



W.P.(MD).No.2079 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.2079 of 2024

M.Nithya

... Petitioner

Vs.

The Registrar,
Madurai Kamaraj University,
Madurai 625 021.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the respondent to regularize the service of the petitioner in time scale of pay as a Clerk/Junior Assistant with effect from 27..09.2018 completion of 10 years of her appointment as casual labour on consolidated pay and further sanction and release all the attended benefits.

For Petitioner : Mr.T.S.Mohamed Mohideen

For Respondent : Mr.T.Sakthi Kumaran
Standing Counsel



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ORDER

The present writ petition has been filed for the issue of a writ of mandamus, directing the respondent to regularize the service of the petitioner in time scale of pay as a Clerk/Junior Assistant with effect from 27.09.2018 completion of 10 years of her appointment as casual labour on consolidated pay and further sanction and release all the attended benefits.

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

3. The petitioner was appointed as a casual labour on daily wages on 25.10.2007. Later, the Appointment Committee of the University appointed the petitioner as Causal Labour on Consolidated Pay (CPCLR) on 27.09.2008. The petitioner was assigned with the duty of Clerk in the EDP Semester Section. Presently, the petitioner is drawing a consolidated pay of Rs.19,100/- per month. The petitioner has been working for 16 years on consolidated pay with the fond hope that the University would place the petitioner in a regular scale



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of pay. The petitioner was appointed as Casual Labour and the petitioner is eligible for regularization under time scale of pay in anyone of the existing clerical vacancy in the University.

4. 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 the order was confirmed by the Division Bench in W.A.(MD)No.981 of 2023 and thereafter, SLP was preferred by the University before the Hon'ble Apex Court and the same was dismissed.

5. 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



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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 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 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



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qualifications prescribed for the posts and they were selected by the very same method of recruitment prescribed for regular selection.

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.”



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6. The case on hand is absolutely similar and there is no place for taking a different footing. 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 the respondents are directed to regularise the service of the petitioner in terms of the order passed in the aforesaid writ petition, within a period of eight weeks from the date of receipt of copy of this order.

7. Accordingly, this writ petition stands disposed of. No costs.

11.03.2024

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

The Registrar,
Madurai Kamaraj University,
Madurai 625 021.



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L.VICTORIA GOWRI, J.

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