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W.P.No.26414 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.26414 of 2021 and
W.M.P.Nos.27873 & 27875 of 2021 and
W.M.P.No.27635 of 2022

- 1.Mr.D.Rameshkumar
- 2.Mr.B.Selvam
- 3.Mr.G.R.Balasubramanian
- 4.Mr.E.Mahaboob John
- 5.Mr.M.Pandiyan
- 6.Mr.R.Chozharajan
- 7.Mr.M.Sasidharan
- 8.Mrs.V.Bharathi

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Higher Education Department,
Secretariat, Chennai.
- 2.The Commissioner of Technical Education,
Directorate of Technical Education,
Sardharpatel Road, Guindy,
Chennai - 25.
- 3.The Principal,
Government Polytechnic College,
Krishnagiri.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of



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India, to issue a Writ of Mandamus, to direct the respondents to regularise the services of the petitioners from the date of their inception into service with all consequential service as well as monetary benefits within a time period stipulated by this Court.

For Petitioners : Mr.M.Muruganantham

For Respondents : Mr.M.Rajendran, AGP

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus to direct the respondents to regularise the services of the petitioners from the date of their inception into service with all consequential service as well as monetary benefits within a time period stipulated by this Court.

2. Heard Mr.M.Muruganantham, learned counsel for the petitioners and Mr.M.Rajendran, learned Additional Government Pleader for the respondents.

3. The petitioners were working as part-time lecturers and they have rendered ten years of service in the third respondent College. Hence the petitioners have filed this Writ Petition seeking direction to the



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respondents to regularise their services from the date of their inception into service.

4. The learned counsel for the petitioners attracted the attention of this Court to the Government Order in G.O.Ms.No.334, Education, Science and Technology (I.2) Department, dated 28.04.1995, wherein, it is ordered to regularise the services of 200 Instructors in the Government Polytechnic Colleges. Subsequently, G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department dated 28.02.2006 has been issued to regularise the services of all the employees in all the Departments who completed 10 years of continuous service as on 01.01.2006. Later, a fresh modified Government Order has been issued on 27.06.2013 in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department. As per the above Government Order, the services of the similarly placed persons have been regularised retrospectively with effect from 01.01.2006. However in the subsequent judgment passed by the learned Division Bench of this Court in W.A.Nos.606 & 2830 of 2019 dated 16.08.2023, it is clarified that the benefit of G.O.Ms.No.74 can also be extended beyond the period of 2006. Since the petitioners have



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completed 10 years of service, they are also entitled for regularisation in pursuant to the benefit conferred upon the similarly placed persons in G.O.Ms.No.22 dated 28.02.2006 and G.O.Ms.No.74 dated 27.06.2013.

In the said Judgment it is held as under :

"9. Be that as it may, the issue of regularisation of the casual labourers/ NMRs had been dealt with by the various Division Benches of this Court and infact, the Division Benches had also considered the fact that subsequent Government Orders had been issued by the Government regularising the employment of the similarly placed persons, had directed the regularisation of services of such employees. It is a trite law that similarly placed persons should be treated equally. In the present case, the Government even in the Government Order issued in G.O.Ms.No.74, dated 27.06.2013, admits the position that where persons who had not completed 10 years of service as on 01.01.2006, had been subsequently regularised and had also expressly protected their regularisation.



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10. The private individuals in these Writ Appeals are also similarly placed persons and therefore, they cannot be sought to be discriminated from similarly placed persons and in that view of the matter, the learned Single Judge had rightly concluded that the cut off date 01.01.2006 fixed in G.O.Ms.No.74, as being arbitrary."

5. However, the learned Additional Government Pleader for the respondents submitted that the petitioners did not undergo any selection process and they want to regularise their service through back door entry. Umadevi's case is squarely applicable to the facts of the case and the petitioners are not entitled for regularisation.

6. Petitioners made a distinction between those persons who try to regularise their service through back door entry and those persons who have served for more than a decade on temporary basis in the third respondent College. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court held in the case of ***Narendra Kumar Tiwari and Others Vs. State of Jharkhand and Others***, reported in



(2018) 8 SCC 238. In the said judgment, it is held as under:

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"7. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State



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came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be



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regularised unless there is some valid objection to their regularisation like misconduct etc."

