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W.P.No.16701 of 2020,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.16701 of 2020
and W.M.P.Nos.4559 of 2021 & 20708 of 2020

S.Bala Baskaran

...

Petitioner

/vs/

Pondicherry University,
Rep. by its Registrar,
R.V.Nagar, Kalapet,
Puducherry – 605 014.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondent to regularly appoint the petitioner in the post of Programmer with effect from 22.11.2013, as per the Executive Council's approval, with all consequential benefits of seniority, arrears of salary and all other benefits and award costs.

For Petitioner ... Ms.R.Vaigai
for Ms.Anna Mathew

For Respondent ... Mr.AR.L.Sundaresan
Senior Counsel
for Mr.B.Rabu Manohar



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ORDER

WEB COPY This Writ Petition has been filed for issuance of a Writ of Mandamus to direct the respondent to regularly appoint the petitioner in the post of Programmer with effect from 22.11.2013, as per the Executive Council's approval, with all consequential benefits of seniority, arrears of salary and all other benefits and award costs.

2. The petitioner is employed as Programmer in the respondent University as a contract employee from the year 2012. The services has been continuously extended from time to time. The grievance of the petitioner is that the persons appointed similar to the petitioner and whose services have been extended from time to time were absorbed in the regular vacancies by taking into consideration of his continuous services. But the petitioner alone was not considered. Hence he has filed this Writ Petition seeking direction to appoint him in the regular post of Programmer with effect from 22.11.2013 as per the Executive Council's approval with all consequential benefits.



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3. Ms.R.Vaigai, learned Senior Counsel for the petitioner attracted the attention of the Court to the minutes of the selection committee held on 21.05.2011 in which the appointment of the petitioner is shown against the permanent positions likely to be created; though the appointment order stated that the petitioner was appointed for one year, he continued to be in service; the petitioner has given a representation on 02.02.2015 by stating that the programmer post has been created in the Directorate of Distance Education and he should be considered for regular appointment; in response to that, the respondent University has given a memorandum dated 28.10.2016 by stating that the request of the petitioner for regularization in the post of Programmer is yet to be placed before the executive council for consideration subject to the terms and conditions of the University; in the minutes of meeting of the committee constituted to consider the extension of tenure of contract engagements, has passed a resolution to consider the temporary appointments as regular appointments; in the said minutes the name of the petitioner also appeared in Sl.No.3 for the post of Programmer.



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3.1 In a meeting of the Executive Council dated 16.02.2017, the petitioner was considered, but the subject was deferred; the vacancy details of the respondent University as on 01.01.2018 would show that two posts was sanctioned and out of which one post is for Programmer and it is kept vacant.

3.2 Mr.R.Vaigai, further submitted that many of the person similar to the petitioner's was regularized under the Directorate of Distance Education (hereinafter referred to as 'DDE') funds irrespective of the fact of receiving of UGC grants; in the minutes of the Committee constituted to examine the Man Power requirements and other matters of Directorate of Distance Education, vide EC Minutes Res.No.2013.117.167 dated 07.03.2013, the requirement of additional post for DDE has been tabulated under Annexure-I and in which additional requirement for one programmer is shown.

3.3 In the meeting of the Executive Council held on 22.11.2013, a resolution has been passed to approve in principle, the recommendations of



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the Committee constituted to examine the Human Resource Requirements and other matters of the DDE.

3.4 The grievance of the petitioner is that all those posts which have been recommended to be essential either for the University or DDE have been regularized except the post of the petitioner and series of appointment orders have been given to the individuals in respect of the post listed in the Annexure mentioned already; those regular appointment orders have been given considering the recommendations made by the Man Power Committee approved by the Executive Council though the posts created by the University is funded by DDE. In those appointments it has been specified that the appointments will be continued so long as DDE exists and that the appointment have been made with effect from 22.11.2013, on which date approval was given in the 117th Meeting of Executive Council for the recommendations made by the Man Power Committee.



