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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos. 3450, 3466, 3468 of 2016

and

W.M.P(MD)Nos. 3053, 3063 & 3066 of 2016

W.P.(MD)No. 3450 of 2016

Chellammal

... Petitioner

Vs.

1. The Secretary to Government,
Higher Education Department,
Government of Tamilnadu,
Chennai.
2. The Registrar,
Anna University,
Chennai.
3. The Syndicate,
Anna University, Chennai.
4. The Dean,
Anna University,
Tirunelveli Region,
Regional Office,
Tirunelveli – 627 007.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records pertaining to the proceedings of the 1st respondent in G.O.Ms.No.452 Higher Education (II) Department, dated 20.10.2015 so far as it does not consider the petitioner's appointment in the post of Record Clerk under the 4th respondent and quash the same and consequently directing the respondents to regularize the petitioner's service as Record Clerk from the date of her initial appointment by absorbing her in any one of the existing vacancies with the consequential benefits.

W.P.(MD)No. 3466 of 2016

T.A.Cruz Justina Subitha

... Petitioner

Vs.

1. The Secretary to Government,
Higher Education Department,
Government of Tamilnadu,
Chennai.
2. The Registrar,
Anna University,
Chennai.
3. The Syndicate,
Anna University, Chennai.
4. The Dean,
University College of Engineering,
Konam,
Nagercoil.

... Respondents



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W.P.(MD)No. 3468 of 2016

K. Sureshkumar

... Petitioner

Vs.

1. The Secretary to Government,
Higher Education Department,
Government of Tamilnadu,
Chennai.
2. The Registrar,
Anna University,
Chennai.
3. The Syndicate,
Anna University,
Chennai.



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4. The Dean,
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... Respondents

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In all the Writ Petitions:

For Petitioner : Mr.S.T. Selvan

For Respondents : Mr.V.Om Prakash
Government Advocate, for R-1

Mr.E.V.N.Siva,
Standing Counsel for R-2 to R-3

COMMON ORDER

Since the issue involved in these Writ Petitions are one and the same,
all the writ petitions are taken up together and disposed of by a Common order.



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2. The Anna University of Technology was established in 1978 by Tamil Nadu Act 30 of 1978. It was converted into affiliated type University in the year 2001. Consequently, 237 engineering colleges which were earlier affiliated to various Universities in the State got affiliated to the Anna University. It was realized in December 2006 that a number of administrative difficulties were being faced and that therefore it would better to establish 5 more technical Universities, namely, Anna University of Technology, Thiruchirappalli, Anna University of Technology, Coimbatore, Anna University of Technology, Tirunelveli, Anna University of Technology, Chennai and Anna University of Technology, Madurai. Each University had its own clearly demarcated areas. Since this division did not yield the desired result, but created more confusion, it was decided to once again restore the earlier unitary type University. Therefore, the newly established Anna Universities of Technology were wound up and they were all merged. To this effect, Tamil Nadu Act 20 of 2011 was passed.

3. The Government of Tamilnadu in and by the G.O.Ms.No.218 Higher Education (I-1) Department dated 26.12.2011 constituted a Monitoring committee to oversee the transition process of merging various Anna Universities



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of Technology with the Anna University Chennai. The said committee submitted a report and that was accepted by the Government. The said monitoring committee observed various lacuna in the administrative and personnel processes in the recruitment of erstwhile Anna Universities of Technology.

4. A scrutiny committee was constituted by the Anna University Chennai to streamline the process of absorption of teaching and non teaching staff of erstwhile Anna Universities of Technology in the Anna University Chennai with effect from 01.08.2012 based on the guidelines in the report of the Monitoring committee. As per the said report of the scrutiny committee Report, Non teaching staff appointed by the erstwhile Anna Universities were identified and classified as the eligible, pay anomaly, improper and excess and pay anomaly appointments.

5. The Government of Tamilnadu examined the proposal of the Registrar, Anna University, Chennai dated 30.10.2014 based on the reports of the Monitoring committee and the scrutiny committee issued orders in and by G.O.Ms.No.452 Higher Education (I1) Department dated 20.12.2015. The



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eligible and fully qualified non teaching staff identified by the scrutiny committee were absorbed by the above said Government Order No.452 dated 20.10.2015. As per the said Government Order dated 20.10.2015, Anna University is directed to form a separate committee to examine the issues further and to make recommendations to Finance committee/syndicate separately in respect of improper appointments, unqualified non teaching staff and appointments on daily wage/consolidated pay to regular time scale.

