2024:MHC:2669

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **: 05.07.2024**

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

W.P.No.27087 of 2017
and
W.M.P.Nos.1832 of 2018 and 28911 & 28912 of 2017

P.Jerlin Annuncia ... Petitioner

Vs.

1. The University of Madras,
   Represented by its Registrar,
   Centenary Buildings,
   Chepauk Campus,
   Chennai - 600 005.

2. The Syndicate,
   Represented by its Secretary,
   The University of Madras,
   Centenary Buildings,
   Chepauk Campus,
   Chennai - 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the Syndicate Resolution dated 11.08.2017 passed by the 2nd respondent and the consequential order of dismissal bearing ref.no.F1(B)/ESSTT./2017/R-52

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dated 22.11.2017 passed by the 1st respondent University (EX-A) and to quash the same as being illegal, malafide and contrary to the Principles of Natural Justice and for a consequential direction to the respondents to reinstate the petitioner in service w.e.f.22.08.2017 and to continue in service till her date of superannuation and to grant her full back wages together with all other attendant benefits.

For Petitioner : Mr.V.Govardhanan
for M/s.Row and Reddy

For Respondents : Mr.A.S.Vijayaragavan
Standing Counsel

O R D E R

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The writ petitioner was appointed as temporary Nurse in the Medical Centre situated in Madras University campus. Her initial appointment was made on consolidated pay. It was a tenure appointment.

2. Mr.V.Govardhanan, the learned Counsel appearing on behalf of the petitioner would submit that the Syndicate passed a resolution to regularise the services of these temporary consolidated pay employees.

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Several recommendations are made by the University. However, the order of termination has been issued in proceedings dated 22.08.2017, without any opportunity to the writ petitioner. Thus, the petitioner is constrained to move the present writ petition.

3. Mr.A.S.Vijayaragavan, the learned Standing Counsel appearing on behalf of the respondent would submit that based on the Audit Objection raised by the Audit party, the University has decided to terminate the services of these contract/temporary staff, who all are engaged in Medical Centre in the University. These employees were appointed in accordance with the service rules. The post of Nurse and Medical Officer sanctioned by the Government of Tamil Nadu. The resolution passed by the Syndicate is recommendatory in nature, but the Government of Tamil Nadu has not granted any sanctioned post. Therefore, the University had no objection to terminate the services of these employees. More-so, University is not in a position to pay salary to these staff members in the Medical Centres.

4. It is not in dispute that the initial appointment of the petitioner was on consolidated pay temporary basis. As rightly pointed out by the

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learned Counsel for the petitioner, Syndicate passed the resolution. Even in one resolution they have passed that the services are to be regularised, but in any other Syndicate resolution dated 11.08.2017, the Syndicate has considered Audit Objection, wherein it is stated that the seven categories of post approved by the Senate on 25.10.2014, are not sanctioned by the Government of Tamil Nadu. Therefore, it is apparently clear that the Government of Tamil Nadu has not sanctioned the post of Medical Officer or Staff Nurse in Madras University. In the absence of any sanctioned post, the benefit of regularization cannot be extended.

5. Since the salary is to be paid by the Government by way of grant. The appointment of the petitioner for a subsequent period would also indicate that certain conditions are imposed. Perusal of the conditions would reveal that the petitioner executed a Deed of Agreement in the prescribed form and approved the terms and conditions in the Stamp Paper Rs.20/- soon after joining duty. Though the appointment order states that the petitioner was appointed in the time scale of pay, but the terms and conditions stipulated and the conditions would reveal that the nature of appointment is temporary and not against sanctioned post.

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6. For appointing employees in sanctioned post, the Service Rules as applicable are to be followed. Such appointments are to be made by providing opportunity to all the eligible candidates, who all are aspiring to secure regular employment in the University. However, the writ petitioner was not appointed by following the Service Rules in force. Therefore, she cannot seek regularization and permanent absorption as a matter of right, in view of the legal principles settled by the Constitution Bench of Hon'ble Supreme Court of India in ***Uma Devi's*** case and the legal position has been further reiterated in ***Govindaswamy's*** case. The Hon'ble Supreme Court of India relying on the principles laid down in the case of ***State of Rajasthan Vs. Daya Lal*** reported in ***2011 (2) SCC 429*** reiterated the well settled principles relating to regularization, which reads as under:

> *(i) High Courts in exercise of power under Article 226 of the Constitution of India will not issue a directions for regularisation, oborption or permanent continuance, unless the employees claiming regularisation, 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 clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation*

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of services of an employee which would be violative of the 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 regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(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 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.*

(iii) Even where a scheme is formulated for regularisation 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 regularisation as they are not working against any sanctioned posts.

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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 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." (emphasis supplied)

7. The power of Judicial Review of the High Court is to ensure the processes through which the decision has been taken in consonance with the statutes and rules in force, but not the decision itself. When the post has not been sanctioned, issuing a direction to the Government to sanction the post, in our opinion would not fall under the powers of Judicial Review and sanctioning of post would be the decision of the Government. Creation or abolition of post is the prerogative of an employer. Therefore, Courts cannot issue any such direction to sanction the post and grant regularization or permanent absorption.

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8. In the case of Medical Officer, who was appointed by the University, the learned Single Judge granted direction to sanction the post to regularise the services of the Medical Officer, we have considered the issues and allowed the writ appeal in W.A.No.1607 of 2021 dated 05.07.2024. In the present case, the petitioner has been temporarily appointed as staff nurse. Therefore, the principles considered in that writ appeal order will be squarely applicable to the present case.

9. Since equal opportunity in public employment is the constitutional mandate all eligible candidates including the petitioner is at liberty to participate and secure employment on merits and in accordance with law.

10. Accordingly, the Writ Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.] [N.S., J.]
05.07.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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Order in
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