



W.A(MD)No.229 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A(MD)o.229 of 2020

The Management of Madurai Kamaraj University,
Rep. by its Registrar,
Palkalai Nagar,
Madurai – 625 021.

... Appellant/Respondent

Vs.

1.U.Ayubkhan
2.P.Chinniah
3.N.Rajendran
4.R.Pappathi
5.E.Velusamy
6.M.Moovendran
7.G.Irulayee
8.M.Irulayee
9.V.Gopal
10.P.Palpandian
11.S.Alagumalai
12.N.Ravichandran

....Respondents/Petitioners



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Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order dated 17.12.2019 passed in W.P(MD)No.10551 of 2016.

For Appellant :Mr.Veera Kathiravan,
Additional Advocate General, assisted by
Mr.T.Sakthikumaran

For Respondents :Mr. K.Saravanan

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is preferred by the respondent in W.P(MD)No.10551 of 2016 challenging the order passed therein by a learned Single Judge on 17.12.2019.

2. The facts are as below:

- a) Sometime between 1981 and 1990, the twelve respondents herein were appointed as gardeners in a botanical garden in the appellant University. According to the appellant, these twelve respondents were appointed specifically for a certain project, and on completion of the project in 1993, they were terminated from service. The said twelve



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respondents along with others raised separate industrial dispute and approached the Labour Court for regularisation of their service. Vide common order dated 31.03.1998, the Labour Court concerned dismissed the industrial dispute raised by these respondents and others on the ground that they are mere casual labourers.

- b) The petitioners before the Labour Court approached this Court in two batches in W.P.Nos.17337 and 17908 of 1998 and they were allowed by the learned Single Judge of this Court vide his order dated 11.08.2004. Operative portion of the said order reads as follows:

“ the petitioners are entitled to succeed and the respondent is directed to reinstate the petitioners in service as permanent employees with continuity of service with effect from the date on which they were originally appointed. However, it is made clear that the petitioners will not be entitled to any back-wages, considering the fact that the respondent-University is a public institution and that the employees have also not been performing or discharging any duty during the said period. They will be entitled to salary only after they are reinstated in service.”



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c) This order was put to challenge by the appellant herein in W.A.Nos.1675 and 1676 of 2005. When the matter came up for final hearing on 14.08.2008, a statement was made before the Division Bench by the appellant that the order of appointment would be given as and when the respondents/writ petitioners approached it. Recording the said statement the Division Bench disposed of the twin appeals.

d) Subsequently, the writ petitioners were issued with an order of appointment dated 16.10.2008 and this order of appointment has a string of conditions attached to it and they read as below:

“This appointment is made subject to the condition that he should not claim any weightage or fixation of seniority or protection of salary for their service in any other appointments to be made in future.

He should not apply for any other competitive examination or any other appointment without prior permission of this University.

He will be placed under probation for a period of two years



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and his continuance will be decided based on his performance and the genuineness of the certificates with regard to the Date of Birth and Educational Qualifications.

He should produce his Original Certificates/Testimonials for verification. He should produce a Certificate of Physical Fitness obtained from a Medical Officer not below the rank of an Assistant Surgeon, within three weeks from the date of joining.

He is also informed that regarding the Time Bound Promotion, G.O.No.304 Finance (Pay Commission) Department dt.12.03.1990 will be followed as per the resolution of the Syndicate dt. 19.05.2006.

As per the resolution of the Syndicate dated 22.01.2005, the above individuals will come under the New Contributory Pension Scheme vide G.O.Ms.No.430 Finance(Pension) Department, dated 06.08.2004.

- e) Receiving this order of appointment, the respondents herein have joined duty, and sometime in 2013, they were also promoted as Attenders.



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f) While so, in 2016, they made a demand that their past services be reckoned for grant of pension and that they might be given pension in terms of the Old Pension Scheme that was in vogue prior to 01.04.2004. As this prayer was not acceded to, the respondents herein approached the learned Single Judge with W.P(MD)No.10551 of 2016 and it came to be allowed by the learned Single Judge vide his order, dated 17.12.2019. The line of reasoning of the learned Single Judge was that the order issued to the respondents contemplated a break-in-service whereas the order passed in W.P.Nos.17337 and 17908 of 1998 provides for granting continuity of service. This order is now under challenge.

3.1 Placing reliance on the ratio in *K.Madalaimuthu and another vs. State of Tamil Nadu and others* [2006 6 SCC 558], the learned Additional Advocate General submitted that when the order of appointment dated 16.10.2008, with all the list of conditions stipulated therein was not challenged by the respondents herein, they have literally forfeited whatever right that might have accrued to them vide the order of this Court in W.P.Nos.



