



WRIT APPEAL(MD)No.981 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	12.07.2023
Date of Judgment	25.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

WRIT APPEAL(MD)No.981 of 2023
and
CMP(MD)No.7691 of 2023

The Madurai Kamaraj University,
Rep. By its Registrar,
Madurai-625 021.

: Appellant/ Respondent

Vs.

K.Ravikumar

: Respondent/Petitioner

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 01.12.2022 made in W.P.(MD)No.12554 of 2022.

For Appellant

: Mr.Veerakathiravan
Additional Advocate General
for Mr.T.Sakthikumarn

For Respondent

: Mr.M.Mahaboob Athiff



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J U D G M E N T

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(Judgment of the Court was made by **D.BHARATHA CHAKRAVARTHY, J**)

A. THE APPEAL :

This Writ Appeal is directed against the order of the learned Single Judge of this Court, dated 01.12.2022 in W.P.(MD)No.12554 of 2022, in and by which the writ petition filed by the respondent was allowed by this Court directing the appellant to regularize the services of the respondent on completion of 10 years of service as casual labour. However with financial benefits from the date of the impugned order ie., 11.08.2021.

1.1. Hereinafter in this Judgment, the parties are referred to as per array in the writ petition.

B. Brief Facts Leading to the Appeal:

2. The case of the writ petitioner is that he was called for an interview by the respondent University by a call letter dated 13.10.2005. After subjecting him to selection, by an order dated 14.11.2015, he was



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appointed as a Casual Labour on a consolidated pay of Rs.3,600/-. The appointment was duly approved by the Appointments Committee by a resolution on the same day. Thereafter, the petitioner has been continued in service without any break in service whatsoever.

2.1. After completion of 10 years of service, the petitioner made representation dated 27.10.2015 for regularization of his services on par with similarly situated casual labours. Since there was no positive response, the writ petitioner approached this Court by Writ Petition in W.P.(MD)No.20955 of 2016 and by an order, dated 30.11.2016, the writ petitioner was directed to be regularized in service as Clerk/Junior Assistant as per the existing norms under the time scale of pay within a period of four weeks from the date of receipt of a copy of the order. On appeal, by order dated 28.04.2017, the Hon'ble Division Bench of this Court set aside the said order by giving an opportunity to the University to file counter and remanded the matter back to the file of the learned Single Judge. Thereafter, the University filed a counter affidavit contending that the appointment of the writ petitioner was otherwise than



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by sponsoring through employment exchange. The engagement was not against any sanctioned post. Therefore, on the basis of the dictum of the Hon'ble Supreme Court of India in ***State of Karnataka and Others Vs. Uma Devi and Others*** reported in ***AIR 2006 SC 1806***, it is contended that the petitioner is not entitled to pray for regularization of service. Thereafter, the said writ petition was disposed of by order dated 09.03.2021 to consider the representation of the writ petitioner and dispose of the same in accordance with law.

2.2. Pursuant thereto, by order dated 11.08.2021, the request was rejected stating that the Judgment in ***Umadevi's*** case have to be adhered to and the finance committee had recommended to call for vacancies by a proper recruitment process and the vacancies can be filled up only by a regular recruitment process. Challenging the same, the present writ petition in W.P.(MD)No.12554 of 2022 was filed, which was again resisted by filing a counter affidavit on the same lines as that of the earlier writ petition.



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2.3. The learned Single Judge of this Court then considered the case of both parties and found that the petitioner was subjected to a selection process and a resolution was passed approving the appointment and thereafter, the petitioner has been serving the University without any break for 17 years. The learned Single Judge found that there is a resolution, which is passed by the respondent University on 12.08.2005 in and by which, the casual labourers be allowed regular time scale of pay after they completed 10 years of service and the said resolution has not been rescinded till date. Thereafter, the learned Single Judge considered the order, which was passed on the Hon'ble Division Bench of this Court in W.A.(MD)Nos.351 of 2012 etc., whereby, the Hon'ble Division Bench found that the principles in **Umadevi's** case cannot be applied *stricto sensu*, to cases of this nature and the appointment cannot be considered as back door appointment and ordered regularization. The learned Single Judge therefore, ordered regularization of the writ petitioner. Aggrieved by which, the present writ appeal is filed before this Court.



