



W.P.(MD).No.18974 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.18974 of 2022
and W.M.P(MD) No.13849 of 2022

R.Kavitha

... Petitioner

Vs

1. The Principal Secretary to Government,
Higher Education Department,
Government of Tamilnadu, Secretariat,
Chennai 600 009.
2. The Vice Chancellor,
Madurai Kamaraj University, Palkalai Nagar,
Madurai 625 021.
3. The Registrar,
Madurai Kamaraj University, Palkalai Nagar,
Madurai 625 021.

... 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 of the 3rd respondent pertaining to the impugned order made in Ref. MKU/Estt-I/2021, dated 14.09.2021 and quash the same as illegal and arbitrary and consequently direct the 3rd Respondent to be regularize the petitioner service as clerk/Junior Assistant from the date of completion of 10 years of



W.P.(MD).No.18974 of 2022

service i.e From 05.06.2011 along with all consequential benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.A.D.Ganeshamoorthi

For Respondents : Mr.G.Suryananth (R1)
Additional Government Pleader

Mr.T.Sakthi Kumar (R2, R3)
Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned order made in Ref. MKU/Estt-I/2021, dated 14.09.2021 by the third respondent and consequently to direct the 3rd Respondent to regularize the petitioner's service as clerk/Junior Assistant from the date of completion of 10 years of service i.e from 05.06.2011 along with all consequential benefits within the time limit fixed by this Court.

2.Heard, the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the respondents 2 and 3. Perused the materials on record.



W.P.(MD).No.18974 of 2022

Whereas, the above recommendation is not implemented by the 2nd and 3rd respondents till date.

4.This Court in a batch of cases in W.P(MD)No.940 to 949 of 2017 in a common order, dated 05.09.2019 directed the respondent University therein to consider the representation made by the petitioners therein seeking to regularise the employment. However, the third respondent University vide impugned proceedings, dated 14.09.2021 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.

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

WEB COPY

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 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.

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



W.P.(MD).No.18974 of 2022

WEB COPY

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.”

An appeal was preferred by the third 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 regularise the service of the petitioner in terms of the order passed in the aforesaid writ petition.



W.P.(MD).No.18974 of 2022

WEB COPY

7. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.01.2024

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

To

1. The Principal Secretary to Government,
Higher Education Department,
Government of Tamilnadu, Secretariat,
Chennai 600 009.



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W.P.(MD).No.18974 of 2022

L.VICTORIA GOWRI, J.

PNM

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04.01.2024