



W.P.Nos.5170 of 2020 and etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

**W.P.Nos.5170 and 19710 of 2020 & 35896, 35898, 35899, 35900, 35901  
and 35905 of 2019  
and W.M.P.Nos.6105, 24351 and 24354 of 2020 & 36808, 36810, 36811,  
36813, 36812, 36814, 36820 and 36824 of 2019**

**W.P.No.5170 of 2020:-**

K.Chinnasamy

...Petitioner

-Vs-

1. The State of Tamil Nadu  
Represented by its Principal Secretary,  
Higher Education (B2) Department,  
Fort.St. George, Chennai - 600 009.
2. The Director of Sugar Mills,  
No. 690, Anna Salai,  
Nandanam, Chennai - 600 035.
3. The Commissioner of Technical Education,  
Chennai -600 025.
4. Dharmapuri District Co-operative  
Sugar Mills Private Limited  
Represented by its President,  
Palakode.



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5. The Principal,  
Dharmapuri District Co-Operative  
Sugar Mills Polytechnic College,  
Now Government Polytechnic College,  
Palakode 636 808.

6. The Merger Committee,  
Headed by the Principal,  
Government College of Technology,  
Coimbatore.

... Respondents

**Prayer** : Writ Petitions filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in connection with the Letter of the Merger Committee, the 6<sup>th</sup> respondent bearing Ref No. Letter No. 01/CON/2020, dated 13.01.2020 and quash the same and further Directing the Respondents to absorb the petitioner in service as Lecturer of the Dharmapuri District Co-operative Sugar Mills Polytechnic College converted as Government Polytechnic College vide G.O.Ms.No.26, dated 30.01.2018, Department of Higher Education (B2), Tamil Nadu.

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|                      |                                                            |
|----------------------|------------------------------------------------------------|
| For Petitioners      | : Mr.K.Raja<br>for Mr.M.Kaviveerappan                      |
| For R1, R3<br>and R6 | : Mr.R.Neethiperumal<br>Government Advocate                |
| For R2               | : Mr.M.Murali<br>Government Advocate                       |
| For R4 and R5        | : Mrs.M.Geetha Tamaraiselvan<br>Special Government Pleader |



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**In W.P.Nos.35896, 35898, 35899, 35900, 35901 and 35905 of 2019**

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For Petitioners : Mr.K.Raja  
for Mr.M.Kaviveerappan

For R1 and R3 : Mr.R.Neethiperumal  
Government Advocate

For R2 : Mr.M.Murali  
Government Advocate

For R4 and R5 : Mrs.M.Geetha Tamaraiselvan  
Special Government Pleader

**COMMON ORDER**

W.P.No.5170 of 2020 has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records in connection with the Letter of the Merger Committee, the 6<sup>th</sup> respondent bearing Ref No. Letter No.01/CON/2020, dated 13.01.2020 and quash the same and further directing the Respondents to absorb the petitioner in service as Lecturer of the Dharmapuri District Co-operative Sugar Mills Polytechnic College converted as Government Polytechnic College vide G.O.Ms.No.26, dated 30.01.2018, Department of Higher Education (B2), Tamil Nadu.

2. W.P.No.19710 of 2020 has been filed challenging G.O.Ms.No.26 dated 30.01.2018 on the file of the first respondent, insofar as ignoring the petitioners for absorption.



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3. W.P.Nos.35896, 35898, 35899, 35900, 35901 and 35905 of 2019 have been filed challenging the order dated 21.11.2019, on the file of the third respondent, thereby rejected the request made by the petitioner to absorb them in the regular employment in the fifth respondent College.

4. The petitioners had joined in the service of the fifth respondent College on various dates and rendered more than 10 to 15 years of service as Lecturers on consolidated basis. They were appointed in the walk in interview for the post of Lecturer, Workshop Instructor and Lab Assistant in the fifth respondent College. They were paid through the Sugar Mills Limited on consolidated basis. They were fully qualified for the post of Lecturer, Workshop Instructor and Lab Assistant. In fact, the said vacancies were not filled in view of the fact that no person was available for the aforesaid post through employment exchange. Therefore, on a paper publication, the petitioners were participated in the interview and selected in the sanctioned post.

5. While being so, the first respondent issued an order in G.O.Ms.No.26, Higher Education (B2) Department, dated 30.01.2018 and



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accorded administrative and financial sanction for the fifth respondent College after taking over as Government Polytechnic College, on conditions that the regular staff of the fifth respondent College alone shall be allowed to continue giving relaxation only to the two regular staff who do not possess the required qualification. The merger committee shall be constituted for absorption and accommodation of regular staff of the Dharmapuri District Co-operative Sugar Mills Polytechnic College in the created post and the Committee shall decide terms and conditions of their absorption. Staff shall be absorbed only against sanctioned post and excess staff will not be taken over.

6. The petitioners were employed on consolidated salary and their employment was temporary in nature. Therefore, they were not absorbed in the sanctioned vacancy. Therefore, some of the petitioners submitted representation and the same was rejected by the Merger Committee rendered by the fifth respondent.

