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W.P.No.32822 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos. 32822, 32916, 32919, 32920, 32922, 32924, 32925, 32926,
32947, 32948, 32949, 32950, 32951, 32952, 32953, 32954, 32955,
32956, 32957, 32959, 32961, 32962, 32963, 32964, 32965, 32968,
32969, 32970, 32971, 32973, 32975, 33188, 33190, 33192, 33193,
33194, 33195, 33197, 33199, 33202, 33203, 33204, 33206, 33257,
33258, 33263 & 33265 of 2023

and

W.M.P.Nos.32445, 32446, 32552 to 32559, 32561 to 32566,
32590 to 32609, 32617 to 32621, 32624 to 32627, 32629 to 32631,
32638, 32640 to 32643, 32645, 32646, 32648, 32888, 32889, 32891,
32893, 32895, 32897, 32898, 32900 to 32906, 32909, 32911, 32913 to
32916, 32918, 32920, 32986 to 32989, 32997 to 33000 of 2023

W.P.No.32822 of 2023:-

Dr.M.Rajeswari

...Petitioner

-Vs -

1. The State of Tamil Nadu
Rep by its Principal Secretary,
Higher Education Department,
Fort St. George,
Chennai – 600 009.

2. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the



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records of the second respondent in the university order No.621/2023 (C) dated 15.11.2023 and quash the same and consequently direct the respondents to permit the petitioner to continue in the post of Assistant Professor (Economics) by relaxing, if necessary, the minimum pass percentage marks of 55% by accepting the petitioner's pass mark of 53.37% in M.A. Economics or in the alternative accommodate the petitioner in the post of Assistant Professor (Rural Development).

In W.P.No.32822 of 2023

For Petitioners : Ms. Dakshayani Reddy,
Senior Counsel
For Ms.Suneetha

For Respondents

For R1 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader

For R2 : Mr.E.C.Ramesh
Standing Counsel

In W.P.Nos. 32916, 32919, 32920, 32922, 32924,
32925 & 32926 of 2023

For Petitioners : Ms.A.L.Gandhimathi
Senior Counsel
For Mr.L.Palanimuthu

For Respondents

For R1, R2, R4 & R5 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader

For R3 : Mr.E.C.Ramesh
Standing Counsel



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In W.P.Nos. 32947, 32948, 32950, 32952, 32953, 32954,
33188, 33192 33194, 33202, 33203 & 33206 of 2023

For Petitioners : Mr.R.Shivakumar
For M/s.K.M.Vijayan Associates
For Respondents
For R1 & R3 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader
For R2 : Mr.E.C.Ramesh
Standing Counsel

In W.P.Nos. 32949, 32951, 32955, 32956,
32957, 33199, 33204 of 2023

For Petitioners : Mr.Kandan Duraisami
For Respondents
For R1 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader
For R2 : Mr.E.C.Ramesh
Standing Counsel

In W.P.Nos.32959, 32961, 32962, 32963, 32964,
32965, 33195, 33257, 33258, 33263 & 33265 of 2023

For Petitioners : Mr.Kandan Duraisami
For Respondents
For R1 & R3 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader
For R2 : Mr.E.C.Ramesh
Standing Counsel



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**In W.P.Nos. 32968, 32969, 32970, 32971,
32973, 32975, 33190 & 33193 of 2023**

For Petitioners : Mr.R.Shivakumar
For M/s.K.M.Vijayan Associates
For Respondents
For R1 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader
For R2 : Mr.E.C.Ramesh
Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the orders dated 15.11.2023, passed by the Registrar of Annamalai University, thereby removed the petitioners from service.

2. The petitioner in all the writ petitions were qualified with master degree and M.Phil and Doctorate in their respective subjects. While being so, the Annamalai university called for selection for the post of lecturers in various subjects and the petitioners were applied for the same. The selection committee had selected the petitioners in their respective post and as per the resolution passed by the selection committee, they were appointed in their respective posts, during the year 2004.



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3. While being so, the Annamalai University Act, 1928 was repealed and the university was taken over by the State government by enacting the Annamalai University Act, 2013. Thereafter, the education qualification possessed by the various employees of the Annamalai University have been reviewed and concluded that the petitioners had no requisite qualification as such, they had not obtained 55% of marks in their post graduate degree. All the petitioners had obtained below 55% of marks in their post graduate degree.

