



W.P.No.7110 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

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

W.P.No.7110 of 2024

and

W.M.P.No.7961 of 2024

- 1.Dr.K.Rajalakshmi
- 2.Dr.A.Sivaraj
- 3.Dr.B.Palani
- 4.Dr.S.Krishna Moorthy
- 5.S.Saraswathi
- 6.Dr.C.Kumar
- 7.S.Saravannan
- 8.Dr.R.Thangadurai
- 9.Dr.N.Suresh
- 10.P.Siva

...Petitioners

-Vs-

1.The Principal Secretary to Government,
Higher Education Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

2.The Director,
The Director of Collegiate Education,
EVK Sampath Maaligai,
DPI Campus, Nungampakkam,
Chennai – 600 006.

3.The Chairman,



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Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Campus, Nungampakkam,
Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in G.O.Ms.No.247 and G.O.Ms.No.248 on the file of the respondent No.1 and quash the same as illegal and consequently to direct the respondents to regularise the petitioners/Guest Lecturers working in Government Arts & Science Colleges as initiated vide G.O.Ms.No.56, Higher Education (F2) Department, dated 21.03.2020 within the time stipulated by this Court.

For Petitioner	: Mr.S.Louis
For R1 & R2	: Mrs.S.Anitha Special Government Pleader
For R3	: Mr.R.Neelakandan Additional Advocate General Assisted by Mr.C.Kathiravan Standing Counsel.

ORDER

This writ petition has been filed challenging the orders passed by the first respondent in G.O.Ms.No.247 Higher Education (F2) Department and G.O.Ms.No.248 Higher Education (F2) Department dated 08.11.2022 thereby ordered to recruit 4000 posts of Assistant Professor vacancies out of 7198 by supersession of the order already issued by the Government in GO.Ms.No.56 Higher Education (F2) Department dated 21.03.2020 thereby granted permission to the University Grants Commission qualified Guest Lecturers



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working in Government colleges to take part in open competitive written examinations by awarding weightage of 2 marks for each academic year for teaching experience subject to maximum of 15 marks for the years of service rendered in Government colleges as a one time measure.

2. The petitioners were initially appointed as Guest Lecturers in Government Arts and Science Colleges. After undergoing process of selection through open advertisement by the Selection Committee, after due selection, they had completed 5 to 17 years of their service in their respective colleges. (While being so, for regular absorption, the Government passed order in GO.Ms.No.56 Higher Education (F2) Department dated 21.03.2020, thereby ordered to regularise the services rendered by the Guest Lecturers in Government Arts and Science Colleges and Colleges of Education by appointing them as Assistant Professors in Government Arts and Science Colleges and Colleges of Education in Tamilnadu in Collegiate Education service on certain conditions). The petitioners are qualified with UG degree, PG degree, M.Phil and Doctorate in their respective subjects. They also cleared National Eligibility Test, State Level Eligibility Test, etc and they are presently working as Guest Lecturers in various Arts and Science Colleges and Colleges of Education in Tamil Nadu. They were recruited to the posts of Guest Lecturers through



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Selection process. They were appointed as Guest Lecturers on consolidated salary. Apart from regular courses, the Government conducted self financing courses in Government Arts and Science Colleges. Therefore, the Government converted the self financing courses as regular courses with nominal fees and to engage Guest Lecturers for taking classes in the sanctioned post by conducting selection through Selection Committee by making paper advertisement and also following the rule of reservation. The petitioners participated in the selection process and they were selected and appointed to the post of Guest Lecturer by Selection Committee on consolidated salary. Those who were fully qualified for the post of Assistant Lecturers appointed as Guest Lecturers. From the date of appointment, all the petitioners are continuously working as Guest Lecturers without break in service.

2.1 Though the service of the contract based Assistant Professors in the year 1996 were regularised, as per the GO.Ms.No.81, Higher Education Department dated 13.03.1998, the petitioners were not considered for their regularisation. After repeated representations, the Government issued order in GO.Ms.No.56 dated 21.03.2020, thereby decided to regularise the services of the Guest Lecturers in Government Arts and Science Colleges and Colleges of Education by appointing them as Assistant Professors subject to certain



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conditions. The service rendered by the Guest Lecturers in Government Colleges alone, that too who were working as on 30.09.2019, shall be considered for calculation of qualifying years of service. Accordingly, the regularization shall be restricted to 1146 Guest Lecturers and those vacancies approved for the year 2017-18 and 2018-19 shall be earmarked after regularisation of Guest Lecturers in two phases. It has to be conducted through certificate verification and interview. Accordingly, the petitioners were issued call letter to attend the certificate verification by the Selection Committee in the month of February 2021. All the petitioners appeared for certificate verification and they anticipated to attend interview.

