
(2014) 04 MAD CK 0086

In the Madras High Court

Case No : Writ Appeal (MD) No. 127 of 2011 and M.P. (MD) No. 1 of 2014

M. Umadevi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) WritLR 901

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Judgement

V. Ramasubramanian, J.—This appeal arises out of an order of the learned Judge dismissing the writ petition filed by the appellant, praying for regularisation of her services as a Lecturer in the Department of Tamil in the 5th respondent College. We have heard Mr. Isaac Mohanlal, learned counsel for the appellant, Mr. M. Alagadevan, learned Special Government Pleader for respondents 1 to 3, Mr. K.N. Thampi, learned counsel appearing for the 6th respondent.

2. The facts, leading to the filing of the above appeal, are as follows:

(a) Two posts of Lecturer in the Department of Tamil, fell vacant respectively in the years 2000 and 2002, in the 5th respondent College. The 5th respondent is a college, established and administered by the Hindu Religious and Charitable Endowments Department.

(b) In the post that fell vacant in the year 2000, a lady by name Lalitha Maheswari was appointed. Similarly, in the post that fell vacant on 28.02.2002, upon the retirement of the existing incumbent, the appellant was appointed on consolidated pay basis.

(c) At that time, there were lot of vacancies in the posts of Lecturers that remained unfilled in various Government colleges and various colleges run by the Hindu religious and Charitable Endowments department. Therefore the Government issued G.O.Ms. No. 220, Higher Education Department, dated

12.06.2003, permitting the filling up of (i) 20 posts of Lecturers in Arulmighu Palani Andavar Arts and Science Men's College (ii) six posts of Lecturers in Arulmighu Palaniandavar Women's College (iii) 11 posts of Lecturers in Shree Parasakthi Women's College, Tirunelveli (iv) five posts of Lecturers in Shree Devi Kumari Women's College, Kuzhithurai, Kanyakumari District and (v) five posts of Lecturers in Shree Poompukar College, Melaiyur, Nagappattinam. The Government also ordered in paragraph 3 of the said Government Order that appointments to the newly created 47 posts can be made on consolidated pay of Rs. 4000/- per month for a period of five years.

(d) In pursuance of the said Government order, the Commissioner, Hindu Religious and Charitable Endowments Department, permitted the 5th respondent to fill up the vacancies and hence he issued an Advertisement on 04.11.2003 in News Papers, calling for applications for appointment to 6 posts of Lecturers, two each in the Departments of Tamil and Economics and one each in the Departments of English and Zoology.

(e) In pursuance of the said Advertisement, the appellant applied and she was invited by a call letter dated 25.11.2003 to appear for an interview. She appeared for the interview on 02.12.2003. She was selected" by the Selection Committee and the 5th respondent sent the list of selectees for approval to the Commissioner, Hindu Religious and Charitable Endowments Department, on 18.12.2003.

(f) After the approval of appointment by the Commissioner, Hindu Religious and Charitable Endowments Department, the 5th respondent issued an order of appointment, dated 30.12.2003, to the appellant, appointing her as Lecturer in the Department of Tamil, on consolidated pay basis.

(g) Thereafter, the 5th respondent sent proposals to the Joint Director of Collegiate Education for the approval of the appointments made on 30.12.2003. The Joint Director of Collegiate Education returned the proposal on the ground that a list of candidates ought to have been obtained from the Employment Exchange, for consideration along with the candidates who applied in response to the News Paper Advertisement.

(h) Therefore, the 5th respondent College obtained a list of candidates eligible for appointment from the Professional Employment Exchange, Chennai, and undertook a fresh exercise of recruitment. Since the name of the appellant was sponsored even by the Employment Exchange, she was invited once again for an interview, by a call letter dated 14.02.2006. She attended the interview for the second time on 27.02.2006, though she was already selected and appointed by the proceedings dated 30.12.2003 and had actually continued for more than two years.

(i) In the selection so held for the second time on 27.02.2006, the appellant was again selected. Therefore, she was appointed by another order dated 29.03.2006 by the 5th respondent.

