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W.P.(MD) No.19575 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD) No.19575 of 2021

and

W.M.P.(MD) Nos.16267, 16268 & 16270 of 2021

- 1.A.Alex
- 2.A.Anthony Felix
- 3.G.Balamurugan
- 4.S.Chitra
- 5.A.Daisyrani
- 6.S.Dhamodharan
- 7.D.Gunavathi
- 8.P.Helan Carolin
- 9.B.Elangeeran
- 10.M.Kaliselvi
- 11.D.Kalimuthu



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12.T.Kannan

13.A.Karunaimani

14.T.Mathaselvi

15.C.Murugesan

16.S.Murugesan

17.P.R.Rajan

18.R.Padmavathy

19.A.Pallavan

20.M.Pandiarajan

21.S.Pandiyaraja

22.S.Prasanna

23.A.Radhakrishnaswamy

24.D.Rajakumar

25.K.Rajasekar

26.P.Raju

27.D.Ramesh

28.Saberina A Francis

29.S.Sampath Kumar

30.G.Saravanakumar



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31.C.Saravanan

32.R.Selvaraj

33.K.Selvi

34.R.Senthilkumar

35.G.Senthilkumar

36.S.Senthilkumar

37.M.Sudha

38.J.Sumathi

39.G.Sakthivel

40.M.Thangamani

41.G.Vanitha

42.S.Zester Arputharaj

... Petitioners

-vs-

1.The Union of India
rep.by its Secretary to Government
Ministry of Human Resource Development
Department of Secondary and Higher Education
Bureau of Technical Education
Shashtri Bhavan, New Delhi

2.The National Institute of Technology
rep.by its Director
Thiruchirapalli-620 015

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to NITs Non-Teaching Recruitment Rules, 2019 issued by the first respondent and quash the same as illegal, insofar as it does not permit the regularization of the services of the petitioners whom the second respondent had already decided to regularize vide 21st, 22nd, 23rd and 61st Meeting of the Board of Governance dated 07.04.2010, 05.06.2010, 08.09.2010 and 14.12.2020 respectively and consequently direct the second respondent to regularize the services of the petitioners in their respective entry level posts from the date on which they become eligible as per the existing Rules.

For Petitioners : Mr.R.Richardson Wilson
for Mr.P.Wilson Associates

For Respondents : No appearance for R1
Ms.J.Maria Roseline for R2

ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

This writ petition is filed questioning the validity of the National Institute of Technology's Non-Teaching Recruitment Rules, 2019 issued by the first respondent insofar as it does not permit regularization of the services of the petitioners, who all are serving as N.M.Rs.



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regularise the services of the petitioners in the sanctioned post with all service benefits.

4. Learned counsel for the petitioners further submits that all the petitioners are serving as N.M.Rs. for long years and they are serving to the satisfaction of their superiors. Even in the absence of any provision in the Recruitment Rules to regularize the services of the N.M.Rs., the respondents ought to have regularized the services of the petitioners based on the resolution of the Board of Governance.

5. Learned counsel appearing for the second respondent objected the said contention of the learned counsel for the petitioner by stating that nearly about 29 petitioners in the present writ petition had earlier filed W.P. (MD) Nos.3923 of 2011 and 9215 of 2012 seeking a direction to the first respondent herein to direct the second respondent herein to regularize their services and to quash the order dated 11.06.2012, passed by the first respondent and one of us (S.M.S., J. while sitting single), by a common order dated 28.02.2018, dismissed the said writ petitions. The learned counsel for the second respondent would rely on the principles laid down by the



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Constitution Bench in the case of ***The State of Karnataka Vs. Umadevi***, reported in **(2006) 4 SCC 1**, which read as under:

“50. Further, Paragraph (13) of the “Umadevi Case” judgment is extracted hereunder: “13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab v. Jagdip Singh [(1964) 4 SCR 964 : AIR 1964 SC 521] . It



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was held therein: (SCR pp. 971-72) “In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status.”

51. This Court cannot omit the powerful statement made by the Constitution Bench in respect of providing equal opportunity and in respect of implementing the equality clause enshrined under Article 14 & 16 of the Constitution. In the above said paragraph (13), the Hon'ble Supreme Court of India has emphasized that it cannot also be forgotten that it is not the role of the Courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us, while adopting the Constitution. We, the people of India, while adopting the Constitution.”

6. All appointments to the public posts are to be made only under the constitutional schemes and by following the procedures as contemplated under the Recruitment Rules. Equal opportunity in public employment is the



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constitutional mandate. Appointing an employee on daily wage / contractual / temporary basis, without adhering to the Recruitment Rules and after serving for few years, granting regularization of their services would cause infringement to the right of equality of all other candidates, who all are aspiring to secure public employment through open competitive process and such regularization of service would violate the equality clause as enunciated under the Constitution of India. No doubt, these N.M.Rs. can also participate in the selection process and if they are selected, they can seek regular employment. Contrarily, merely on the ground that they have been engaged as daily wage employees without following the Recruitment Rules, they cannot seek regularization of service as a matter of right. No doubt, the practice of regularizing the services of the temporary employees is in force for several years by taking lenient view by the Courts. However, the Constitution Bench of the Apex Court, in **Umadevi's** case, has heavily come down and held that the practice of granting regularization in such a manner would offend the constitutional rights of the lakh and lakh of candidates, who all are longing to secure public employment and therefore, all appointments are to be made only under the constitutional schemes and by following the Recruitment Rules.



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7. Lack of provision in the Recruitment Rules to regularize the services of the N.M.Rs., would not invalidate the Recruitment Rules by itself. So long as the Recruitment Rules provide equal opportunity to all the candidates and the established principles are adopted, the question of declaring such Rules as unconstitutional would not arise at all. More so, prescription of educational qualification, age and other criterias for selection is the prerogative of the employer and no casual / daily rated employees can seek amendment in the Recruitment Rules so as to regularize their services in a sanctioned post. In other words, granting regularization of service as a mode of appointment would result in unconstitutionality and therefore, insertion of a provision in the Recruitment Rules to regularize the services of the daily wage employees would result in an unconstitutionality.

8. We are of the considered opinion that the relief, as such sought for, is not entertainable and the Recruitment Rules in force providing equal opportunity is to be followed scrupulously while undertaking the process of recruitment. The petitioners may continue as N.M.Rs., till the Management of the respondent – Institute requires their services and there is no impediment



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for continuing as N.M.Rs. For the purpose of securing permanent employment, the petitioners are at liberty to participate in the selection process and if they are selected, they can be appointed in the sanctioned posts by following the procedures as contemplated.

9. With the above observations, the writ petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[V.L.N., J.]

07.12.2023

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

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To:
The Secretary to Government,
Ministry of Human Resource Development,
Department of Secondary and Higher Education,
Bureau of Technical Education,
Union of India,
Shashtri Bhavan, New Delhi.



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