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C. The Submissions:

3. Heard Mr.Veerakathiravan, learned Additional Advocate General appearing on behalf of the appellant and Mr.M.Mahaboob Athiff, learned counsel appearing on behalf of the respondent.

3.1. Mr. Veerakathiravan, the learned Additional Advocate General firstly, would submit that in this case, the petitioner's name was not sponsored by employment exchange. He was called for a mere interview and did not go through any stringent selection process and therefore, his entry into service cannot be said to be by following the rules and hence back door. This Court cannot order regularization of such back door entrance in exercise of its powers under Article 226 of the Constitution of India as per the dictum in *Umadevi's* case. The petitioner can only continue in the same consolidated pay until regular appointments are made. The order appointing the petitioner clearly indicates that his appointment is on temporary basis and will not confer any benefit in future. While so, the learned Single Judge ought not to have ordered regularization. As far as the Division Bench Judgment followed by the



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learned Single Judge is concerned, it cannot be termed as a similar case inasmuch as in those matters, the appointments were made by calling for particulars from employment exchange. As far as the Madurai Kamarajar University is concerned, these appointments were not made through proper selection process. Initially these persons were urgently recruited as a stopgap arrangement and therefore, merely because they have been continued they cannot be conferred with the benefit of regularization.

3.2. The learned Additional Advocate General taking this Court through the resolution relied upon by the learned Single Judge would submit that on a complete reading of the resolution it would be clear that it was meant for regularization as one time measure in respect of the employees who have completed 10 years of service as on that date. The learned Single Judge erred in reading the resolution as if it is a scheme framed continuously for all the employees. In the absence of any scheme, the petitioner is not entitled to claim for regularization.



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3.3. The Learned Additional Advocate General would also rely upon the Judgment of the Hon'ble Supreme Court of India in ***Dr.K. Ragu & ors -Vs- Dr. N. Elumalai and ors (C.A. No. 4351 of 2016 & Batch of cases)*** to contend that as per the dictum of Umadevi's case, the order requires interference.

3.4. Per contra, Mr. M. Mahaboob Athiff, the learned counsel appearing on behalf of the respondent/writ petitioner would submit that the matter is no longer *res integra* and after duly considering the ***Umadevi's*** case, this Court in two matters in W.A.(MD)Nos.351 of 2012 etc., and also in W.A.(MD)Nos.919 of 2014 etc., had allowed the prayers for regularization. In that view of the matter, especially when the petitioner has completed 10 years of service and when he is governed by the resolution passed by the respondent University, he is very much entitled for regularization. ***Umadevi's*** case does not bar his regularization inasmuch as he has completed 10 years of service and are governed by the scheme framed by the respondent University itself.



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3.5. Mr. Mahaboob Athiff, also relied upon the Judgment in ***Raman Kumar & ors -Vs Union of India & Ors (SLP No.7898 of 2020)*** to contend that to regularise some of the employees and not to do so in the case of others would be discriminatory.

D. The Discussion & Findings :

4. We have considered the rival submissions made on either side and perused the material records of the case.

4.1. ***Umadevi's*** case lays down that when the entry is through back door method, that is, when the appointment is de-hors the rules, then the High Court in exercise of its power under Article 226 of the Constitution of India cannot order regularization and regularisation is not a method of recruitment. In the said case itself, in paragraph No.53, the Hon'ble Supreme Court of India, held as follows :

“....53.One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa¹¹, R.N.Nanjundappa¹² and B.N.Nagarajan⁸ and referred to in



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para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”



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4.2. The Hon'ble Supreme Court has made an exception that wherever the employees have completed 10 years of service without the aid of the Orders of the Court and where there is a scheme it is framed by the appropriate employer itself, then the employees can be regularised. In the instant case, the writ petitioner certainly has completed more than ten years of service without any intervention of Court. above principle may not apply.

