



W.P.No.12939 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2024

DELIVERED ON : 30.07.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.12939 of 2023

and

WMP.Nos.12724, 12726 and 19494 of 2023

T.Priya

Vs.

.. Petitioner

1.The Secretary to Government
Government of India,
Ministry of Agriculture and Farmers Welfare
Department of Agriculture and Co-operation,
Directorate of Economics and Statistics,
Room No.102, F-Wing,
Shastri Bhawan, New Delhi-1.

2.The Registrar,
University of Madras,
Chepauk-P.O
Chennai-600 005.



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3. The Director in-Charge,
Agro Economic Research Center,
AERC, University of Madras,
Chennai-600 005.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus, calling for the records of the second respondent in the Letter No.RSP/PURCHASE/Service/Priya/AREC/2023/133, dated 19.04.2023, quash the same and consequently direct the first respondent and the second respondent to regularize the services of the petitioner from the initial date of appointment.

For the Petitioner : Mr.C.Vigneswaran
For the Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General of
India for R1
M/s.V.Sudha for R2 & R3

ORDER

A. The Writ Petition:

The writ petition is filed challenging the order dated 19.04.2023 and to consequently direct the respondents 1 and 2 to regularize the



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services of the petitioner from the initial date of appointment.

2.By the impugned order, the request of the petitioner for regularization and extension of service was held to be not feasible of compliance and the petitioner was directed to employ herself through the University approved Outsourcing Agency after the service break of a period of seven days from 1st April 2023 to 7th April 2023.

B. The Case of the Petitioner:

3.1.The case of the petitioner is that the first respondent had established Agro Economic Research Centres throughout the country with a view to provide them with a constant flow of data on various aspect of Agriculture and Rural Life. Initially, four centres were established in New Delhi, Santiniketan, Pune and Chennai. As of today, 15 centres are functioning throughout the country.

3.2.In the year 1995, a Memorandum of Understanding



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(hereinafter referred to as 'MoU') was executed between the second respondent University and the first respondent. As per the same, the first respondent would fully fund the research study. The Agro Economic Research Center (hereinafter referred to as 'AERC') was made as a permanent department of the second respondent University. The Syndicate and Senate of the second respondent University approved the creation of the permanent department and the same was included in the statutes of the second respondent University and thus, it is a permanent wing of the second respondent University. As per the MoU, the staff manning the centre would be considered on par with the regular employees of the second respondent University and will be accordantly funded by the first respondent. The scale of pay of the employees of the centre should be identical to the corresponding posts in the University.

3.3. Based on the above MoU, by a notification dated 04.08.2010,



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the second respondent invited applications for the post of Research Associate/Senior Research Investigator among other posts. As per the notification, the appointment was for a period of five years and the candidates should have the essential qualifications of Master's Degree in Agricultural Economics/Economics/Statistics/Applied Economics and two years of research experience in conducting field surveys and data collection. The scale of pay for the post was fixed at Rs.9300/- - Rs.34800/- + GP of Rs.4600/-.

3.4.The petitioner applied for the said post on 27.08.2010 and was called for an interview on 28.02.2011. Thereafter, the petitioner was issued with an offer of appointment on 20.09.2011. From then on the petitioner has been working continuously in the second respondent University without any break. She had also been given the annual increments and all other benefits on par with the regular employees. During December 2015, the petitioner was also granted maternity leave



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on par with the regular employees.

3.5.The petitioner claims that it is the practice of the second respondent University to regularize the employees of the centre after the initial period of five years. However, for the petitioner, her services were extended by an order dated 01.12.2016 for a period of one year. Similar extensions were made till the year 2018. On 18.01.2018, the second respondent had addressed a letter to the first respondent seeking for confirmation of the extension of services of the petitioner.