(j) After appointing the appellant, in pursuance of the second selection, the Commissioner, Hindu Religious and Charitable Endowments Department, took up the matter with the Government for modification of the Original Government Order G.O.Ms. No. 200, Higher Education Department, dated 12.06.2003. As we have pointed out earlier, by the said order in G.O.Ms. No. 220, 11 posts of Lecturers were allotted for Shree Parasakthi Women's College and five posts were allotted for the 5th respondent college. But, the Commissioner, Hindu Religious and Charitable Endowments Department, wanted the same to be modified as 10 posts for Shree Parasakthi Women's College and six posts for the 5th respondent college.

(k) Accepting the said recommendation, the Government issued a letter No. 15190/E2/2004-4, dated 05.09.2006, allotting 10 posts for Shree Parasakthi Women's College, Tirunelveli and six posts for the 5th respondent College. Thereafter, the Director of Collegiate Education issued proceedings bearing Na.Ka. No. 26627/93/2007, dated 06.08.2007, directing the 5th respondent college to bring into the time scale of pay, five out of six persons appointed on consolidated pay basis on 30.12.2003. In other words, all the other five persons, who were appointed along with the appellant, were directed to be brought into time scale of pay by the proceedings of the Director of Collegiate Education, dated 06.08.2007.

(l) Accordingly, the 5th respondent College, by the proceedings dated 25.09.2007, brought all the other five candidates into time scale of pay, leaving the appellant alone in the lurch, despite the fact that all the six were appointed at the same time in pursuance of the same proceedings and by following the same method of recruitment.

(m) After leaving the appellant in lurch, the 5th respondent college published another Advertisement on 03.10.2007, in News Papers inviting applications for filling-up of 11 posts of Lecturers, one of which was for the Department of Tamil. Shocked at this Advertisement, the appellant filed a writ petition in W.P.(MD) No. 8776 of 2007. The prayer in the writ petition was only for a mandamus to direct the respondents to regularise her services in the post of Lecturer in the Department of Tamil.

(n) While ordering Notice of Motion in the said writ petition, this Court granted an interim order of injunction restraining the 5th respondent from appointing anyone else in the post of Lecturer in the Department of Tamil, by the order dated 31.10.2007. It is relevant to note that by the Advertisement dated 03.10.2007, applications were invited to be submitted on or before 12.10.2007.

(o) Eventually, by order dated 27.03.2008, W.P.(MD) No. 8776 of 2007 was disposed of by this Court, directing the 5th respondent to consider the case of the petitioner for regularisation.

(p) In pursuance of the said order, the 5th respondent issued proceedings, dated 05.09.2008, rejecting the request for regularisation on the sole ground that the

appellant was not working in any approved post. This was actually contrary to the Government Order in G.O.Ms. No. 220, Higher Education Department, dated 12.06.2003, that stood amended by the letter of the Government, bearing No. 15190/09/2006, dated 05.09.2006.

(q) Immediately thereafter, the 5th respondent also issued a News Paper Advertisement, dated 01.10.2008, inviting applications for appointment to eight posts of Lecturers, one each in the Departments of English, Tamil, Economics, Commerce, Physics, Chemistry, Botany and Zoology.

(r) Therefore, the appellant filed a writ petition (out of which the present appeal arises) in W.P.(MD) No. 11654 of 2008. The prayer in the writ petition was to quash the order dated 05.09.2008, by which the appellant's request for regularisation was rejected and for a consequential mandamus to direct the respondents to regularise her services in the post of Lecturer in Tamil.

(s) On 17.12.2008, this Court granted an interim order permitting the 5th respondent to proceed with the interview, but not to publish the results. This Court also made it clear that the respondents should not issue any appointment order, pending disposal of the writ petition.

(t) After the pleadings were completed, the writ petition was taken for final disposal and by a final order dated 07.01.2011, the writ petition was dismissed by the learned Judge. Aggrieved by the said order, upholding the decision of the 5th respondent not to regularise the services of the appellant, she has come up with the above appeal.