6. The petitioners in these Writ petitions were however not considered for absorption. Therefore, in most of these Writ petitions, ***G.O.Ms.No. 452 Higher Education Department, dated 20.10.2015*** is under challenge. All the Writ petitioners seek a direction to the respondents for regularization of their services with effect from the dates of their original appointment.

7. The learned counsel appearing for the Writ petitioners contended that as per Section ***33(9) of the Tamil Nadu Act No.20 of 2011***, they have to be absorbed. The relevant provision reads as under:-



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“(9) (a) Every person who, immediately before the notified date is serving in the Anna University of Technology, Tiruchirappalli, Anna University of Technology, Coimbatore, Anna University of Technology, Tirunelveli, Anna University of Technology, Chennai and Anna University of Technology, Madurai or in any of the constituent colleges of that Universities shall cease to be an employee of that Universities, or of the constituents colleges, as the case may be;

(b) As soon as may be, after the notified date, the Government may, after consulting the Vice-Chancellors of the Universities in the State and such other authorities, as they deem fit, direct, by general or special order, that the employees referred to in clause (a), as specified in such order, shall stand allotted to serve in connection with the affairs of an University or an educational institution or a Government department, with effect on and from the date, as may be specified in such order.”



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8. The petitioners also contended that they were appointed by the competent authority and that they are having the requisite qualifications and that they have put in long number of years of service. It would cause them immense hardship if they are ousted at this point of time. Most of them have become very aged and cannot seek for a job elsewhere in the market. They would also contend that the monitoring committee report is rather in their favour. The respondents without properly applying the legislative mandate or considering the materials on record is acting in an arbitrary and discriminatory manner.

9. The request of the Writ petitioners was strongly opposed by the learned Standing counsel for Anna University.

10. In none of the Writ petitions, there is any claim that the Writ petitioners applied in response to a notification and that a selection process was conducted and that thereafter, they were duly appointed. There is no claim or averment to that effect. In any event, there is no material containing that the petitioners were appointed against sanctioned posts. This Court, therefore, concurs with the contention of the learned Standing counsel for the



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respondents/University. In this case, large number of appointments were made without any proper advertisements.

11. It is well settled that in the matter of public employment, the employment exchange will have to be notified and they will have to sponsor the candidates who are registered with it. Likewise qualified candidates from the open market are also eligible to compete. Reservation will have to be followed. In this case, none of such parameters were adopted. The issue is no longer *res integra*. The ratio laid down by the Hon'ble Supreme Court in the decision reported in **2006 4 SCC 173** in the case of ***State of Karnataka Vs. Uma Devi and others*** has been referred to, relied upon and followed in a number of cases. The learned Standing counsel appearing for the respondents also brought to the notice of this Court, the Judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No.2440 of 2010, dated 16.03.2010, (Satya Prakash and others Vs. State of Bihar and others)***, the decision reported in **AIR 2015 SC 3473** in the case of ***Vice-Chancellor, Lucknow University V. Akilesh Kumar Khare***, the decision reported in **2016-2-L.W.730**, in the case of the ***Registrar of Co-operative Societies and others V. M.Panneer Losini and others*** and the Judgment passed



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by the Hon'ble Supreme Court, in *Civil Appeal No.2356 of 2018, dated 23.02.2018(Upendra Singh V. The State of Bihar and others)*.

12. The ratio and substance of these decisions is that there cannot be arbitrariness while filling up the vacancies in public posts. If due procedure was not followed in the matter of initial appointment, if the engagement was not against the sanctioned posts, the appointees cannot seek regularization. If by misplaced sympathy, the authorities are directed to regularize the services of such appointees, that would result in gross infraction of the equality principle. That is why, this Court is unable to agree with the submission of the petitioners' counsel with regard to the construction of *Section 33(9) (a & b) of Tamil Nadu Act 20 of 2011*. No doubt the said provision states that *every person who immediately before the notified date is serving in the Anna Universities shall cease to be an employee of the said Universities or the constituent colleges and that they shall stand allotted to serve in connection with the affairs of an University or an educational institution or a Government department*. The expression, every person who is serving should be understood as every person who is serving against the sanctioned post and in a regular capacity and was appointed after