3.6.By their communication dated 06.02.2018, the first respondent conveyed his no objection for granting extension to the petitioner and also directed the second respondent to clarify that when the sanctioned posts were to be filled up on regular basis with the objective of ensuring dedicated and qualified staff why the same is not being observed in the petitioner's case alone. Thereafter, the petitioner's



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pay was also refixed pursuant to the implementation of the 7th Central Pay Commission in the scale of Rs.36400/- - Rs.1,15,700/- with effect from the year 2017. By a communication dated 16.11.2018, the first respondent requested the second respondent that the petitioner may be considered for regularization and reiterated that the financial liability of such an appointment is that of the Government of India. Whiles, by an order dated 19.12.2018, the second respondent extended the services of the petitioner by another one year from 22.09.2018 and again by order dated 29.10.2019 her services were further extended for another one year upto 21.09.2020 and again by order dated 30.09.2020 her services were extended upto 21.09.2021. Further, by order dated 16.11.2021, her services were extended for a period of 11 months upto 26.08.2022 with a break of five days from 22.09.2021 to 26.09.2021. The first respondent, thereafter, considered the issue by their communication dated 24.11.2021, in which, it took note of the periodical extension given to the petitioner and held that the extension



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which is given for a period of 11 months with a break of five days is inappropriate and directed the second respondent to ratify the extension of services of the petitioner without break and to furnish the action taken report with reference to the earlier letter dated 06.02.2018 and office memorandum dated 16.11.2018. Thereafter, the petitioner made representations to regularize her services. However, from the month of November 2022 onwards, her salary was not regularly paid and by the impugned communication dated 19.04.2023, her request for regularization is rejected and she was directed to employ herself through outsourcing. Hence, the writ petition.

C. The Case of the Respondents:

4.1.The writ petition was resisted by the respondents by filing separate counter affidavits.

4.2.As per the counter affidavit filed by the first respondent, it is



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stated that the Centers were started in the year 1954-55. The Agro Economic Research Units were started as independent/autonomous institutions functioning under the administrative control of different Universities/Institutes. They were started for the purpose of carrying out a comprehensive and continuous study of agricultural economic problems. The MoU with the University of Madras came into force in the year 1969. As per the said MoU, while functioning of the Centers, which is staff, their conditions of service shall be as per the terms of the concerned University, the funding alone will be made by the Government of India. The Universities have the administrative control over the AER Centers and they are integral part of the respective Universities. Therefore, it is for the University of Madras to determine the eligibility as to the regularization of the petitioner. The recruitment is solely done by the Center by following their recruitment rules. The responsibility of the Ministry of Agriculture and Farmers Welfare is only to provide funds to the AERC, Chennai for a smooth functioning



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for the research work that AERC performs for the Ministry.
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4.3. An additional counter affidavit is also filed on behalf of the first respondent. In the additional counter affidavit, apart from reiterating the earlier stand, the first respondent has sought to explain their communications dated 06.02.2018, 16.11.2018 and 24.11.2021 stating that only a request was made to the AERC Chennai to take appropriate action and to submit action taken report on the matter for the office records. However, it is pleaded that seeking clarification and action taken report by the Ministry does not confer any right of the petitioner for claiming regularization and it is only the University of Madras has the sole authority and responsibility to decide upon the eligibility for regularization of the services of the petitioner. It is further contended that if the actual facts were submitted to the Ministry, the Ministry would not have issued any letters in this regard.



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4.4.The second respondent has also filed a separate counter affidavit. According to the second respondent, pursuant to an advertisement, the petitioner was appointed as Research Associate/Senior Research Investigator on a regular time scale of pay of Rs.9,300/- - Rs.34,800/- + Grade Pay of Rs.4,600/- at AERC for the tenure period of five years, based on the resolution passed by the Syndicate on 07.11.2011. The petitioner joined duty on 02.09.2011 on the terms that her appointment will be on contract basis for a period of five years and that she will be governed by contributory provident fund scheme. As per the MoU between the University of Madras and the Ministry of Agriculture, dated 21.05.1990, the petitioner being the staff of the AERC has been treated on par with the regular employees of the University and she is also enjoying all the privileges such as gratuity, PF, allotment of quarters, medical benefits, leave etc., as per the existing rules of the University.



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4.5 The recruitment of the petitioner was done by the AERC following the University Rules and hence in matters relating to the regularization also, the rules of the University will alone be applicable and only the funding of AERC alone is the responsibility of the Ministry of Agriculture. When the matter relating to the petitioner was placed before the Syndicate, by a resolution dated 12.09.2020, the Syndicate reiterated that there is no provision for regularization of contractual staff and therefore, directed placing of extension of services of the petitioner alone and accordingly, the petitioner's services were being extended.