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3.5 On 16.08.2021, in the meeting of the committee constituted to consider regularization of various contract personnel working in Pondicherry University, it has been resolved to prescribe certain criteria for recommending regularization of the employees.

3.6 In the annexure attached to the above resolution also the name of the petitioner appears in Sl.No.23; the petitioner's post has been recommended against DDE created post of Programmer as he has completed nearly 10 years and the post is available subject to the condition that he should withdraw the case filed against the University; in the subsequent meeting held on 22.12.2021 to ratify the recommendations of the committee constituted to consider regularization of various contract personnel working in the Pondicherry University, 125 personnels' appointment has been ratified except the petitioner and the petitioner's case was not considered for ratification; since the petitioner alone has been discriminated each time though his services were above the benchmark, he was not regularized.



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WEB COPY 3.7 All along the persons similarly placed have been considered to be regularized under DDE and the respondent cannot invoke any new rule which might have come into force subsequently and apply it against the petitioner; after having utilized the petitioner's services for several years, it cannot be said that the petitioner's employment is a back door entry; hence a direction should be given to appoint the petitioner in regular post of Programmer as prayed.

4. Mr.AR.L.Sundaresan, learned Senior Counsel for the respondent University relied on the Memorandum dated 08.03.2012 and submitted that the petitioner is engaged as Programmer in the respondent University on contract basis for a period of one year and if the said offer is accepted, he should report for duty on or before 23.03.2012 failing which the offer of engagement will automatically stand cancelled without any further intimation; having agreed the offer with the above condition, the petitioner cannot claim that he has a better right for regularization; the petitioner was offered with an appointment only because those persons who were selected



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and stood above him did not report duty; just in order to see the work not affected, the petitioner was engaged only on specified terms and on contract basis.

4.1 Mr.AR.L.Sundaresan, further submitted that the sanction under DDE is a separate head and self financing mode wherein no regular positions were offered and therefore in the revised recruitment rules, no post under DDE have been included and as such the sanctioned posts is only one.

5. The petitioner's case squarely falls under the dictum laid by the Hon'ble Supreme Court in *State of Karnataka Vs Umadevi* reported in *(2006) 4 SCC 1* in which it is held that person who entered back door cannot claim permanency without undergoing the strict selection process.

6. The fact that the petitioner was appointed on contract basis through an order dated 08.03.2012 is not denied. But prior to the said selection, the notification was issued by the respondent University. The



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petitioner was appointed to the post of 'Programmer' on contractual basis for the period of one year. However, his services have been extended for each year even though he was regularized. The petitioner had given a representation to consider him to appoint in a permanent post. Even though the petitioner was appointed on temporary basis, he had undergone thorough selection process. Since selection has been done subsequent to a notification issued online by the University, the petitioner competed with several applicants and attended the written examination and qualified for interview and thereafter only he was appointed.

7. As per the information furnished to the petitioner with regard to the minutes of the meeting of the selection committee held on 21.05.2011, it is seen that totally 12 persons have been shortlisted for interview based on their merit and after having analyzed their performance during interview, three persons have been appointed to the post of 'Programmer'. The petitioner who stood in place No.3 is said to have been appointed against the vacancy which is likely to be created. The petitioner had undergone a thorough process of selection and he did not adopt any



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backdoor entry to enter into the staff role of the University.

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8. Since the services of the petitioner was being extended every year, he gave a representation dated 02.02.2015, by stating various facts about the possibility of getting him appointed in a regular manner. In fact, a reply was given to the petitioner on 07.03.2015 by stating that the post of 'Programmer' will be filled 100% by direct recruitment and hence the petitioner applied to the post of 'Programmer' afresh when the vacancy is advertised by the University. As the petitioner had renewed his request once again, a reply was given to him on 28.10.2016 by stating that the subject of regularizing him in the post of Programmer is yet to be placed before the Executive Council for consideration. However in the 124th meeting of the Executive Council held on 16.02.2017 the petitioner's repeated request for regularization had also been surfaced as a subject. Earlier in the meeting of the committee constituted to consider extension of tenure of contract and engagements which was held on 21.07.2014, the performance of 97 contract employees were considered and it has been recommended that contract persons who have been recruited through proper selection process can be considered for regular appointment. It is