7. The above principles has been subsequently referred in approval by the Hon'ble Full Bench of the Supreme Court, in the case of ***Rajnish Kumar Mishra and Others Vs. State of Uttar Pradesh and Others***, reported in (2019) 17 SCC 648 and the relevant portion is extracted hereunder:

"15. It is further to be noted that similarly circumstanced employees in the employment of the State of Uttar Pradesh, who were appointed on daily wages/contractual basis had approached the Allahabad High Court praying for regularization of their services. The Single Judge had dismissed the writ petitions which orders were affirmed by the Division Bench. The said employees therein had approached this Court by way of Civil Appeal No.18510 of 2017 (arising out of Special Leave Petition (Civil) No.6183 of 2015) in the case of Sheo Narain Nagar cited supra. It will be relevant to refer to the following observations of this Court in the case of Sheo Narain Nagar (supra):



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“The appellants were required to be appointed on regular basis as a onetime measure, as laid down in paragraph 53 of Umadevi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 02.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 02.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.”

16. Another aspect that needs consideration is that during the pendency of the petitions, the Rules with regard to regularization were amended which provided cutoff date of 31.12.2001. Undisputedly, all the appellants were appointed prior to 31.12.2001. The change in position of law ought to have been taken into consideration by the High Court. It is not in dispute that all the appellants were appointed prior to 31.12.2001. Undisputedly, the appellants were continued in services from 01.08.2006 on account of interim orders passed in writ petitions. However, the



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selection process in which the appellants were permitted to participate, could not see the light of the day, as it was subsequently cancelled in 2008. As such, as a matter of fact, when the appellants' case was considered for regularization by a Committee under the chairmanship of Additional District Judge, the appellants had, in fact, put in service almost for a period of 12 years.

17. As such, apart from the circular issued by the Registrar General of the High Court dated 05.11.2009, the appellants' cases were also required to be taken into consideration in view of the exception carved out in the case of Umadevi (supra). We find that the Committee under the chairmanship of the Additional District Judge had rightly submitted its report dated 12.07.2012 and the then District Judge had rightly passed the order of regularization on 09.11.2012 granting regularization from 01.06.2012. We find, that while considering the representation of some of the employees for promotion, the successor in the office of the District Judge could not have annulled the order of the regularization of the appellants which was done after following the proper



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procedure. The least that was required to be done was to follow the principles of natural justice by giving an opportunity of being heard to the appellants. We find, that the three orders passed by the District Judge dated 16.08.2014 also suffer from violation of the principles of natural justice.

18. In any case, we find that in view of the exception carved out in the case of Umadevi (supra) providing for onetime regularization of employees who have completed 10 years or above; the parity of similarly circumstanced employees who have been granted benefit in the case of Sheo Narain Nagar (supra) and the Rules amended in 2016 which provide a cutoff date of 31.12.2001, the appellants are also entitled for regularization of their services.

19. In the result:

(1) the appeals are allowed;

(2) the Judgement and order dated 14.09.2017 passed by the Single Judge of the High Court of Allahabad in Writ Petition No.4813(S/S) of 2014 and Writ Petition No.5530(S/S) of 2014 as well as Division Bench of the



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said High Court dated 09.07.2018 in Special Appeal No.440 of 2017 and in Special Appeal No.444 of 2017 are quashed and set aside; and

(3) the orders dated 16.08.2014 passed by the District Judge, Ambedkar Nagar are quashed and set aside and the consequential order of termination dated 23.9.2017 is also quashed and set aside.

(4) the order dated 9.11.2012 passed by the District Judge, Ambedkar Nagar regularizing the services of appellants with effect from 01.06.2012 is upheld.

(5) Consequentially, the termination of the appellants from their services is quashed and set aside and the appellants are directed to be reinstated forthwith with continuity in service for all the purposes including terminal benefits. However, in the facts and circumstance of the case, the appellants would not be entitled for back wages for the period during which they are out of employment.

20. In the facts and circumstances, there shall be no order as to cost. All pending applications shall stand disposed of."



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8. Since the petitioners have rendered more than 10 years of service as part-time lecturers, the benefit of the above judgments should be extended to the petitioners as well.

9. The learned Additional Government Pleader for the respondents cited a Government Order in G.O.Ms.No.290, Higher Education (II) Department dated 14.11.2019 and submitted that the petitioners have come under the folder of temporary employees. Having accepting the terms of the appointment that their services cannot be regularised in future, they cannot come with this Petition seeking regularisation.

10. However, in the light of the judgments in respect of regularisation of those employees who have rendered long continuous service, I feel it is appropriate to direct the respondents to consider the case of the petitioners also in the light of the judgments of the Hon'ble Supreme Court and this Court which have been referred above.



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11. In the result, this Writ Petition is disposed and the respondents

are directed to consider the representation of the petitioners dated 02.12.2021 in the light of the earlier judgments which are referred above and the Government Orders issued in this regard and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes /No

Internet : Yes/No

Speaking / Non-speaking

Neutral Citation : Yes / No

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