



W.P.(MD).Nos.1703 to 1711 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.1703 to 1711 of 2024

and

W.M.P.(MD)No.1736 to 1741, 1743, 1747, 1748 of 2024

W.P(MD)No.1703 of 2024:

L.Josephin Mary

... 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,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Cetrriorarified Mandamus, calling for the records relating to the impugned order made by the respondent 2nd respondent in his proceedings in REF.MKU/ESTT-I/2021, dated 11.08.2021 and quash the same as illegal in so far as the petitioner is concerned and consequently direct



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the respondents to regularize the petitioner's service as a Clerk with effect from 14.11.2015 (completion of 10 years as casual laborer on consolidated pay) with all attendant benefits within the time that may be stipulated by this Court in light of the decision of this Court in W.A.(MD)No.981 of 2023, dated 25.07.2023.

For Petitioner : Mr.M.Mahaboob Athiff
For R-1 : Mr.M.Sarangan
Additional Government Pleader
For R-2 : Mr.T.Sakthi Kumaran
Standing Counsel

ORDER

The present writ petitions have been filed to quash the impugned orders and to direct the respondents to regularize the petitioners' service with effect from the date of completion of 10 years as casual labourers on consolidated pay with all attendant benefits in the light of the decision of this Court in W.A(MD)No.981 of 2023, dated 25.07.2023.

2. Heard the learned counsels on either side and anxiously perused the materials available on record.



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4. After completion of 10 years of service, the petitioners made representations on various dates for regularization of their respective services on par with similarly situated casual labourers. Since there was no positive response, few among the writ petitioners approached this Court by filing writ petitions. To be specific, W.P(MD)No.7622 of 2017 was disposed off by this Court by directing the respondent University to consider the petitioners' request for regularization within a period of twelve (12) weeks and to pass appropriate orders in this regard.

5. In all those cases where the writ petitioners preferred to file a writ petition before this Court and had managed to obtain orders directing the respondent University to consider their respective request for regularization, the respondent University pursuant to the issuance of such orders by this Court, proceeded to consider the various representations of the petitioners and thereafter, rejected the same in the line of the judgment of the Honorable Apex Court reported in *AIR 2006 SC 1806 (State of Karnataka & Others Vs. Uma Devi & Others)* case. Challenging the rejection orders, the petitioners have filed these petitions.



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6. A similar matter came to be dealt with by this court in W.P(MD)No. 12554 of 2022, dated 01-12-2022 and that was allowed and as against the same writ appeal in W.A(MD)No.981 of 2023 was preferred by the respondent University and the Honorable Division Bench of this Court was pleased to confirm the order passed by the learned Single Judge and thereafter, a Special Leave Petition was also preferred by the University before the Honorable Apex Court and the same was dismissed.

7. For better appreciation of the facts, the order passed in W.P(MD)No. 12554 of 2022, dated 01-12-2022 is extracted hereunder:

“5. I carefully considered the rival contentions and went through the materials on record. Though the petitioner was appointed only as Casual Labourer in the year 2005, it was not a back door entry. The University had published notification calling for applications from eligible candidates seeking appointment as Casual Labourer on consolidated basis. The University issued call letter dated 13.10.2005 calling upon the petitioner to attend interview on 26.10.2005. The petitioner was subjected to selection process. Proper resolution was passed by the appointment committee and that is how the petitioner came to be appointed on 14.11.2005. The petitioner has been serving the University without any break for the last 17 years.

6. My attention is drawn to the resolution passed by the syndicate of the respondent University on 12.08.2005. The resolution



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reads that the consolidated pay Casual Labourers and Casual Labourers on daily wages be allowed regular time scale of pay if they completed 10 years of service. This resolution has not been rescinded till date. I can understand the objection of the University if it is claimed that the cadre strength will be exceeded. Admittedly, it is stated that regular vacancies were available when he completed 10 years and even as on date. It is well settled that relief of regularisation can be given only in favour of the person who is still in service. That apart, he has to bring his case within the extant norms. The petitioner is able to fulfil both the conditions.

7.The learned counsel appearing for the petitioner relies on order dated 29.04.2014 passed by the Hon'ble Division Bench in 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 go to 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 vivo 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 non-suited 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 monetary benefits only from the date of the impugned order. The order impugned in this writ petition is set aside.

9.This writ petition is allowed. No costs.”

8. The Honorable Division Bench of this Court in the writ appeal preferred by the respondent University in W.A(MD)No.981 of 2023 has



confirmed the order passed by the learned Single Judge and the relevant portion of which is extracted hereunder:

“4.1. Umadevi's case lays down that when the entry is through back door method, that is, when the appointment is de-hors the rules, then the High Court in exercise of its power under Article 226 of the Constitution of India cannot order regularization and regularisation is not a method of recruitment. In the said case itself, in paragraph No.53, the Hon'ble Supreme Court of India, held as follows :

“....53.One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa¹¹, R.N.Nanjundappa¹² and B.N.Nagarajan⁸ and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are



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undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

4.2. The Hon'ble Supreme Court has made an exception that wherever the employees have completed 10 years of service without the aid of the Orders of the Court and where there is a scheme it is framed by the appropriate employer itself, then the employees can be regularised. In the instant case, the writ petitioner certainly has completed more than ten years of service without any intervention of Court, the above principle may not apply.