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noted down that the services of those contract employees are required for smooth functioning of the department. However it is found that out of that 97 employees 95 employees engaged on contract basis had performed well and their overall assessment is good and above. The annexure along with the minutes of the meeting would show that it includes the name of the petitioner also. So the committee has recommended to consider the petitioner to be appointed regularly. However, in the meeting dated 16.02.2017 the request of the petitioner for regularization of services has been deferred.

9. The vacancy details as on 01.01.2018 would show that there are two programmers available; one for the University and the another for DDE. Even while extending the tenure of contract engagements the respective committee constituted to consider the extension of tenure has passed a resolution on 21.07.2014 which is extracted hereunder:

“ The committee noted that 97 employees as in Annexure-I engaged on contract basis have been working continuously for more than two years with the designation indicated against each. It was also noted that as per the recommendations made by the concerned Heads of Depts./Offices, their services are essentially required for smooth functioning of the



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Depts./Offices. The Finance Officer pointed out that as per the Terms and Conditions of Contract, as approved by the Executive Council, contract appointments will be restricted to a specified duration as per requirement, maximum up to 3 years at a time which would be applicable for extension of contract engagements also.

....

The committee after perusing their performance reports, other relevant records and the recommendations of the concerned Heads of Depts./Offices, unanimously recommended that the services of all the 95 employees engaged on contract basis whose overall assessment is Good and above may be extended for a further period of one year from the date of completion of their present tenure as detailed in the Annexure-II pending receipt of sanctioned posts from UGC.

...

The Committee also recommended that the Contract personnel who have been reckoned against regular posts and recruited through proper selection may be considered for regular appointment."

10. It is seen that each time when the meetings were conducted by the respective committees, the scope for appointing the petitioner as against the post Programmer was on the positive side.

11. It is submitted by learned Senior Counsel for the petitioner that apart from the regular post in the University, the contractual employees



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whose services are above the mark have also been absorbed as against the regular post in DDE as well. The committee constituted to examine the man power requirements and other matters of Directorate of Distance Education has furnished a list of requirements in which one post of Programmer is also included as an essential post. For the reasons best known to the respondent, one post of 'Programmer' in the University has been scheduled to be filled up through direct recruitment. The regular posts of University might have some administrative hurdles in view of the UGC grant and approval. Hence there could have been some technical difficulties.

12. So far as the DDE is concerned, it is a self financing institution under the Puducherry University. In fact various appointments have been issued to similarly placed person if their performance is found to be above board. To substantiate the same, the learned Senior Counsel attracted the attention of this Court to minutes of meeting dated 16.08.2021 of committee constituted to consider regularization of various contract personnel working in the University. In the said meeting the following



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criteria have been considered to recommend the regularization of contract employees:

- i. Employed following due process of selection including issue of advertisement, constitution of selection committee, skill test, interview, etc.*
- ii. Ten years or above service.*
- iii. Availability of regular vacancies against direct recruitment as per CRR-2019.*
- iv. Consistent good Annual Performance Appraisal Report.*
- v. Fulfilling qualifications as per Recruitment Rules.*

13. The list of contract employees who found to be qualified by falling under the above criteria have also been listed. In the said list of candidates, the petitioner's name is also flashed but at that relevant point of time the petitioner had completed only nine years of service. However the recommendation has been made to appoint the petitioner against DDE created post of 'Programmer' after completion of 10 years, subject to the condition that he should withdraw this case filed by him against the University.

