

W.A.Nos.1147 to 1154 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On : 06.09.2024
Pronounced On : 29.10.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

W.A.Nos.1147 to 1154 of 2017
and
C.M.P.Nos. 16060 to 16067 of 2017 and 21452 and 21456 of 2019

W.A.No.1147 of 2017:

G.Kulanchiyappan

.. Appellant

Vs

1 The Vice Chancellor
Indian Maritime University , ECR Road,
Uthandi Chennai - 600 119.

2 Indian Maritime University
Rep.by its Registrar,
ECR Road Uthandi,
Chennai - 600 119.

.. Respondents

Prayer : Appeal filed under Clause 15 of Letters Patent against order dated 09.08.2017 in WP.No.19597 of 2017 on the file of this Court.



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In all W.As.

For Appellants : Mr.Vishnu Mohan

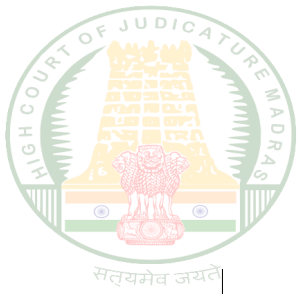
For Respondents : Mr.R.Sankara Narayanan
Senior Counsel
For Mr.K.Srinivasamurthy

COMMON JUDGMENT

(Delivered by Dr.ANITA SUMANTH..J)

This is a batch of 8 Writ Appeals. The appellants/Writ Petitioners are post graduates. Their educational qualifications are tabulated below:

S.No.	W.P.No./W.A.No	Name of the Petitioner	Educational qualification
1	19597 of 2017 1147 of 2017	G.Kulanchiyappan	Post Graduate in Commerce and Master of Library and Information Science
2	19598 of 2017 1148 of 2017	R.Padma	Post Graduate in MBA (Human Resource Management), M.A. (Public Administration), B.Sc., (Botany)
3	19599 of 2017 1149 of 2017	P.Navaneethakrishnan	Post Graduate in M.Tech (VLSI) MBA (International Business), B.E.(ECE)
4	19600 of 2017	Srinivasa Rao	Post Graduate in



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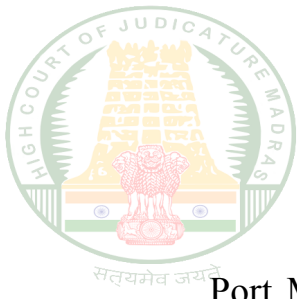


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	1150 of 2017	Manukonda	Computer Application, B.Sc. (Mathematics)
5	19601 of 2017 1151 of 2017	M.Premavathi	Post Graduate in MBA (HRM), B.Com
6	19602 of 2017 1152 of 2017	V.Senthil Kumar	B.Sc.(Physics), M.A.(Public Administration), MBA (HR)
7	19603 of 2017 1153 of 2017	P.Rajalakshmi	M.Tech.(VLSI), B.E.(ECE)
8	19604 of 2017 1154 of 2017	R.Rachel Mary	Post Graduate MBA (Master of Administration), B.Com

2. The Indian Maritime University (IMU) was constituted under the Indian Maritime University Act, 2008 (in short 'Act') on 14.11.2008. The Act integrated several Universities that existed at a national level for promotion of maritime studies and research and other connected matters.

3. Section 49 of the Act provides for transfer of assets of the Training Ship Chanakay, Mumbai, the Marine Engineering and Research Institute, Mumbai, the Marine Engineering and Research Institute, Kolkata, Lal Bahadur Shastri College of Advance Maritime Studies, Mumbai, the National Maritime Academy, Chennai, Indian Institute of



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Port Management, Kolkata and the National Ship Design and Research Centre, Visakhapatnam into the IMU.

4. The employees of the aforesaid Universities stood transferred to the IMU and were extended options as below:

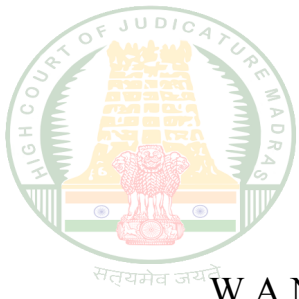
(i) the employees of the four training institutes under Indian Institute of Maritime Studies who shall stand transferred to Indian Maritime University shall have the option to continue on deemed deputation in Indian Maritime University on the terms and conditions in force of the Central Government and also continue to retain or to be allotted government residential accommodation on turn and avail of the Central Government Health Scheme facilities till their retirement;

(ii) the employees of the National Maritime Academy, Chennai, Indian Institute of Port Management, Kolkata and the National Ship Design and Research Centre, Visakhapatnam shall have the option to continue on the terms and conditions of their respective institutes till their retirement; and

(iii) all employees shall have the option to join University as per the service conditions of the University.

