



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A(MD)No.2008 of 2025

and

C.M.P(MD) No.11608 of 2025

The Madurai Kamaraj University,
Rep. by its Registrar,
Palkalai Nagar,
Madurai, Madurai District.

... Appellant

-Vs-

1.R.Kavitha

2.The Principal Secretary to Government,
Higher Education Department,
Secretariat,
Chennai.

3.The Vice Chancellor,
The Madurai Kamaraj University,
Palkalai Nagar,
Madurai District.

... Respondents

Prayer:Writ Appeal filed under Section 15 of Letters Patent Act, to set aside the order dated 04.01.2024 passed in W.P(MD) No.18974 of 2022 on the file of this Court and allow the writ appeal.



WEB COPY

For Appellant : Mr.T.Sakthi Kumaran
For R1 : Mr.M.Govindan
For R2 : Mr.J.Ashok
Additional Government Pleader
For R3 : No appearance

J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

This writ appeal has been filed to set aside the order dated 04.01.2024 passed in W.P(MD) No.18974 of 2022, on the file of this Court.

2.The issue is already decided by this Court vide order dated 21.08.2025, made in W.A(MD) No.644 of 2025 etc., batch and the same is extracted hereunder:-

The factual matrix, as projected between the parties, are that the respondent – employees were initially appointed as casual labourers on daily wage basis. Subsequently, the services of the respondent – employees were extended and brought under consolidated pay. They were engaged as consolidated pay employees to perform the ministerial jobs /



WEB COPY



technical jobs i.e. Data Entry Operator, Data Analysts, Clerks etc. During the period of their employment, the appellant – Madurai Kamaraj University was effectively conducting open distance education courses and in order to maintain several courses, which were conducted by admitting candidates all over the country, these consolidated pay employees were engaged. Pursuant to the orders of the University Grants Commission, the distance education courses were closed down and it was restricted to the territorial jurisdiction of the University concerned. Thus, the University was not in a position to provide employment to several consolidated pay employees and some consolidated pay employees were allowed to continue to perform the existing works in the University. Thus, the consolidated pay employees are serving in the University from the years 2008 and 2009 onwards.

2. In such circumstances, one Mr.Ravikumar filed a writ petition seeking the benefit of regularization. He succeeded before the Division Bench of this Court and the Honourable Supreme Court dismissed the Special Leave Petition at the admission stage and his services were regularized. Citing the case of the said Ravikumar, nearly 98 consolidated pay employees filed writ petitions seeking the benefit of regularization. One set of consolidated pay employees filed writ of mandamus seeking a direction to regularize their



WEB COPY



services in the sanctioned post in the time scale of pay. Other set of consolidated pay employees filed writ petitions challenging the rejection orders passed by the University not granting the benefit of regularization. Citing the case of Ravikumar, the learned Single Judges of this Court granted the relief to the respondent - employees. Thus, the present batch of writ appeals have been filed by the University raising several legal issues, financial constraints, recruitment process to be followed, nature of appointment of these consolidated pay employees and other connected issues.

3. While extending the benefit of the order passed by the High Court, it is necessary to consider the legality involved, service rules applicable, method of recruitment and rights involved for securing the benefit of regularization and permanent absorption. Undoubtedly, routine orders, in these matters, would result in causing prejudice and therefore, this Court has to necessarily examine the facts involved and the legal position settled in the matter of grant of regularization and permanent absorption.

*4. The respondent – employees were appointed as consolidated pay employees in the years 2008 and 2009, more specifically, after the Judgment of the Constitution Bench of the Honourable Supreme Court of India in the case of **State of***



WEB COPY



Karnataka v. Umadevi and others, reported in (2006) 4 SCC 1.

5. The legal principles governing grant of regularization and permanent absorption are that regularization and permanent absorption is to be granted strictly in accordance with the service rules applicable, and temporary, casual, part-time and consolidated pay employees are not entitled to claim regularization in the sanctioned post in the time scale of pay, contrary to their terms of appointment accepted by those employees.

*6. In the case of **State of Rajasthan and others vs. Daya Lal and others**, reported in (2011) 2 SCC 429, the Honourable Supreme Court issued directives that the High Courts, in exercising power under Article 226 of the Constitution, will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for*



WEB COPY



want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

7. Equal opportunity in public employment is the constitutional mandate. Back door appointments or regularization of irregular and illegal appointments would result in infringement of the right of equal opportunity to the lakhs and lakhs of youths of our great Nation, who all are longing to secure public employment through open competitive process. Therefore, the constitutional courts time and again discouraged back door, irregular and illegal appointments. Despite the same, such illegal methods are being adopted on account of lackadaisical approach on the part of the authorities of the State. Irregular, illegal and back door appointments are made on favouritism and nepotism and also depriving equal opportunity to the eligible meritorious candidates, who all are aspiring to secure public employment. That apart, rule of reservation is flouted.

