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W.A.Nos.434, 497, 467 & 514 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

W.A.Nos.434, 497, 467 & 514 of 2022

W.A.No.434 of 2022

1.The Union of India,
Represented by its Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi 110 001.

2.The Director,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

3.The Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Appellants

Vs.

1.Dr.T.Poovaisubramanian

2.V.G.Bhooma,
Director I/C, Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.



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3.Dr.M.Muthuvelu,
Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Respondents

W.A.No.467 of 2022

1.The Union of India,
Represented by its Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi 110 001.

2.The Director,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

3.The Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Appellants

Vs.

1.S.Nagooramal

2.V.G.Bhooma,
Director I/C, Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

3.Dr.M.Muthuvelu,
Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Respondents



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W.A.No.497 of 2022

1.The Union of India,
Represented by its Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi 110 001.

2.The Director,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

3.The Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Appellants

Vs.

1.Dr.P.Raja

2.V.G.Bhooma,
Director I/C, Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

3.Dr.M.Muthuvelu,
Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Respondents

W.A.No.514 of 2022

1.The Union of India,
Represented by its Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi 110 001.



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2.The Director,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

3.The Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Appellants

Vs.

1.V.Gayatri

2.V.G.Bhooma,
Director I/C, Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

3.Dr.M.Muthuvelu,
Registrar,
Central Institute of Classical Tamil,
IRT Campus, 100 Feet Road,
Taramani, Chennai 600 113.

... Respondents

Common Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 09.11.2021 passed in Writ Petition Nos.12787, 12786, 12785 & 12788 of 2015 respectively.

For Appellants
in all Writ Appeals

: Mr.A.R.L.Sundaresan, ASGI
Assisted by Mr.A.Kumaraguru, SPC

For R1 in
W.A.Nos.497, 467 & 514 of 2022

: Mr.T.Sundaravadanam
for M/s.Row & Reddy

For R1 in W.A.No.434 of 2022 : No appearance



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COMMON JUDGEMENT

(Judgment of the Court was delivered by S.M.Subramaniam J.)

The intra court appeals have been instituted challenging the writ order pronounced on 09.11.2021 in Writ Petition Nos.12787, 12786, 12785 & 12788 of 2015. The Government of India established a Central Institute of Classical Tamil for comprehensive understanding of history and culture of Tamil Nadu. The Central Institute of Classical Tamil (hereinafter referred as 'the Institute') started its work towards development of Tamil language in 2006 with skeleton staff, like Programmer, Web Designer and Administrative staff etc. The institute issued notice on 25.03.2007, calling for the applications to fill up various posts both on academic and non academic sides. Pursuant to the notification, the respondents in the writ appeals have submitted their applications. The committee conducted an interview and appointed the first respondent in all the writ appeals in the institute.

2.The grievances of the first respondent in all the writ appeals are that they were appointed as contract employees and allowed to continue in service for more than 4 ½ years. Mr.T.Sundaravadanam appearing on



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behalf of the first respondent would submit that the contract has been extended time to time after the expiry of one year of period of contract, since the first respondent was allowed to continue on contract basis for more than 4 ½ years, they are entitled to be regularized in the sanctioned post in the time scale of pay. Mr.T.Sundaravadanam has taken effort to convince this Court by stating that the memos are issued on false allegations. Mere protest was taken as misconduct and several charge memos were issued. However, the authorities have not imposed any punishment, but rescinded the contract and relieved the first respondent. In other words, the respondents were not allowed to continue on expiry of the period of contract and therefore, the Writ Court has rightly considered the issues and allowed the writ petitions.

3.Mr.T.Sundaravadanam drew our attention with reference to the charge memorandum issued to the respondents. The final memo issued would reveal that the period of contract expired and therefore, the respondents are not allowed to continue in service. The contract was not renewed and therefore, the first respondent in all the writ appeals were unable to continue in service.



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4.Mr.A.Kumaraguru, the learned Senior Panel Counsel, appearing on behalf of the appellants would submit that the appointment of the first respondent in all the writ appeals was on contract basis. The period of contract was one year. No regular recruitment was conducted by following the service rules. On constitution of the Institute, only skeleton staff were appointed and no rules were framed. In the absence of rules, contract appointments are made. Till such time, recruitment rules are framed for the purpose of regular recruitment in the manner known to law.

5.The first respondent in all the writ appeals had participated in the agitation. Their conduct in the Institute was assessed and therefore, the authorities have not extended/renewed the contract and on expiry of the term of the contract, they were relieved from service.