4.6 As far as the extension of service from 01.12.2022 to till date is concerned, the same has not been sanctioned by the authorities and the same is under process. Under the circumstances, when the petitioner made a representation, the Director in-charge of AERC replied by the impugned communication dated 19.04.2023 that regularizing and extension of her service is not feasible of compliance



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and she was further informed that she made employ herself through the University approved Outsourcing Agency after the service break period of seven days from 1st April 2023 to 7th April 2023.

4.7 It is further stated that by a communication dated 27.04.2023, the first respondent had directed to maintain the current staffing position of AERC as per the sanctioned core staff strength which are live. It was further directed that the posts under the deemed abolished category need not be filled up without revival of the same by the Department of expenditure, Ministry of finance. The AERC, Chennai is also directed to adhere to Clause (xiv) of the Memorandum of agreement signed in the year 1990, wherein, it has been mentioned that the staffing pattern of the AERC shall not be altered/changed without prior approval of the Ministry. It is in this background, by a communication dated 04.05.2023, the AERC has stated that the petitioner has to employ herself through University approved



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Outsourcing Agency after the service break. Statements are also made relating to the interim order granted by this Court pending the writ petition and the compliance thereof and it is stated that the Directives of the first respondent dated 06.02.2018 and 16.11.2018 to regularize the services of the petitioner are not feasible of compliance.

D. The Hearing & Orders of this Court:

5.1 Heard *Mr.C.Vigneswaran*, learned counsel appearing on behalf of the petitioner, *Mr.AR.L.Sundaresan*, learned Additional Solicitor General of India appearing on behalf of the first respondent and *M/s.V.Sudha*, learned counsel appearing on behalf of the respondents 2 and 3.

5.2 Before advertng to the arguments, it is pertinent to note that in the course of the arguments, on 01.04.2024, this Court passed an order requesting the learned counsel appearing on behalf of the Madras



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University to produce the resolution, by which, the post in question was decided to be filled up through man power agency and whether the same policy is followed in respect of the other employees of the centre or not. In reply thereof, the learned counsel, thereafter, submitted that there is no such specific policy. Thereafter, once again by another order, the Court also raised the following queries by an order dated 08.04.2024, which are extracted hereunder:

"4. In view thereof, the following particulars are further required from the second respondent.

1. Whether the centre being one of permanent in nature in the University, the post sanctioned are permanent or temporary in nature?

2. Whether any other employee of the centre is treated as permanent employee and retired employee who is being paid pension?

3. What is the condition in respect of other employees who are employed in the said centre?

4. Whether the particulars mentioned in the check list, as annexed to the letter dated 14.08.2018 stands correct or not?

5. Whether the post mentioned in Page No.50 of the typed set of papers which are mentioned as sanctioned post etc., are



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sanctioned permanently?"

5.3 In respect of the queries the learned counsel appearing on behalf of the second respondent produced a typed set of papers annexing the materials in answer to the same.

E. The Arguments:

6.1 *Mr.C.Vigneswaran*, learned counsel appearing on behalf of the petitioner drawing the attention of the earlier directions given by the first respondent would submit that even though the petitioner was appointed on contract basis only for a period of five years, her appointment has now been periodically extended till date. Thus, the petitioner, who joined the services in the year 2011 is working continuously under the respondents for the past 13 years. Whiles, now an artificial break of seven days is sought to be given and the petitioner was sought to be continued under an Outsourcing Agency. When the Government of India, which is the funding agency, has earlier directed the regularization of the services of the petitioner, the respondents



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ought to have regularized her. He would submit that all the other employees of the AERC were regularised upon completion of the initial five years of the contract period and some of them have even retired from service and have been paid the regular pension also. The entire contention on behalf of the second respondent University as if it is a scheme or project is incorrect. He would therefore pray that this Court should interfere in the matter. He would further place reliance on paragraph No.53 of the Judgment of the Hon'ble Supreme Court of India in ***Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others***¹. For the proposition that whether the direction is from the first or second respondent, it will be binding on all of them vis-a-vis the petitioner herein, the learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji***², more specifically relying upon paragraph No.7 of the Judgment.