*8. The Constitution Bench in **Umadevi's** case raised a serious concern about the constitutional violations, mainly, for the reason that the constitutional scheme of appointments*



WEB COPY



alone are to be upheld to preserve the fundamental rights of the citizens longing to secure public employment.

*9. The Constitution Bench was aware that many such irregular and illegal appointees were serving during the hearing of **Umadevi's** case. Thus, a one-time measure was permitted to regularize the services of the appointments, where, such appointments are not illegal or through back door methods. In respect of temporary appointments made in accordance with Rules, the Honourable Supreme Court granted the benefit of one-time measure for grant of regularization in the year 2006, more specifically, in respect of the temporary employees, who had completed ten years of service as on the date of judgment. Thus, any irregular, illegal or backdoor appointments made thereafter, cannot be considered for grant of regularization or permanent absorption. Merely on the ground of length of services, regularisation cannot be granted to the back door, irregular or illegal appointees.*

*10. In paragraph 54 of the Judgment in **Umadevi's** case, the Constitution Bench in unequivocal terms, ruled that those decisions, which run counter to the principles settled in **Umadevi's** case or in which directions running counter to the principles settled in the judgment will stand denuded of their*



WEB COPY



*status as precedent. This ruling of the Constitution Bench became the law of the land under Article 141 of the Constitution of India. Thus, any subsequent Judgment of the High Court or the Two Judges Bench of the Supreme Court is to be confined only with reference to the facts established in a particular case and those judgments cannot be followed as precedents in view of the ruling made in Paragraph No.54 of the Constitution Bench Judgment in **Umadevi's** case.*

*11. Even in the Judicial Department, many such temporary and backdoor appointments were made. While dealing with such irregular and backdoor appointments in the Judicial Department, the Honourable Supreme Court has heavily come down in the case of **Renu and others vs. District and Sessions Judge and others**, reported in **AIR 2014 SC 2175**, wherein the following observations have been made*

*“8. As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in **Delhi Development Horticulture Employees' Union v. Delhi Admn.** [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] , **State of Haryana v. Piara Singh** [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC*



WEB COPY



403] , *Prabhat Kumar Sharma v. State of U.P.* [(1996) 10 SCC 62 : 1996 SCC (L&S) 1331] , *J.A.S. Inter College v. State of U.P.* [(1996) 10 SCC 71 : 1996 SCC (L&S) 1339] , *M.P. Housing Board v. Manoj Shrivastava* [(2006) 2 SCC 702 : 2006 SCC (L&S) 422] , *M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey* [(2006) 2 SCC 716 : 2006 SCC (L&S) 434] and *State of M.P. v. Sandhya Tomar* [(2013) 11 SCC 357] .

9.

10. In *Suresh Kumar v. State of Haryana* [(2003) 10 SCC 276] this Court upheld the judgment of the Punjab and Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.

11.

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in *M.P. State*



WEB COPY



Coop. Bank Ltd. v. Nanuram Yadav [(2007) 8 SCC 264 : (2007) 2 SCC (L&S) 883] as under :

“(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.



WEB COPY



(6) *The court should not exercise its jurisdiction on misplaced sympathy.*

(7) *If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.*

(8) *When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”*

13. *A similar view has been reiterated by the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753 : AIR 2006 SC 1806] , observing that any appointment made in violation of the statutory rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. “Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.” The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to*



WEB COPY



flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

14.

15.

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

17.

18.

19.

20.

21.

22.



WEB COPY



23.

24.

25.

26.

27.

28.

29.

30.

31.

32.

33.

34.

35. *In view of the above, the appeal stands disposed of with the following directions:*

(i) All the High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

(ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance with the statutory rules so made. In case any appointment is made in contravention of the statutory rules,



WEB COPY



the appointment would be void ab initio irrespective of any class of the post or the person occupying it.

(iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab initio and would remain unenforceable and unexecutable except such appointments which are permissible to be filled up without advertisement e.g. appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all the candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc. if any.

(iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on zonal or divisional basis.



WEB COPY



(v) *The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad hocism.*”

12. The Honourable Supreme Court reiterated that all vacancies must be filled up in strict compliance of the statutory rules. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class or post the person occupying it. In the absence of any statutory service rules in force, the established principles for recruitment to be adopted in a transparent manner and to ensure equal opportunity to all the aspiring candidates to participate in the process of selection through open competitive process. Any vacancy filled up without proper advertisement or without following the procedures shall be void ab initio and would remain unenforceable and inexecutable.

*13. In the case of **State of Orissa and another vs. Mamata Mohanty**, reported in (2011) 3 SCC 436, the Apex Court held that “Therefore, it is a settled legal proposition that*



WEB COPY



no person can be appointed even on temporary or ad hoc basis without inviting applications from all eligible candidates”. The Apex Court further reiterated that “a person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment, mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merits.”