4. Therefore, the petitioners were issued show cause notice in the year 2016-2017 for the first time, raising the issue of qualification of the petitioners that too, with respect to the requisite pass mark percentage of pass mark and not the lack of qualification itself. On receipt of the same, the petitioners submitted their detail explanation stating that they were appointed regularly in the year 2004 itself. On receipt of the explanation, it was accepted and no order has been passed. All of us sudden, in the year 2023, by the impugned orders, all the petitioners were removed from their respective service. Hence, they approached this Court by way of these writ petitions.



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WEB COPY 5. The learned Senior Counsel and the respective learned counsel appearing for the petitioners submitted that the impugned orders are liable to be quashed on the sole ground of violation of principles of natural justice, since the petitioners were not served with any notice before the order of termination and they were not given opportunity to submit their case. Further no enquiry was conducted and they were not given opportunity of hearing before the order of removal them from service. All the petitioners are working nearly 19 to 20 years continuously without any charge.

5.1. They further submitted that the show cause notices were issued in the year 2016-2017. When the petitioners were imposed with maximum punishment, it is mandatory on the part of the authorities to issue definite charge on the delinquent along with statements, documents and other witnesses. After conducting enquiry and after given an opportunity of hearing, then only the major penalty can be imposed on the delinquent. Approximately 56 employees were removed from service for the very same reasons. The petitioners were allowed to continue in



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their respective services for the past 19 to 20 years and after the long period, their qualification cannot be said that it found fault as per their norms. The impugned orders have been passed with predetermined intention and it cannot fulfill the statutory requirements of the principles of natural justice. In fact, at any point of time University Grand Commission or All India Council for Technical Education never raised any objections about their qualifications. In support of their contention, they relied upon the following judgments :-

(i) (1993) 3 SCC 591 – Dr.M.S.Mudhol and anr Vs. S.D.Halegkar & ors

(ii) (2001)3 SCC 328 – Buddhi Nath Chaudhary and ors Vs. Abahi Kumar & ors

(iii) 2001 (1) AWC 509 – Kalu Ram Vs. State of U.P. and anr.,

(iv) W.P.No.27064 & 26120 of 2018 dated 12.12.2018 – V. Premakurmari Vs. The Government of Tamil Nadu and ors

(v) W.A.Nos.3066 & 3235 of 2019 dated 23.09.2019 – The Director of School Education and ors Vs. S.Aruna.

6. The learned Additional Advocate General appearing for the first respondent submitted that all the petitioners were illegally appointed as such the Annamalai University Act, 1928 was repealed and the university was taken over by the State of Tamil Nadu and enacting the



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Annammalai University Act, 2013. All the petitioners were found deficit qualification since they did not obtain 55% of marks in their post graduate degree. Therefore, they cannot say that they were not issued show cause notice and it is violation of the principal of nature justice. When their appointment itself illegal, they cannot expect the principles of natural justice. Even after number of years, if the person found disqualified to the said post, he or she can be terminated on the ground of disqualification.

7. Heard the learned counsel appearing on either side and perused the material placed before this Court.

8. On perusal of the documents revealed that all the petitioners were qualified with 10+2+3 educational qualification and they also qualified with master degree and M.Phil, Ph.D. All the petitioners were removed only on the ground that they did not obtain 55% marks in their post graduate degree. From the records, it revealed that all the petitioners were obtained 53 to 54% of marks in their respective post graduate degree.



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WEB COPY 9. In the year 2017, the petitioners were issued with show cause notices for not possessing prescribed qualification at the time of their entry in their service. In response, all the petitioners had submitted their reply for the show cause notices. On receipt of the same, the university did not pass any orders. All of sudden, the petitioners were terminated from the service by the impugned orders dated 15.11.2023. Considering the above facts and circumstances of all the writ petitions, this Court granted interim stay and all the petitioners are continuing in their respective posts.

10. The learned Senior Counsel appearing for the petitioner in W.P.No.32822 of 2023 relied upon the judgment reported in **(1993) 3 SCC 591** in the case of **Dr.M.S.Mudhol and anr Vs. S.D.Halegkar & ors.**, the Hon'ble Supreme Court of India held as follows :-

“7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive



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public importance that the Court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.”

11. She also relied upon the another judgment of the Hon'ble Supreme Court of India reported in **(2001)3 SCC 328** in the case of ***Buddhi Nath Chaudhary and ors Vs. Abahi Kumar & ors.***, which held as follows :-

“6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of



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experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup vs. State of Haryana & Ors., 1979 (1) SCC 168; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. vs. M. Tripura Sundari Devi, 1990 (3) SCC 655; and H.C.Puttaswamy & Ors. vs. The Honble Chief Justice of Karnataka High Court, Bangalore & Ors., 1991 Supp. (2) SCC 421. Therefore, we must let the



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matters lie where they are.”

