



W.P.(MD).No.1105 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1105 of 2024

M.Saraswathi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
High Education K2 Department,
Secretariat,
Fort St. George,
Chennai.

2.The Madurai Kamaraj University,
Rep. by its Registrar,
University Campus,
Madurai-21.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made by the 2nd respondent in his proceedings in REF:MKU/Estt-I/2021 dated 24.09.2021 and quash the same as



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illegal and consequently direct the respondents to regularize the petitioner's service as a Clerk / Junior Assistant / Data entry operator with effect from 16.11.2015 (completion of 10 years as casual labourer on consolidated pay) with all attendant benefits within the time that may be stipulated by this Court.

For Petitioner : Mr.M.P.Senthil
For R-1 : Mr.N.Ramesh Arumugam
Government Advocate (CIVIL)
For R-2 : Mr.T.Sakthi Kumaran
Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned order made in REF:MKU/Estt-I/2021 dated 24.09.2021 and quash the same as illegal and consequently direct the respondents to regularize the petitioner's service as a Clerk / Junior Assistant / Data entry operator with effect from 16.11.2015 (completion of 10 years as casual labourer on consolidated pay) with all attendant benefits within the time that may be stipulated by this Court.



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2. Heard, the learned counsel appearing for the petitioner and the learned Additional Government Advocate appearing for the first respondent and the learned Standing Counsel appearing for the 2nd respondent. Perused the materials on record.

3.The petitioner joined as a casual labour in the second respondent's University on 03.02.2003. The appointment committee of the University on found the petitioner and others selected by the University for being appointed as data entry operators to be qualified and satisfying all requirement under the Act. The syndicate by its resolution dated 14.11.2005 approved the petitioner's appointment and appointed the petitioner as a data entry operator with a consolidated pay of Rs.3,600/- (Three Thousand and Six Hundred only) per month. The petitioner is working more than 18 years in the various departments without regularization. Though the University had a policy to regularize the persons who had completed 10 years of service in the establishment of the University, the petitioner was not considered for regularization. It is also pertinent to point out that, since the petitioner's appointment, the University has



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regularized 6 CPCLRs in the year 2013 and 49 CPCLRs on 14.11.2005 and one Rajeshwari on 03.01.2012. However, the same benefit was not accorded to the petitioner. Hence, the petitioner made a representation dated 10.01.2017 to the 2nd respondent seeking to regularize the petitioner's service as clerk / Junior Assistant / data Entry Operator with effect from the date of completion of 10 years of service i.e. from 16.11.2015 as per the syndicate resolution. However, the 2nd respondent has not considered the petitioner's representation. Hence, the petitioner filed W.P.(MD)No.1487 of 2017 before this Court.

4. This Court in W.P(MD)No.1487 of 2017 vide order, dated 01.10.2019 directed the 2nd respondent University to consider the representation made by the petitioner seeking to regularize the employment. However, the 2nd respondent University vide impugned proceedings, dated 24.09.2021 rejected the petitioner's request stating that existing vacancy can be filled up only through recruitment process as per norms in vogue. Challenging the same, this writ petition came to be filed.



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5. Similar matter came to be dealt with by this Court in W.P(MD)No. 12554 of 2022, dated 01.12.2022, in which, similar cases of CPCLR was considered and favourable order was passed in favour of the consolidated employee therein and the relevant portion of the said order is extracted as follows:

“7. The learned counsel appearing for the petitioner relies on order dated 29.04.2014 passed by the Hon’ble Division Bench in W.P.(MD).No.18974 of 2022 W.A(MD)Nos.351 of 2012 etc. The Hon’ble Division Bench had held as follows:

“18. If the posts sanctioned by the Finance Committee are to be filled up by the University on a regular basis, the University would have to go in for a fresh direct recruitment. As per the statutes of the University, such regular process of selection will be through a written examination followed by viva voce. The respondents in these cases, were actually sponsored through employment exchange. They were made to appear for written examination. Those who were short listed in the written examination were interviewed and the respondents were selected. Therefore, despite the fact that they were appointed temporarily on daily wages basis, the respondents herein have fulfilled the qualifications prescribed for the posts and they were selected by the very same method of recruitment prescribed for regular selection.



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19. The reliance placed by the learned Senior Counsel for the University upon the decision of the Constitution Bench of the Supreme Court in Uma Devi, cannot be applied stricto sensu, to cases of this nature. It is for the simple reason that Courts will have to distinguish between the appointments made through back door methods and appointments made by following the rigorous process of selection. The principles that would apply to back door appointments cannot be simply transported to the cases where a process of selection is strictly followed.”

This order was followed by another Hon’ble Division Bench to which I was a party (order dated 10.08.2017 in W.A(MD)Nos.919 and 920 of 2016).

8.The University which is the employer is receiving funds from the Government. The Government is not a necessary party to the present proceedings. I hold that the writ petitioners cannot be nonsuited merely because the Government has not been impleaded. All the relevant norms are fulfilled. I direct the respondent University to regularise the services of the petitioner on completion of 10 years of service as casual labour. However, taking note of the contention advanced by the learned Standing Counsel for the respondent that the University is facing financial crunch, the petitioner will be eligible for



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monetary benefits only from the date of the impugned order. The order impugned in this writ petition is set aside.”

An appeal was preferred by the 2nd respondent University before this Court in W.A.(MD)No.981 of 2023 and the Division Bench was pleased to dismiss the said appeal on 25.07.2023 and gave a specific direction to the University to implement the order passed by the learned Single Judge in W.P(MD)No.12554 of 2022. Against which, Special Leave Petition also was preferred before the Hon’ble Apex Court in S.L.P.No.4588 of 2023 and the same was also dismissed on 10.11.2023.

6. In view of the same, by adopting the order passed by this Court in W.P(MD)No.12554 of 2022, I hold that the writ petitioner cannot be non suited and therefore, the respondents are directed to regularize the service of the petitioner in terms of the order passed in the aforesaid writ petition.



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7. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

The State of Tamil Nadu,
Rep. by its Secretary,
High Education K2 Department,
Secretariat,
Fort St. George,
Chennai.



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L.VICTORIA GOWRI, J.

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