



WEB COPY



W.P. No. 2075 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 2075 of 2018

and

W.M.P. Nos. 2591 & 2592 of 2018

S. Mullai

... Petitioner

Vs.

1.The University of Madras,
Rep., by its Registrar,
Centenary Buildings,
Chepauk Campus,
Chennai – 600 005.

2.The Syndicate,
Rep., by its Secretary,
The University of Madras,
Centenary Buildings, Chepauk Campus,
Chennai – 600 005.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Syndicate Resolution dated 11.08.2017 passed by the second respondent (Ex-B) and the consequential order of dismissal bearing Ref. No. F1(B)/ESSTT./2017/R-55 dated 22.08.2017 passed by the first respondent University (Ex-A) and to quash the same as being illegal, malafide and contrary to the principles of natural justice and for a consequential direction to the respondents to reinstate the petitioner in service w.e.f. 22.08.2017 and to continue in service till her date of superannuation and to grant her full back



W.P. No. 2075 of 2018

wages together with all other attendant benefits.

WEB COPY

For Petitioner : Mr. N.G.R. Prasad
for M/s. Row and Reddy
For Respondents : Mr. A.S. Vijayaraghavan, for R1
No Appearance for R2

ORDER

Heard Mr. N.G.R. Prasad, learned counsel appearing for the petitioner and Mr.A.S. Vijayaraghavan, learned counsel for the first respondent.

2. The case of the petitioner is that, she was appointed as Psychological Counsellor in the first respondent University on consolidated basis of Rs.15,000/- per month. On 02.01.2015 she joined duty. Her services were regularised by the second respondent on 01.12.2015. However, on 11.08.2017, the Syndicate of the University passed a resolution to terminate the petitioner's services, as the Government has not approved the creation of post of Psychological Counsellor coupled with objections raised by audit. Accordingly, the services of the petitioner were terminated on 22.08.2017. Aggrieved against the order of termination, the present Writ Petition has been filed.

3. The University of Madras, established in the year 1857, is one of the oldest and reputed Universities in India. The organizational structure of the



W.P. No. 2075 of 2018

University, insofar as the appointments of its staff and faculties are concerned, is by the Syndicate of the University.

4. Pursuant to the decision of the Syndicate, the University had called for applications for the post of a Psychological Counsellor in the University, through an advertisement in the Newspaper. Subsequently, the petitioner herein, who is a registered Medical Practitioner, was appointed to the post of Psychological Counsellor at the Medical Care Centre at the University of Madras, on 02.01.2015, on a consolidated pay of Rs.15,000/- per month for a period of one year, on contract basis. Her contractual services was thereafter periodically extended and the petitioner's services, as a Psychological Counsellor at the Medical Care Centre, were confirmed through an order dated 01.12.2015 and the petitioner was brought in the pay band of Rs.15,600-39,100 with GP of Rs.5,400/-. Pursuant to the order of appointment, an Agreement was entered into between the petitioner and Syndicate of the University.

5. On 11.08.2017, the Syndicate of the University passed a resolution to terminate the services of the petitioner as the Government has not approved the creation of the post of Psychological Counsellor and due to audit objections.

Based on the same, by an order dated 22.08.2017, the petitioner's services were



W.P. No. 2075 of 2018

abruptly terminated through the impugned order of the second respondent herein, on the sole ground that the post of Psychological Counsellor, as well as six other paramedical posts were not sanctioned posts by the Government of Tamil Nadu and in view of the Audit objections, the termination was effected. There was no prior notice or opportunity given to the petitioner to put-forth her objections to the termination and therefore, aggrieved against the order of termination, the present Writ Petition has been filed.

6. The one and only ground on which the petitioner's service, as a Psychological Counsellor, was terminated is that, her post was not sanctioned by the Government of Tamil Nadu, which was brought to the notice of the University through the Audit objections.

7. Mr. N.G.R. Prasad, learned counsel for the petitioner submits that the Syndicate passed a resolution to regularise the services of these temporary consolidated pay employees on the basis of recommendations made by the University. However, the order of termination has been in proceedings dated 22.08.2017, without any opportunity to the petitioner. Thus, the petitioner is constrained to move the present writ petition inasmuch as the order of termination is in violation of principles of natural justice.