3. It appears that after the dismissal of the writ petition by the order dated 07.01.2011, the results of the selection were declared and the 6th respondent in this appeal was declared to have been selected for appointment. But, curiously, the 6th respondent got impleaded even in the writ petition, by order dated 07.09.2009, in a miscellaneous petition in M.P.(MD) No. 1 of 2009. We do not know how the 6th respondent could have known by premonition, the results of the selection, so as to get impleaded even during the pendency of the writ petition when an interim order not to declare the results was in force.

4. A careful look at the order of the learned Judge, dismissing the writ petition, would show that the appellant was refused the relief of regularisation, primarily on two grounds. They are: (i) that since her appointment was only temporary and on contract basis, she was not entitled to regularisation; and (ii) that in view of the appellant's participation in the selection in pursuance of the advertisement issued on 01.10.2008, she is estopped from questioning the selection of the 6th respondent on comparative merit.

5. But, in our considered view, both the grounds appear to be unsustainable. By G.O.Ms. No. 220, dated 12.06.2003, what the Government did was, just to give permission to fill up 5 sanctioned posts of Lecturers in the 5th respondent college. The posts were already in existence, duly sanctioned, but had not been

filled up for a long time, perhaps due to financial constraints. Therefore, while permitting the college to fill up the posts, the Government prescribed in the said order that they shall be filled up first on consolidated pay basis, for a period of five years. This is how one post of Lecturer in Tamil, two posts in the department of Economics and one post each in the department of English and Zoology, were permitted by the said government order to be filled up on consolidated pay basis in the first instance. But, the Commissioner, Hindu Religious and Charitable Endowments Department, allowed the 5th respondent to fill-up two posts of Lecturers in the department of Tamil and sought an amendment to G.O.Ms. Nos. 220. The Government conceded the demand and issued a letter dated 05.09.2006, sanctioning two posts in the department of Tamil, apart from two posts in the department of Economics and one post each in the Department of English and Zoology. Therefore, it is erroneous to think that the appointment of the appellant was to a post which was not sanctioned. The appointment of the appellant was actually to a sanctioned post, but permitted to be filled up by the Government, initially on consolidated pay basis for a period of five years. The appellant was not the only person so appointed. Along with the appellant, five more persons were appointed, one in the department of Tamil, one in the department of English, one in the department of Zoology and two in the department of Economics. The services of all those five persons have been regularised, after bringing them into time scale of pay, by the proceedings of the Government in Letter No. 76, Higher Education Department, dated 03.04.2007. The Director of Collegiate Education also issued proceedings, dated 06.08.2007, permitting the other five persons appointed along with the petitioner to be brought into time scale of pay and regularised. The 5th respondent implemented the said proceedings of the Director Collegiate Education, by issuing an order dated 25.09.2007.

6. The appellant was appointed by the very same method of recruitment that was followed in the matter of appointment of (i) Latha Maheswari in the Department of Tamil; (ii) Subhashini in the department of English; (iii) Seethalakshmi in the department of Zoology; (iv) Bindhuja in the department of Economics and (v) Baby in the department of Economics. All these five persons were also appointed only on consolidated pay basis for a period of five years, as per G.O.Ms. No. 220, dated 12.06.2003. The regularisation orders of these five persons, issued on 25.09.2007 by the 5th respondent, refers only to G.O.Ms. No. 220. It does not refer to any other Government Order, sanctioning these posts on regular basis in time scale of pay.

7. The official respondents miserably failed to come out clean as to why the appellant alone was singled out, when five other persons (i) appointed in pursuance of the very same Government Order; (ii) appointed by following the very same method of recruitment and (iii) appointed on the very same terms and conditions were regularised. There was not a single difference on any aspect, between the appellant and those five persons. Therefore, the fact that the appellant was meted out with hostile discrimination, stares at one's face. This

fact has not been appreciated in the right perspective by the learned Judge. Therefore, the first ground on which the learned Judge dismissed the writ petition cannot be sustained.

