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W.A.No.2538 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2538 of 2021

and

C.M.P.No.16522 of 2021

1.The Registrar (i/c),
Pondicherry University,
Puducherry.

2.The Chief Warden,
University Hostels (Boys),
Pondicherry University,
Puducherry.

... Appellants

Vs.

P.Gopi

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the judgment dated 25.03.2021 in W.P.No.569 of 2021.

For Appellants

: Mr.K.Srinivasamurthy
For Mr.B.Rabu Manohar [SCGC]

For Respondent

: Mr.V.Ajauakumar



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J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The respondents in the writ petition are the appellants before us.

2. Mr.K.Srinivasamurthy, learned counsel appearing on behalf of the appellants would mainly contend that the Writ Court found that the respondent had not approached the Writ Court with clean hands and purposely avoided to receive the reliving order and awaited the order of Court and thereafter received the communication in person on 27.01.2021. On the said ground a cost of Rs.5000/- was imposed. While recording the conduct of the respondent, the Writ Court granted the relief of regularisation not in accordance with the principles established. Thus, the writ appeal has been instituted.

3. Admittedly, the respondent was appointed as Mess Manager on contract basis vide proceedings dated 22.07.2009. The terms of contractual appointment are as under;



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(i) The engagement is purely on contract basis for a period of one academic year till 30th April, 2010.

(ii) He will be paid a consolidated salary of Rs.10,000/- per month.

(iii) This is purely temporary arrangement and this will not confer any right for permanent employment/absorption in the Pondicherry University service.

(iv) The engagement can be terminated any time by the employee by giving one month notice, without any reason. The University also has the right to terminate the engagement at any time without assigning any reason by giving one month notice or pay and allowances in lieu of notice period.

(v) He will not be eligible for any leave except 8 days of casual leave.

4. The order of reliving was issued on 10.12.2020. The respondent filed writ petition seeking regularisation and permanent absorption. The appellants would submit that there is no sanctioned post of Mess Manager in the appellant / University. In the absence of any sanctioned post, the services of the respondent cannot be regularised. More so, the respondent was not appointed in accordance with the Recruitment Rules. Therefore, the contract appointment for a tenure would not confer right to claim regularisation or



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permanent absorption.

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5. Mr.V.Ajayakumar, learned counsel appearing on behalf of the respondent would oppose by stating that the respondent participated in the process of interview and accordingly selected for the post of Mess Manager. He was continuously serving for about 16 years and the appellants have taken steps to appoint contract employees by ousting the services of the respondent. In this regard, the respondent relied on the notification issued by the appellant / University.

6. In reply, Mr.K.Srinivasamurthy, learned counsel for the appellants / University would submit that the notification was not acted upon and no one has been appointed on contract basis. The counter affidavit filed by the respondent before the Writ Court reiterate the said position in paragraph 14, which reads as under.

“14. Subsequently, Contract engagement of the petitioner has been extended up to 30.04.2019 and was valid until further orders. The petitioner has relied upon a recommendation dated 09.08.2019 for the recruitment of three Mess



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Managers – Caretakers. But due to financial crunch and the Covid-19 situation, this was not proceeded with. The 1st respondent had internally re-deployed two Junior Field Assistant (Regular) on 20.10.2020 to perform the day-to-day duties and activities at the mess. Therefore, as on date, there is no requirement for Mess Manager-Caretaker to be appointed.”

7. It is contended that the appellants have not taken any to engage contract employees in the place of respondent. Therefore, the said contention is incorrect.

8. The learned counsel for the respondent would rely on the judgment of the Hon’ble Supreme Court of India in the case of ***Kailash Ben T.Solangi ETC. vs. Union of India***¹. However, the said judgment of the Hon’ble Supreme Court is to be considered as individualisation of justice. Para 14 of the judgement reads as under;

“14. It is clarified that these directions have been issued keeping in view the peculiar facts and circumstances of this case and the same shall not

¹ Civil Appeal Nos.13999-14000 of 2015, dated 11.05.2023



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be taken as a precedent in the case of other contractually appointed employees.”

Therefore, based on the said judgment relief of regularisation and permanent absorption cannot be claimed.

9. The Constitution Bench of the Hon'ble Supreme Court of India in the *Uma Devi's* case paragraph 53 clarifies that it is a one time arrangement, which is to be extended to the employees completed 10 years of service as on 01.01.2006 and appointed in a sanctioned post and they possessed the requisite educational qualifications. Therefore, regularisation and permanent absorption cannot be claimed as an absolute right in violation of the Recruitment Rules in force. Contract / daily wage employees cannot seek regularisation and permanent absorption, which would offend the rights of the candidates, who all are aspiring to secure public employment through open competitive process.

10. When the respondent was appointed on contract basis in a non-sanctioned post and the payment was paid from the students bill charges, the regularisation and permanent absorption cannot be granted. Mere



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recommendation by a Committee would be insufficient to grant the relief of regularisation and permanent absorption.

11. If at all any post has been sanctioned and if a recruitment notification is issued, the respondent is at liberty to participate in the process of selection. In such circumstances, the services rendered by the respondent may be taken into consideration by granting weightage marks. Contrarily, mere appointment on contract basis or continuance as such would not confer any right to seek regularisation and permanent absorption.

12. Further, it is clarified that one contract employee need not be replaced by another contract employee. If at all the apprehension raised by the respondent is correct and in the event of appellants taking a decision to engage contract employees the respondent is to be considered for engagement as contract employee. However, the relief granted by the Writ Court is running counter to the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the *Uma Devi's* case and the subsequent judgements delivered by the Constitutional Courts across the Country.



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13. Thus, we are inclined to interfere and consequently, the writ order dated 25.03.2021 passed in W.P.No.569 of 2021 is set aside and the Writ Appeal stands allowed. No costs. Connected Miscellaneous Petition is closed.

[S.M.S., J.] [C.K., J.]
18.07.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes