



W.P(MD) No.11721 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P(MD) No.11721 of 2019
and
W.M.P.(MD) No.8890 of 2019

M. Namasivayam

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of Higher Education,
Fort St.George,
Secretariat,
Chennai – 600 009.



W.P(MD) No.11721 of 2019

2. Director of Collegiate Education,
Directorate of Collegiate Education,
9th Floor EVK Sambath Maligai,
College Road,
Chennai – 600 006.

3. The Registrar,
Madurai kamaraj University,
Palkalai Nagar,
Madurai 625 021,
Madurai District.

... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus directing the respondents to regularize the service of the petitioner in any one of the non-teaching staff contained in Serial No.2 of the Annexure – II of the G.O.M.S.No.36, Higher Education Department, dated 28.02.2019 by considering the Petitioner's consolidated service in the post of Non-teaching Staff at the Madurai Kamaraj University Constituent College taken over by the State Government as the



W.P(MD) No.11721 of 2019

Government Arts & Science college, Aundipatti, Theni District
within a stipulated time prescribed by this Court.

For Petitioner : Mr.S. Louis

For Respondents : Mr.R. Baskaran

Additional Advocate General

Assisted by Mr.V. Nirmal Kumar

Government Advocate - for R1 & R2

Mr.T. Cibi Chakkaraborthy - for R3

ORDER

This Writ Petition is filed seeking a direction to the respondents to regularize the service of the petitioner in any one of the non-teaching staff contained in Serial No.2 of the Annexure – II of the G.O.M.S.No.36, Higher Education Department, dated 28.02.2019 by considering the Petitioner's consolidated service in the post of Non-teaching Staff at the third respondent University



W.P(MD) No.11721 of 2019

WEB COPY

Constituent College taken over by the first respondent as the Government Arts & Science college, Aundipatti, Theni District within a stipulated time prescribed by this Court, in the interest of justice.

2. Heard Mr.S. Louis, learned counsel appearing for the petitioner, Mr.R. Baskaran, learned Additional Advocate General assisted by Mr.V. Nirmal Kumar, learned Government Advocate appearing for the respondents 1 & 2 and Mr.T. Cibi Chakkaraborthy, learned Standing Counsel appearing for the third respondent.

3. The petitioner was appointed as a daily wager for the salary of Rs.40/- per day at Madurai Kamaraj University in the year 2002 in the post of Peon. In the year 2003, it is raised to Rs.60/- and in the year 2005, it is raised to Rs.85/-. From the year 2003 onwards the petitioner service was termed to be Office Assistant. The service was shifted from daily wage service to consolidated pay service in



W.P(MD) No.11721 of 2019

the year 2009. The petitioner was given consolidated pay of Rs.4,500/- per month in the year 2009 and Rs.9,500/- in the year 2015 and Rs.10,000/- in the year 2018 and at present, he is receiving consolidated pay of Rs.12,000/- per month, for rendering service in the post of Attender.

4. The learned counsel for the petitioner submits that as of now the petitioner has rendered 21 years of service in the consolidated pay and though he is entitled for the benefit of special time scale of pay which is not granted till date by the respondents. The State Government decided to take over 41 Constituent Colleges as the Government Colleges in the first phase 14 Constituent Colleges listed as per G.O.Ms.No.36, Higher Education, dated 28.02.2019 in which the College, wherein, the petitioner is working is listed at Serial No.2. As per the Annexure – II, 17 posts of non-teaching staffs are included. In the said Government Order, there is no mention about the non-teaching staff who are already working



W.P(MD) No.11721 of 2019

there and there is no protection for their job on par with the similarly placed non-teaching staff. Under these circumstances, the petitioner has submitted a representation, dated 10.04.2019 requesting the respondents to regularize his service in the sanctioned post which are included in the Annexure - II of the G.O.Ms.No.36, dated 28.02.2019, it is pending for consideration till date, the respondents did not take any action on the said representation.