8. It is needless to state that persons appointed in pursuance of the very same Government Order, by the very same method of recruitment and on the very same terms and conditions, cannot be treated differently from one another, when all of them possess all the qualifications as prescribed by the recruitment rules. This discrimination of the appellant, in violation of Articles 14 and 16 of the Constitution, has been lost sight of by the learned Judge.

9. The second ground on which the learned Judge rejected the claim of the appellant was that she participated in the selection held in pursuance of the Notification, dated 01.10.2008 and that therefore she is disentitled from seeking any relief, after having lost the race. In support of such a view, the learned Judge relied upon two decisions of the Apex Court, one in I.L. Honnegouda Vs. The State of Karnataka and Others, and another in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, . The learned Judge also relied upon the decision of the Full Bench of this Court in Dr. R. Murali Vs. Dr. R. Kamalakkannan and three others, .

10. But, we are of the considered view that those decisions will not apply to the case on hand. The principle that a person who participates in the selection process, cannot turn around and challenge the same, after having lost the race, is too well settled and the decisions relied upon by the learned Judge are on the said principle. But in the case on hand, the appellant did not challenge the selection process initiated in pursuance of the Notification, dated 01.10.2008. A careful look at the prayer made in the writ petition would show that the petitioner challenged the proceedings, dated 05.09.2008, of the 5th respondent, by which her prayer for regularisation was rejected. There was no prayer in the writ petition challenging the selection notification, dated 01.10.2008. Therefore, the learned Judge, with great respect, was in error in thinking that the appellant had come up with a challenge to the selection process.

11. The appellant did not challenge the selection process. The appellant did not even seek to set aside the notification for selection, dated 01.10.2008. The prayer made by the appellant in the writ petition reads as follows:

".....to issue a Writ, Order or Direction in the nature of a WRIT OF CERTIORARIFIED MANDAMUS calling for the records relating to the impugned proceedings issued by the 5th respondent college in Rc. No. 2476/2007/D3, dated 05.09.2007, QUASH THE SAME and further DIRECT the respondents herein to regularise the petitioner's appointment as Lecturer in Tamil in the 5th respondent college w.e.f. 03.07.2002 with all attendant benefits....."

12. The prayer of the appellant for regularisation arose out of her selection for appointment, not once but atleast twice. In response to the News Paper Advertisement issued on 04.11.2003, the petitioner applied and participated in

the process of selection and got selected and appointed by the proceedings dated 30.12.2003. After the Joint Director of College Education took exception to the action of the 5th respondent college in not inviting a list of candidates from Employment Exchange, the 5th respondent again went through the process of selection for the second time, by obtaining a list of candidates from the Employment Exchange, on 27.02.2006. The name of the appellant was sponsored by the Employment Exchange and she was again selected for the second time. When a process was initiated for the third time, by the issue of a News Paper Advertisement on 03.10.2007, the appellant challenged the same in W.P.(MD)No.8776/2007 without participating in the selection. That selection process did not ultimately get completed and this Court issued an order on 27.03.2008 directing the 5th respondent to consider the case of the petitioner for regularisation. But, the 5th respondent rejected the request for regularisation by order dated 05.09.2008. Challenging the said decision, the appellant filed the writ petition out of which this writ appeal arises.

13. Therefore, it is clear that the appellant is a person who got selected for appointment first in a selection conducted after inviting applications through a News Paper Advertisement and next in a selection conducted after inviting a list of candidates from the Professional Employment Exchange. The present writ petition (out of which this writ appeal arises) relates to the claim for regularisation, whose cause of action was the first selection held in November/December, 2003 and the second selection held in January-February, 2006. Therefore, it is wrong to think that the appellant had challenged the selection process, after having participated and lost in the selection process.

14. In the decision of the Supreme Court in I.L. Honnegouda, what was under challenge was the constitutional validity of the 1970 rules, relating to recruitment to the post of Village Accountants. The challenge was made by a person who participated in the selection made under the very same Rules. Therefore, the said case is of no application to the case on hand.