1 (2006) 4 SCC 1

2 1951 SCC Online SC 70



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6.2 *Mr. AR.L. Sundaresan*, the learned Additional Solicitor General of India, appearing on behalf of the first respondent would submit that the AERC is established for permanent purposes. However, whether the staff would be permanent or would be paid a particular scale of pay is within the realm of the second respondent University. Only to ensure the funds granted by the first respondent are utilized properly, reports are called for and cross checks are made. However, it would be only for the second respondent to decide the matter as to the permanency or otherwise of the petitioner as per their own rules. Merely because some directions were issued in the communications, the same would not be binding on the second respondent University.

6.3 *Ms.V.Sudha*, learned counsel appearing on behalf of the Madras University would submit that as per the Judgment of the



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Hon'ble Supreme Court of India in *Umadevi* cited *supra*, this Court under Article 226 of the Constitution of India cannot direct regularization of the employees. She would submit that the petitioner is a contract employee. Her services has been extended periodically. She does not have any right of regularization. Only to provide an opportunity to the petitioner, it was mentioned in the impugned order that she can join through outsourcing.

F. The Discussion & Findings:

7. I have considered the rival submissions made on either side and have perused the material records of the case. The question that arises for consideration is as to whether the petitioner is entitled for regularization of her services ?

8.1 It is essential to extract the impugned order which reads as



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follows:

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"With reference to the above, it is by direction to inform that, the request of Tmt.T.Priya for regularization and extension of service is not feasible of compliance, in accordance to the recommendation of professor and Director i/c, AERC, UNOM, she is further informed that she may employ herself through University approved Outsourcing Agency after the service break of period of 7 days from 1st April 2023 to 7th April 2023."

8.2 On the face of it, it is clear that the services of the petitioner is required. It is the consistent case of both the first and second respondents that the research/collection of data work is required to be done on a permanent basis. Therefore, even if the employee is working on a temporary basis, grant of such artificial break in service is illegal.

8.3 Secondly, it can be seen that the impugned order mandates the petitioner to employ herself through approved Outsourcing Agency. Firstly, the policy of the outsourcing by the Government of India/State



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Governments was made with reference abolition of Group-IV posts such as house keeping, cleaning etc. or it can be resorted to when there are no regular posts exist for performing a particular task. In a centre such as the AERC, which is carrying out a very important function of collating and classifying data relating to agricultural and their economic activities, and when a highly qualified person in the cadre of Research Associate is to be employed, the same cannot be left to the outsourcing agency. Research is one of the important works of any University and the same can never be manned by staff through outsourcing agency. Further, despite the specific Order by this Court, no such policy has been placed on record.

8.4 It can be further seen that by a communication of the third respondent University dated 14.08.2018, the details with reference to the sanctioned staff positions and the recruitment rules were furnished to the first respondent and instructions were requested from the



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University to fill up the vacancies on permanent basis. In the said communication, in the annexure, it can be clearly seen that there are four numbers of sanctioned posts of Research Associate/Senior Research Investigator, which were revived from the year 2008 onwards in the then scale of pay of Rs.9300/- - Rs.34800/- + Grade Pay of Rs.4600/-. The details of core staff positions as enclosed with the said communication is extracted hereunder for ready reference:

**"Agro Economic Research Centre, Chennai
Details of Core Staff Position as on 11 July 2018**

Name of the Post & Pay Scale (6th CPC) Under Core Staffing Pattern	No. Sanctioned Post	No. of Posts Revived in 2008	No. of Filled Posts	Total No. of Posts Vacant	No. of Revived Posts Remained Vacant	Date of Vacancy (Date, Since when the post is vacant)	No. of Posts Lying Vacant for Less than Two years	No. of Posts proposed for Revival (Posts Vacant for More than Two Years)
Director/Professor ; 37400-6700+AGP 10000	1	1	1	0	0	--	--	--
Deputy Director/Reader; 37400-67000+AGP 9000	1	1	0	1	1	--	0	1
Research Officer/Lecturer;	2	0	0	2	2	--	0	2



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15600-39100 + AGP WEB 6000 COPY								
Research Associate/Sr. Research Investigator 9300-34800+GP 4600	4	4	1	3	3	--	1	3
Research Fellow (Temporary) Consolidated pay at par on UGC NET-JRF scale	2	2	0	2	2	--	0	2
Research & Reference Assistant (Lib): 9300- 34800+GP 4200	1	1	0	1	1	--	0	1
Office Superintendent/Section Officer 9300- 34800+GP 4200 (4600)	1	1	0	1	1	--	0	1
PA to Director; 9300- 34800+GP 4200	1	1	0	1	1	--	0	1
Accounts Assistant; 5200-20200+GP 2400	1	1	0	1	1	--	0	1
Typist; 5200- 20200+GP 1900	1	1	0	1	1	--	0	1
Total	15	15	1	13	13	--		13

Note: The above information should be correct and updated as the proposal would be submitted on the basis of information provided above. Centers/Units would itself be responsible for any discrepancies henceforth."