Thus, it is clear that those who failed to fulfill the qualification at the time of their joining, now they had worked in such posts for a long time, necessarily they would have acquired the requisite experience.

12. In fact, all the petitioners herein had completed their doctorate in their respective subject, after joining in their respective posts. They were working in their respective post more than 19-20 years. Therefore, after the period of 19-20 years, the qualification of the petitioner cannot be examined as that would be wholly arbitrary and it violates Article 14 of the Constitution of India. Only on the ground that the petitioners were not possessed requisite qualification at the date of their appointment, they were terminated from their respective service. Therefore, the delay cause by the university cannot be put against the petitioners and this belated point of time disabling them from continuing in service.

13. The Hon'ble Division Bench of this Court, while confirming the order passed by the learned Single Judge of this Court in



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W.A.Nos.3066 & 3235 of 2019 by an order dated **23.09.2019** in the case of **The Director of School Education and ors Vs. S.Aruna** held as follows :-

“24. As stated supra, while considering the decisions relied on by the learned counsel for both parties, writ Court has observed that the respondents herein were appointed as B.Sc. Mathematics teachers, on 22.02.2006 and 01.03.2006 respectively, and after a decade, taken for ascertaining the educational qualifications, precisely 12 years, vide order dated 14.09.2016 cancelled the appointments, on the basis of clause Nos.19 and 20 of the orders of appointment.

25. As stated supra, during the interregnum period one of the respondents Mrs.V.Premakumari [WA.No.3235 of 2019], has cleared B.Sc. Mathematics. As of now, another respondent S.Aruna, in WA No.3066 of 2019, would complete her degree in Mathematics in 2020.

26. Even in the decision, Sukh Bilash Thakur's case [quoted supra] relied on by Ms.Dakshayani Reddy, learned counsel for the respondent in WA No.3066 of 2019, the Hon'ble Supreme Court while finding that there was no case of suppression or fraud, interfered with the order of reversion of the appellant therein and since the appellant therein viz., Sukh Bilash



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Thakur, had retired from service, while setting aside the order of reversion, the Hon'ble Supreme Court directed pensionary and other retiral benefits be paid to the appellant therein with interest.

27. It is not the case of the appellants that the respondents have misrepresented, at the time of securing appointment. Allegation of malpractice has not been substantiated. There is an inordinate delay of 12 years in verifying the details of the educational qualifications. Performance of the respondents were found to be good, to be precise, it is more than 100% in subject mathematics, for the last five years. By considering the decisions of the Hon'ble Supreme Court and on the facts and circumstances of the case, writ Court has rightly rejected the contention of the appellants herein and issued directions to reinstate the respondents in service and grant them all consequential monetary and attendant benefits to which the respondents are entitled.”

14. Further it is not a case of the respondents that the petitioners had misrepresented and there is a suppression or fraud committed by the petitioners at the time of their selection. The petitioners did not suppressed anything or produced any fraudulent documents. They



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possessed requisite qualification but not fulfilled the requirement viz., 55% of marks in their post graduate degree. All the petitioners are having 53 to 54% of marks in their respective post graduate degree. Thereafter after the period of 19 to 20 years, it cannot be said that they did not possess requisite qualification.

15. That apart, admittedly no enquiry was conducted and no opportunity was given to the petitioners before passing the orders of termination of the petitioners, from their respective service. Though they were served with show cause notice in the year 2017, and on receipt of the explanation submitted by the respective petitioners, no order has been passed to conduct enquiry. They were not served with any charge memo and no enquiry was conducted before passing the order of termination. Therefore, it is clear violation of principles of nature justice. The action of the respondents highly unjust, unsustainable and arbitrary.

16. In view of the above discussions, the orders impugned in all the writ petitioners cannot be sustained and liable to be quashed. Accordingly, all the impugned orders dated 15.11.2023 passed by the



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Registrar, Annamalai University, are hereby quashed. However, the respondents are at liberty to issue fresh show cause notice and proceed with disciplinary proceedings as against the petitioner, in the manner known to law, if so advised.

17. Accordingly, all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



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1. The Principal Secretary,
State of Tamil Nadu,
Higher Education Department,
Fort St. George,
Chennai – 600 009.
2. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram



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G.K.ILANTHIRAIYAN. J.

rts

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