Department dated 25.09.1978, all the Industries, Institutions, Universities and Colleges etc., which receive financial assistance by way of grant or loan or material assistance etc., from the Government should recruit its personnel only through employment exchange. Any other form of recruitment like dailies etc., should be resorted to only after obtaining a Non-availability certificate from the concerned employment exchange or obtaining the prior sanction of the Government. The University has already started the



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process of recruitment for the post of “Data Entry Operator” on permanent basis by calling eligible candidates from the District Employment Office, Chennai as per the above Government Order. The temporary servants have executed an agreement of service contract to the University by stating that they will not claim permanent position in the University of Madras or absorption by virtue of their temporary appointment.

5.1. When some other persons filed Writ Petitions in W.P.Nos.26213 to 26219 of 2009, this Court has observed that the person who accepts temporary appointment should not claim for permanent position or absorption contrary to his undertaking. When similar request was made by the other staff who were also working in the Computerised Results Processing Section, an order has been passed by stating that the eligible candidates from District Employment Office will be called in pursuant to the Government Order in G.O.Ms.No.1138 dated 25.09.1978. Therefore, the request of the petitioners cannot be considered. The petitioners' services were frequently broken and their



services were not continuous. The petitioners' representation cannot be considered due to the following reasons:

“17. It is submitted that after careful consideration of the reasons given in their representation, the University has come to the following conclusion with regard to the above said clauses:

(i) The appointments to the sanctioned post of Technical Cadre of the University are to be filled by Direct Recruitment through open advertisement by calling for eligible list from District Employment Exchange. Moreover, the Government has not given grants for creation of New Posts on or after 01.01.1996, hence there is no sanctioned vacant post.

(ii) The petitioners were engaged as Temporary Technical Assistants / Data Entry Operators / Tabulators purely on temporary basis to carry out the Examination data entry work for a specific seasonal work. The Data Entry Operation work is a seasonal job which is required only at the time of examination result processing work, and with change in technology such a requirement may not be there.

The serial No.8 of the agreement of the service contract executed by the petitioners with the University of



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Madras reads as follows:

“He/She in the event of temporary appointment agrees in no uncertain terms that he/she will not claim for permanent position in the University of Madras or absorption into the University's services by virtue of his/her temporary appointment at this University.”

(iii) The petitioners do not come under any specific scheme formulated for regularisation with cut-off dates.

(iv) Clause No.(iv) and (v) are not at all applicable for P.K.S.Madhavi and 4 others as they were neither part-time employees nor part-time temporary employees.”

6. For the sake of clarity, the relevant portions of the judgment of the Hon'ble Supreme Court held in the case of ***The Secretary to Government, School Education Department, Chennai and others Vs. Thiru.R.Govindasamy and others, reported in (2014) 4 SCC 769***, are extracted as under:

“(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of



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part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.”

7. In the earlier direction given in W.P.No.14885 of 2014, the second respondent University was directed to consider the representation of the petitioners on its own merits. When such a direction is given, it should not be misunderstood by the petitioners that it was a direction to appoint the petitioners even without considering the rules and regulations for recruitment. Admittedly, the petitioners were appointed in temporary service and their services were also broken every now and then. The University has come out with the reasons that as to why the petitioners absorption / regularisation cannot be entertained. More specifically, in the service contract between the petitioners and the second respondent



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University itself, the petitioners have agreed that they will not claim for any permanent position / absorption in the University by virtue of their temporary appointment. Even in the judgment of the Hon'ble Supreme Court relied on by the petitioners also it has been specifically observed that the back door entries and appointments are contrary to the Constitutional Scheme and appointment of ineligible candidates cannot be regularised.

8. No doubt, the petitioners were appointed not through regular permanent employment. They participated in the selection process knowing pretty well that it is a selection for temporary posts only. The petitioners do not form under any scheme as well. If the petitioners so intend, they could have also participated in the selection process of the University consequent to its notification for recruiting permanent posts. Without participating in the regular employment process and after agreeing in unequivocal terms, the petitioners should not demand regularisation or permanency of their temporary service. Hence, this Writ Petition is liable to be dismissed.



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9. In the result, this Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

06.11.2023

Index : Yes

Internet : Yes/No

Speaking / Non-speaking

Neutral Citation : Yes/No

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To

1.The Vice Chancellor,
The University of Madras,
Chepauk, Chennai 600 005.

2.The Registrar,
University of Madras,
Chepauk, Chennai 600 005.



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