W.P. No. 2075 of 2018

8. Mr. A.S. Vijayaraghavan, learned Standing counsel for the University would submit that, the Syndicate had appointed the petitioner to a non sanctioned post. However, subsequent to such appointment, the respondents were unable to continue her services ever since the factum of non sanction of post was brought to their notice in the Audit objections. Learned Standing Counsel also brought to the notice of this Court the judgment in W.A. No. 1607 of 2021 dated 05.07.2024 and submitted that the Division Bench had rejected the claim of the petitioner therein in a case where the Government refused sanction for the post of Medical Officer. It was also observed that recruitment to the post has to be made by strictly following the service rules in force and through open competitive process. Since equal opportunity in public employment is the constitutional mandate, all eligible candidates including the petitioner is at liberty to participate and secure employment on merits and in accordance with law. Learned Standing Counsel submitted that the Division Bench judgment of this Court will also squarely apply to the present case.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record.

10. It is relevant to extract the relevant portion of the judgment of the Division Bench which has been cited before this Court as herein under: -



W.P. No. 2075 of 2018

WEB COPY

“8. The power of Judicial Review of the High Court is to ensure the processes through which a decision has been taken in consonance with the statutes and rules in force, but not the decision itself. When the post has not been sanctioned, issuing a direction to the Government to sanction the post, in our opinion would not fall under the power of Judicial Review and sanctioning of post would be the decision of the Government. Creation or abolition of post is the prerogative of an employer. Therefore, Courts cannot issue any such direction to sanction the post and grant regularization or permanent absorption.

9. In the present case, the legal principles settled in Uma Devi's case reported in 2006 (4) SCC 1 and Govindasamy's case reported in 2014 (4) SCC 769 have not been followed by the writ court. Therefore, we are inclined to interfere.

10. The first respondent, admittedly, continued as temporary employee as Medical Officer on tenure basis and he was terminated from service. Now he cannot seek the benefit of regularization or permanent absorption, since no post of Medical Officer has been sanctioned in Madras University. Even in case the Government sanction the post of Medical Officer, recruitment is to be made by strictly following the service rules in force and through open competitive process. Since equal opportunity in public employment is the constitutional mandate, all eligible candidates including the petitioner is at liberty to participate and secure employment on merits and in accordance with law.

11. Accordingly, the order impugned dated 06.05.2021 in



W.P. No. 2075 of 2018

W.P.No.27439 of 2017 is set aside and the Writ Appeal stands allowed. No costs. Connected miscellaneous petition is closed.”

WEB COPY

11. It is seen that after the appointment of the petitioner to the post of Psychological Counsellor, the Government refused sanction to such post and this was pointed out by the audit by raising objections. The Syndicate of the respondent University has passed a resolution on 11.08.2017 and pursuant to such resolution, the order of termination has been passed on 22.08.2017. In this context, in the decision of the Division Bench of this Court stated supra, that recruitment to a post has to be made by strictly following the Rules which are in force and by conducting open competition in which opportunity will be given to all those who are eligible to participate in such competition. It was also held by the Division Bench of this Court that equal opportunity in public employment is the constitutional mandate and all eligible candidates has to be given opportunity to participate and secure employment on merits and in accordance with law. The decision of the Division Bench of this Court is squarely applicable to the facts of the present case. In such view of the matter, the order of termination has been rightly passed by the respondents and no interference is warranted.

12. In the result, the Writ Petition stands dismissed.



W.P. No. 2075 of 2018

WEB COPY 13. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

27.08.2024

Index : Yes/No
Neutral Citation : Yes/No
AT

To

1. The Registrar,
University of Madras,
Centenary Buildings, Chepauk Campus,
Chennai – 600 005.

2. The Secretary,
Syndicate, The University of Madras,
Centenary Buildings, Chepauk Campus,
Chennai – 600 005.



WEB COPY



W.P. No. 2075 of 2018

BATTU DEVANAND, J.

AT

W.P. No. 2075 of 2018 and
W.M.P. Nos. 2591 & 2592 of 2018

27.08.2024