



W.P.(MD) No.7755 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 09.11.2023

ORDERS PRONOUNCED ON : 12.12.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.7755 of 2014

and

W.M.P.(MD) No.1 of 2014

S.Ramesh

... Petitioner

Vs.

1.The Bharathidasan University,
Rep., by its Vice-Chancellor,
Tiruchirappalli-620 024.

2.The Registrar,
Bharathidasan University,
Tiruchirappalli-620 024.

3.The Secretary,
Department of Higher Education,
Fort St. George, Secretariat, Chennai-600 009.

4.The Director of Collegiate Education,
DPI Campus, College Road, Chennai-600 006.

... Respondents

***[RR3 & 4 impleaded vide order dated 24.04.2023 in W.M.P.
(MD) No.7967 of 2023 in W.P.(MD) No.7755 of 2014]***



W.P.(MD) No.7755 of 2014

WEB COPY

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the Respondents 3 and 4 to regularize the services of the petitioner as Assistant Professor in Computer Science Department in Bharathidasan University Model College at Aranthangi, Pudukkottai District with effect from 16.09.2007, the date of joining of the petitioner, with all consequential benefits including monetary benefits, seniority etc., on par with the regular or permanent Assistant Professors of the respondent University.

For Petitioner	:	Mr.K.K.Senthil Velan Senior Counsel assisted by Mr.S.Ramu
For R2	:	Mr.VR.Shanmuganathan
For RR3 & 4	:	Mr.R.Baskaran Additional Advocate General assisted by Mr.V.Nirmal Kumar Government Advocate
For R1	:	No appearance



WEB COPY



W.P.(MD) No.7755 of 2014

ORDER

1. The case of the petitioner as per the averments in the affidavit filed along with the writ petition:

(i) The 1st respondent issued notification dated 09.08.2007 calling for applications for Guest Lecturers in their University College for the academic year 2007-2008. The petitioner submitted application for the post of Guest Lecturer in the Department of Computer Science. The 2nd respondent sent a call letter dated 06.09.2007 directing the petitioner to appear for an interview before the Selection Committee on 14.09.2007 at 10 a.m. in the Department of Mathematics of the University. The petitioner fared well in the interview and he was appointed as Guest Lecturer *vide* proceedings of the 2nd respondent dated 16.09.2007. Since then, he has been working as Guest Lecturer for a consolidated payment continuously with an artificial break of three days once in three months and continued his work as Guest Lecturer till date.

(ii) In the year 2009, in the recruitment process for permanent Assistant Professor in the 1st respondent University in the Computer Science



W.P.(MD) No.7755 of 2014

Department. Though the petitioner submitted application, but he has not been called for for interview. Subsequently, he was transferred from Orathanadu College to Bharathidasan University Model College at Aranthangi on 24.01.2019. When he approached the 2nd respondent and enquired about his transfer, the 2nd respondent had informed that since the Model College is a newly started one, the services of experienced and skilled lecturers, like the petitioner, are required and due to that reason, the petitioner was transferred. Thereafter, he was transferred to Orathanadu by order dated 09.09.2010. But, he was again transferred from Orathanadu to Aranthangi Model College by order dated 04.10.2010. Again he was transferred from Aranthangi to Orathanadu by order of the 2nd respondent dated 03.05.2012. Again he was transferred from Orathanadu to Aranthangi by virtue of transfer order dated 01.11.2012 and now, he is working at Aranthangi.

(iii) The petitioner also completed and acquired National Educational Testing Bureau Certificate as required by the new norms of the University Grants Commission in the year 2012. As the petitioner rendered



W.P.(MD) No.7755 of 2014

his heartfelt and dedicated services with utmost satisfaction of concerned authorities for all these years and he possessed all requisite qualifications, he made representation to the 1st respondent on 02.05.2013 requesting to appoint him in a regular post of Assistant Professor on permanent basis. Though the 1st respondent received the same, he did not choose to consider the same. Against the inaction on the part of Respondents No.1 and 2, in considering the petitioner for the post of Assistant Professor, despite all eligibilities, experience, testimonial certificates and seniority, as there is no other alternative, the petitioner filed the present writ petition.