15. Similarly, Om Prakash Shukla is also a case where a candidate who participated in the selection to the post of Grade-III Ministerial Staff in the Subordinate Courts in the District of Kanpur challenged his non-selection on the ground that the selection should have been held only in accordance with 1947 Rules, as amended by the 1969 rules and not as per 1950 Rules. It is only in view of the same, the Supreme Court held in Paragraph 23 of the Report that the petitioner therein was not entitled to any relief, as he had appeared for the examination, without protest and failed to get selected.

16. Apart from the decisions that find place in the order of the learned Judge, the learned counsel for the 6th respondent relied upon a few more decisions, which we shall consider now.

17. In Swaran Lata Vs. Union of India and Others, the question that arose for consideration before the Supreme Court was whether a particular post was a

deputation post to be filled by drawing a person working in an equivalent cadre or whether it could be filled-up by direct recruitment. Another question that arose was, whether the Union Public Service commission was entitled to relax the essential qualifications of candidates, while recommending their cases for recruitment. The person, who made that challenge in that case, as pointed out by the Supreme Court in Paragraph 62 of the Report, approbated and reprobated. That candidate was found by the Supreme Court to have willingly and without any persuasion applied for the post and participated in the process of direct recruitment. Therefore, the supreme Court found that she was not entitled to take a chance and later rely upon Section 84 of the Act, after having been found unsuitable for appointment. Hence, the said case is also of no assistance to the 6th respondent, inasmuch as the cause of action for the appellant in this case was the order of rejection of her request for regularisation dated 05.09.2008 and not the selection notification, dated 01.10.2008.

18. In *Suneeta Aggarwal Vs. State of Haryana and Others*, , the Supreme Court reiterated the principle that a person who appeared before the Selection Committee without any protest and who took a chance, is estopped by her conduct from challenging the orders. As a matter of fact, the distinction between the case on hand and the other cases where a person chooses to challenge the selection process after losing the battle, is a well made out if we have a close look at the facts in *Suneeta Aggarwal*. In *Suneeta Aggarwal*, the appellant was actually selected for appointment in pursuance of an interview conducted on 15.07.1996. But, the Vice-Chancellor did not approve the appointment. He directed re-advertisement. The post was re-advertised on 13.11.1996 and the appellant once again applied to the post. On the date of interview, the appellant appeared for the interview and simultaneously filed a writ petition, challenging the non-approval of her selection. Therefore, the Supreme Court held that without challenging the decision of the Vice-Chancellor, dated 05.08.1996 till the date of next selection, the appellant participated in the selection process and hence she was estopped from questioning the earlier order. But, in the case on hand, the order dated 05.09.2008, rejecting the request of the appellant for regularisation was challenged by the appellant in the writ petition that was filed on 16.02.2008. An interim order was passed in the writ petition on 17.12.2008 and the interview was conducted only on 18.12.2008. Therefore, the appearance of the appellant before the selection committee cannot be taken to be without protest, as she was actually armed with an interim order when she appeared for the interview.

19. In *K.H. Siraj Vs. High Court of Kerala and Others*, , a candidate, who was unsuccessful in the selection to the post of Munsif cum Magistrate in the Kerala Judicial Service, challenged the decision of the Kerala High Court to provide a minimum mark for the interview. Therefore, it was held that after having participated in the interview, it was not open to the appellant therein to challenge the provision of minimum mark for interview. Hence, the said decision is of no assistance to the 6th respondent.

20. In *Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others*, , the petitioner before the Supreme Court was not selected for appointment to the post of Civil Judge (Junior Division) on the sole ground that he did not have basic knowledge of computer operations. The decision of the High Court to insist upon the basic knowledge of computer operations was held to be binding upon the petitioner as he had participated in the selection. Therefore, the said decision arose out of the prescription of a qualification for the post and the acceptance of the same by the candidate, by participating in the selection. But in this case, the appellant fulfils all qualifications and hence the said decision is also of no assistance to the 6th respondent.

