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W.A.No.1170 of 2018, etc and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2024

PRONOUNCED ON : 28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.Nos.1170 to 1182 of 2018 & 428, 494 & 496 of 2021

and

C.M.P.Nos.9415 to 9427 of 2018 & 1713, 1956 & 1957 of 2021

W.A.No.1170 of 2018:

- 1.The Union of India,
Rep. by its Joint Secretary (Languages),
Department of Higher Education,
Ministry of Human Resources Development,
Government of India, Sastri Bhavan, C Wing,
New Delhi – 110 115.
- 2.The Director (Languages),
Department of Higher Education,
Ministry of Human Resources Development,
Government of India, Sastri Bhawan, C Wing,
New Delhi – 110 115.
- 3.The Director,
Central Institute of Classical Tamil,
No.40 IRT Campus, 100 Feet Road,
Taramani, Chennai – 600 113.



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4.The Registrar,
Central Institute of Classical Tamil,
No.40 IRT Campus, 100 Feet Road,
Taramani, Chennai – 600 113.

... Appellants

Vs.

D.M.Tamilvanan

... Respondent

Prayer in WA.No.1170/2018: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 13.10.2017 made in W.P.No.29551 of 2012 on the file of this Court and allow the writ appeal.

For Appellants : Mr.AR.L.Sunderesan
Additional Solicitor General of India
Assisted by Mr.A.Kumaraguru
(in all WAs)

For Respondents : Mr.Balan Haridas
For Mr.S.Jim Raj Milton
(in WA.Nos.1170, 1175, 1177
& 1182 of 2018)

: Mr.R.Prabhakaran
(in WA.No.1171 of 2018)

: Mr.Nagendra Prasath
(in WA.No.1174 of 2018)

: Mr.A.Rajaguru
(in WA.No.1180 of 2018)

: Mr.P.Mohanraj
(in WA.Nos.428, 494 & 496 of 2021)



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: No Appearance
(in WA.Nos.1172, 1176, 1178, 1179
& 1181 of 2018)

COMMON JUDGMENT

S.M.SUBRAMANIAM, J.

The common verdict dated 13.10.2017 passed in batch of writ petitions is under challenge in the writ appeals on hand.

2. The Government of India established a Central Institute of Classical Tamil for comprehensive understanding of history and culture of Tamil Language. The Central Institute of Classical Tamil [hereinafter referred as the 'Institute'] started its work towards development of Tamil language in 2006 with skeleton staff like Programmer, Web Designer, Administrative Staffs, etc. The Institute issued notification on 23.05.2007 calling for applications to fill up various posts both on Academic and Non-Academic sides. Pursuant to the notification, the respondents in all the writ appeals had submitted their respective applications. The Committee constituted conducted an interview and the respondents in the writ appeals had been selected and appointed.



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3. The grievances of the respondents in the writ appeals are that at the time of filing of the writ petitions in the year 2012, they have completed services for about 4½ years and by virtue of their long services, they are entitled for regularisation and permanent absorptions in the sanctioned posts in the Institute. The claim of the respondents in the writ appeals are not considered by the appellants. Thus, they have challenged the recruitment notification issued on 12.10.2012 and 17.10.2012 and to regularise their services with effect from their respective date of initial appointment. The Writ Court allowed all the writ petitions granting the relief.

4. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India assisted by Mr.A.Kumaraguru, learned Central Government Standing Counsel appearing on behalf of the appellants would contend that the initial appointment of the respondents in the writ appeals are made on contract basis. The respondents were appointed temporarily for a period of one year for the day salary. Their salary has been calculated based on the working days and their appointments were purely temporary. At the time of establishing the Institute, posts were not sanctioned and Service Rules were not framed. Therefore, temporary appointments were made by specifying the



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period of contract. The initial appointments of the respondents in the writ appeals were made on temporary basis for day salary and they were not appointed in the sanctioned posts. The tenure was extended for about four years. Thereafter, the respondents in the writ appeals filed the writ petitions and by virtue of the interim order granted by this Court in the writ petitions and in the writ appeals, they are continuing in service as temporary employees. The Institute originally was established in the year 2005 at Mysore and subsequently it was shifted to Chennai in the year 2008.

5. The learned Additional Solicitor General of India would submit that the Writ Court has not considered the nature of appointment and the conditions stipulated in the order of appointment. The Writ Court proceeded on the basis that the respondents in the writ appeals were appointed through notification and by conducting interview. But not considered the fact that the posts were not sanctioned and the initial appointments were made with specific conditions, which all are stipulated in the order of appointment. The respondents in the writ appeals admittedly accepted the terms and conditions of the appointment and after serving about four years, they have filed the writ petitions seeking regularisation. Thus, the Writ Court ought not to have



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granted the benefit of the regularisation and permanent absorption, which is running counter to the legal principles settled by the Hon'ble Supreme Court of India in the matter of regularisation.