5. The case of G.Kulanchiyappan, appellant in W.A.No.1147 of 2017 stands on a different position qua the other 7 appellants as Mr.Kulanchiyappan was an employee in the National Maritime Academy (NMA), Chennai and exercised the option to continue with the IMU post its constitution. The services of Kulanchiyappan as a clerk in the NMA had been extended to the IMU as well.

6. There is no defence put forth to his Writ Appeal, being



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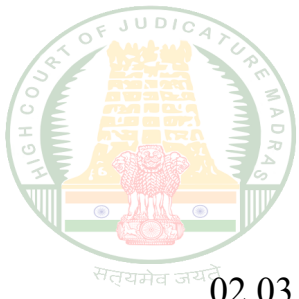
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W.A.No.1147 of 2017 and the respondents would accede to the prayer in Writ Petition, being W.P.No.19597 of 2017, for a mandamus seeking regularization of his services.

7. In light of their accession to the prayer, W.A.No.1147 of 2017 is allowed and mandamus as sought for in W.P.No.19597 of 2017 is issued to the respondents to regularize his services as against the existing vacancy within a period of four (4) weeks from date of receipt of a copy of this order.

8. IMU was up in 2008 and with that, came the necessity to populate the University with necessary staff. An advertisement was inserted in the Hindu on 12.08.2012 announcing a walk-in interview for all posts from Academic Assistant to Vice-Chancellor on contract basis. The eligibility criteria were that the aspirant be young and energetic, possess a post graduation, have good command over English, interest in maritime/transportation/logistics research, experience in preparation of reports and be conversant with computer operations.

9. The appellants applied and were called for an interview before a Committee comprising 3 individuals. They were found suitable for the post and initial proceedings were issued on various dates between



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02.03.2009 and 10.06.2011, engaging their services on consolidated pay, on temporary basis, that came to be extended from time to time. Their appointments were in the post of R.Padma (W.A.No.1148 of 2017) – Junior Assistant, P.Naveethakrishnan (W.A.No.1149 of 2017) – Research Assistant, Srinivasa Rao Manukonda (W.A.No.1150 of 2017) – Academic Assistant to Vice Chancellor, M.Premavathi (W.A.No.1151 of 2017) – Office Assistant, V.Senthil Kumar (W.A.No.1152 of 2017) – Assistant Administrative Officer, P.Rajalakshmi (W.A.No.1153 of 2017) – Digital Library Assistant and R.Rachel Mary (W.A.No.1154 of 2017) – Clerk.

10. It is relevant to note that there had been no rules providing for the number of vacancies or for the manner or mode of filling the same. Ultimately, recruitment rules came to be issued as Ordinance 39 of 2015 vide Executive Council Resolution No.EC 2015-32-16 on 21.08.2015.

11. There had been yet another series of appointments for the post of Workshop Personnel. To be noted, that the post of Assistant, which was held by all the appellants and the post of Workshop Personnel, both belong to Group 'C' category.

12. Even prior to the formation of IMU, a Notification had been



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issued by the NMA in the Hindu on 12.11.2008 for appointment of suitable candidates to various posts including personnel to man the workshop. The Notification stipulated minimum experience of 3 years in the respective field and pay scales had also been stipulated.

13. In conclusion, it states that the NMA would shortly be merging with IMU, which was in the process of being established. Thus, those persons who had been selected to fill the posts advertised would, on merger, come under the IMU and would be offered matching pay scales of the Central University.