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8.5 The recruitment rules for the said post is also framed by the respondents which is enclosed to the said communication which reads as hereunder:

"

Sl.No.	Particulars	
1	Name of Organization	AERC Chennai
2	Name of Post	Research Associate/Sr.Research Investigator
3	Pay Scale of the Post	9300-34800+GP 4600
4	Date of Vacancy	1.Post vacant for one year. 2.Posts vacant for seven years.
5	Mode of Recruitment of the Post	Direct Recruitment
6	No. of posts in the grade of post proposed to be revived	(a) Sanctioned - 4 (b) Vacant - 3
7	Duties and Responsibilities of the Post	Collection of data, Processing and tabulation work
8	Functional Justification for Revival of the Post	Since the Centre is engaged in studying and analyzing agricultural concerns of four States/Union Territories under its jurisdiction, it requires a full time eligible hand to supervise such important works done by the staff team in the centre. Since the centre has only a Director i/c., it will also help him in managing his responsibilities to the centre efficiently.
9	Efforts made to fill up the	1.This office letter No.D.1



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	post, since date of vacancy (In Chronological order with relevant documents)	(B)/TE/2009/3073, dated 20/09/2009 to the Directorate of Economics and Statistics, GOI. 2.This office letter No.AERC/Reg/2011/136 dated 08/7/11 to The Registrar, University of Madras. 3.This office letter No.AERC/Appt-S.O/2013/72 dated 08/07/2013 to The Registrar, University of Madras. 4.This office letter NO.AERC/Appointment letter/2015/60 dated 07/04/15 to The Registrar, University of Madras. 5.This office letter No.AERC/Section Officer/2017/43 dated 28/04/17 to The Registrar, University of Madras. 6.This office letter No.AERC/Appointment of Assistant (Typist) 2018/49 dated 16/02/18 to The Registrar, University of Madras. 7.This office letter No.AERC/Call for Advt./2018/88 dated 08/06/2018 to The Registrar, University of Madras.
10	How the work is being managed in the absence of the post and why this arrangement cannot continue	The work has been managed by the only Research Associate by doing overtime work.
11	Possibility of Outsourcing/Contract	Outsourcing/Contract based works will end up in inefficient and discontinuous working



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		of the Centre, as the Centre is supposed to deal with whole year agricultural studies and concerns of four States/Union Territories under its jurisdiction.
12	Financial Implication of Revival of the post	At par with Seventh Pay Commission
13	Matching savings (Specific posts with pay scales)	-----
14	Whether the post has been offered as matching savings for creation/revival of any other posts	-----
15	Whether the Post has been recommended for abolition SIU/IWSU/ERC	No
16	Any other relevant information	-----

"

8.6 As a matter of fact, on a reading of the MoU which was originally entered into and thereafter, in the year 2005, it is clear that AERC is permanent in nature and the first respondent/Ministry is fully funding the same including the salary which are to be paid to the regular staff. The Syndicate of the second respondent University by in its meeting held on 22.06.1987 has resolved that AERC will be



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permanent with effect from 15.05.1985. The said resolution extracted in the communication dated 21.07.1987 which reads as follows:

"In continuation of this office letter cited (Copy mentioned for ready reference) I am to inform you that the Syndicate at its meeting held on 22.06.1987 considered the date from which the Agro Economic Research Centre is to be made permanent and has resolved as follows:

"RESOLVED that A.E.R.C. be made permanent with effect from 15.05.1985."

Kindly acknowledge receipt."

