



W.P.No.13726 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.07.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13726 of 2015

C.Wilbert

...Petitioner

Vs.

1.The Management of Indian Institute of Technology,
Represented by its Director,
Chennai – 600 036.

2.The Deputy Registrar (Admin)
Indian Institute of Technology,
Chennai – 600 036.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, Calling for all the entire records pertaining to the passing of the impugned order dated 16.03.2015 in No.F.Admn.II/2015/363 passed by the 2nd Respondent herein and quash the same consequentially direct the Respondents herein to appoint the Petitioner as permanent staff in any of the department in Indian Institute Technology, Madras, I.I.T Campus, Chennai 600 036.



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For Petitioner : M/s.C.Umashankar
For Respondents : Mr.Karthik Rajan
[For R1 and R2] For M/s.Menon, Karthik, Mukundan and
Neelakandan

ORDER

The order of rejection, rejecting the claim of the writ petitioner for permanent absorption in Indian Institute of Technology (I.I.T), Madras is under challenge in the present writ petition.

2. The petitioner states that he joined as Nominal Muster Roll (NMR) skilled attendant in Indian Institute of Technology, I.I.T Campus, Chennai in the year 1998. He worked continuously for more than 240 days in a single project in the Indian Institute of Technology and his basic job will be helping and aiding the Professor of various Department in I.I.T., when they indulge in any project. The petitioner studied up to Higher Secondary course and now he has completed Post Graduate in Master of Arts in Economics and also completed Bachelor of Library Science. Suddenly, the petitioner was directed not to attend for duty and he was relieved from the temporary employee. He requested the Management of I.I.T., Madras to regularize the services, since he had served more than 240 days and the



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Management has not considered his case. Thus, the petitioner raised an Industrial Dispute in I.D.No.93 of 1997 before the Principal Judge, Labour Court, Chennai. The Industrial Dispute was allowed and an award was passed on 28.04.2004 and the relief of reinstatement with backwages and all attendant benefits were granted. The I.I.T Management filed W.P.No.29626 of 2004 and the said writ petition was allowed on 01.12.2006 and the petitioner preferred Writ Appeal in W.A.No.169 of 2007 and the Hon'ble Division Bench of this Court passed an order on 15.07.2008, allowing the writ appeal and directed the Management of I.I.T to absorb the petitioner into the services. The respondents preferred S.L.P.(Civil).No.26226 of 2008 and the Hon'ble Supreme Court of India passed an order on 02.12.2010 as follows:

“Mr.K.V.Viswanathan, senior counsel appearing for the petitioners, on instructions, states that the respondent-workman will be given employment on some ongoing project. He further assured the Court that the employment on a project, instead of absorption in the Institute, shall not be used by the petitioner Management as a subterfuge to get rid of the respondent-workman within the next few months and, as far as possible, the Management would endeavour to continue to employ the respondent-workman on different projects from



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time to time.

This arrangement is acceptable to the respondent-workman, as conveyed by him to his counsel Mr.S.Gowthaman.

We dispose of the special leave petition with the direction that instead of absorption, the respondent-workman shall be employed on any of the ongoing project and after its completion the Management will try and accommodate him in any other projects that may be at hand at that time.”

3. The petitioner states that he is continuously working in various projects in I.I.T., Madras, but he is being engaged only as a temporary employee and he has already completed 25 years of temporary services in I.I.T. Therefore, his services are to be regularized.

4. The learned counsel for the petitioner mainly contended that the petitioner is continuing in service as temporary employee (NMR) even now. The petitioner is having rich experience in project works in I.I.T Madras. When he is fully qualified, he must be accommodated in any one of the suitable post. Now, the petitioner is aged about 54 years and at this age, he cannot seek any other employment as he has already served more than 25



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years in I.I.T. Thus, he has to be permanently absorbed with all service benefits.