4.3. This Court, in ***Union of India -Vs- R. Paramasivam and another(2014 SCOnline Mad 114)***, held that when there was no rules for the post in which the employees are recruited, it cannot be said to be back door. In this case also, the employment itself is done by the employer without reference to any sanctioned post and the writ petitioner was appointed as casual labour. On the other hand, he was called for an interview and was being subjected to a selection process and was selected. Therefore, we reject the submission of the learned Additional Advocate General, their appointment is back door in nature.



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4.4. Ever since their recruitment as casual labour, they have been continuously been made to discharge the duties assigned to the post of Clerk/Junior Assistant. The said fact could not be denied by the respondent University. The resolution passed by the respondent University reads thus:

“Item No.5:

Considered the

a) the status of Consolidated Pay Casual Labourers;

b)the recommendation of the Syndicate dated 09.07.2005 to enhance the Consolidated Pay of the Consolidated Pay CLRs who have acquired an additional qualification such as PGDCA/B.Sc., (Computer Science) BCA etc.,

c)Casual Labour working on daily wages basis (Persons working previously in Scheme/Project)

d)Casual Labour working on daily wage basis as Data Entry Operators.

e)Computer Centre Lab Technicians.

Resolved that it be a recommendation to the Syndicate. that the consolidated pay casual labourers and casual



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labourers on daily wages be allowed regular time scale of pay.
for those who have completed ten years of service as given.
below against to the existing vacant posts.

Clerical cadre : Rs.3625-85-4900

Class IV :Rs.2550-55-2660-60-3200

Total no. of employees under clerical cadre

Total no. of employees under Class IV

*The remaining vacancies ie., 61 in the clerical cadre and
9 under class IV category shall be kept in abeyance.”*

(emphasis supplied)

4.5. Thus a careful reading of the above resolution even though mentions about the number of employees and vacancies as on that date, it can be seen that generally it enhanced the consolidated pay on obtaining additional qualification and it considered the status of consolidated pay casual labourers and it resolved that the consolidated pay casual labourers and the casual labourers on daily wages be allowed on regular time scale of pay for those who have completed 10 years of service as given below against existing vacant posts in the Clerical cadre and Class IV posts in the scales of pay mentioned therein. On the basis of the resolution, persons similarly situate that of the petitioner have also been



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regularised. That is, one S. Rajeswari was regularised by order dated 03/01/2012 and one S. Paulraj & 5 others were regularised by order dated 03/10/2013. In that view of the matter, we are unable to accept the contentions of the learned Additional Advocate General that the learned Single Judge has not read the resolution in the correct perspective.

4.6. The petitioner has been kept under consolidated pay for nearly two decades and the dictum of *Umadevi's* case is not for the purpose of employing hands on regular basis continuously for years together and extracting work in the regular posts but on a meagre and consolidated pay. In that view of the matter, the respondent University has got no justification whatsoever in denying regularisation to the writ petitioner.

E. The Result:

5. In the result, this Writ Appeal stands dismissed:

- (i) The respondent shall implement the order of the learned Single Judge of this Court in W.P.(MD)No.12554 of 2022,



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dated 01.12.2022, within a period of two months from the date of receipt of a copy of this order;

(ii) There shall be no orders as to costs;

(iii) Consequently, connected miscellaneous petition is closed.

(S.S.S.R.,J.) & (D.B.C.,J)

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NCC : Yes / No

Index:Yes/No

Index:Yes/No

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AND
D.BHARATHA CHAKRAVARTHY, J.

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Pre-Delivery Judgement made in
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25.07.2023