2. The petitioner filed an additional affidavit. Averments in the additional affidavit:

(i) In the year 2003, the 1st respondent-University started its University sponsored programme at H.H. Rajah's College, Pudukkottai and the petitioner was appointed as a Guest Lecturer by following the selection procedure and he served from 6th June 2003 and later, the 4th respondent itself undertook the University sponsored programmes as Government programmes in which the petitioner continued to serve till 19.09.2007.



W.P.(MD) No.7755 of 2014

WEB COPY Apart, he served as a Guest Lecturer in M.R. Government Arts College, Mannargudi from 01.08.2000 to 16.04.2002, over all he served as a Guest Lecturer for more than 23 years since 2000.

(ii) The 1st respondent reviewed the performance of the petitioner and found satisfactory. He was recognised and appreciated in various academic responsibilities, which includes Head in-charge of Computer Science Department for the past 15 years, as an Examiner to evaluate University theory and practical examinations, as a Member of Council Centre, as an Additional Chief Superintendent in University examinations, as a Coordinator in Student Career Development Cell, as a Member in Student Grievance Cell, as a Member in Science Forum, as a Member in Student Discipline Committee and as Programme Officer of National Service Scheme. The petitioner possesses Post Graduation degree in Science (M.Sc.), Master of Philosophy (M.Phil.) and Doctorate (Ph.D) in Computer Science and also cleared National Level Eligibility Test (NET) in Computer Science.



W.P.(MD) No.7755 of 2014

WEB COPY

3. On behalf of the respondents, counter affidavits have been filed. Averments made in the counter filed by Respondents No.1 and 2:

(i) The petitioner was selected and appointed as Guest Lecturer even without NET/SLET on 16.09.2007. After recruitment of the petitioner as Guest Lecturer in 2007, there was selection to the post of Lecturer in Computer Science for six posts. Out of 191 applicants, only 17 were called for for interview by following the University Grants Commission norms. As the petitioner was not eligible, he was not called for for interview. Thereafter, *vide* G.O.Ms.No.36, Higher Education Department, dated 28.02.2019, the constituent college of the respondent-University and other University were made as Government colleges. Clause (vii) of the said Government Order makes it clear that the permanent staff of the constituent college will be retained by the University. The colleges under the control of the Government will be run with the help of the temporary staffs till new employees are recruited on permanent basis. There is no clause that after recruitment on permanent basis, the temporary staffs will be reverted back to the University. Further, as on date, there is so far no recruitment in the



W.P.(MD) No.7755 of 2014

Government colleges on permanent basis. It is for the Government to take a call as to whether these Guest Lecturers/temporary staff to be regularised or made permanent and other future course of action.

(ii) The college, in which the petitioner was working, is no longer the college belonging to or administered by the respondent-University. Therefore, there is no employer-employee relationship between the University and the writ petitioner as on date, more particularly from the academic year 2018-2019. It is further averred that assuming for a moment without admitting that the petitioner has merit in his claim, the relief sought for by the petitioner cannot be granted by the respondent-University and therefore, the writ petition as against the Respondents No.1 and 2 is not maintainable and deserves to be dismissed.

(iii) The petitioner, admittedly being a Guest Lecturer, is not entitled to regularisation and he was engaged on the terms and conditions and on need basis. The petitioner is not a regular employee and not appointed by following the rules of recruitment of a public employment.



W.P.(MD) No.7755 of 2014

Being a Guest Lecturer, he cannot claim the benefit of regularisation. The relief of regularisation or permanent absorption could never be claimed as a matter of right and in the absence of any such statutory right, the writ petition for a mandamus will not lie. A similar relief seeking a mandamus to regularise from the post of Guest Lecturers as Assistant Professors as against the respondent-University was considered by this Court in W.P.No. 18129 of 2017 and the said writ petition was dismissed by order dated 08.09.2022 and the said order is squarely applicable to the facts of the present case.