*14. In the present case, the respective learned counsels appearing on behalf of the respondent – employees relied on some Judgments of the Division Bench of this Court and the Judgments, wherein the Honourable Supreme Court granted the relief of regularization. This Court has carefully gone through those Judgments. But found that the facts of those cases are distinguishable. Therefore, the benefit of similarity cannot be extended to the present case. Further, those Judgments cannot be followed as precedent in view of the dictum laid down by the Constitution Bench in Paragraph No. 54 of **Umadevi's** case. Those Judgments are to be confined only in respect of the facts of the particular case, and it cannot be routinely extended to the other cases so as to extend the benefit of regularization and permanent absorption and to*



WEB COPY



whittle down the spirit of the legal principles settled in ***Uma Devi's*** case.

15. The consequences of regularization and permanent absorption of illegal, irregular and the back door appointments, unconstitutionality involved, fundamental rights of the citizen for equal employment opportunity, rule of reservation etc. all are to be taken into consideration by the Courts, while granting the relief of regularization, since the opportunity for public employment is competitive and large number of meritorious candidates are longing to participate in the selection through open competitive process.

16. In respect of Madurai Kamaraj University, it is brought to the notice of this Court that the Government of Tamil Nadu is providing financial aid for running the University The Principal Secretary, Higher Education (K2) Department, issued a letter bearing No.23663/K2/2018-1, dated 09.01.2019, as follows:

“During two Finance Committee meetings, it has been observed that temporary appointments are being made by the Vice Chancellor of the Universities in excess of the sanctioned strength, to meet urgent requirements since it will take more time to make regular appointments. The power is vested in the Vice Chancellor under the statute of the Universities to make



WEB COPY



temporary, appointments to non-teaching cadres and extend the services from time to time can be exercised by the Vice Chancellor only after Syndicate has created such posts on regular scale of pay or on consolidated salary on the prior recommendation of the Finance Committee, Action of the Universities in having appointed temporary staff on consolidated pay/daily wages in excess of sanctioned posts is not in order. Such appointments will lead to unauthorized expenditure by way of salary and will attract audit objections. Such temporary appointments should be made for short period only and not longer period.

2. I am also to state that as per the Supreme court Judgement in the Chokkar Case and subsequent cases any appointment made without advertisement and lacking transparency is void abinito. These points can never be regularised into any of the existing posts without following due recruitment process. They may be permitted to participate in the recruitment on advertisement by the Vice Chancellor for the available vacant posts. If possible due weightage may be considered for experience in the recruitment process apart from the written test.

3. I am therefore, to request you to ensure that temporary appointments are made in the sanctioned posts only, that too,



WEB COPY



for a very short period to meet urgent recruitment of man power for the university. Steps should be taken to fill up vacant sanctioned posts with regular staff, by following prescribed recruitment procedure. Temporary appointments by Vice Chancellor by creating new posts should be avoided. Any lapse in this regard by the University staff should be viewed seriously and disciplinary action should be taken against the concerned staff in the administrative wing.”

17. Again, the Government issued G.O.(D) No.282, Higher Education (H2) Department, dated 13.10.2022, stating that the Vice Chancellor, Madurai Kamaraj University, has given an undertaking in his letter dated 28.09.2022, as under:

- “i. To reduce the remuneration of Teaching Assistants from Rs.25,000/- to Rs.20,000/- as stipulated in G.O.Ma.No.88, Higher Education (G) Department, dated 26.02.2021.*
- ii. To curtail number of Teaching Assistants engaged in various Schools / Departments of the University to a sanctioned strength in a phased manner.*
- iii. To reduce 200 numbers of CPCLRs/CLRs engaged in University in Non-teaching category on Last come First Go basis.*
- iv. To review the audit paras pending and to take necessary remedial actions including disciplinary action to solve the pending audit paras and establishment issues.*



- v. *The provisional pension shall be revised based on the revised pay certified by the Local Fund Audit Department where ever applicable. The number of persons drawing provisional pension due to non settlement of audit paras should be reduced immediately starting from the earliest ones to the recent ones.*
- vi. *To finalise the additionally grant eligibility from the year 2018-2019 in consultation with the Director of Local Fund Audit based on the clarification issued by the Government in G.O.Ms.No.110, Higher Education (K1) Department, dated 12.06.2018 to reduce the financial burden of the University.*
- vii. *To surrender the excess posts and supernumerary posts which are under audit objections (such as Senior Deputy Registrar, Senior Superintendent etc.)*
- viii. *To revise the fee structure of the University to increase its income base.*
- ix. *To focus on increasing the income from the Distance Education module.”*

18. *The Syndicate of Madurai Kamaraj University has also passed a resolution on 07.11.2019. The relevant portions of the said resolution are extracted hereunder:*

“In Item No.6:

Resolved that it be a recommendation to Syndicate that the



WEB COPY



Supreme Court Judgment in Umadevi case shall be adhered. - deleted.