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17337 and 17908 of 1998. Indeed, these respondents were also given promotion sometime in 2013, and even at that point of time they have not chosen to challenge it. When the respondents have either given up their right or waived their right by their failure to challenge the order of appointment, they cannot fall back on the earlier order of this Court in W.P.Nos.17337 and 17908 of 1998.

3.2 The learned Additional Advocate General added that the respondents had chosen to approach this Court in 2016 after a delay of eight years and hence, the writ petition itself is hit by laches. Reliance was placed on the authority in *S.Sumnyan and Others vs. Limi Niri and Others* [(2010) 6 SCC 791].

4. Per contra, the learned counsel for the respondents would contend that the appellant has made an unqualified statement before the Division Bench in W.A.Nos.1675 and 1676 of 2005 that they would give order of appointment to such of those respondents who approached them but the nature of order of appointment subsequently issued by the appellant runs counter to the tone and tenor of the order of the learned Single Judge in W.P.No.17337 of 1998



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and 17908 of 1998. He placed reliance on the authority of the Hon'ble Supreme Court in *Vinod Ravjibhai Rajput Vs State of Gujarat and Others* [2020-II-LLJ-71(SC)].

5. Rival submissions were carefully weighed. The indisputable facts are that the respondents herein were appointed on various dates between 1981-1990 and that they were terminated from service in 1993, and they have successfully challenged the order of termination in W.P.Nos.17337 and 17908 of 1998 after an unsuccessful bid before the Labour Court to regularize their services. The significant features of the order passed in this batch of writ petitions are:

- (i) That the appellant is required to reinstate the respondents as permanent employees ; and
- (ii) That there will be continuity of service without back-wages for the period of non-employment.

However, what is contextually significant is that there is nothing in the statement made before the Division Bench about the terms on which the orders of appointment were proposed to be issued.



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6. When this order came to be challenged before the Division Bench in W.A.Nos.1675 and 1676 of 2005, as rightly contended by the respondents, the appellant did not opt to challenge either the permanency of employment or continuity of service which the learned Single Judge has directed the appellant to give to the respondents. Indeed, it made a blanket statement before the Court that they would issue appointment order as and when the writ petitioners approached it. This in effect would imply that the appellant would abide by the order passed by the learned Single Judge. This order in effect has become final and this is more in tune with the facts of the case in ***Vinod Ravjibhai Rajput's case***.

7. Turning to the present contention that the writ petitions are hit by laches is concerned, inasmuch as the learned Single Judge has chosen to entertain the same this contentions fade into insignificance. What this Court now concerned is only about that the correctness of the order of the learned Single Judge.



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8. Turning to the order of the learned Single Judge, this Court is in absolute concurrence with the line of his reasoning. When the appellant is under a duty to abide by the order passed in W.P.Nos.17337 and 17908 of 1998 and when it literally gave up its contentions in W.A.Nos.1675 and 1676 of 2005, then any order of appointment that it issues shall conform to the directions given in W.P.Nos.17337 and 17908 of 1998.

9. However, having made an unqualified statement before the Division Bench in W.A.Nos.1675 and 1676 of 2005, the appellant has issued an order of appointment that runs counter to the tone and tenor of the order passed in W.P.Nos.17337 and 17908 of 1998. It needs to be emphasised that given the context, the order of the learned Single Judge merges with W.A.Nos.1675 and 1676 of 2005. This is impermissible as the order of appointment not only breaches the directions given by the learned Single Judge but also breaches the rule of fairness, and inasmuch as the order of appointment has been granted contrary to the directions given by the learned Single Judge in W.P.Nos.17337 and 17908 of 1998, the said order of appointment, dated 16.10.2008, must necessarily be read as one issued pursuant to the said order.



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Any variance which the order of appointment may possess shall necessarily yield to the nature of the order passed by this court in the earlier appeals, and language of the appointment order must have to be toned down to accommodate within in it the letter and spirit of the order passed in W.P.Nos. 17337 and 17908 of 1998. This precisely as the learned Single Judge has done. At the end of the day, the order of the learned Single Judge is not just a possible view or a plausible view but perhaps the best view possible. Under these circumstances, this Court does not consider it necessary to interfere with the order of the learned Single Judge.

10. However, while continuity of service can be reckoned for the purpose of availing pensionary benefits, the same may also be reckoned for fixing seniority. In the instant case, the respondents/writ petitioners were made as permanent employees vide order, dated 16.10.2008. This apart, they were given promotion in 2013. The respondents should have challenged the seniority right at that time and not after accepting it and this benefit is available only for those who have appointed pursuant to the orders passed in W.P.Nos.17337 and 17908 of 1998.



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11. This appeal is accordingly disposed of. No Costs.

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(N.S.S., J.)

(P.V.M., J.)

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NCC : Yes/No
Index : Yes/No
PM

To

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