5. The learned counsel for the respondents strenuously objected the contentions raised on behalf of the writ petitioner by stating that the petitioner, at no circumstances, was appointed as a permanent employee. He was engaged as daily wage employee (NMR) to execute the projects. Whenever the projects are completed, the petitioner will be discharged from the service. Therefore, the petitioner was not employed continuously nor he was recruited through the process of selection.

6. The learned counsel for the respondent drew the attention of this Court that the petitioner was engaged for execution of projects and on completion of project, he will be discharged. That apart, the petitioner has already raised an Industrial Dispute and the matter went up to the Hon'ble Supreme Court of India. Pursuant to the observations made by the Hon'ble Supreme Court of India, the petitioner was further engaged only in projects. When the issues relating to permanent absorption was decided by the Hon'ble Supreme Court of India with reference to the engagement of the



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writ petitioner, further round of litigation on the same issue is not entertainable and therefore, the present writ petition is to be rejected.

7. This Court is of the considered opinion that the writ petitioner, based on his services in various projects in I.I.T., Chennai, raised an Industrial Dispute before the Labour Court and the Labour Court, allowed the Industrial Dispute and passed an award in favour of the workman. The Management preferred a writ petition, which was allowed and thereafter, the writ petitioner preferred the writ appeal, which was allowed in favour of the writ petitioner. The Management preferred the S.L.P before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India, in clear terms, held that “*We dispose of the Special Leave Petition with the direction that instead of absorption, the respondent-workman shall be employed on any of the ongoing project and after its completion, the Management will try and accommodate him in any other projects that may be at hand at that time.*”

8. Therefore, the claim of the writ petitioner for permanent absorption was rejected by the Hon'ble Supreme Court of India. The Apex Court



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directed the respondents to continue the services in the project and if there is any future project, the Management will try and accommodate the writ petitioner. Therefore, it is not a mandatory direction to engage the writ petitioner in other projects. It is for the Management to take a decision in this regard on need basis. If at all the services of the writ petitioner is required in a particular project, they are at liberty to engage the petitioner for execution of projects. However, the Hon'ble Supreme Court of India has declined the relief of permanent absorption. When the relief of permanent absorption or regularization is denied to the writ petitioner by the Hon'ble Supreme Court of India, further writ petition on the same issue is not entertainable and more so, the petitioner is being engaged by the respondents in other projects as temporary employees. When the respondents are honouring the judgment of the Hon'ble Supreme Court of India, in its letter and spirit and by providing an opportunity to the writ petitioner to work in projects, the writ petitioner cannot further litigate the issues for grant of permanent absorption, which is to be made in accordance with the recruitment rules in force.



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9. Regularisation or permanent absorption cannot be granted in

violation of the recruitment rules in force. Equal opportunity in public employment is the Constitutional mandate. Lakhs and Lakhs youth of our great Nation are longing to secure public employment through open competitive process and they are working hard for the purpose of succeeding in the competitive process. While so, back door appointments or illegal or irregular appointments, if regularised, undoubtedly, the fundamental rights of those candidates, who all are aspiring to secure public employment through open competitive process are infringed. The equality clause enunciated under the Constitution must be implemented in its real spirit. Thus, the back door appointments are to be stopped forthwith in order to ensure that equal opportunity in public employment is provided to all the eligible candidates through open competitive process by implementing the rule of reservation.

10. The principles of justice requires that the Constitutional principles and mandates are preserved in the interest of the society at large. Misplaced sympathy or leniency, if leads to unconstitutionality, then the Courts would be slow in showing such sympathy or leniency. Therefore, the leniency may

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be permissible only in certain exceptional cases, in the event of no unconstitutionality or non violation of any Statutes and Rules. Thus, there cannot be any misplaced sympathy in the matter of upholding the Constitutional Philosophy and Ethos.