4. Averments in the counter affidavit filed by the Respondents No.

3 and 4:

(i) In order to impart higher education in the rural and low Gross Enrolment Ratio (GER) Districts, the Government have decided to establish University constituent colleges, which were also called as Model Colleges. The noble intent behind starting of these colleges is to uplift the status of the poor and marginalised students by imparting higher education to them. The Government have examined all the aspects and subsequently, the then



W.P.(MD) No.7755 of 2014

WEB COPY

Hon'ble Chief Minister of Tamil Nadu has announced on the floor of the Assembly under Rule 110, that all the 41 University constituent colleges would be converted into Government Arts and Science Colleges. Based on the announcement, the Government have issued orders in G.O.(Ms).No.36, Higher Education (G1) Department, dated 28.02.2019 converting 14 constituent colleges into Government colleges in the first phase and also administrative sanction for teaching and non-teaching posts for the above colleges. Accordingly, 14 colleges, out of 41, have been converted into Government colleges. In G.O.(Ms).No.184, Higher Education (G1) Department dated 11.12.2020, remaining 27 constituent colleges have also been converted as Government colleges in the second phase. Subsequently, the Government have issued orders in G.O.(Ms).No.186, Higher Education (G1) Department, dated 22.09.2022, in which the Government have also sanctioned expenditure for teaching and non-teaching posts for 14 colleges. In G.O.(Ms).No.183, Higher Education (G1) Department, dated 15.09.2022, the Government have also sanctioned expenditure for teaching and non-teaching posts to the remaining 27 colleges.



W.P.(MD) No.7755 of 2014

WEB COPY

(ii) The Government, after careful scrutiny and taking into consideration the view of all the stakeholders and basing on the announcement made by the then Hon'ble Chief Minister on the floor of the Legislative Assembly, converted the constituent colleges of the University into Government colleges. The contention of the petitioner that he is aggrieved by this action is not factually correct and it is liable to be rejected, since the petitioner was not ousted from service or relieved from duty or denied of his salary.

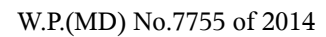
(iii) When these constituent colleges were started by the respective Universities, they have recruited and appointed the teaching staff on regular pay, consolidated pay, remunerative pay, daily wages and on hourly basis. As per the orders issued by the Government in G.O.(Ms).No. 186, Higher Education (G1) Department dated, 22.06.2022, the teaching/non-teaching staff working in constituent colleges cannot be absorbed as Government staff. Universities have been advised that they should themselves correct the audit para clauses regarding recruitment of staff in the constituent colleges of the respective Universities and that the



W.P.(MD) No.7755 of 2014

Universities should not transfer them to any of the Government College for any reason. In Paragraph No.3(viii) of the said Government Order, it has been stated that the teaching/non-teaching staff, who are presently working in permanent/temporary posts will continue to work on deputation basis at the Government colleges in which they are working, till vacancies arise at the respective Universities or till the post are filled by the Government on a permanent basis, whichever is earlier, after which they will be sent back to the respective Universities. The petitioner is a Guest Lecturer working purely on temporary basis. Hence, the petitioner's contention is totally baseless.

(iv) The Government have issued orders in G.O.(Ms).No.56, Higher Education (F2) Department, dated 21.03.2020, by which it was decided to regularise the services of Guest Lecturers in Government Arts and Science Colleges and Colleges of Education by appointing them as Assistant Professors subject to the condition that the original recruitment process of Guest Lecturers should fulfil the norms of an open competitive process. But, it has been superseded and fresh orders for recruitment have



(v) The Government issued G.O.(Ms).No.247, Higher Education Department, dated 08.11.2022, the Government have issued orders in G.O.(Ms).No.247, Higher Education Department, dated 08.11.2022, towards allowing Guest Lecturers to participate in the written examination as a one-time measure and the University Grants Commission has approved the Government's order. Guest Lecturers working in Government colleges shall be eligible to take part in the open competitive written examination and they shall be awarded suitable weightage for the years of service rendered in Government colleges. The Government have issued orders in G.O.(Ms).No.248, Higher Education (F2) Department, dated 08.11.2022 for recruitment to vacant posts of Assistant Professors in Government colleges, which in fact, will create more vacancies and more opportunities to the petitioner. Against G.O.(Ms).Nos.247 and 248, Higher Education (F2) Department, dated 08.11.2022, a batch of writ petitions were filed before the High Court of Madras and Madurai Bench of Madras High Court and they are pending.



W.P.(MD) No.7755 of 2014

As per the orders of the Hon'ble Apex Court in S.L.P. Civil Appeal No.4351 of 2016, the temporary service of the petitioner is not eligible to be regularised as prayed for.