14. On the basis of the above Notification, various recruitments had taken place including of 7 persons who had been selected to man the workshop. Their appointments were subject matter of the 36th Meeting of the Executive Council (EC) held on 28.09.2016. The agenda for the said meeting reads as follows:

'To Consider the regularization of the service of 7 workshop personnel in the 'Group C' category recruited on temporary basis in 2009, on IMU's pay scale and service conditions; to include them under the coverage of IMU's Group Medical Insurance Scheme; and to deposit their NPS contribution along with equal contribution of IMU with the National Securities Depository Limited'

15. The EC had noted that the recruitment of 7 Workshop



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Personnel pursuant to advertisement dated 12.11.2008 was never placed before the EC of the IMU even though all permanent appointments could be made only with the prior approval of the EC and only contract appointments could be made by the Vice Chancellor with post-facto approval of the EC.

16. The 7 employees appointed initially on temporary basis were working from February 2009 in IMU. To be noted at this juncture, that their appointments had been under a Notification issued prior to the constitution of IMU which was on 14.11.2008.

17. The resolution records that they had been in service in IMU from February, 2009 onwards for more than 7 years, in 5 cases probation had been '*irregularly declared*' and their services '*confirmed*' by Dr.P.Vijayan. They had been given NMA pay scale initially, which was converted to IMU pay scale later. This was also noted to be an irregularity.

18. Yet another irregularity was that they had been given Group Medical Insurance benefit at par with NMA employees, which was stopped with effect from May, 2015. Deductions for National Pension Scheme was made but was not credited.



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19. The EC specifically notes that *'the case was typical of the style of functioning of Dr.P.Vijayan (currently under suspension), who flouted the rules and violated the procedure at every step during his tenure as Vice Chancellor, IMU (20.11.2008 – 19.11.2011) and later as Director, IMU, Chennai Campus (from 20.11.2011 onwards till his suspension on 31.10.2014)'*.

20. The resolution does not stop there, as the EC thereafter takes into account *'the human factor, the prolonged service of the 7 employees in the university, the fact that they are aged between 40 and 50 years and cannot hope to get any employment outside at this stage of their lives, the fact that the various mistakes were committed by Dr.P.Vijayan with no collusion on the part of the employees and the likelihood of unproductive and messy litigation in the event of termination of their services.....'*

21. Having regard to the aforesaid facts, the EC resolved to regularize those 7 persons from the date of their joining, treating them as permanent employees under Section 49(iii) of the Act and also to give them coverage under the Group Medical Insurance Scheme as well as Pension Schemes.



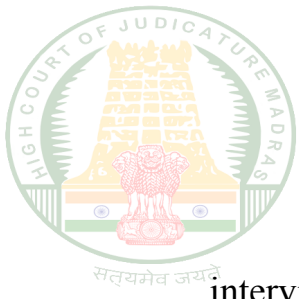
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22. It is the submission of Mr.Vishnu Mohan, learned counsel for the appellants that the case of the present appellants must be considered on par with the above referred 7 employees, as both categories of employees fall under Group 'C' category. He would further argue that all factors that have been taken into account by the EC in regularizing the employees of the Workshop Personnel would apply on all fours to the case of the appellants as well. Hence, there is no justification whatsoever in denying the benefit that identically placed employees have been granted by the respondents themselves.

23. He would also submit that the order of the Writ Court dismissing the Writ Petitions has not taken into account various relevant facts, and has proceeded on irrelevant and incorrect considerations. Relying on the judgments of the Supreme Court on various cases dealing with illegal appointments is unwarranted for the reason that the appointments in the present case are not illegal at all.

24. He would emphasize on the position that the recruitment rules had been framed only in 2015 and hence it cannot be said that the recruitments of the appellants were illegal. The recruitments had been made taking into account their eligibility and after conducting an



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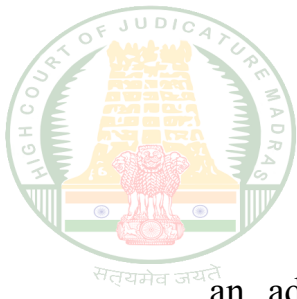
interview, and there was no dispute on the position that their services, till 01.08.2020, have been found to be unimpeachable and satisfactory.

25. Mr.R.Sankara Narayanan, learned Senior Counsel appearing for Mr.K.Srinivasamurthy, learned counsel for the IMU would, at the outset, distinguish the case of the appellants from those of the 7 Workshop Personnel relied on by the appellants. He would submit that mere longevity in service does not lead to the conclusion that their services must be regularized. That apart, he submits that the appointments of the appellants have been on temporary basis with consolidated pay. Hence, they cannot, as a matter of right seek regularization.