2.2 While being so, the Teachers Recruitment Board issued notification calling upon the applications to fill up the post of Assistant Professor in Government Arts and Science Colleges for the year 2018-19 by direct recruitment of 2331 posts. The said notification was challenged before the Madurai Bench of this Court. All the writ petitions were dismissed and made clear that 1146 vacancies as mentioned in GO.Ms.No.56 dated 21.03.2020 are exclusive from the total 2331 vacancies for which notification for direct recruitment was published. Therefore, the apprehension of the petitioners is that the impugned notification would affect the chances for consideration for



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selection in direct recruitment is unfounded. While being so, due to election notification for the legislative assembly, the respondents had not pursued further process of selection to conduct interview and to regularise the service of the eligible Lecturers as Assistant Professors. The said process was abandoned by the respondents. While being so, once again the Government issued order in GO.Ms.No.246 dated 08.11.2022, thereby introduced competitive written examination and interview procedure for direct recruitment to fill up the posts of Assistant Professor in Collegiate Education by dispensing with the existing method of awarding of weightage marks. Subsequently, the Government passed order in GO.Ms.No.247 dated 08.11.2022 thereby superseding the earlier order passed in GO.Ms.No.56 dated 21.03.2020 and allowed the Guest Lecturers to participate in the written competitive examination as one time measure to the recruitment to the posts of Assistant Professors, thereby the first respondent cancelled the earlier order in GO.Ms.No.56 dated 21.03.2020.

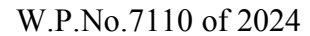
3. The learned counsel appearing for the petitioners submitted that the change of Government is the main reason for issuance of the impugned Government Order thereby changed the entire process of selection to the post of Assistant Professors and cancelled the earlier order passed in GO.Ms.No.56 dated 21.03.2020, as per which already initiated the process of selection for regularisation of service of the eligible Guest Lecturers. In pursuant to the



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Government order in GO.Ms.No.247 dated 08.11.2022, order was passed in GO.Ms.No.248 dated 08.11.2022 which are impugned in this writ petition thereby directed the Teachers Recruitment Board to cancel the notification for direct recruitment of 2331 posts of Assistant Professor and to issue fresh notification for direct recruitment of 4000 posts of Assistant Professors by following the method of written competitive examinations. He also pointed out that by GO.Ms.No.305 dated 26.12.2022, ordered to regularise the service of one of the Guest Lecturers by name P.Sasikala to the post of Assistant Professor who rendered less period of service than the petitioners. In fact, she is not qualified with State Eligibility Test, National Eligibility Test or Ph.D. Therefore, the petitioners cannot be discriminated among others. As such, the impugned Government order is arbitrary, illegal and against law.

3.1 Admittedly the petitioners were appointed as Guest Lecturers in Government Arts and Science Colleges from the year 2007 by the Selection Committee by making paper advertisement after conversion of self financing courses into regular courses and ordered to fill up the teaching posts with Guest Lecturers by the Government. In fact, they were selected and appointed following the rule of reservation on consolidated pay. They are fully qualified for the post of Assistant Professors and they are continuously working as Guest



3.2 Subsequently, another order has been passed in GO.Ms.No.247
08.11.2022, thereby ordered that the Guest Lecturers are allowed to
participate in the written competitive examination as a one time measure by
rescinding the earlier order in GO.Ms.No.56 dated 21.03.2020 and the



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relevant portion of the same is extracted hereunder:

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6. *The Government after careful examination of the request of the Director of Collegiate Education, accept the same and in supersession of the orders issued in the Government Order fifth read above, hereby grant permission to the University Grants Commission qualified Guest Lecturers working in Government Colleges to take part in the Open Competitive Written Examinations, following the procedures issued in the Government Order ninth read above and such Guest Lecturers who have cleared the Written Competitive Examinations, shall be awarded a weightage of 2 marks for each academic year of teaching experience (ie 11 months), subject to a maximum of 15 marks for the years of service rendered in Government Colleges, as a onetime measure and the marks to be awarded for experience and interview shall be as follows:-*

