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W.P. No.21155 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.21155 of 2017

K.Gnanavel

... Petitioner

Vs.

1.The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram – 608 002.

2.Joint Director (Administration),
Social Welfare Department,
Guindy, Chennai – 600 032.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to call for the records on the file of the respondents in his proceedings dated 11.05.2017 in Proc.No.24515/Ad.4(3)/2016 by the 2nd respondent and University order No.603/2017 dated 15.05.2017 by the 1st respondent and quash the same by issuing a Writ of Certiorarified Mandamus and direct the respondents to treat the petitioner as the permanent employee of the university with all service and monetary benefits of the 1st respondent university.



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For Petitioner : Mr.R.Mohana Raja

For R1 : Mr.C.Ramesh, Standing Counsel
for Annamalai University

For R2 : E.Ranganayaki,
Additional Government Pleader

ORDER

The petitioner herein was initially appointed as Attender/Workmen in 1st respondent University through AO.No.215/1988 and accordingly the petitioner joined duty on temporary basis on 10.09.1988 with Token No.01809. Thereafter, the petitioner was promoted as Lab Assistant on 02.10.1993 and he was further promoted to the post of Junior Assistant through appointment order No.144/2010 (C1) dated 10.05.2010.

2. While the petitioner was working as Junior Assistant in the 1st respondent University, the 1st respondent University was taken over by the Government of Tamil Nadu by enacting Annamalai University Act, 2013 and thereafter, through G.O.Ms.No.108, Higher Education, Department dated 28.04.2017, the surplus non-teaching staff existing in the 1st respondent University were ordered to be redeployed to various departments in the State



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of Tamil Nadu. Accordingly, the 1st respondent University, through its letter AUEstt./Non-teaching/2017, dated 02.05.2017, allotted 101 surplus non-teaching staff in the category of Junior Assistant to Social Welfare Department and accordingly, the 2nd respondent herein through impugned Proc.No.24515/Ad.4(3)/2016 dated 11.05.2017 appointed the petitioner in the category of Junior Assistant in the Social Welfare Department for a period of three years on agreement basis subject to terms and conditions indicated in G.O(MS)No.108 dated 28.04.2017. Accordingly, the petitioner was relieved from the post of Junior Assistant by the 1st respondent University through Order No.663/2017(C) dated 15.05.2017, and is working in the 2nd respondent Social Welfare Department.

3. It is aggrieved by the said proceedings issued by the 2nd respondent dated 11.05.2017 and the University order dated 15.05.2017, the petitioner approached this Court by filing the present writ petition contending that he was erroneously identified as surplus non-teaching staff and as a matter of fact, he is not a surplus non-teaching staff, having been initially appointed in the University as early as in the year 1988, he cannot be identified as surplus non-teaching staff and he is entitled to be continued in



the 1st respondent University.

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4. In response to the notice issued by this Court, the 1st respondent filed counter affidavit contending that in all 4211 non-teaching staff working in the 1st respondent University were found surplus and accordingly by following the principle of 'last come first go', the surplus staff were identified and accordingly, the petitioner who was appointed as Junior Assistant in the year 2010 was identified as surplus in the category of Junior Assistant and he was redeployed to the Social Welfare Department.

5. The learned counsel Mr.R.Mohana Raja appearing for the petitioner contended that the petitioner was initially appointed as Attender in the 1st respondent University and thereafter, promoted to the post of Lab Assistant in the year 1993 and further promoted to the post of Junior Assistant in the year 2010, and hence, while applying the principle of 'last come first go', the respondent is under obligation to take into consideration the initial date of entry of the petitioner into the 1st respondent University, but not the date of his promotion to the post of Junior Assistant and thus, he contended that his initial date of entry into University should be taken into account but



not the date of his promotion to the post of Junior Assistant. He further submitted that, in case if the petitioner is to be treated as surplus in the category of Junior Assistant by virtue of date of promotion of Junior Assistant in the year 2010, the respondent is ought to have given an option to the petitioner to go back to his lower post either as Lab Assistant or attender in order to continue in the respondent University. But without giving any opportunity to the petitioner, the respondent University, in an arbitrary manner, treated the petitioner as surplus and redeployed him to the 2nd respondent Social Welfare Department. He also contended that because of the impugned order, the petitioner has become a temporary employee and drawing much lesser pay than the pay of the Attender working in the 1st respondent University. He also further submitted that the petitioner is ready and willing to work in the post of Lab Assistant or in the post of Attender and intend to continue in the respondent University instead of being redeployed to the Social Welfare Department. The learned counsel for the petitioner, on instruction, submitted that the petitioner is ready and willing to work either as Lab Assistant or as Attender wherever he was found not surplus.

