



W.P.Nos.32848 & 32849 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

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

W.P.Nos.32848 & 32849 of 2023 and
WMP.Nos.32476 & 32477 of 2023 and
WMP.Nos.4811, 4818, 6990 & 7002 of 2024

WP.No.32848 of 2023

- 1.Dr.E.Rajamanickam
- 2.Dr.K.Chezhiyan
- 3.Dr.M.Kumaran
- 4.Dr.D.Thiyagarajan
- 5.Dr.T.Elanchezian
- 6.Dr.P.Jayakumar

... Petitioners

Vs.

- 1.The Government of Tamilnadu,
Rep. By its Secretary,
Higher Education Department,
Fort St.George, Chennai 600 009
- 2.The Annamalai University,
Rep. By its Registrar(incharge),
Annamalai Nagar,
Chidambaram 608 001
- 3.The Director,
Directorate of College Education,
Institute of Advance Study in Education Campus,
577, Anna Salai, Saidapet,
Chennai-15



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(3rd respondent impleaded as per order dated 18.03.2024
made in WMP.No.4806 of 2024 in
WP.No.32848 of 2023)

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of Certiorari calling for the records of the second
respondent in University Order No.624/2023 dated 15.11.2023 and to
quash the same.

(prayer amended as per order dated 18.03.2024 made in WMP.No.4810
of 2024 in WP.No.32848 of 2023)

For Petitioners : M/s.Kandhan Duraisami

For Respondents

For R1 & 3 : Mr.J.Ravindran,
Additional Advocate General
Assisted by Mrs.V.Yamunadevi,
Special Government Pleader

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

WP.No.32849 of 2023

Dr.D.Kannan

... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. By its Secretary,



W.P.Nos.32848 & 32849 of 2023

- Higher Education Department,
Fort St.George, Chennai 600 009
- 2.The Annamalai University,
Rep. By its Registrar(incharge),
Annamalai Nagar,
Chidambaram 608 001
- 3.The Director,
Directorate of College Education,
Institute of Advance Study in Education Campus,
577, Anna Salai, Saidapet,
Chennai-15
- (3rd respondent impleaded as per order dated 18.03.2024
made in WMP.No.6978 of 2024 in
WP.No.32849 of 2023)

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of Certiorari calling for the records of the second
respondent in University Order No.624/2023 dated 15.11.2023 and to
quash the same.

(prayer amended as per order dated 18.03.2024 made in WMP.No.6982
of 2024 in WP.No.32849 of 2023)

For Petitioner : M/s.Kandhan Duraisami

For Respondents

For R1 & 3 : Mrs.V.Yamunadevi,
Special Government Pleader



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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. All the Petitioners were appointed in the 2nd Respondent University as Lecturer more fully in the Directorate of Distance Education Study Centre with all admissible allowances on temporary basis for a period of one year. Upon completion on temporary basis, their services were further extended for a period one year on probation and thereafter, as per the rules and regulations of the 2nd Respondent university, the petitioners' appointments were approved by the Board of Selection by way of various resolutions dated 21.03.2007 to 25.03.2007 and 24.06.2008. Subsequently, the petitioners were appointed in the Department of Business Administration. All the petitioners are presently working as Assistant Professor in various Government Arts and Science



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Colleges under the control of "The Director, Directorate of College Education, Institute of Advance Study in Education Campus, 577, Anna Salai, Saidapet, Chennai-15" on deputation basis.

2.1 All the orders pertaining to the appointment of the Petitioners mentioned above were passed by the Vice-Chancellor after following the due procedure of law namely the resolution of the members of Board of Selection which consists of Vice-Chancellor, Subject Expert, UGC Nominee and Government Nominee. Therefore, the Petitioners' appointment to the post of Lecturer in the Department of Business Administration were done through proper recruitment process and by following the due procedure of law. While this being so, the Government of Tamil Nadu took over the administration of the Annamalai University by way of Act 20/2013 (hereinafter referred to as the "Act"). The Government has taken over the Annamalai University by an Act which came into effect on 25.09.2013. While taking over the management, the Government has also undertaken not to affect the service conditions of



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the existing employees of the Annamalai University, more fully provided under Section 58 (3)(e) of the Act 20/2013.

2.2 When such was the position, the 2nd Respondent issued a show cause notice on 22.02.2017 to all the Petitioners and called for explanation with regard to verification of educational qualification for the post of Assistant Professor on the initial date of their appointment. Further, the notices specially stated as follows: "to offer Petitioners' explanation as regard to not possessing required educational qualification for the post of Assistant Professor and accordingly disqualified to continue in the post. All the Petitioners given explanation through proper channel should reach the Registrar within 15 days from the date of receipt of this University Order". Immediately, the petitioners offered their explanation. On 09.09.2020, the Syndicate of the Annamalai University consisting of the Vice Chancellor, Principal Secretary Higher Education Department, Director of Collegiate Education, Director of Medical Education and others considering the request of petitioners and other similarly placed lectures, passed the following resolution:



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The Registrar reports that 39 Assistant Professors in Business Administration who have been issued show cause notice for not possessing prescribed educational Qualification at the time of entry and qualified (for Ph.D) on a later date have been redeployed to Government Arts Colleges on agreement basis for a period of three years and relived from this University on 27.02.2020. Further, the date of appointment as Assistant Professor has been refixed from the date of eligibility to the post and accordingly fixed in the 6th pay and fitted in the corresponding scale of pay in 7th pay commission. The monetary benefit arising out of 7th Pay Commission has been sanctioned from the date of joining duty (no arrears) at the posted place. The service rendered by them prior to their becoming eligible for the post may be taken into account only for pensionary benefit and not for pay fixation. The matter is reported to the Syndicate for ratification of the action taken.