14. At no point of time the petitioner was found to be falling short of any performance standards. Only because of the above reason in the



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minutes of the above meeting dated 13.11.2021 the petitioner's name also was included in the list. In response to the earlier resolution dated 12.08.2021, the regularization was also issued to 58 members of contract employees vide order dated 13.11.2021 and that has been subjected to ratification of the Executive Council and the Executive Council has taken up the matter in the meeting held on 22.12.2021. Even though the petitioner had completed 10 years of service and was fit into the criteria laid down by the University for getting regularized in DDE created post, he was not given with regularization. It is probably because the petitioner did not withdrew the writ petition filed against the University and kept it pending.

15. So in the manner in which the contract employees have been absorbed and their services were regularized would show that the University did not await for UGC created post but the Man Power Requirement was met out by way of regularizing the contract employees against DDE created posts as well. There is no quarrel on the point that one Programmer post has been created in DDE which was found to be



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essential. In fact in the earlier meetings itself the petitioner's name was considered and approval was given in principle to appoint him in the said post after ten years.

16. There seems to be some underlying institutional animosity against the petitioner and it had worked against him. A person knocking the doors of the Court for any rightful remedy should not be viewed hostile to the interest of the institution and there should not be any discrimination for having come to Court. In this regard, I feel it is appropriate to refer the judgment of the Hon'ble Supreme Court in ***The Manger, Government Branch Press and another Vs. D.B.Belliappa*** reported in (1979) 1 SCC 477, wherein it is held as under:

“ 12. ... the respondent was arbitrarily singled out for discriminatory treatment, although the respondent's record of service was good and at no time he gave room for any complaint from his official superiors. It is stressed that these averments in the additional affidavit of the respondent were not rebutted or countered by the opposite side on affidavit, nor was any material produced on record to show that there was any special reason for terminating the respondent's service and continuing the service of his juniors. It is urged that since the consistent stand taken by the appellant in the impugned order; in their counter-affidavit and at the time of arguments in the High Court was that the service of the respondent



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has been terminated without any reason, in accordance with the terms and conditions of his service, the appellants should not be allowed to commit and volte-face in his special appeal and take up a different ground which was never set up or pleaded.

...

16. ... But where there is a specific charge of arbitrary discrimination, or some hostile motive is imputed to the authority terminating the service, it is incumbent on the authority making the impugned order to explain the same by disclosing the reason for the impugned action. In the instant case, the appellant intransigently withheld that information from the Court. There is no escape from the conclusion that Belliappa was picked out for the impugned action whimsically, without any special reason which could put him in a class separate from that of his three juniors who have been retained in service."

17. The prime submission of the learned counsel for the respondent is that the petitioner accepted the appointment on contractual basis by knowing that he cannot have any better right for regularization. However the learned counsel for the petitioner submitted that though the petitioner was appointed on contractual basis, his services have been regularized from year to year without any break only on account of the infrastructural demand of the University. Hence it is not wrong on the part of the employee to seek for regularization.



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18. No doubt a person who is employed on contractual basis is engaged for a temporary purpose and his engagement comes to an end once the need or the project for which they are employed comes to an end. But, in the case on hand the petitioner's services were renewed each and every year even though he is labelled as contractual employee. There are sufficient materials produced before the Court to show that such contractual employees have been regularized against DDE created post on certain conditions and the Executive Committee has also approved such engagements. Since the petitioner was also well considered for the said right of regularization and DDE created post of 'Programmer' is also available, there should not be any difficulty in regularizing the services of the petitioner also by absorbing him in the DDE created programmer.

19. Since the similarly placed persons have been appointed and their regularization has been given with effect from 22.11.2013 on which date the vacancies were created, similar order should have been issued for the petitioner as well.



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WEB COPY 20. In the result, this Writ Petition is allowed and the respondent is directed to pass orders to regularize the petitioner in the post of Programmer with effect from 22.11.2013, as per the Executive Council's approval along with 50% of monetary benefits and all attendant benefits of seniority, arrears of salary and all other benefits within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

19.12.2023

Index: Yes
Speaking order
Neutral Citation : Yes
bkn

To:

The Registrar,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry – 605 014.



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