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W.P.No.5124/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.5124 of 2020
and W.M.P.No.6108 of 2020

A.Princy Christy

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Petitioner

/vs/

1. The Secretary,
Higher Education Department,
Fort St. George,
Chennai – 600 009.

2. The Registrar,
University of Madras,
Chennai.

3. The Secretary and Correspondent,
Loyola College,
Chennai – 600 034.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the third respondent in connection with the impugned order passed by him in proceeding dated 17.06.2019 and to quash the same and further direct the



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respondents to reinstate the petitioner as Assistant Professor in Computer

Science with all consequential service and monetary benefits.

For Petitioner ... Mr.S.Sivakumar

For Respondents ... Mr.K.Susendran
Government Advocate for R1

Mr.A.S.Vijayaraghavan for R2

Mr.Godson Swaminathan
for M/s.Isaac Chamber for R3

ORDER

The petitioner has filed this writ petition challenging the order of the third respondent in connection with the impugned order passed by him in proceeding dated 17.06.2019 and to direct the respondents to reinstate the petitioner as Assistant Professor in Computer Science with all consequential service and monetary benefits.

2. The petitioner was appointed as an Assistant Professor in the third respondent college through an appointment order dated 13.06.2007. Her appointment was confirmed by the College Management Committee vide confirmation letter dated 01.08.2009. The qualification of the petitioner was also approved by the second respondent vide order dated



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23.07.2012. On 17.06.2019, the petitioner was served with termination order by stating that her contract of service in the capacity of Assistant Professor in the Department of Master of Computer Application (MCA) is no longer required.

3. Mr.S.Sivakumar, the learned counsel for the petitioner, submitted that without assigning any reason the petitioner who had undergone thorough selection process and whose appointment has been subsequently confirmed by the College Management Committee and whose qualification has been approved by the University, was terminated without any prior notice and the same is illegal; though the petitioner's initial appointment limited her appointment for contractual period of two years, on 13.06.2009 her appointment was confirmed later on 01.08.2009; hence the petitioner claims that her appointment is permanent in nature.

4. Mr.A.S.Vijayaraghavan, the learned counsel for the second respondent, submitted that the Department of Master of Computer Application was closed in the year 2019 by the third respondent college in



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view of the less enrollment to the said course; whenever a request is made to close a Department, the University will initially suspend the course for two years and during that time fresh admission will not be made; after complying such due process, the University has given permission to close the Master of Computer Application Department and consequently, the Department was also closed; the petitioner who is the junior most in the Department was aware of the impending closure and she was informed about the impact of her employment due to closure of the Department; in the confirmation order itself it has been stated that the service is terminal within one month's notice in writing.

5. In support of his above contention, the learned counsel for the second respondent cited the judgment of this Court held in W.P.No.12391 of 2012 dated 17.09.2012 wherein it is held that the petitioner's employment is only on contractual basis and hence he is not entitled to the relief as prayed. The relevant part of the said judgment is extracted hereunder:

“ 5. In my considered opinion, a contract of the personal service cannot be enforced in a writ proceeding. From the record,



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it is clear that the petitioner was only a contractual employee and it is based on a personal contract of service. The same cannot be enforce in a writ proceeding. Therefore, the relief sought for in this writ petition cannot be granted to the petitioner. It is open to the petitioner to work out his remedy in the manner known to law. The writ petition is dismissed. No costs. Connected miscellaneous petition is also dismissed.”

6. Mr.Godson Swaminathan, the learned counsel for the third respondent, submitted that the third respondent College has got limited role to play and once a Department is closed pursuant to the permission issued by the second respondent nothing can be done beyond that; the employment contract is between the petitioner and the third respondent which is a self financing College.

7. However, the learned counsel for the petitioner, submitted that despite the petitioner was initially appointed on contractual basis, her employment has been confirmed on 01.08.2009 and hence the petitioner ought to have been considered as a permanent employee and she cannot be considered as a employee on contractual basis; in the initial employment of



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the petitioner it has been stated that the petitioner's employment is only on contractual basis and that may be renewed for a further period of two years or until the age of retirement specified by the Government subject to certain conditions; when the petitioner's first year contractual term of two years was about to finish, she was given with an another renewal on 01.08.2009; however, the letter dated 01.08.2009 has not been titled as 'Contractual renewal letter' but it is stated as 'Confirmation letter'; the petitioner was originally engaged in the UG Course and later she was shifted to PG course and it is only the PG course which was closed now.

8. The confirmation letter dated 01.08.2009 mentions the following termination clause:

“ 5. The service is terminable with one month's notice in writing or one month's salary in lieu of such notice on either side.”

9. It appears that the petitioner was the junior most in the Master of Computer Application Department and the closure of PG course resulted in her termination. Since the course for which the petitioner was employed is



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a self financed course, the petitioner cannot claim that she was permanently employed. As cited in the order in W.P.No.12391/2012 dated 17.09.2012, the contract of service cannot be enforced by way of filing a writ petition.

10. Accordingly, this writ petition is disposed and it is up to the petitioner to give a fresh representation to the third respondent and on receipt of the same the third respondent shall consider and pass orders if it is possible to accommodate the petitioner in any of the existing vacancy or courses. No costs. Connected miscellaneous petition is closed.

12.02.2024

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

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Higher Education Department,
Fort St. George,
Chennai – 600 009.
2. The Secretary and Correspondent,
Loyola College,
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R.N.MANJULA ,J.

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