1	For Guest Lectures who have taught in Government Colleges. teaching experience in Government Colleges as Guest Lecturers with University Grants Commission approved Educational Qualifications from time to time in the posts sanctioned by the Government. (2 Marks for each Academic Year (i.e. 11 months)- subject to a maximum of 15 marks)	15 Marks (Maximum)
2	Viva Voce (for Guest Lecturers) if a candidate has gained less than 15 marks for experience then the remaining marks will be added for viva-voce component and viva-voce for such candidates will be held	15 Marks



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	with the remaining marks for experience + viva-voce marks (i.e) if a candidate scores 8 marks for experience he will face viva-voce for 22. (Max. marks for experience (ie) 15 minus actual experience marks 8) = 7 + 15 (viva-voce marks) 22 marks. These 22 marks shall be distributed under the four components prescribed for interview on pro rata basis as per Government Order ninth read above (i.e) Content, Delivery, Language and Personal Characteristics.	
Total		30 Marks (Maximum)

3.3 Subsequently, the Government Order was issued by the first respondent in GO.Ms.No.248 dated 08.11.2022 thereby directed the Teachers Recruitment Board to cancel the notification for direct recruitment of 2331 posts of Assistant Professors and to issue fresh notification for direct recruitment of 4000 posts of Assistant Professors. Before that, there was notification to recruit to 2331 posts of Assistant Professors by direct recruitment. Persons who applied for the said posts approached Madurai Bench of this Court in various writ petitions apprehending that the proposal to regularise the services of the Guest Lecturers in respect of 1146 vacancies as per the GO.Ms.No.56 Higher Education (F2) Department dated 21.03.2020 in respect of 1146 vacancies may affect 2331 vacancies for direct recruitment. The Madurai Bench of this Court by order dated 29.03.2021 held that the anxiety of the petitioners has now been clarified by the respondents stating that 2331 vacancies under the notification for recruitment, are exclusive of the 1146 vacancies which is sought to be filled



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through regularisation of the services of the Guest Lecturers. Therefore, the regularisation of Guest Lecturers which vacancies do not form part of the said notification. The learned counsels appearing for the petitioners relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***P.Partheepan Vs. Gagandeep Singh Bedi, IAS, Agricultural Production, Commissioner & Secretary to Government in Cont.P.No.1682 of 2019, etc batch*** dated 24.08.2022, wherein it is held as follows:

31. *In Durgacharan Misra [(1987) 4 SCC 646 : 1988 SCC (L&S) 36 : (1987) 5 ATC 148] this Court was considering the selection under the Orissa Service Rules which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The Rules merely required that after the viva voce test the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission which was the selecting authority prescribed minimum qualifying marks for the viva voce test also. This Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment of Munsifs.*

32. *In Maharashtra SRTC v. Rajendra Bhimrao Mandve [(2001) 10 SCC 51 : 2002 SCC (L&S) 720] this Court*



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observed that “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced”. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played and the results of the game were being awaited. That is unacceptable and impermissible.

3.4 Thus it is clear that the rules of game cannot be changed in the midst of the recruitment. Once the process of recruitment has been initiated as per the rules obtained as on the date, it cannot be subjected to any amendment in the rules during the midst of the recruitment process. In the case on hand, already the Government passed order in G.O.Ms.No.56 dated 21.03.2020 to regularise the services of eligible Guest Lecturers working for several years in the Government Arts and Science Colleges and Colleges of Education. The relevant portion of the said order in GO.Ms.No.56 dated 21.03.2020 is extracted hereunder:

2. As called for in the refererence second read above, the Director of Collegiate Education has sent the proposal vide reference third read above for regularaisation of Guest Lecturers who possess minimum requisite qualification for the post of Assistant Professors as per existing University Grants



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Commission norms and has requested the Government that the selection of guest lecturers proposed to be regularized may be restricted to 1146 guest lecturers and the estimate of vacancies for the post of Assistant Professors approved for the year 2017-18 and 2018-19 ie 1146 posts may be earmarked for the regularization of guest lecturers in two phases.