2.3 Subsequently, the syndicate approved the refixing of the date of appointment of petitioners and other similarly placed Assistant Professors of the Department of Business Administration as follows:-

The Syndicate RESOLVED to APPROVE the refixing the date of the appointment of 39 Assistant Professors of the Department of Business Administration as per UGC/AICTE eligibility norms, and redeployed to



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various Government Arts Colleges on agreement basis for a period of three years.

The Syndicate further RESOLVED to FIX the pay in the 6th and fitted in the corresponding scale of pay in the 7th pay commission only from the date of joining duty at the posted place, and not eligible for any arrears.

The Syndicate further RESOLVED to CLARIFY from P & AR and Finance Department about the eligibility of pensionary benefits for those service rendered by the individuals prior to they become eligible for the post of Assistant Professor/Lecture and directed to place it in the next meeting.

2.4 The terms and conditions of the Petitioners' deputation mandated that the Petitioners' services would be extended every three years on the same terms and conditions. The said three-year period was over during the month of February 2023 and the Respondents were supposed to extend the deputation for the next three years further. The Respondents stopped paying monthly salary for the past three months to all the petitioners. Therefore, the Petitioners anticipating their termination filed these writ petition for direction forbearing the Respondents from, in



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any way, disturbing or relieving the Petitioners from the present post of Assistant Professors in the various Government Arts and Science Colleges, Tamilnadu.

2.5 In the Writ Petitions, on 17.11.2023, this Court was pleased to pass the following interim order:-

"3. All the petitioners herein have been appointed more than 10 years back in the University in various departments as teaching faculties. The present decision to remove them from service is based on a show cause notice issued in the year 2017 and the Syndicate Resolution rejecting their explanation in the year 2019. Having failed to act upon the batch show cause notice within a reasonable time after the explanation was given by the petitioners; the decision to remove them from service has been taken more than 6 years later.

4. In the case of Dr.M.Rajeswari Vs. State of Tamil Nadu, Higher Education Department and another passed in W.P.No.32822 of 2023, where one of the teaching faculty, who was also originally appointed in Annamalai University, was served with such a show cause notice, this Court had entertained the writ petition



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and granted an order of interim stay, in the following manner:

"5. This Court, on a prima facie view, does not appreciate the manner in which the show cause notice was issued in the year 2016 and the respondents, having slept over the objections given to the show cause notice for over 7 years, had issued the present impugned order of removal from service. Furthermore, by taking note of the fact that the petitioner have been serving for almost 20 years, it would be appropriate to stay the order, till the respondents file their counter.

6. Accordingly there shall be an order of interim stay. It is hereby clarified that in case the petitioner has already been relieved from service, she would forthwith be reinstated back and she would continue in service, along with all the service and monetary benefits".

5. The facts involved in the present writ petitions are also identical. Accordingly, there shall be an order of interim stay".

2.6 After filing of the writ petitions and grant of interim order, the 2nd Respondent served the copy of the termination order dated 15.11.2023 to all the petitioners through the Director, Directorate of College Education, Institute of Advance Study in Education Campus,



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577, Anna Salai, Saidapet, Chennai-15 and the Principal of the respective colleges. Therefore, the prayer in these writ petitions have been amended to challenge the above mentioned termination order.

3. 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 Annamalai University Act, 2013. All the petitioners were found deficit qualification since they did not obtain 55% of marks in the relevant subject. 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.

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



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5. On perusal of the documents revealed that all the petitioners were removed only on the ground that they did not obtain 55% marks in the relevant subject. This Court granted interim stay and all the petitioners are continuing in their respective posts.

6. The learned counsel appearing for the petitioners 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.**, wherein 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 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



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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.”

7. He also relied upon 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.***, wherein it is 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 experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the



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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,



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we must let the 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.

8. In fact, they are working in their respective posts for many years. Therefore, after such period, the qualification of the petitioners 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 did not possess 55% marks in the relevant subject at the time of appointment, they have been terminated from their respective services. Therefore, the delay cause by the University cannot be put against the petitioners.

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



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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



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Bilash 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.”

10. Further it is not the case of the respondents that the petitioners had misrepresented and there is a suppression or fraud



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committed by the petitioners at the time of their selection. The petitioners did not suppress anything or produce any fraudulent documents. They possessed requisite qualification but not fulfilled the requirement viz., 55% of marks in the relevant subject. Therefore, after many years, it cannot be said that they did not possess requisite qualification.

11. 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 services. 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 is highly unjust, unsustainable and arbitrary.

12. In view of the above discussions, the order impugned in both the writ petitions cannot be sustained and liable to be quashed. Accordingly, the impugned orders dated 15.11.2023 passed by the Registrar, Annamalai University, are hereby quashed. However, the



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respondents are at liberty to issue fresh show cause notice and proceed with disciplinary proceedings as against the petitioners, in the manner known to law, if so advised.

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

18.03.2024
(3/3)

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
lok

To

1. Secretary,
The Government of Tamilnadu,
Higher Education Department,
Fort St.George, Chennai 600 009
2. Registrar(incharge),
The Annamalai University,
Annamalai Nagar,
Chidambaram 608 001
3. The Director,
Directorate of College Education,
Institute of Advance Study in Education Campus,
577, Anna Salai, Saidapet,
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G.K.ILANTHIRAIYAN, J.

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