6. Mr.Balan Haridas, learned counsel appearing on behalf of the respondents in some of the writ appeals would oppose by stating that the initial appointment of the respondents in the writ appeals were not irregular or illegal. Pursuant to the notification issued by the Institution, the respondents submitted their respective applications to participate in the process of selection. The Committee constituted conducted an interview and selected the respondents and consequently, they were appointed. Since their initial appointments were made by following the established procedures, the same cannot be termed as irregular or illegal. Therefore, the learned Single Judge has rightly granted the relief of regularisation in favour of the respondents.

7. Mr.R.Prabhakaran, learned counsel appearing on behalf of the employees in some of the writ appeals would contend that equal opportunity in public employment has been followed in the present case. The process of selection was conducted by issuing a public notification. The Writ Court



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considered all these aspects. The appellants cannot turn around and refuse the benefit of regularisation despite the fact that the respondents in the writ appeals have completed considerable length of unblemished service. Since the respondents in the writ appeals are qualified to hold the post in which they were appointed, the grant of regularisation is consequential which cannot be denied.

8. Mr.Nagendraprasath, Mr.P.Mohanraj, Mr.Rajaguru, respective learned counsels appearing on behalf of the respondents in other writ appeals would also contend that the learned Single Judge has elaborately considered the fact that the initial appointment of the respondents in the writ appeals were not irregular or illegal, but by following the due process as established. When the initial appointment was made through notification and by conducting an interview by the Competent Committee, the said appointment is to be construed as valid for all purposes. When the appointment is validly made, the benefit of regularisation is consequential, which cannot be denied to the employees. Therefore, the writ appeals are to be rejected.

9. We have considered the rival submissions made on behalf of the parties to the *lis* on hand.



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10. Let us first consider the terms and conditions stipulated in the recruitment notification originally issued on 23.05.2007. The said notification indicates the positions, number of positions and the salary payable as “Honorarium and Conveyance”. Number of sanctioned posts have not been mentioned in the notification. Time scale of pay has not been granted. The honorarium and conveyance has been notified as Rs.500 + Rs.75/- per day. Notification further provides the essential qualifications. Pertinently the instructions provided in the notification are as under;

“1. These are purely temporary and the number of positions and particular requirements are likely to change from time to time.

2. The person selected for a particular position will be engaged for the period for which his/her services may be required. The initial engagement will be for a period until March 31, 2008, extendable by one more financial year.

3. The engagement may be terminated at any point of time without giving any reason or notice.

4. The decision of the Director in availing



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the services of the persons is final.

5. Persons who are employed should route the application through their employers.

6. The candidates should not have exceeded 40 years of age as on 31st May, 2017 for the positions 1 and 3 and 30 years of age for the position 2 and 4. Age relaxation will be allowed for OBC candidates (3 years) and SC/ST candidates (5 years).”

11. It is not in dispute, on receipt of applications, persons who have fulfilled the qualifications, were appointed for daily rated honorarium and conveyance for a term of one year. In this context, it is relevant to consider the order of selection and appointment issued in favour of the respondents in the writ appeals. The order of appointment issued to the respondents unambiguously stipulates that the position is offered on daily honorarium basis for a period of one year. During the period of contract, a sum of Rs.850/- per working day will be paid subject to the terms and conditions stipulated in the appointment order. Condition Nos.1, 2 and 4 stipulated in the appointment order reads as under:



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“1. His engagement is purely on temporary basis and at present for one year from the date of joining as per the requirements of the Institute.

2. This assignment may be terminated by the Institute at any time without assigning any reason or prior notice.

3.

4. His joining will be preceded by an undertaking to the effect that he will not make any claims for any kind of regularisation and that he has accepted this assignment with full knowledge that it is purely temporary work, the duration and nature of which will be determined by the Institute.

5.

6.”

12. Pursuant to the conditions imposed in the offer of appointment, the respondents have executed an undertaking, which reads as under;



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To

The Director
Central Institute of Classical Tamil
No. 6, Palaru Illam, Kaminrajar Salai
Chepauk
Chennai - 600 005

Sir,

Please refer to the Institute's Memorandum No. 11-264/2012-13/CIT/Memorandum
Dated 03/04/12 offering me to be contractually engaged in the
CIT Linguistics Project of the Institute on a monthly
consolidated remuneration of Rs. 850/- per working day (Rupees/ Eight Hundred and
fifty (per working day) only).

I have gone through all the terms and conditions indicated in the above Memorandum
and I hereby accept the offer subject to adherence of the same. I also undertake to abide by
the terms and conditions as stipulated therein. I understand that the Institute reserves the
right to engage me only for the period my expertise is needed.

Accordingly, I am reporting today the 03/04/12 Forenoon/Afternoon in
the Institute as Senior Resource Person.

Thanking you,

Yours faithfully,

(Signature)

Place: Chennai
Date: 03/04/12

Name & Address of the Candidate

Dr. V. Maniappan



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13. The post was created by the Government of India, Ministry of Human Resources Development Department of Higher Education in proceedings dated 25th June, 2010. Accordingly, the posts are created, pay band and grade pay are indicated in letter dated 25th June, 2010 issued by the Ministry and communicated to the Director, Central Institute of Classical Tamil (CICT).