(vi) In G.O.(Ms).No.269, Higher Education (G1) Department, dated 25.11.2022, the Government have issued guidelines for recruitment of 1895 new Guest Lecturers to be appointed in the Government colleges. Paragraph No.12 of the annexure to the said Government Order has explained that the Guest Lecturers may be appointed on consolidated basis up to 30th April of the current year. Further, Paragraph No.13 of the annexure to the said Government Order states that the Guest Lecturers in the Government Colleges shall be terminated when a regularly recruited Assistant Professor joined duty, or when that post was filled up through transfer or on the last working day of the academic year, whichever is earlier.

5. Mr.K.K.Senthil Velan, learned Senior Counsel assisted by Mr.S.Ramu, learned counsel for the petitioner, submits that the petitioner



W.P.(MD) No.7755 of 2014

was appointed as Guest Lecturer by virtue of the notification issued by the 1st respondent on 09.08.2007 by following the procedure. While issuing the notification, the 1st respondent has followed the roster and reservation. The competent Selection Committee appointed by the 1st respondent-University selected the petitioner. As such, the appointment of the petitioner was made by following the procedure and as the petitioner is having all requisite qualifications, he was continued as Guest Lecturer from the academic year 2007-2008 to till date and as such, he is entitled for regularisation in the said post.

6. The learned Senior Counsel contends that the petitioner dedicated his entire life for the teaching profession in the Government college with meagre salary and within few years, he is going to attain superannuation age and considering all these facts, the respondents ought to have considered the claim of the petitioner for regularisation. The learned Senior Counsel further contends that though the petitioner submitted representation to the 1st respondent on 02.05.2013, it was not considered by the 1st respondent, though at the relevant point of time, the institution



W.P.(MD) No.7755 of 2014

wherein the petitioner was working, was not taken over by the Government.

The petitioner also submitted a representation dated 17.11.2022 to the Respondents No.3 and 4 requesting to regularise his services. But it was also not considered, which is illegal, arbitrary and unjust. Finally, the learned Senior Counsel sought to pass appropriate direction to the respondents to regularise the services of the petitioner as Assistant Professor in Computer Science Department with effect from 16.09.2007 with all consequential benefits by allowing the writ petition.

7. Mr.VR.Shanmuganathan, learned counsel appearing for the Respondents No.1 and 2 submits that the petitioner was selected and appointed as Guest Lecturer even without NET/SLET on 16.11.2007 as per the guidelines issued by the Director of Collegiate Education, which were revised subsequently in the year 2006. After recruitment of the petitioner as Guest Lecturer in 2007, there was a selection to the post of Lecturer in Computer Science Department for six posts. As per the University Grants Commission norms, the degree holders in Computer Science with NET/SLET or Ph.D. degree holders in Computer Science or M.E./M.Tech.



W.P.(MD) No.7755 of 2014

WEB COPY

in Computer Science were eligible. As the petitioner was not eligible, he was not called for for interview.

8. The learned counsel for the Respondents No.1 and 2 contends that the State Government *vide* G.O.Ms.No.36, Higher Education Department, dated 28.02.2019, made the constituent college of the respondent University and other University as Government colleges. Now, it is for the Government to take decision as to whether the Guest Lecturers, like the petitioner, to be regularised or not. The learned counsel for the Respondents No.1 and 2 finally submits that the relief sought by the petitioner in this writ petition cannot be granted by the respondent-University at present and therefore, the writ petition is not maintainable as against the Respondents No.1 and 2 and sought to dismiss the same.

9. Mr.R.Baskaran, learned Additional Advocate General, assisted by Mr.V.Nirmal Kumar, learned Government Advocate appearing for the Respondents No.3 and 4, submits that as per the policy decision taken by the State Government to impart higher education in the rural or low Gross



W.P.(MD) No.7755 of 2014

Enrolment Ratio Districts, it is decided to establish the University constituent colleges, which were also colleges as Model Colleges. As per the said decision, the Government converted 41 constituent colleges into Government colleges *vide* G.O.(Ms).No.184, Higher Education (G1) Department, dated 11.12.2020 and G.O.(Ms) No.186, Higher Education (G1) Department dated 22.06.2022 respectively.

10. The learned Additional Advocate General, basing on the averments made in the counter affidavit filed by the Respondents No.3 and 4 submits that though the college, wherein the petitioner was working has been converted into Government college, as per the policy decision of the Government, the petitioner was not ousted from service or relieved from duty or denied of his salary.

11. The learned Additional Advocate General contends that the petitioner is working as a Guest Lecturer purely on temporary basis. The appointment of the petitioner by the Respondent No.1-University as Guest Lecturer was made without following the rules of public appointment and



W.P.(MD) No.7755 of 2014

rule of reservation and roster was not followed. As such, he has no any vested right to claim regularisation. The learned Additional Advocate General also brought to the notice of the Court that originally the Government has issued G.O.(Ms) No.56, Higher Education (F2) Department, dated 21.03.2020 to regularise the services of the Guest Lecturers in Government Arts and Science Colleges and Colleges of Education by appointing them as Assistant Professors subject to the condition that the original recruitment process of Guest Lecturers should fulfil the norms of an open competitive process. But, in compliance of the judgment dated 07.04.2022 in S.L.P. Civil Appeal No.4351 of 2016 of the Hon'ble Apex Court, the Government issued G.O.(Ms) No.247, Higher Education (F2) Department, dated 08.11.2022, superseding the Government Order in G.O.(Ms) No.56, Higher Education (F2) Department, dated 21.03.2020.

12. The learned Additional Advocate General further submits that in G.O.(Ms) No.247, Higher Education (F2) Department, dated 08.11.2022, orders were issued to allow Guest Lecturers to participate in the written



W.P.(MD) No.7755 of 2014

examination as a one time measure and they may be awarded suitable weightage for the years of service rendered in Government colleges. As per the orders of the Hon'ble Apex Court in S.L.P. Civil Appeal No.4351 of 2016, the petitioner can participate in the selection process and he will be awarded suitable weightage in the recruitment of Assistant Professors subject to the result of the batch of writ petitions pending before the Madras High Court and Madurai Bench of Madras High Court.

13. The following decisions are relied on by the learned counsel appearing for the petitioner:

- i. ***Seo Narain Nagar and others vs. State of Uttar Pradesh and others*** reported in ***AIR 2018 SC 233***;
- ii. ***Narendra Kumar Tiwari and others vs. State of Jharkhand and others*** reported in ***(2018) 8 SCC 238***; and
- iii. ***Periyar University vs. D.Gayathri and Others*** reported in ***(2018) 3 CTC 857***.



W.P.(MD) No.7755 of 2014

WEB COPY

14. The following decisions are relied on by the learned counsel appearing for the Respondents No.3 and 4:

- i. ***Vibhuti Shankar Pandey vs. State of Madhya Pradesh and others*** in S.L.P.(C) No.10519 of 2020;
- ii. Order dated 22.04.2022 of the Madurai Bench of Madras High Court in W.P.(MD) Nos.4950 to 4965 of 2020 ;
- iii. Order dated 12.04.2020 of the Madurai Bench of Madras High Court in W.P.(MD) No.14427 of 2019; and
- iv. Order dated 21.06.2023 of the Madurai Bench of Madras High Court in W.P.(MD) No.7552 of 2023.

15. This Court gave anxious consideration to the arguments advanced by the respective counsels and carefully examined the entire material available on record.

16. It is an admitted fact that the petitioner was appointed as Guest Lecturer in the 1st respondent-University for the academic year



W.P.(MD) No.7755 of 2014

2007-2008. On perusal of the Notification No.26233/6/R/CCCD/L/2007, dated 11.09.2007 (which is filed as page No.23 of the additional typed set of papers), it reveals that applications are invited for Guest Lecturers in the 1st respondent-University for the academic year 2007-2008. In the said notification, the number of Guest Lecturers to be recruited Department wise and category wise was also mentioned. How many vacancies to be filled by general category candidates and how many posts to be filled under SC, MBC and BC categories was also mentioned. The petitioner submitted application seeking appointment as Guest Lecturer in Computer Science Department. In the said Department, three posts of Guest Lecturers are earmarked for general category, two for SCs, two for MBCs and two for BCs.

17. The list of Selection Committee members appointed for selection of Guest Lecturers for the constituent colleges of the 1st respondent-University for the academic year 2007-2008 is filed as Page No.25. On perusal of the same, it is clear that the 1st respondent-University constituted Selection Committee Department wise. The Selection Committee for Department of Computer Science was constituted



W.P.(MD) No.7755 of 2014

with the Head of the Department, Syndicate Nominee and SC/ST Nominee.