26. It is true that the recruitment rules have been framed only in 2015. However, in the call for recruitment in 2017, some of the appellants had participated and failed miserably. Hence, accepting the case of the appellants would result in the IMU being forced to take on board employees, who were below the required standards.

27. We have heard submissions of both sides and have also studied the material papers and case law carefully.

28. The appointments of the appellants have been made pursuant to



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an advertisement dated 12.08.2012 in the Hindu. The criterion for eligibility has been set out by us in paragraph 8 supra. There is no dispute on the position that all appellants were found eligible in terms of their academic skills and were recruited pursuant to interviews conducted. There were no rules for recruitment till 2015. Hence, and in light of the aforesaid admitted position, it cannot be said that the initial appointments of the appellants were illegal or even irregular.

29. In fact, the services of the appellants was necessitated on account of the fact that the IMU had been constituted in November, 2008 and evidently the University could not have functioned without staff, for want of recruitment rules.

30. There is thus no gainsaying that if recruitments were to be made only post framing of the recruitment rules, then the University could not have been staffed till 2015. We are hence of the categorical view that the appointments of the appellants was both regular and necessitated for obvious reasons. Their contracts were being extended till orders of relieving were passed on 01.08.2020.

31. There is nothing on record, and it has also never been the case of the respondents, that the services of the Appellant was unsatisfactory



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in any way. The very fact that their services were accepted periodically on various dates, from 2009 to 2011 and then onwards till 01.08.2020, would itself show that their services was satisfactory.

32. It is true that some of the writ appellants who had participated in the recruitment in 2017 had failed. However, their services were continued even thereafter, till expiry of their contract on 01.08.2020. The argument that they were unsuccessful in the interview has thus to be weighed against the continuation of their services even thereafter. It is quite evident that success or otherwise in the interview is one thing but rendition of duty is quite another.

33. On a careful consideration of this aspect, we believe that the relevant criterion to be taken note of in these matters is their unblemished service, in all cases, for more than a decade, till 01.08.2020. Incidentally, one of the defences raised by the respondents is that the order of termination of services dated 01.08.2020 has not been challenged. We do not believe this to be fatal to the case of the appellants, since the Writ Petitions were filed at the first instance in 2017, seeking a mandamus for regularization of services in the teeth of the recruitment Notifications that were issued by the respondents then.



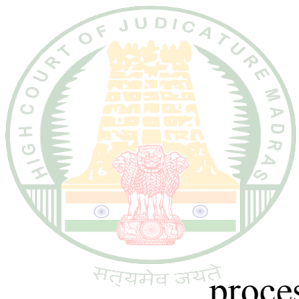
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34. Thus, the Writ Petitioners are seen to have been diligent and prompt in approaching this Court for remedy. With the filing of the Writ Petitions in 2017 agitating the plea of regularisation, subsequent events, including the orders of termination dated 01.08.2020, would stand encompassed. Though it would have been appropriate had the prayer been amended to a certiorari challenging the termination order, insistence on such a course of action at this juncture would, in our view, be hyper-technical.

35. In *State of Karnataka V. Umadevi*¹, the Supreme Court came down heavily on illegal appointments holding them to be contrary to public policy. A distinction was however made between illegal and irregular appointments.

36. The Writ Court in the present matter has dismissed all Writ Petitions on the ground that the appointments of the petitioners/appellants cannot be regularized. The Court has rightly held that a contract appointee cannot, as a matter of right, seek regularization, going to state that the appellant cannot claim regularization to the deprivation of other citizens of the country as they have not participated in open recruitment

¹ 2006 (4) SCC 1



process. On the latter aspect, we differ.

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37. While we agree that regularization cannot be sought as a matter of right, there are extenuating circumstances that can be taken note of by the employer or by the Court in deciding whether services that have been rendered are liable to be regularized.

38. Upon consideration of various factors, the facts that commend themselves to us in this case are that:

- (i) The appointment of the Writ Petitioners has been found by us to be regular and following a process for selection.
- (ii) There was a call for recruitment by way of advertisement in public domain setting out eligible criteria including academic requirements, being a post-graduation.
- (iii) There were no recruitment rules governing recruitments till 2015 and hence it was open to the respondents to evolve a proper methodology for recruitment which we believe has been done in the recruitment of the appellants.
- (iv) There is no whisper of any irregularity in the procedure followed by the respondents in appointing the appellants, and, to be fair to the respondents, they do not question, at any stage, the methodology



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followed for appointment or selection of the appellants.