Resolved that it be a recommendation to the Syndicate to call for advertisement to fill the non-teching staff vacancies from the strength sanctioned by Government (for Block Grand Purpose) without further delay be following the government rules.

The following be added:

Further resolved that the Vice-Chancellor be authorized to constitute a Committee to look into the Backlog vacancies, Roster system and marks allotment in the recruitment process.

In Item No.10:

The following be added:

The Vice-Chancellor is authorized to issue the order immediately.”

19. *As far as the University is concerned, the Syndicate is the appointing authority. One of the grounds raised by the respondent - employees is that the consolidated pay appointments are made by the Syndicate and interviews were conducted and therefore, the appointments cannot be construed as backdoor appointments.*

20. *It is mandatory that the procedures established for selection and appointment are to be followed in order to*



WEB COPY



validate the appointment under the constitutional scheme of appointments. In the present case, a drop box was kept in the University Administrative Office. Candidates dropped their applications in the drop box and those candidates alone were called for the interview and thereafter, the selected persons were appointed. However, the very procedure adopted is in violation of the established procedures to be followed for recruitment. Equal opportunity clause is offended, since there was no wide publication inviting applications from the eligible candidates aspiring to participate in the process of selection. There was no open competitive process. Keeping a drop box for receiving applications may not be known in the public domain. Only the persons, who may have acquaintance with the University employees or Staffs alone, may be in a position to drop their applications in the drop box, and those persons were selected. Therefore, the entire process of selection and appointment of the consolidated pay employees is flawed and it is unconstitutional and not in consonance with the established recruitment process to be adopted in order to ensure equal opportunity in public employment.

21. The consolidated pay employees were allowed to work for several years. But, it is brought to the notice of this Court that no recruitment process was undertaken by the University subsequently in view of various reasons and on



WEB COPY



account of the fact that the distance education courses were closed pursuant to the directions issued by the University Grants Commission. Therefore, the respondent – employees were allowed to continue as consolidated pay employees and they served accepting the terms of consolidated appointment.

22. At this juncture, a question arises whether this Court can take a lenient or sympathetic view for the purpose of granting the benefit of regularization or permanent absorption to the consolidated pay employees.

23. As discussed above, the initial appointments of the respondent – employees were through back door methods, since the process of recruitment as per the established procedures, were not followed. The initial appointments were not in accordance with the established principles or service Rules. Any misplaced sympathy in the matter of regularization and permanent absorption will not only offend the equal opportunity clause, but, also infringe the fundamental rights of the meritorious candidates. Thus, any lenient view would result in serious consequences and repercussions in the matter of equal opportunity in public employment. The Courts are expected not to exercise its discretion to legalise the back door or illegal appointments. The Courts are expected to ensure the constitutional scheme of appointments. Courts taking



WEB COPY



decisions on misplaced sympathy or by lenient view, wherein large number of candidates were appointed through backdoor methods, then the consequences will be disastrous and further, the Constitutional Courts would be failing in its duty to uphold the mandates of the Constitution.

24. The Government of Tamil Nadu, in the present case, from the year 2019 onwards, has been issuing directions to the University to exercise restraint in allowing these consolidated pay employees for indefinite period. The Government is providing financial aid. Recruitments are to be made to the sanctioned posts by following the established principles contemplated for recruitment to services. The Government further reiterated that the Vice Chancellor has given an undertaking that he will not engage any such consolidated pay employees. The financial constraints involved, number of sanctioned posts which may be available and the equal opportunity clause to be adopted are all to be holistically considered, while granting the relief in such nature of cases where large number of employees were not appointed in accordance with law. Since the appointments are through back door methods, the Courts are not expected to consider the relief of regularization. However, the Government may formulate a policy for the purpose of conducting a special recruitment drive, if required by conducting competitive



WEB COPY



examinations for the benefit of these employees, if they are otherwise qualified and eligible for regular employment and if the sanctioned posts are available. In such circumstances, the Government may consider the long services rendered by these employees by granting due weightage. The respondent - employees may also participate in the recruitment process, if any notified. In view of these facts and circumstances of the case, this Court is of the considered view that the impugned writ orders cannot be sustained and they are liable to be set aside.

25. Accordingly, all the writ appeals are allowed and the impugned writ orders are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

4. In view of the above judgment, this Writ Appeal is also allowed on the same lines. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (G.A.M., J.)
25.08.2025

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



WEB COPY To

The Principal Secretary to Government,
Higher Education Department,
Secretariat,
Chennai.



WEB COPY



S.M.SUBRAMANIAM, J.
AND
G.ARUL MURUGAN, J.
cp

W.A(MD)No.2008 of 2025

25.08.2025