



WEB COPY



WA No. 2456 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2456 of 2022

S.Mageswari

... Appellant

Versus

- 1.The State of Tamilnadu,
Rep. By its Secretary to Government,
Tourism and Culture Department,
Secretariat, Fort St.George,
Chennai 600 009.
- 2.The Commissioner / Director of Art and Culture,
Egmore, Chennai 600 008.
- 3.The Principal,
Government Architecture and Sculpture College,
Mamallapuram,
Kancheepuram District.
- 4.The Principal,
Tamilnadu Government Music College,
D.G.S. Dinakaran Salai,
Chennai 600 028.

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order dated 21.06.2022 passed by the learned Judge in W.P. No. 9300 of 2021.

For Appellant : Mr. G. Thyagarajan
for M/s. Rugan & Arya

For Respondents : Mr. V. Arun, Additional Advocate General
assisted by Mrs. S. Anitha,
Special Government Pleader.

JUDGMENT

[Judgment of the Court was delivered by R. MAHADEVAN, J]

The appellant herein is the petitioner in W.P. No. 9300 of 2021. She preferred the said writ petition for issuance of writ of certiorarified mandamus to call for the records relating to the order in Proceedings No.6341/A1/2017 dated 26.09.2020 passed by the second respondent, quash the same and consequently, direct the respondents to regularise the services of the appellant.

2. According to the appellant / writ petitioner, consequent to the vacancy that arose on account of retirement of one B.Srinivasan, the third



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respondent invited applications for the post of Lecturer (Music & Dance).

The appellant applied for the said post. The third respondent selected the appellant and appointed her as a part time Lecturer on contract basis on 27.06.2011. She continued in the said post till 2015. When the things stood thus, she made a representation dated 14.07.2015 seeking regularisation of her services as full time Lecturer (M & D). Since the same was not considered, she filed a writ petition in W.P. No. 22833 of 2015 for a direction to the authorities to consider her representation. The appellant further stated that during the pendency of the above writ petition, she was relieved from the third respondent College by proceedings dated 29.09.2015 and was appointed in the Tamil Nadu Government Music College, Chennai, again on a temporary and contract basis by order dated 03.10.2017.

3. It was the grievance of the appellant before the writ court that the second respondent had regularised the services of Natesan, Kennadi, Rajendran, Balasubramanian and Sreenivasan, who are part time Lecturers, from the date of their initial appointment vide G.O.Ms.No.42, Tourism and Culture Department, dated 28.03.2007. Further, by G.O.Ms.No.112, Tourism and Culture Department, dated 03.08.2011, the service of one Parimala



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appointed as Full time Lecturer was regularised. Similarly, the services of the part time Lecturers viz., Srimathy, David and Vikram in the Tamil Nadu Government Music College, Adyar, Chennai, were also regularised, pursuant to the order passed by the Tribunal in OA Nos.8990, 8941 and 8991 of 2001. However, the similar request of the appellant was not considered by the respondent authorities, despite several representations having been made. Therefore, she filed a writ petition in W.P. No. 30074 of 2017, but the same was dismissed on 23.11.2017 on the ground that she did not possess NET/SLET/SET, which is a compulsory requirement for appointment as Lecturer. Subsequently, by order dated 02.01.2020, the writ petition in W.P. No. 22833 of 2015 which was filed by the appellant earlier, was disposed of, by a learned Judge, by directing the respondents to consider the representation of the appellant within a period of eight weeks. Pursuant to the same, the second respondent considered the appellant's representation and rejected the same, by proceedings dated 26.09.2020. Aggrieved by the same, the appellant filed yet another writ petition in W.P. No. 9300 of 2021 and the same was also dismissed, by order dated 21.06.2022, which is impugned in this writ appeal, at the instance of the appellant / writ petitioner.