8.7 It can be seen from the statement showing the details of the staff strength, every other staff namely, Mr.V.Chockalingam, Mr.Lakshminarayanan and Mr.R.Swaminathan-Junior Research Investigators, Mrs.A.Pushpavalli-Statistic Assistant, Mr.S.Deenadayalu and Ms.M.Leela-Tabulators, Mr.V.S.Gnanasundaram, Mr.Mct.Nachiappan, Mr.S.Dhiraviam and Mr.A.Abdul Salam-Computers and they were all treated as regular employees in the regular scale of pay after their initial appointment on contract basis and upon



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being superannuated from service, even admitted into the regular pension. Therefore, it is clear that AERC is a permanent department of the second respondent University and the post which the petitioner occupies is a regular post. Even as per the counter affidavit filed by the second respondent, the first respondent by its communication dated 27.04.2023, had stated that the staff strength with reference to the total sanctioned posts shall be maintained and only the posts which are deemed to have been abolished category alone need not be revived. It is essential to extract the relevant portion of paragraph No.7 of the counter affidavit which reads as follows:

"7.....In this connection, Department of Agriculture & Farmers Welfare Economics & Statistics Division (A.E.R Section) functioning under Ministry of Agriculture & Farmers Welfare, Government of India communicated a letter dated 27.04.2023 to Registrar through speed post (received on 04.05.2023) regarding contractual appointment of research fellow at AERC, "on the subject mentioned above wherein the list of current staff position of AERC, Chennai was furnished. It was observed that four Research Fellows have been appointed at AERC, Chennai instead of two Research Fellows that are permitted as per the sanctioned



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core staff strength which are live.

In this regard, it is directed to restrict the current staff position (both regular and contractual) of AERC, Chennai, to the total sanctioned post and further to limit the same only to live staff strength position which have not fallen into deemed Abolished category. The posts fallen under deemed abolished category cannot be filled up without revival of the same by Department of expenditure, Ministry of finance.

Further, AERC, Chennai is also directed to adhere to the clause (xiv) of the memorandum of agreement signed in 1990, wherein it has been mentioned that the staffing pattern of the Agro Economic Research Centre shall not be altered/changed without prior approval of the ministry. The ministry will have no financial obligations for funding the staff employed by the Centre in excess of the approved strength"

8.8 In this background, it can be seen that earlier when the petitioner's services were sought to be extended from 27.09.2021 to 26.08.2022 with a break of five days, the following was the directions issued by the first respondent by its communication dated 24.11.2021 and the same is extracted hereunder:

"...V) The University administration has now given extension of Tmt.T.Priya, Research Associate for a period of 11 months with break of



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five days in service which is inappropriate in view of the above mentioned letter dated 06.02.2018 and OM dated 16.11.2018.

2.In view of the above, it is requested to take appropriate action to ratify the extension of services of Tmt.T.Priya without break and to furnish the action taken report with regard to the earlier letter dated 06.02.2018 and OM dated 16.11.2018 issued by this office in the matter."

8.9 Further, by a communication dated 19.04.2022, the directions issued by the first respondent, which reads as follows:-

"Subject: Regularization of the services of Tmt. T. Priya, Research Associate/Sr. Research Investigator of AERC, Chennai-regarding.

The undersigned is directed to refer to this office letter of even number dated 24.11.2021 (copy enclosed) requesting therewith to ratify the extension of services of Tmt. T. Priya without break and to furnish the action taken report with regard to this office's earlier letter of even number dated 06.02.2018 and OM dated 16.11.2018 (copies enclosed) on the above mentioned subject. The University of Madras has been requested to take appropriate action with regard to regularization of service of Tmt. T. Priya as Research Associate/Sr. Research Investigator in AERC, Chennai. In this regard, this office has not received any communication so far from the University of Madras.



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2. Therefore, it is again requested to take appropriate and favourable action to ratify the extension without break and regularization of services of Tmt. T. Priya, Research Associate/Sr. Research Investigator in view of the instructions issued by this office vide letter dated 06.02.2018 and OM dated 16.11.2018. Action taken report in this regard may please be furnished to this office on priority."

(emphasis supplied)

8.10 In the teeth of the same, when the first respondent being the funding agency orders that the petitioner's services be regularised and already when regular scale of pay being paid to the petitioner, yet for no reason, the second respondent has not regularised the services of the petitioner. In this regard, it is essential to quote paragraph No.53 of the Judgment of Hon'ble Supreme Court of India in **Umadevi** cited *supra*:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa¹¹, R.N.Nanjundappa¹² and B.N.Nagarajan⁸ and referred to in para 15 above. of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of



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tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

8.11 Even in the present case, it can be seen that the petitioner is a duly qualified person. She is working in a duly sanctioned post. She has been continued in work for more than ten years without the intervention of the orders of the Court until 2023, whereupon, the Court orders have been passed in the present writ petition. In such



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cases, the question of regularization has to be considered as per the earlier directives of the Hon'ble Supreme Court of India.

8.12 In this case, already the Union of India being the funding agency as thought it fit to direct the second respondent to regularize the petitioner. A stand is now taken by the Union of India diametrically opposite to the said communications as if its directions will not be binding on the University. The language of the earlier communications were certainly mandatory directing the second respondent to consider the regularization of the services. In this regard, it is apt to reproduce the Judgment of the Hon'ble Supreme Court of India in ***Commissioner of Police*** cited *supra* and paragraph No.9 is extracted hereunder:-

“9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of the Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the



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officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

8.13 Further, certainly these communications between the first and second respondents, unequivocally create a legitimate expectation that the petitioner would be regularised in service. In the instant case, eventhough originally a contract was made for a period of five years, thereafter, it was periodically been extended. The petitioner, who was 25 years at the time of engagement of the services, is now aged 38 years. It can be seen that though the petitioner is engaged on a contract basis for five years, the appointment order also reads as if the petitioner is appointed on time scale of pay of Rs.9300/- - Rs.34800/-+Grade Pay of Rs.4600/- and the petitioner was also placed on probation for a period of one year and was also put under contributory provident fund scheme.



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8.14 The communication of the second respondent to the first respondent dated 17.12.2015 categorically admits the practice of AERC to initially appoint the employee on contract basis for a period of five years and to regularise thereafter, which has been the practice of the second respondent University over the last sixty years. The relevant portion of the communication is extracted hereunder:

"I submit that Mrs. T Priya is working at AERC, Chennai as Research Associate/ Sr. Research Investigator in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4600/- since September 2011. She is under family way and has applied for grant of maternity leave. However, the University has sent a letter to you seeking your Concurrence in this regard. (Copy enclosed)

In this regard, it is to bring to your kind notice that the appointment of staff at AERC, Chennai is made initially on contractual appointment for a period of 5 years with a probationary period of one year and regularized thereafter which has been the practice for over the last 60 years. It will be pertinent to mention here that the staff at AERC, Chennai are governed by the rules and regulations of the University of Madras and are eligible to avail all the facilities at par with the University staff as per the Memorandum of Understanding entered by



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AERC and the University ."

(emphasis supplied)

8.15 Thus the case of the petitioner would squarely fall within the exception as contained in the *Umadevi case* for this Court to direct the respondents to regularize the services of the petitioner.

G. The Result:

9. In view thereof, this Writ Petition is allowed on the following terms:

(i) The impugned order dated 19.04.2023 shall stand quashed;

(ii) The respondents are directed to continue and regularise the services of the petitioner in the post of Research Associate/Senior Research Investigator, within a period of four weeks from the date of receipt of a copy of this order;



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(iii) The regularization of the petitioner will only be prospective, however, the services of the petitioner from the date of her initial appointment till the date of her regularization, shall be deemed to be continuous and without any break in service and if any salary is due to the petitioner for the periods, the same shall be paid to the petitioner within a period of eight weeks therefrom;

(iv) No costs. Consequently, connected miscellaneous petitions are closed.

30.07.2024

(1/2)

NCC : Yes

Sji



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To

- 1.The Secretary to Government
Government of India,
Ministry of Agriculture and Farmers Welfare
Department of Agriculture and Co-operation,
Directorate of Economics and Statistics,
Room No.102, F-Wing,
Shastri Bhawan, New Delhi-1.
- 2.The Registrar,
University of Madras,
Chepauk-P.O
Chennai-600 005.
- 3.The Director in-Charge,
Agro Economic Research Center,
AERC, University of Madras,



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D.BHARATHA CHAKRAVARTHY,J.

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**PRE-DELIVERY ORDER MADE IN
W.P.No.12939 of 2023**

**30.07.2024
(1/2)**