6.The relief sought for in the writ petition is to quash the order relieving the first respondent herein from the contract services and to regularize the services in the sanctioned post. Regularization and permanent absorption and the principles to be followed are no more *res integra*. The legal principles are settled by the constitutional bench of the Hon'ble Supreme Court of India in the case of ***State of Karnataka Vs.***



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Uma Devi reported in **2006 (4) SCC 1** and in *Renu & Ors. Vs. District & Sessions Judge & Ors.* reported in **2014 (4) SCC 50**.

7.The constitution bench reiterated that judgments running counter to the principles laid down in Umadevi's case denuded to lose its status as precedent and cannot be followed. Thus, the legal principles settled by the constitutional bench are binding on all Courts.

8.Equal opportunity in public employment is the constitutional mandate. All the appointments are to be made in accordance with the recruitment rules in force. Rules of reservation are to be followed. Equal opportunity enshrined under the constitution at no circumstances be diluted. Back door, irregular and illegal appointments cannot be regularized and such regularization would result in infringement of fundamental rights of the citizens, who are aspiring to secure public employment through open competitive process. Therefore, contract employment for a period of one year would not confer any right to seek regularization or permanent absorption. On expiry of the contract, it is left to the employer to continue the period of contract or to relieve the contract employee and go for regular recruitment by following the service rules in



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force. In such circumstances, the contract employees may be permitted to participate in the process of recruitment. However, mere contract appointment would not confer any right to seek regularization or permanent absorption.

9.Many eligible candidates and lakhs and lakhs of youth of our great nation are longing to secure public employment through open competitive process. Authorities cannot appoint persons on contract basis/temporarily/daily wages and regularize their services without following the rules of reservation and recruitment rules in force. The ramifications and repercussions of regularizing the irregular, illegal and back door appointments were considered by the constitution bench and it is reiterated in unequivocal terms that irregular, illegal and back door appointments cannot be regularized. In the present case, it cannot be construed as irregular, illegal and back door appointments, but it is a contract appointment. The contract appointments are made, in order to meet out certain administrative exigencies. Such contract appointments would not provide any right to claim regularization or permanent absorption. The contract appointees have to undergo the regular recruitment process by participating in the open competitive process.



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Therefore, we are of the opinion that the appointment of the first respondent may not be irregular or illegal, but it is a contractual appointment for a period of one year and the period of contract was renewed periodically and the first respondent in all the writ appeals continued in service for about 4 ½ years. Thereafter, it was not renewed and by virtue of an interim order, they were paid salary for about 1 ½ years.

10.It is not in dispute between the parties that the initial appointment of the first respondent in all the writ appeals was on contract basis for a period of one year. That being the case, regularization or permanent absorption cannot be sought for in violation of the regular recruitment rules in force. While establishing Central Institute of Classical Tamil, the employees were appointed on contract basis and thereafter, service rules are framed and therefore, the appellants have to recruit candidates strictly by following the recruitment rules in force and by affording equal opportunity to all the candidates, who are all aspiring to secure the public employment through open competitive process.



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11. The Writ Court has not considered the legal principles settled by the constitution bench of the Supreme Court of India, in the case of Umadevi cited supra and further, in the case ***State of Rajasthan and Others Vs. Daya Lal and Others*** reported in (2011) 2 SCC 429, the Supreme Court has directed the High Court not to issue any directions to regularize the services in violation of the recruitment rules. The sanctioned posts has to be filled up strictly in accordance with the service rules and by following due process and the relevant portion of the said judgment reads as follows:

8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under [Article 226](#) of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality



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clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an 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 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 regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.



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(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if



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serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

12. Creation or sanctioning of posts and running administration is the prerogative of the employer and the employee has no say about sanctioning of the post or running of administration. Even in the absence of the service rules, regular recruitment to the sanctioned posts are to be made only by following the established principles laid down by the constitutional Courts across the country. The selection and appointments to the sanctioned post in the time scale of pay is to be made by scrupulously following the established principles in the absence of any service rules in force. However, contract/temporary/daily wages employment cannot result in regularization or permanent absorption.

13. In view of the fact that the first respondent in all the writ appeals were admittedly appointed as contract employees for a period of one year and the contract was extended for about four years, the said extension would not confer any right to claim regularization or permanent absorption



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in violation of the service rules in force. Thus, the first respondent in all the writ appeals are not entitled for the relief of regularization and permanent absorption, which has been granted counter to the legal principles settled by the constitution bench of the Supreme Court of India.

14.Thus, the writ order impugned dated 09.11.2021, passed in Writ Petition Nos.12787, 12786, 12785 & 12788 of 2015 is set aside and the Writ Appeal is allowed. No costs.

(S.M.S.J.,)

(V.S.G.J.,)

13.08.2024

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

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