(v) The services of the appellants from various dates between 2009 and 2011 and 2011 till 01.08.2020, being periods upto 11 years, has admittedly been satisfactory.

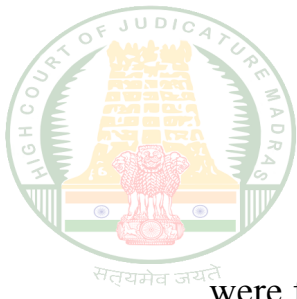
(vi) In fact, their services were found to be indispensable as even after the failure of the appellants in the recruitment test in 2017, the respondent University continued to exploit their services till expiry of their contract on 01.08.2020.

39. These aspects of the matter have not been adverted to by the Writ Court, which, after narration of the facts, has relied on the judgments in *Mineral Exploration Corporation Employees Union V. Mineral Exploration Corporation Ltd.*² and *Umadevi*³ in denying the relief.

40. Most importantly, at paragraph 12, the writ Court states '*Therefore, it is admitted that the recruitment rules in force was not followed while appointing these writ petitioners. There was no open competition process method was adopted while appointing these writ petitioners*'. The writ court has failed to note that the recruitment rules

² 2006 (6) SCC 310

³ Foot Note Supra (1)



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were framed only in 2015 and there was an open, transparent competition as an advertisement was released on 12.08.2012 calling for walk-in interview stipulating eligibility criteria. After careful consideration, we are thus of the view that the order of the writ Court is liable to be set aside for the aforesaid reasons.

Analysis of Case Law:

41. The judgment in the case of *Umadevi*⁴ has been the subject matter of discussion in several cases. In *Vinod Kumar and others V. Union of India and others*⁵, the Supreme Court considered appeals filed against the decision of the Allahabad High Court. The Writ Petition had been filed by those appellants challenging the decision of the Central Administrative Tribunal rejecting their plea for regularization and absorption into the posts of Accounts Clerk.

42. In that case as well, the appellants were engaged on temporary/scheme based contracts. Those employees were working continuously for a period exceeding 25 years, their appointments had been made pursuant to a Notification and there was a selection process followed involving written test and interview. Their request for

⁴ Foot Note Supra (1)

⁵ SLP (c) Nos.22241-42 of 2016



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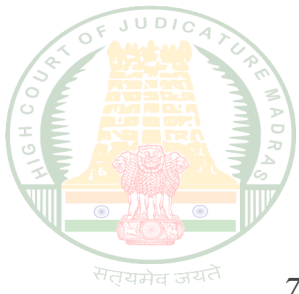
regularization had been rejected on the ground that appointment under a temporary scheme would not confer rights akin to those held by permanent employees.

43. Relying on the judgment in *Umadevi*⁶, the Supreme Court opined that the substantive nature of the duties rendered by those employees aligned with regular employment rather than the temporary or scheme based rules under which they had been originally appointed. The Court also took note of the selection process that they had undergone, the duration of, and promotions while in service, ultimately holding that the essence of their employment and consequent rights cannot be determined by the initial terms of their appointment which has evolved over time.

44. In that case, promotion process had been conducted without reference to the temporary nature of their roles. The Court concluded that the judgment in *Umadevi*⁷ did not apply to those facts, that consideration must be had to the circumstances in which those employees had been employed and their services continued. At paragraph 7, they state as follows:

⁶ Foot Note Supra (1)

⁷ Foot Note Supra (1)



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7. The judgement in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071], *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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 regularisation 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 regularise 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 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 regularisation, 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 regularising or making permanent, those not duly appointed as per the constitutional scheme.”

45. We find the facts in the above matter akin to the facts on hand.



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In the present case, the nature of duties rendered by the Assistants, while being contractual, is what has sustained the functioning of the University till 01.08.2020, ie., for a period of 12 years, since the inception of the University, apart from the fact that their services were itself, without blemish.

46. This would stand testimony to the substantive nature of their duties and efface any distinction between the services rendered by them and those rendered by direct recruitees. Thus, to brush away their services merely on the ground that their appointments had been made on temporary, contractual and on consolidated basis is, in our view, unacceptable.