3 After careful examination of the proposal of the Director of Collegiate Education the Government have decided to regularize the services rendered by the guest lecturers in Government Arts and Science Colleges and Colleges of Education by appointing them as Assistant Professors in Government Arts and Science Colleges and Colleges of Education in Tamilnadu Collegiate Educational Service as per the announcement of the Hon'ble Minister stipulating the following conditions:

- (i) original recruitment process of guest lecturers should be fulfill the norms of open competitive process*
- (ii) the selection of guest lecturers proposed to be regularized shall be restricted to 1146 guest lecturers.*
- (iii) 1146 Assistant Professors vacancies approved for the year 2017-18 and 2018-19 shall be earmarked for regularization of guest lecturers in two phases*
- (iv) to speed up the process of selection for assessing the eligibility of the candidates by scrutinising applications.*



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Certificate Verification, preparing rank list etc., a Committee shall be constituted with the following members

- 1.The Director of Collegiate Education, Chennai -6*
- 2.The Joint Director of Collegiate Education, Teachers Recruitment Board*

3.The Joint Director of Collegiate Education (P&D)

4.The Joint Director of Collegiate Education (Finance)

5.The Regional Joint Director of Collegiate Education

(v) the selection of guest lecturers proposed to be regularized as Assistant Professors shall be on the basis of the procedures contemplated in G.O.(Ms) No.412. Higher Education (F2) Department, dated 4.12.2009,, G.O. (Ms) No.32 Higher Education (F2) department, dated 8.3.2013 and Government Letter No. 20575A/F2/2011 dated 27.06.2012 by allotting marks as stipulated therein

(vi) the Director of Collegiate Education shall arrange sufficient experts from Governmeent Colleges for interview panels to facilitate the selection of guest lecturers as Assistant Professors proposed to be regularized

(vii) department of Higher Education shall facilitate identification of adequate subject experts from the Tamil Nadu State Universities to Director of Collegiate Education.

(viii) the Director of Collegiate Education shall collect and compile the list of all qualified guest lecturers as per the



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University Grants Commission norms. The guest lecturers who fulfil the eligible conditions shall all be given a fair chance

(ix) Guest lecturers proposed to be regularised should have been recruited in a transparent manner after following due procedure prescribed by Government/ Director of Collegiate Education proceeding's issued from time to time by the duly authorised selection committee

(x) the interview boards shall include one subject expert from the University and two subject experts from the Government College.

(xi) the guest lecturers proposed to be regularized as Assistant Professors shall fulfill all the eligibility criteria as specified by University Grants Commission.

(xii) the services of the selected guest lecturers as Assistant Professors by the above said committee, shall be regularized as Assistant Professors by the competent authority only from the date of appointment and no claim on their initial appointment as guest lecturers shall be later entertained.

(xiii) a minimum service of five years as guest lecturers shall be considered as essential for the regularisation.

(xiv) the services rendered by the guest lecturers in Government Colleges alone and those who are serving as on 30.09.2019 shall be considered for calculation of qualifying years of service.



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(xv) the selection of guest lecturers shall be based on the total marks obtained by each of them and no request emphasising seniority on the number of years of service rendered or otherwise shall be entertained.

(xvi) the assessment made by the above committee shall be considered as a special test mentioned in the announcement

(xvii) fixation of seniority of guest lecturers shall be decided with prior approval of Personnel and Administrative Reforms Department.

(xviii) the Rule of Reservation shall be followed in the selection of guest lecturers.

3.5 As far as the petitioners are concerned, they had duly fulfilled the conditions of regularisation. In fact, the said conditions stipulate that original recruitment process of Guest Lecturers should be fulfilled the norms of open competitive process. Further the said selection of Guest Lecturers for regularisation as Assistant Professors shall be based on the procedures already contemplated under the various Government Orders. All the Guest Lecturers should have been recruited in a transparent manner after following due procedure prescribed by Government / Directorate of Collegiate Education proceedings issued from time to time by the duly authorised Selection Committee. Therefore at the stage of interview, that too after certificate verification it cannot be stopped abruptly. Further by superseding the said



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Government Order, another Government Order has been issued thereby ordered to issue notification for recruitment of 4000 posts of Assistant Professor by direct recruitment.