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following due procedure and that if such construction is not placed on ***Section 33(9)(a&b) of Tamil Nadu Act 20 of 2011***, it would only result in absorption of illegally appointed back door entrants. The legislature could never have intended such an effect. In fact in the written submissions filed by one of the learned counsel for the Writ petitioners, it has been fairly stated that they are not claiming regularization as of right. In fact the learned counsel has made a submission which is fair and obvious. But then, the Writ of Mandamus can be issued only in which if it is established that legal right is inhering in the Writ petitioners. Since such a right is not in existence, this Court will not be justified in issuing a direction to the respondents to regularise their service.

13. The learned Standing counsel appearing for the University pointed out that many persons were chosen after holding walk-in-interviews. As a result, there is huge over staffing. The Government had constituted a Monitoring Committee followed by Scrutiny Committee only to rationalise and restructure the entire set up.



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14. This Court will not be justified in putting spokes in the wheel by interfering with this process. The respondents are posted with relevant data. The petitioners have not shown as to how their right has been infringed. All that the Writ petitioners have pleaded is that they were appointed by the competent authority and that they have put in service for several years of others and that it would not be fair to oust them from service at that point of time. The question is not who issued the letters of appointment. The question is whether proper procedure was followed while issuing the letters of appointment. The affidavits filed in support of the Writ petitions are totally silent on this aspect of the matter. In fact during the course of hearing, this Court repeatedly put this question to the learned counsel. But there was no response instead the focus was sought to be shifted to what *Section 33(9)(a&a) of Tamil Nadu Act 20 of 2011* actually means. This Court rejects the contention of the petitioners that every person serving in the Anna Universities of Technology before the notified date would be automatically absorbed in the Anna University as per *Section 33(9) (a&b) of Tamil Nadu Act 20 of 2011*. As already held, every person serving in the Anna Universities of Technology, Tirunelveli or Thiruchirappalli or Coimbatore can



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only refer to those persons who were regularly selected and appointed and against sanctioned posts. It certainly will not include the Writ petitioners herein.

15. The Hon'ble Supreme Court of India in the decision reported in ***(2017) 4 SCC 133 in the case of State of Tamil Nadu V. A. Singamuthu*** held that the right of regularization will have to be established with reference to the terms of the Government Order or scheme. It cannot exist in the abstract. The Government issued *G.O.Ms.No.22 P&AR Department, dated 28.02.2006*, providing for regularizing the services of certain classes of persons who had put in 10 years as on a given date. The said Government Order was subsequently superseded and *G.O.Ms.No.74 P&AR Department, dated 27.06.2013* was adopted. Only if the employees can bring in their case within the frame work of such a scheme or Government Order, the High Court will be justified in issuing a direction for regularization. That is why when this Court directed the regularization of part time employees de-hors the provisions, the Hon'ble Supreme Court in the aforesaid decision reported in ***(2017) 4 SCC 133***, reversed the Judgment of this Court. To the same effect is another decision of the Hon'ble



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Supreme Court reported in **(2014) 4 SCC 769 (State of Tamil Nadu V. R.Govindhasamy)**.

16. The challenge to the impugned Government Order has to be necessarily negated. The Government Order can be quashed only if it is shown as being contrary to the provisions of statute or that of the Constitution. In this case, neither of the grounds exist. In fact the Hon'ble Supreme Court in the decision reported in **(2017) 4 SCC 133** in the case of **State of Tamil Nadu V.A. Singamuthu**, quoted, followed an earlier decision reported in **(2011) 2 SCC 429** in the case of **State of Rajasthan V. Daya Lal**, in which it was held that the High Courts exercising the power under Article 226 of Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process against the sanctioned posts. It was stated that the equality clause contained in **Articles 14 and 16** should be scrupulously followed and the direction for regularization of service of an illegally appointed employee would be violative of the constitutional scheme.



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17. This Court is of the view that if this mandate issued by the Hon'ble Apex Court is borne in mind, all these Writ petitions will have to necessarily fail. This Court finds no merits in the Writ petitions.

18. Accordingly, these Writ petitions are dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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**Common Order made in
W.P.(MD)Nos.3450, 3466,
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