7. A perusal of the counter filed by the third respondent revealed that after conversion of Dharmapuri District Co-operative Sugar Mills Polytechnic



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College into Government Polytechnic College, the first respondent passed an order in G.O.Ms.No.26 Higher Education Department, dated 30.01.2018 and accorded administrative sanction for conversion of self-financing polytechnic college for five courses viz., Civil Engineering, Electrical and Electronics Engineering, Electronics and Communication Engineering, Mechanical Engineering and Mechanical Engineering (Tool and Die). Further, it also sanctioned 87 posts (43 teaching, 24 technical posts, 14 administrative staff and 6 basic servant posts) for the polytechnic college. The regular staff of the College alone shall be allowed to continue and an undertaking has to be obtained from the regular staff for absorption and the merger committee shall be constituted for absorption and the accommodation of regular staff of the College. Accordingly, the 6<sup>th</sup> respondent has been constituted to verify all the original documents of the regular employees. Insofar as the petitioners are concerned they are not regular employees. They were recruited temporarily for the post of lecturer on consolidated wages.

8. In fact, the deceased first petitioner in W.P.No.19710 of 2020 already approached this Court in W.P.No.17572 of 2018 for direction to absorb him as Lecturer in the fifth respondent College. This Court, by an



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order dated 18.06.2019 directed the fifth respondent to sanction the post considering the fact that the deceased petitioner has been continuously employed to absorb as Lecturer, on regular basis and regularize the service. Aggrieved by the same, an appeal was filed in W.A.No.3926 of 2019, in which the Hon'ble Division Bench of this Court, by an order dated 20.11.2019 allowed the writ appeal and directed that the petitioners are at liberty to get their claim assessed and considered by the Merger Committee, within a period of two months. Thereafter, the Merger Committee of the fifth respondent College rejected the request made by the petitioners, on specific ground that the petitioners were not employed on regular basis and they could not be able to produce any evidence for their regular appointment like Service Register, Salary Statement, Appointment Order, Regularization Order, Declaration of Probation Order etc. Therefore, their names were not recommended for absorption as per the terms and conditions specified in G.O.Ms.No.26, Higher Education (B2) Department, dated 30.01.2018.

9. In fact, already similar request of these writ petitions were made before this Court in a batch of writ petitions in W.P.Nos.33535 of 2018 and etc., wherein this Court, by an order dated 29.04.2019 dismissed the writ



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petitions and the relevant portion of the order is extracted here under:-

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*“ 10. The Apex Court has directed the High Court stating that the High Courts, in exercising power under Article 226 of the 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 sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized. The said directions are issued by the Hon'ble Supreme Court of India by following the directions issued in the case of **State of Rajasthan-vs- Dayalal** reported in **2011 4 SSC 429**.*

*11. This being the legal principles consistently followed by the constitutional courts, the benefit of regularization or permanent absorption cannot be granted to these writ petitioners in violation of Recruitment Rules in force. However, there is no bar for the continuance of the writ petitioners as the lecturers on hourly basis, whenever the need arises in the Government Polytechnic Colleges such services rendered by the writ petitioners and it cannot be the basis for grant of regularization nor the writ petitioners can claim regularization or permanent absorption based on the length of services rendered by them as part time / guest lecturers on hourly basis.*

*12. In view of these principles, this Court has no hesitation in coming to the conclusion that the relief sought*



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*for to appoint these writ petitioners in a sanctioned posts as lecturers cannot be considered, as the appointments are to be made strictly in accordance with the Recruitment Rules and by providing equal opportunity to all the candidates who all are aspiring to secure public employment through open competitive process.*

*13. This being the factum, the writ petitioners has not established any acceptable legal grounds to consider the case of the writ petitioners. Accordingly, writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed."*

10. That apart, in the case of State of Karnataka and others Vs Uma Devi reported in **AIR 2006 SC 1806**, the Hon'ble Apex Court held as follows:-

*"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to Claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."*

*"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been*



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*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 regularization 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 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 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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.*

*(iii) Even where a scheme is formulated for regularisation with a cut- off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.*

*(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of*



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*part-time temporary employees.*

*(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the state must arise under a contract or under a statute."*

11. Further, the creation and abolition of posts is a matter of Government Policy and every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. Therefore, any recruitment to the post of service in the state or in the union is governed by Acts, Rules and Regulations. The constitution does not envisage any employment outside this constitutional scheme.

12. That apart, the petitioners services were terminated after the Government Order in G.O.Ms.No.26 Higher Education (B2) Department dated 30.01.2018. Though this Court passed an interim order, in view of the rejection of their request by the Merger Committee, the fifth respondent could not able to re-engage them on consolidated salary. Further, they were not



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appointed through any employment exchange and they were appointed to their respective posts through walk-in interview on consolidated salary that too on temporary basis.

13. Therefore, this Court finds no infirmity or illegality in G.O.Ms.No.26 Higher Education (B2) Department dated 30.01.2018 and the order passed by the third respondent dated 21.11.2019 and W.P.Nos.19710 of 2020, 35896, 35898, 35899, 35900 and 35901 of 2019 are devoid of merits and are liable to be dismissed.

14. Accordingly, W.P.Nos.19710 of 2020, 35896, 35898, 35899, 35900 and 35901 of 2019 are dismissed. Insofar as W.P.Nos.5170 of 2020 and 35905 of 2019 are concerned, the sole petitioner in both the writ petitions died. Accordingly, W.P.Nos.5170 of 2020 and 35905 of 2019 are dismissed as abated. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order



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To

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**G.K.ILANTHIRAIYAN. J.**

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