11. If at all, the benefit of regularisation and permanent absorption are granted to irregular and illegal appointments in a routine manner, no doubt, the fundamental rights of all the eligible persons, who all are waiting for securing public employment are violated. Courts are bound to consider the plea of those poor people from rural and semi-urban areas of our great Nation, who all are preparing meritoriously to face the competitive process with a fond of hope that their merits will be recognised by the State in one way or other for the purpose of securing public employment. What would be the answer for those poor people from villages and semi-urban areas, who all are mostly non exposed to these illegalities and irregularities and corrupt activities in Government employment. Thus, the Constitutional Courts are bound to protect the interest of those meritorious candidates, who all are not before the Courts.



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12. The principles for grant of regularisation and permanent absorption are no more *res integra* and the Constitutional Bench of Hon'ble Supreme Court of India settled the issues in the case of ***Secretary, State of Karnataka Vs. Uma Devi*** and others reported in ***(2006) 4 SCC 1***. Any decisions, which are running counter to the principles laid down by the Hon'ble Constitution Bench of India cannot be followed at this length of time and in the event of any such consideration, the Courts are violating the principles settled by the Constitution Bench and by the Hon'ble Apex Court in subsequent judgments.

13. Once the Constitution Bench has settled the principles regarding the regularization and permanent absorption, any Government Order running counter to the principles, cannot be implemented and based on such Government Orders, benefits cannot be conferred by the Courts. The said position also has been unambiguously stipulated by the Constitution Bench of Hon'ble Supreme Court of India in Paragraph 54 of the Judgment cited supra. In Paragraph 53 of the Judgment, the Hon'ble Supreme Court of India has given one time measure for the purpose of regularizing the services for the purpose of clearing the proposals, which all are pending before the

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Government for regularization. Such one time measure or benefit granted cannot be continued for a indefinite period. In Paragraph 54 of the said judgment, the Hon'ble Supreme Court in unambiguous terms held that *'It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.'* Therefore all the judgments and Government Orders running counter to the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India stands denuded of their status as precedents and the said Government Orders or the judgments by the High Courts or even by two Judges' Bench of the Hon'ble Supreme Court of India cannot be followed. Those judgments are to be read in the context of the particular facts and circumstances of the case.

14. However, the principles settled by the Constitution Bench is to be followed as precedent. In the matter of following the precedents, again another Constitution Bench of the Hon'ble Supreme Court of India in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in *2017 (6) SCC 680* held that the hierarchy in this aspect is to be

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maintained by all Courts scrupulously.

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15. Thus, any judgment running counter to the principles settled by the Constitution Bench of the Hon'ble Supreme Court cannot be followed as a precedent for the purpose of considering the relief. All such judgments are to be confined only with reference to the facts of that particular case and cannot be followed as precedent. The Government has passed several such orders, granting the benefit of regularization or permanent absorption on various circumstances for many years by granting relaxation of Rules. Such relaxation of Rules cannot be now granted in a routine manner, even by the Government. The appointments made in an irregular or illegal manner cannot be regularized by granting regularization or otherwise.

16. Regarding the part time employment, again the Hon'ble Supreme Court following the Constitution Bench judgment, reiterated in the case of ***Secretary to Government School Education Department, Chennai Vs. R.Govindaswamy and others*** reported in ***2014 (4) SCC 769***. The Hon'ble Supreme Court again relied on the earlier cases decided by the Hon'ble Supreme Court of India in the case of ***Union of India Vs. A.S.Pillai and***

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others reported in **(2010) 13 SCC 448** and in the case of **State of Rajasthan and others Vs. Daya Lal and others** reported in **(2011) 2 SCC 429**. The

Hon'ble Supreme Court of India held that '*the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization of services of an employee which would be violative of the constitutional scheme. While something that is irregular for 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.*'



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17. In view of the facts and circumstances, the petitioner has not established any acceptable ground for the purpose of considering the relief.

Accordingly, the writ petition stands dismissed. No costs.

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Index : Yes
Speaking order: Yes
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To
1. The Director,
Management of Indian Institute of Technology,
Chennai – 600 036.

2. The Deputy Registrar (Admin)
Indian Institute of Technology,
Chennai – 600 036.



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S.M.SUBRAMANIAM, J.

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