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4. The learned counsel for the appellant has submitted that though the appellant initially joined as a part time Lecturer in the years 2011 and 2015 on contract basis against the sanctioned post, she was appointed as guest lecturer by order dated 03.10.2017. It is further submitted that the services of similarly placed persons were regularised *vide* G.O.(Ms) No. 42, Tourism and Culture Department dated 28.03.2007. However, without considering the orders passed in respect of the similarly placed persons, the learned Judge erred in dismissing the writ petition filed by the appellant. It is also submitted by the learned counsel that there is no reason for the appellant to become jobless after having served for more than ten years continuously in a substantive post on a consolidated monthly salary, especially when many of the similarly placed persons have got the relief of regularisation of their services from the date of their initial appointment. Therefore, the learned counsel sought to allow this appeal by setting aside the order impugned herein.

5. On the other hand, the learned Additional Advocate General appearing for the respondents has submitted that the averment made by the appellant that she was given appointment as Part Time Lecturer (Music and Dance) on contract basis in the sanctioned post, is not correct. She was not



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given appointment in the sanctioned post. In the appointment order, it was clearly mentioned that the post was only for 4 months under consolidated pay and that too Part Time Temporary Instructor. She only worked on temporary basis with many breaks. In view of the order dated 02.01.2020 passed in W.P. No.22833 of 2015 to consider her representation, the fourth respondent constituted a 5-Member Committee and an interview was conducted on 24.07.2019, in which she obtained only 115 marks out of 500 marks and she secured only 12th position and hence, she was not given further employment in the fourth respondent college, since the Committee opined that she is not fit to teach either music or dance theoretically. Hence, the order of the learned Judge does not require any interference by this court and prayed for dismissal of this appeal.

6. Heard the learned counsel on either side and perused the records.

7. A perusal of the documents enclosed in the typed set of papers filed along with this appeal would reveal that the appellant was serving as Part Time Lecturer from the year 2011. As regards the plea of the appellant with regard to regularisation granted in respect of similarly situated persons based upon G.O.Ms.No.42 Tourism and Culture Department, dated



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28.03.2007 and G.O.Ms.No.112 Tourism and Culture Department, dated 03.08.2011, it is seen that those persons differ from the appellant herein on the premise that they worked in full time capacity, whereas the appellant herein had not worked in full time capacity and she was handling only 2 to 3 classes per week in the third respondent college up to the academic year 2014-15. According to the respondent authorities, the appellant was neither sponsored through Employment Exchange nor appointed against a sanctioned post. However, the appellant has not produced any document to deny the same.

8. It is further seen that the appellant preferred writ petitions one after another seeking a direction to the authorities to regularise her services in the post in question. Firstly, the writ petition filed by her in W.P.No.22833 of 2015 was disposed of only with a direction to consider her representation. The second writ petition filed by her in W.P.No.30074 of 2017 was dismissed on the ground of non-possession of NET/SLET/SET. The writ petition filed by her on the third occasion, from which the present appeal has emanated, also came to be dismissed in view of the reason that she obtained the lowest mark of 115 out of 500 marks in the interview conducted by a Five member committee, with regard to selection to the post of Guest



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Lecturer on consolidated basis and hence, she was not called for the academic year 2019-2020. This court finds no infirmity or illegality in the order passed by the learned Judge in the writ petition.

9. It is settled law that temporary, contractual, casual, daily wage or *ad hoc* employees appointed / recruited *dehors* the rule, even if continued for long, are not entitled to regularisation. In ***State of Karnataka vs. Uma Devi***, [(2006) 4 SCC 1], it has been categorically held by the Hon'ble Supreme Court that appointment for all Government employments will have to be made in terms of the recruitment rules and any other recruitment will be against Articles 14 and 16 of the Constitution of India. This view has been fortified by another judgment of the Hon'ble Supreme Court in ***Uttaranchal Jal Sansthan vs. Laxmi Devi***, [(2009) 7 SCC 205]. Further, at this juncture, it will be apropos to advert to the judgment of the Hon'ble Supreme Court in ***State of Rajasthan vs. Daya Lal*** [(2011) 2 SCC 429], wherein, while alluding to the settled principles *qua* regularisation, it was observed in no uncertain and unequivocal terms as under:

“(ii) *Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into*



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service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.”

10. Therefore, the writ appeal deserves to be dismissed as devoid of merits and is accordingly, dismissed. No costs.

(R.M.D.,J) (M.S.Q.,J)

13.03.2024

ay

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

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