5. The Counter affidavits have been filed by the respondents. The learned Additional Advocate General appearing for the respondents 1 and 2 and the learned Standing Counsel appearing for the third respondent has reiterated their arguments vehemently basing on the averments made in their counter affidavits.

6. At that stage, during the course of hearing the learned Standing Counsel appearing for the third respondent has placed a copy of the order of the Court, dated 12.04.2022 in W.P.(MD)



W.P(MD) No.11721 of 2019

No.14427 of 2019. On careful perusal of the same, it appears that in identical circumstances, this Court passed the said order. The relevant portion of the order is extracted herein under:

“The learned counsel appearing on behalf of Madurai Kamaraj University made a submission that the college, in which the petitioner is working, is now taken over by the Government through G.O.Ms.No.36, dated 28.02.2019.

2. Once the college is taken over by the Government, then the status of the temporary employees is also to be decided. As per the Government Order passed in G.O.Ms.No.385, Finance (Pay Section) Department, dated 01.10.2010 the Government fixed a special time scale of pay to the temporary employees. Therefore, the respondents are directed to ascertain the eligibility of the petitioner for availing the Government Order and if the Government Order is otherwise eligible for



W.P(MD) No.11721 of 2019

fixation of time scale of pay, then the case of the petitioner is to be considered according to the service particulars and other relevant materials. The said exercise is directed to be done as expeditiously as possible.”

7. Having considered the facts and circumstances of the case and on examination of the entire material available on record and on consideration of the fact that the petitioner is rendering service for the last 21 years, only on consolidated pay even without getting the special time scale of pay, it is appropriate to direct the respondents 1 and 2 to consider the representation, dated 10.04.2019 of the petitioner.

8. At present, the College in which the petitioner is working is now taken over by the Government by G.O.Ms.No.36, dated 28.02.2019. As such, as rightly observed by this Court in its order in W.P.(MD)No.14427 of 2019 once the College is taken over



W.P(MD) No.11721 of 2019

by the Government then the status of the temporary employee is also to be decided.

9. In the light of the said observation, in our considered view, it is appropriate to permit the petitioner to submit a representation afresh to the respondents 1 and 2 to consider his case for regularization. This Court expect that the said representation to be considered, taking into consideration the length of service of the petitioner rendered in the said Institution as expeditiously as possible, preferably, not beyond six months from the date of submission of the representation by the petitioner.

10. In the considered opinion of this court, the petitioner herein is also entitled for the same relief granted by this Court to the petitioner in W.P.(MD)No.14427 of 2019 for grant of special time scale of pay.

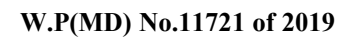


W.P(MD) No.11721 of 2019

WEB COPY

11. Accordingly, the respondents 1 and 2 are directed to ascertain the eligibility of the petitioner for availing the Government Order in G.O.Ms.No.385, Finance (Pay Section) Department, dated 01.10.2010 and if the Government Order is otherwise eligible for fixation of time scale of pay, then the case of the petitioner is to be considered according to the service particulars and other relevant material. The respondents 1 and 2 are directed to complete the said exercise to grant special time scale of pay to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

12. The learned counsel for the petitioner brought to the notice of this Court that the petitioner is continued till now without any disturbance in the light of the status quo order passed by this Court on 30.05.2019. It is made it clear that the status quo order shall continue till the respondents 1 and 2 take decision with regard to the regularization of service of the petitioner.



14. No costs.

09.11.2023

Index : Yes / No
Internet : Yes
NCC : Yes / No

RM



W.P(MD) No.11721 of 2019

To
WEB COPY

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of Higher Education,
Fort St.George,
Secretariat,
Chennai – 600 009.
2. Director of Collegiate Education,
Directorate of Collegiate Education,
9th Floor EVK Sambath Maligai,
College Road,
Chennai – 600 006.
3. The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai 625 021,
Madurai District.



WEB COPY



W.P(MD) No.11721 of 2019

BATTU DEVANAND, J.

RM

W.P(MD) No.11721 of 2019
(1/6)

09.11.2023