4. The respondents filed counter and the learned Additional Advocate General vehemently contended that on the basis of the audit report, the Government ordered for direct recruitment to fill up the post of Assistant Professors. Further, the persons who were appointed under 10(a)(1) of General Rules i.e. Tamil Nadu State and Subordinate Services Rules, 1955 cannot be regularised in any manner. As per the orders passed by the Hon'ble Supreme Court of India, the first respondent passed the Government order which is also impugned in this writ petition. Further, they were not appointed in proper selection process and the first respondent found that all the appointments of the petitioners as fraud and illegal. The notifications were issued at the college level and no proper communal reservation was followed while recruiting the petitioners as Guest Lecturers. Therefore, the recruitment of the petitioners itself is questionable on the ground of fraud. In support of his contention, the learned Additional Advocate General relied upon the judgment of this Court in the case of *M.Saravanakumar Vs. The Secretary to Government, Education Department* reported in *2005-3-LW 329*, wherein it is held as follows:



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28. *It may be noted that Guest Lecturers are appointed by the Principals of the Colleges. There is no guarantee that such an appointee is competent. The Principal may have various considerations for making such an appointment, not necessarily merit. Suppose one of such appointees is wholly incompetent and undeserving. Why can he not be replaced by a bright and deserving candidate? After all we have to see the matter from the point of view of the students. An incompetent teacher may adversely affect the future career of the students, while a bright teacher can greatly uplift it. Hence, in our opinion, if a deserving and competent candidate is available then he can certainly be appointed as Guest Lecturer in the place of another Guest Lecturer, who is incompetent and undeserving.*

5. However, the above submissions of the learned Additional Advocate General cannot be accepted for the very simple reason that admittedly the petitioners were appointed as Guest Lecturers in the Government Arts and Science Colleges. They are working for the past several years i.e. nearly 5 to 20 years. All along they are teaching their respective subjects and the respective colleges were given good results. So far, no allegations or complaints received as against the petitioners in respect of their teaching or any other violation in their respective appointments. In fact, they are even till today continuing as Guest



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Lecturers in their respective Government Arts and Science Colleges. Though it is stated in the counter that some of the Guest Lecturers produced their experience certificates and Ph.D. Degree certificates and later found to be fake and they were dismissed from service, as far as the petitioners are concerned, already their certificates were duly verified by the Selection Committee and at the stage of interview, their entire selection process was stopped due to election notification. Therefore, the judgment cited by the learned Additional Advocate General is not applicable to the case on hand.

6. In this regard, the learned Senior Counsel Mr.G.Sankaran relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***State of Bihar and Others Vs. Mithilesh Kumar*** reported in (2010) 13 SCC 467, wherein it is held as follows:

*15. Reference was also made by learned counsel to the decision of this Court in ***N.T. Devin Katti vs. Karnataka Public Service Commission & Ors.*** [(1990) 3 SCC 157], wherein it was reiterated that where selection process was initiated by issuing advertisement inviting applications, selection normally should be regulated by the Rules and orders then prevailing. It was also emphasized that service jurisprudence provides that normally amendments effected during the pendency of a*



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Lecturers after undergoing certificate verification as per the order in GO.Ms.No.56 dated 21.03.2020, is arbitrary, illegal and against the law for the reason that in order to fill up the posts by direct recruitment following the new method of selection as envisaged in GO.Ms.No.246 dated 08.11.2022, 1146 vacancies earmarked for absorption of eligible Guest Lecturers cannot be added in the impugned order in GO.Ms.No.248 08.11.2022.

9. In view of the above, the impugned order in GO.Ms.No.248 Higher Education (F2) Department dated 08.11.2022 is quashed insofar as ordered to notify 1146 vacancies which were earmarked for regular absorption of eligible Guest Lecturers as per G.O.Ms.No.56 Higher Education (F2) Department dated 21.03.2020. The respondents are directed to continue the selection process to fill up 1146 posts of Assistant Professors in accordance with the earlier order passed in G.O.Ms.No.56 Higher Education (F2) Department dated 21.03.2020 based on the selection process already initiated and processed by the proceedings of the second respondent dated 12.02.2021 and complete the same within a period of twelve weeks from the date of receipt of copy of this order.

10. In the result, all the writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to



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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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To
1.The Principal Secretary to Government,
Higher Education Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

2.The Director,
The Director of Collegiate Education,
EVK Sampath Maaligai,
DPI Campus, Nungampakkam,
Chennai – 600 006.

3.The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Campus, Nungampakkam,
Chennai – 600 006.

G.K.ILANTHIRAIYAN. J.

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