14. After creation of posts by the Government of India, Employment Notification No.1/ACADEMIC/2012 dated 12.10.2012 and Employment Notice No.2/NON-ACADEMIC/2012 dated 12.10.2012 were issued to appoint the candidates in the sanctioned posts on regular basis. The said notifications were challenged in the writ petitions and by virtue of the interim order granted by the Writ Court and by the Writ Appellate Court, the respondents in the writ appeals are continuing in service as temporary employees. In other words, the respondents in the writ appeals are continuing in “litigious employment” on temporary basis.

15. This Court is of the considered opinion that if at all the respondents herein have aspired to secure permanent employment in the Institute, they could have participated in the recruitment process notified



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after creation of regular posts by the Government of India. The Employment Notice issued on 12.10.2012 would clearly indicate the name of the post, number of post, pay band and grade pay attached to the post etc. Therefore, the recruitment process for the sanctioned post for regular appointment were notified first time by the Institute on 12.10.2012 after sanctioning the post to the Institute by the Government of India, Ministry of Human Resources Development in the year 2010.

16. Mr.AR.L.Sunderesan, learned Additional Solicitor General of India would further contend that the Service Rules are framed, since the regular posts are sanctioned. As per the Service Rules framed by the appellants, the respondents in the writ appeals are not qualified to hold the post, since they do not possess the relevant Ph.D. Degree as stipulated in the Service Rules.

17. Perusal of the notification dated 23.05.2007, it is unambiguous that, the terms and conditions are stipulated to fill up the post on temporary contract basis. The order of appointment issued to the respondents herein would also reveals that the contract appointment is for a period of one year and the salary of Rs.850/- per day has been stated as honorarium basis.



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Pertinently, the respondents in the writ appeals have executed an undertaking letter before the Director of the Institute accepting the conditions stipulated in the order of appointment. Having accepted the contractual appointment, honorarium basis day salary and the period of appointment i.e., one year, thereafter the respondents cannot turn around and claim the benefit of regularisation, since their initial appointments were not made against the sanctioned post in the regular time scale of pay.

18. The nature of appointments, terms and conditions stipulated in the order of appointment are the factors to be considered for granting the relief of regularisation and permanent absorption. When the post itself has not been sanctioned and skeleton staffs were appointed soon after the establishment of Central Institute of Classical Tamil, the employees appointed on contract basis for a period of one year cannot claim regularisation of permanent absorption. If at all these employees aspire to secure permanent employment in sanctioned post, they must participate in the recruitment process notified for selection and appointment to the sanctioned post in the time scale of pay. The Regular recruitment notification was issued on 12.10.2012. Instead of participating in the recruitment process



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the respondents in the writ appeals have made an attempt to get the benefit of regularisation by filing writ petitions and their services are continued merely based on the interim orders passed in the writ petitions and writ appeals.

19. “Litigious employment” cannot be a ground to seek regularisation or permanent absorption. The respondents in the writ appeals have served about 4½ years as contract staff and for the honorarium per day salary.

20. The Writ Court has considered the initial notification issued on 23.05.2007 and the selection process conducted for temporary appointment on contract basis for honorarium and conveyance on day basis. Such appointments made temporarily would not confer any right to seek regularisation or permanent absorption. The learned Single Judge has not considered the fact that the posts were not sanctioned and the Service Rules were not framed.

21. In respect of the litigious employment and temporary services, the Hon'ble Supreme Court of India in the case of ***State of Rajasthan and Others Vs. Daya Lal and Others*** reported in ***(2011) 2 SCC 429***, has considered the scope of regularisation of irregular or part-time appointments



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in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a



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temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service a would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right."

22. In the case of ***State of Karnataka Vs. Uma Devi*** reported in ***(2006) 4 SCC 1***, the Constitution Bench of the Hon'ble Supreme Court of India in unequivocal terms held that all appointments to the regular posts are to be made in accordance with the Service Rules in force.

23. The importance of the nature of recruitment notification is that several qualified candidates and research scholars may not prefer to apply for contract employments for a period of one year. In such circumstances, they may not opt to submit their application to participate in the selection process. In the event of non-participation of such more meritorious candidates, the



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Institution may suffer and the efficiency level in research oriented works will come down.

24. This exactly is the reason why the Courts have distinguished temporary contract employment made for a particular period and the regular appointments made against sanctioned posts in the time scale of pay. In the event of issuing regular recruitment notification for selection and appointment to the regular post in a time scale of pay, more meritorious candidates may also come forward to participate in the process of selection.

25. The very nature of notification for temporary contractual employment and regular employment cannot be compared and both are distinct and different. Few candidates may opt to accept temporary employments. But large number of meritorious candidates may not opt to participate in the selection for temporary contractual appointment. In the event of granting regularisation and permanent absorption to such temporary contract employees, the opportunity of meritorious candidates to participate in the regular recruitment process for sanctioned posts are taken away.



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26. In view of the reasons stated above, the impugned writ orders dated 13.10.2017 and 05.06.2018 passed in the W.P.Nos.29545 to 29556 and 33324 of 2012 and W.P.Nos.30647 to 30649 of 2012 respectively are set aside and Consequently, all the Writ Appeals are allowed. Connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
28.06.2024

Jeni
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No



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