*4.3. This Court, in **Union of India -Vs- R. Paramasivam and another(2014 SCOnline Mad 114)**, held that when there was no rules for the post in which the employees are recruited, it cannot be said to be back door. In this case also, the employment itself is done by the employer without reference to any sanctioned post and the writ petitioner was appointed as casual labour. On the other hand, he was called for an interview and was being subjected to a selection process and was selected. Therefore, we reject the submission of the learned*



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Additional Advocate General, their appointment is back door in nature.

4.4. Ever since their recruitment as casual labour, they have been continuously been made to discharge the duties assigned to the post of Clerk/Junior Assistant. The said fact could not be denied by the respondent University. The resolution passed by the respondent University reads thus:

“Item No.5:

Considered the

a) the status of Consolidated Pay Casual Labourers;

b)the recommendation of the Syndicate dated 09.07.2005 to enhance the Consolidated Pay of the Consolidated Pay CLR's who have acquired an additional qualification such as PGDCA/B.Sc., (Computer Science) BCA etc.,

c)Casual Labour working on daily wages basis (Persons working previously in Scheme/Project)

d)Casual Labour working on daily wage basis as Data Entry Operators.

e)Computer Centre Lab Technicians.

Resolved that it be a recommendation to the Syndicate that the consolidated pay casual labourers and casual labourers on daily wages be allowed regular time scale of pay for those who have



completed ten years of service as given below against to the existing.
vacant posts.

Clerical cadre : Rs.3625-85-4900

Class IV :Rs.2550-55-2660-60-3200

Total no. of employees under clerical cadre

Total no. of employees under Class IV

The remaining vacancies ie., 61 in the clerical cadre and 9 under class IV category shall be kept in abeyance.”

(emphasis supplied)

4.5. Thus a careful reading of the above resolution even though mentions about the number of employees and vacancies as on that date, it can be seen that generally it enhanced the consolidated pay on obtaining additional qualification and it considered the status of consolidated pay casual labourers and it resolved that the consolidated pay casual labourers and the casual labourers on daily wages be allowed on regular time scale of pay for those who have completed 10 years of service as given below against existing vacant posts in the Clerical cadre and Class IV posts in the scales of pay mentioned therein. On the basis of the resolution, persons similarly situate that of the petitioner have also been regularised. That is, one S. Rajeswari was regularised by order dated 03/01/2012 and one S. Paulraj & 5 others were regularised by order dated 03/10/2013. In that view of the matter, we are unable to accept the contentions of the



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learned Additional Advocate General that the learned Single Judge has not read the resolution in the correct perspective.

*4.6. The petitioner has been kept under consolidated pay for nearly two decades and the dictum of **Umadevi's** case is not for the purpose of employing hands on regular basis continuously for years together and extracting work in the regular posts but on a meagre and consolidated pay. In that view of the matter, the respondent University has got no justification whatsoever in denying regularisation to the writ petitioner.”*

9. The case in hand is absolutely similar and there is no place for taking a different footing. All the petitioners herein can be categorized under clerical cadre or under class IV employees. All the petitioners have completed 10 years of service in consolidated pay for more than a decade ranging from 10 years to 30 years. In view of the same, fully fortified by the order passed by this Court in WP(MD)No.12554 of 2022 and the Honorable Division Bench of this Court in W.A(MD)No.981 of 2023, I hold that the writ petitioners cannot be non-suited and hence, the impugned orders are set aside. For the sake of



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convenience, the details of the writ petitioners, their entry date as CPCLR and their period of service is extracted here under:

S.No.	Writ Petition Number	Name of the Petitioner	Date of entry into service	Date of completion of 10 years	Service period as on today
1.	W.P(MD)No. 1703 of 2024	L.Josephine Mary	14.11.2005	14.11.2015	18.2
2.	W.P(MD)No. 1704 of 2024	B.Ramalakshmi	14.11.2005	14.11.2015	18.2
3.	W.P(MD)No. 1705 of 2024	S.Thayananthan	14.11.2005	14.11.2015	18.2
4.	W.P(MD)No. 1706 of 2024	S.Kasimayan	14.11.2005	14.11.2015	18.2
5.	W.P(MD)No. 1707 of 2024	S.Muthukumar	14.11.2005	14.11.2015	18.2
6.	W.P(MD)No. 1708 of 2024	P.Padmarani	14.11.2005	14.11.2015	18.2
7.	W.P(MD)No. 1709 of 2024	J.Sathesh Vairavan	14.11.2005	14.11.2015	18.2
8.	W.P(MD)No. 1710 of 2024	P.Muthuchamy	14.11.2005	14.11.2015	18.2
9.	W.P(MD)No. 170311 of 2024	M.Packiyaraj	14.11.2005	14.11.2015	18.2

10. Considering the long service rendered by the petitioners herein for more than a decade, the respondents are hereby directed to regularize the



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service of the petitioners in terms of the order passed by this court in WP(MD)No.12554 of 2022 and W.A(MD)No.981 of 2023.

11. Accordingly, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

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To

1. The Secretary,
High Education K2 Department,
Secretariat, Fort St.George,
Chennai.
- 2.The Registrar,
The Madurai Kamaraj University,
Madurai.



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