The Selection Committee conducted interview for selection of Guest Lecturers in the Department of Computer Science on 14.09.2007. Consequent to the selection process, the petitioner was appointed *vide* proceedings of the 1st respondent-University, dated 06.09.2007. The appointments were approved by the Syndicate of the Respondent No.1-University. The appointment of the petitioner was reviewed periodically by the 1st respondent through the Review Committee and basing on its recommendations, the petitioner was allowed to continue as Guest Lecturer. Though the petitioner did not possess the NET/SLET at initial appointment, subsequently, he possessed the degree in Master of Philosophy (M.Phil.), Doctorate (Ph.D.) in Computer Science and also cleared the National Level Eligibility Test (NET) in Computer Science. Considering the same, the petitioner was continued as Guest Lecturer in the 1st respondent-University. It is also to be noted that though the 1st respondent-University appointed the petitioner as Guest Lecturer, his services were utilised and various academic and administrative responsibilities were entrusted to the petitioner.



W.P.(MD) No.7755 of 2014

WEB COPY

18. The contention of the petitioner is that he was entrusted with the work of Head of In-charge of Computer Science Department, as an Examiner to evaluate University theory and practical examinations, as an Additional Chief Superintendent in University examinations, as a Coordinator in Student Career Development Cell, as a Member in Student Grievance Cell, as a Member in Science Forum, as a Member in Student Discipline Committee and as Programme Officer of National Service Scheme. As there is no any denial by the respondents with regard to the entrustment of these academic and administrative responsibilities and discharged by the petitioner for the past several years, it has to be accepted. In view of the same, this Court finds no merit in the contention of the respondents' counsels that the recruitment of Guest Lecturers was made in the 1st respondent-University without following the roster or rule of reservation and contrary to the rules of public appointment. As such, it is held that the appointment of the petitioner is neither illegal nor irregular.

19. On consideration of all these aspects comprehensively, it appears that though sanctioned posts are available in the 1st respondent-



W.P.(MD) No.7755 of 2014

WEB COPY

University, without filling those vacancies of sanctioned posts in various Departments, including the Computer Science Department, the 1st respondent-University had contemplated to appoint only Guest Lecturers in those vacancies. If, sanctioned posts in every Department of the 1st respondent-University are not available, the notification would not be issued after earmarking the vacancies in category wise to apply rule of reservation. As and when sanctioned posts are available, the 1st respondent-University ought to have filled those vacancies on permanent basis with qualified persons to fulfil the norms prescribed by the University Grants Commission and by the Government. It is to be noted that when Universities making temporary teaching arrangement in the form of guest faculty, ad hoc faculty, academic consultants and Assistant Professors on contract basis, they would face several problems. It came to the notice of the Court that right now, in most of the Universities in the country, faculty members, who are working in these categories, were part up more than 10 to 20 years of service like the petitioner in this writ petition. Even some were retired as guest faculty. One can imagine their prime life is being spoiled without any economic security. Those persons appointed under these categories as guest faculties



W.P.(MD) No.7755 of 2014

will take classes and do all other works on par with permanent faculty and some times, do works more than permanent faculty. But, unfortunately, they are being paid low wages and not following the principle of “equal work-equal pay”. Normally, these guest faculties would not have any bargaining power and they would be forced to live the minimul life for their survival. Number of intellectuals having possessed Doctorate (Ph.D.) in their respective branches are teaching the students and they would be paid on only hourly basis. Those faculty members, who are appointed as Guest Lecturers, even after 22 to 25 years of service, they will be treated as temporary staff with low wages and on one day, simply they will be removed from services without any reason. Such type of appointments would cause unstability and agony for the persons who are appointed, due to the reason that though they are discharging duties on par with the regular faculty, they will not get equal salary for the work discharged by them and by continuously working in such capacities for years together and they would reach maximum age limit for regular selection process and also, there is no security for their present position. Definitely, they will get frustrated with that system of adhoc appointments without getting proper



W.P.(MD) No.7755 of 2014

WEB COPY

remuneration for their work. To avoid such difficulties, it is for the Governments to formulate a policy to ventilate their grievances, after placing the ground level realities before the concerned Courts. If the Government is not in a position to frame the policy to continue or regularise the services of these honourary/temporary staff, who put up considerable services, at least they have to be paid remuneration by following the principle of “equal work equal pay”.