47. The legitimacy of their appointments is also established by reason of the fact that proper process was followed and in any event, there were no recruitment rules in place till 2015. In *Sheo Narain Nagar and others V. State of Uttar Pradesh and another*⁸, the Supreme Court considered the plea for regularization by daily wagers.

48. The employees had been appointed on daily wage basis in August 1993, converted to contractual basis in 1996 and thereafter to the status of temporary employees, with effect from 01.10.2002. Their

8 (2018) 13 SCC 432



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services were terminated in 2014 and their plea for regularization was rejected on the ground that their appointments were illegal and not merely irregular.

49. Their interests were protected by virtue of an interim order passed by the Supreme Court on 23.03.2015 noticing that, prima facie, their appointments did not appear to be backdoor entries. They were permitted to continue to render services. When the matter was finally disposed in 2017, they had rendered services for about 24 years.

50. Reiterating the facts surrounding their employment, the Court notes specifically that theirs was no case of backdoor entry, since there were no rules in place offering regularisation of posts. (See facts in the order of the High Court in *Sheo Narain Nagar and others V. State of Uttar Pradesh*⁹⁾)

51. All the more in the present case, there were not even recruitment rules in terms of which regular appointments could have been made. Thus, appointments, in the absence of recruitment rules cannot be stated to be illegal, if the employer is seen to have followed an appropriate, transparent method of recruitment to the posts, as has been done in the present case.

9 2014 SCC Online Allahabad 16492



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52. Coming to the appointments of the 7 Workshop Personnel on which reliance has been placed by the appellants, we find some distinguishing features between the appointments of 7 Workshop Personnel whose regularization has been the subject matter of minutes of the EC dated 28.09.2016 (see paragraphs 14 to 21 supra) and the present appointments.

53. The recruitments of the 7 Workshop Personnel has its genesis in a call for recruitment issued by the NMA on 12.11.2008 even prior to the establishment/constitution of the IMU on 14.11.2008. That call was two days prior to the establishment of the IMU. In that advertisement, experience and pay scale have been stipulated based on the recruitment rules in force at that point in time and as relatable to the NMU. The position qua the appellants is different as the call for recruitment was itself made only on 12.8.2012 by the IMU, admittedly, without the benefit of recruitment rules.

54. The EC considered on 28.09.2016, the regularization of 7 Workshop Personnel. The respondents have fairly placed on record the agenda for the subject. Interalia, they state that out of the 7 persons whose recruitments were pending regularization, only in the case of 5 had



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there been a declaration of probation and confirmation by the erstwhile Director. The reasons for not including the names of the two persons, viz., V.K.Danushkodi and R.Umamaheswari for declaration of probation and confirmation, they state '*are not available on record*'.

55. Thus the respondents admit to some irregularity as far as those appointments are concerned but have proceeded to regularize the same. The case of the appellants before us is on a higher, and better pedestal.

56. For the aforesaid reasons, we set aside the order of the Writ Court dated 09.08.2017 and issue mandamus to the respondents to regularize the services of the appellants. Necessary orders be passed within a period of four (4) weeks from date of receipt of a copy of this order.

57. Before parting, we are given to understand that at present, process of recruitment has been commenced for appointment of persons to various posts including the posts in which the appellants had been engaged. Since, we have in this order directed the services of the appellants to be regularised, they would have to be accommodated in the respective posts held by them earlier.

58. However, this cannot be seen to have any consequence in the



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present recruitment process where the applicants would be unaware of the events in relation to the present Writ Appeals. It is quite another matter, if, even after the recruitment process there are sufficient vacancies where the appellants can be accommodated. However, if that were not to be so, supernumerary posts will be created to accommodate these appellants in order that the aspirants in the on-going recruitment process are not compromised by reason of the present order.

59. These Writ Appeals are allowed. No costs. Connected Miscellaneous Petitions are closed.

[A.S.M., J] [G.A.M., J]
29.10.2024

Index: Yes
Speaking
Neutral Citation: Yes
sl

To

- 1 The Vice Chancellor
Indian Maritime University , ECR Road,
Uthandi Chennai - 600 119.
- 2 Indian Maritime University
Rep.by its Registrar,
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