6. Mr.C.Ramesh, learned counsel appearing for the 1st respondent



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University contended that the respondent University has taken into consideration the date of promotion of the petitioner to the post of Junior Assistant and accordingly, on finding the petitioner as surplus, the petitioner was identified in the list of 329 Junior Assistant as surplus and in the said list of 329 Junior Assistants, the petitioner was placed at Serial No.288.

7. The 2nd respondent also filed detailed counter affidavit stating that the continuance of the petitioner in Social Welfare Department is in terms of the Government orders and term of appointment of the petitioner is being extended from time to time and the agreement period of the petitioner is extended finally through G.O.D.No.253, Higher Education (H1) Department, dated 22.08.2023 extending the period of agreement for a period of three years.

8. In the light of the above rival contentions, the only question that arise for consideration of this Court is whether the petitioner, who was initially appointed to the post of Attender in the 1988, can be treated as surplus non-teaching staff and is liable for redeployment in terms of the Government order issued through G.O.Ms.No.108, Higher Education (H1)



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Department dated 28.04.2017 or not?

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9. There is no dispute on factual aspects. The petitioner who was appointed to the post of Attender on 10.01.1988, thereafter promoted to the post of Lab Assistant and Junior Assistant on 02.10.1993 and 10.05.2010 respectively. The decision to redeploy the surplus non-teaching staff was taken in the year 2017 through G.O.Ms.No.108, dated 28.04.2017. In the light of the un-disputed fact that the petitioner entered into service in the 1st respondent University on 10.01.1988 and he was promoted to the post of Lab Assistant and further promoted to the post of Junior Assistant, as rightly contended by learned counsel for petitioner, in case if the petitioner is found surplus in the post of Junior Assistant, the respondent University ought to have afford an opportunity either to go back to original post or to the post of Lab Assistant in order to continue him in the respondent University. But no such opportunity was given to the petitioner and without giving any such opportunity, the petitioner was redeployed to the Social Welfare Department wherein the petitioner is being continued on agreement or contractual basis from time to time and he is not posted on permanent basis as is evident from the counter affidavit the 2nd respondent has categorically stated that question



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of giving permanent status in the Social Welfare Department is not possible.

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10. In the light of the impugned order as well as the Letter No.AUEstt./Non-teaching/2017, dated 02.05.2017 issued by the 1st respondent in redeploying the petitioner to the Social Welfare Department without affording him any opportunity are liable to be declared as illegal and arbitrary causing serious prejudice to the petitioner.

11. In the light of the above, the impugned proceedings as well as the Letter No.AUEstt./Non-teaching/2017, dated 02.05.2017 issued by the 1st respondent are declared as illegal and arbitrary. Consequently, the 2nd respondent is directed to relieve the petitioner from the Social Welfare Department to enable the petitioner to report before the 1st respondent within a period of four (4) weeks from the date of receipt of a copy of this order. On reporting before the 1st respondent, the 1st respondent shall immediately issue appropriate orders duly taking into consideration firstly his date of promotion to the post of Lab Assistant i.e., 02.10.1993 and in case the petitioner was bound surplus in the said cadre also his initial date of appointment to the post of Attender i.e., 10.01.1988 shall be taken into consideration.



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12. Accordingly, the writ petition is allowed and the connected miscellaneous petitions, if any shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

MUMMINENI SUDHEER KUMAR,J.

dpa

To:

1.The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram – 608 002.

2.Joint Director (Administration),
Social Welfare Department,
Guindy, Chennai – 600 032.

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