20. Under these circumstances, in the considered opinion of this Court, the action of the respondents in keeping the sanctioned posts vacant for years together and appointing the teaching staff on consolidated pay, remunerative pay, daily wages and on hourly basis is nothing but, exploiting the educated qualified persons, and as such, it is to be held as illegal, arbitrary, unjust and violative of Right to Life enshrined under Article 21 of the Constitution of India. The Supreme Court of India time and again ruled that the “Right to Life” includes “right to live with human dignity and free from exploitation”.



W.P.(MD) No.7755 of 2014

WEB COPY

21. The opinion of this Court that the educated and qualified youth are being exploited by way of adhoc/contract/outourcing temporary appointments by the employers is fortified by the judgment of the Hon'ble Apex Court in **Seo Narain Nagar** (*cited supra*). At paragraph No.8 of the said judgment, it is held as extracted hereinunder:

“8. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. This situation was not envisaged by Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .



W.P.(MD) No.7755 of 2014

The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130] , from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions



W.P.(MD) No.7755 of 2014

and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .”



W.P.(MD) No.7755 of 2014

WEB COPY

22. The same view was expressed by the Hon'ble Apex Court in **Narendra Kumar Tiwari** (cited supra), at paragraph No.7 of the said judgment, which is extracted hereinunder:

“7. The purpose and intent of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and Kesari [State of Karnataka v.



W.P.(MD) No.7755 of 2014

M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid.”

23. While dealing with the issue of illegal appointments and irregular appointments of Lecturers in constituent colleges of State University, a Division Bench of the Madras High Court in ***Periyar University*** (*cited supra*), at paragraph Nos.38 and 39, held as extracted hereinunder:

“38. In the decision cited supra, the Hon'ble Apex Court in order to maintain the Rule of Equity in Public employment, has elaborately discussed about the backdoor entry and held that illegal appointments cannot be regularised, however, irregular appointments can be regularized for one time measure if they have put more than ten years of service. The Hon'ble Apex Court further held that temporarily employed or Contractual Casual Worker engagement if not based on proper selection they are not entitled for regularization. Even they have no right to claim on the ground of legitimate expectation.

39. However, in the present case, the Writ Petitioners were selected through Paper Publication and they are continuously in service and they are appointed



W.P.(MD) No.7755 of 2014

through the Selection Committee of the Appellant- University and the said appointment was also approved by the Syndicate of the Appellant- University. Hence, we are of the view that they are entitled for regularization of their services.”

24. This Court has carefully considered the reliances placed by the learned counsel appearing for the Respondents No.3 and 4 in ***Vibhuti Shankar Pandey*** (cited *supra*), the order dated 22.04.2022 in W.P.(MD) Nos.4950 to 4965 of 2020; the order dated 12.04.2020 in W.P.(MD) No. 14427 of 2019; and the order dated 21.06.2023 in W.P.(MD) No.7552 of 2023. This Court is fully agreeing with the observations of the Courts in the said judgment and orders and views expressed by the learned Judges. But, the facts and circumstances of the present case are different.

25. This Court intends to visualise the situation in a different angle. Education is the most important factor for the development of any society in general and plays a very significant role for socio-economic progress of a country in particular. It is the prime responsibility of the



W.P.(MD) No.7755 of 2014

Government to provide all facilities to the education sector at all levels, i.e., primary, secondary and higher level. To impart education at a higher level, institutions like Universities were being established across the country. Universities are centres for higher learning. Higher education institutions like Universities are supposed to give qualitative education. In higher education dimensions are important, i.e., (i) teaching; (ii) research; and (iii) training. To impart all these three, the most important basic need is a good teaching faculty. University Grants Commission is time and again giving directions to all the Universities to provide good faculty to the students for imparting qualitative higher education. Qualitative education is the most important factor in order to face the challenges with all changes in the society. But, unfortunately, several Universities are suffering with several issues in importing qualitative education and primarily, Universities are suffering with lack of good faculty in required number.

26. By non-filling of the vacancies of sanctioned posts by qualified persons on permanent basis in the educational institutions, the ultimate sufferers would be the students studying in such educational



W.P.(MD) No.7755 of 2014

institutions. This ultimately hampers the future of the students studying in those institutions because, they cannot choose or settle in their life facing challenges in the society, because of the low quality education, due to lack of proper teaching faculty. In fact, all State Universities and Government Colleges are started to impart higher education with low costs. Normally, students hail from SC, ST, OBC, EWS, Minorities and other financially weaker sections of the society choose State funded Universities due to their socio-economic conditions. After knowing the fact of lack of proper teaching faculty in that University/College, the students cannot move on better institutions with good faculty paying higher fees. Ultimately, they are forced to continue in the said educational institutions, though there is no qualified teaching faculty and though they are not getting qualitative education.

27. Parents admit their children with great belief that they get quality education and their children will be settled in the society in a good position with a bright future. If qualified persons are not appointed as faculty in the educational institutions, students will not get qualitative



W.P.(MD) No.7755 of 2014

WEB COPY

education, which includes teaching-research-training. This gives ultimately results in low or average performances of the students in various employment opportunities. For example, if guest faculty is teaching law students in Law Universities/Law Colleges, without much commitments and frustrations about their career, then how one can expect that a law student of that institution will perform better as a Lawyer in the Court and to take judicial examinations. Definitely his/her performance will be low. Every student is entitled to get qualitative education as a Right.

28. In the year 1993, in a landmark judgment in “Unnikrishnan case”, the Supreme Court of India held that “the right to education flows directly from the right to life”. The Apex Court and various High Courts time and again declared that “right to education” includes quality education. Education is a fundamental human right plays a crucial role in the over all development of an individual and national as a whole.

29. This Court cannot ignore the fact that at present, most of the Universities/higher educational institutions are imparting higher education



W.P.(MD) No.7755 of 2014

with adhoc and guest faculty. Timely recruitment of teaching faculty on permanent basis is the primary factor in imparting of qualitative education in Universities. The present situation is so miserable in connection with the students in imparting quality education with the adhoc teaching faculty. There are different categories in teaching posts such as Assistant Professors, Associate Professors and Professors on permanent basis. The Universities, instead of appointing teaching faculty on permanent basis, they are making temporary arrangements, such as guest faculty, teaching assistants, academic consultants, adhoc faculty and Assistant Professors on contract basis. Many Universities are following the method to make temporary teaching arrangements. Because of these situations, several issues are coming out from the system. Most of the Universities in the country are under such situation of not having full permanent faculty. The system results several severe issues, which are dangerous to the students, parents, faculty to the institutions and ultimately to the society.

30. In view of these aspects, it is necessary and desirable to the Universities and Colleges should fill all the vacancies of teaching posts



W.P.(MD) No.7755 of 2014

available in the educational institutions on permanent basis as expeditiously as possible in the interest of the students..

31. Thus, this Court expects that the Central and State Governments, University Grants Commission and all other statutory bodies connected with the higher education shall endeavour to take steps to fill all vacancies of teaching faculty in Universities and all educational institutions on permanent basis with qualified persons in the interest of students in particular and the society at large in general.

32. The Registry shall communicate this order to (1) The Secretary, Ministry of Human Resource Development, Government of India; and (2) The Secretary, University Grants Commission.

33. Now, coming to the present case, for the aforesaid reasons and observations of this Court, this Writ Petition is disposed of with a direction to the respondents to consider the representation submitted by the petitioner on 02.05.2013 to the Respondent No.1 and the representation dated



W.P.(MD) No.7755 of 2014

17.11.2022 submitted to the Respondents No.3 and 4 and take appropriate decision and pass reasoned order in the interest of justice.

34. There shall be no order as to costs.

35. Consequently, connected miscellaneous petition is closed.

12.12.2023

Note: Issue order copy within three days from 12.12.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

ABR

To

1.The Vice-Chancellor,
The Bharathidasan University,
Tiruchirappalli-620 024.

2.The Registrar,
Bharathidasan University,
Tiruchirappalli-620 024.



WEB COPY



W.P.(MD) No.7755 of 2014

BATTU DEVANAND, J.

ABR

3.The Secretary,
Department of Higher Education,
Fort St. George, Secretariat, Chennai-600 009.

4.The Director of Collegiate Education,
DPI Campus, College Road, Chennai-600 006.

Pre-delivery Order made in
W.P.(MD) No.7755 of 2014

12.12.2023