21. As we have stated earlier, the appellant before us is not a candidate who merely applied along with other candidates, including the 6th respondent and who came to court challenging the selection process, after becoming unsuccessful. She was, as stated earlier, appointed originally in the year 2003 as against a sanctioned post in a vacancy that arose in February, 2002. She participated in an identical selection process as the present one, atleast two times, first in November/December, 2003 and next in January/February, 2006 and on both the occasions, she was selected for appointment. Ever since the date of her earliest selection and appointment, namely 03.07.2002, the appellant is working in the said post. She has now completed 12 years of service in the post. The selection to a sanction post, once carried out by following the procedure prescribed by law, cannot be nullified by repeatedly advertising for the post and asking the selected candidate (who was also appointed) to run the race every time like in an Olympic.

22. The learned Judge has not taken note of the fact (i) that the appellant participated in a process of selection, exactly identical to the present one; (ii) that the appellant fulfilled the qualifications prescribed for the post; (iii) that in respect of the method of recruitment as well as the process of selection adopted, the appellant's selection, on both the occasions, namely, November/December, 2003 and January/February, 2006, was not different from the process of selection now adopted, that led to the filing of the present writ petition. When that is so, the claim of the appellant for regularisation of her services, after having continued in service for 12 full years, cannot be simply ridiculed or de-valued by citing her participation in the process of selection.

23. The fact that five candidates who were selected along with the appellant in the first selection held in November/December, 2003 and in the selection held in January/February, 2006 have already been regularised, amply demonstrates that the appellant has been singled for hostile discrimination. Such a gross injustice done to the appellant cannot be swept under the carpet by citing the principle laid down in *I.L. Honnegouda*, especially when the appellant had challenged the rejection of her request for regularisation even before participating in selection process.

24. M. K.N. Thampi, learned counsel for the 6th respondent, contended that in

any case, no mandamus could be issued, as laid down by the Supreme Court in Santosh Kumar Verma and others Vs. State of Bihar and others, for the regularisation of an employee. But, this contention loses sight of one important fact that in Santosh Kumar Verma, a writ of mandamus was sought by a person appointed otherwise than through the Public Service Commission. The post in question in that case fell within the purview of the Public Service Commission and the appointment was actually made in contravention of law. Therefore, the Supreme Court held that no mandamus could be issued to regularise the services of a candidate appointed in contravention of the law. Therefore, the said decision cannot be invoked in this case, in view of the fact that the appointment of the appellant was not in contravention of the law. The post was to be filled-up, by following only one method of recruitment and that was followed in this case.

25. The reliance placed upon the decision of the Supreme Court in State of U. P. and others Vs. Harish Chandra and others, is also misconceived. In that case, the Supreme Court held that no mandamus can be issued to do something which is contrary to law. IN the case on hand, the claim of the appellant is not contrary to law. It is based upon a recruitment made by a competent authority through the very same method of recruitment.

26. On the question as to how the other five candidates came to be regularised, the department has no answer. But, strangely, the 6th respondent has an answer. According to the 6th respondent, there was no pleadings to substantiate the contention that the five other candidates appointed, along with the appellant, were regularised. Therefore, the learned counsel for the 6th respondent contended on the basis of a decision of the Division Bench of this Court in Dr. S.P. Thiyagarajan, Prof. in Microbiology Post Graduate Institute of Basic Medical Science, Taramani, Madras Vs. Dr. T. Sundararaj, Reader in Microbiology Post Graduate Institute of Basic Medical Science, Taramani, Madras-600 113 and Others , that the practice of producing documents without filing an affidavit in support of the same is a practice that must be frowned upon. But, we are least impressed with the said contention. The orders of appointment of all the six candidates as well as the orders of regularisation of the other five candidates were placed on record by the appellant and arguments were advanced on the basis of the same. The official respondents did not contest the claim. On the contrary, the Joint Director of Collegiate Education filed a counter affidavit admitting to the regularisation of the services of the other five candidates. Therefore, it is not open to the 6th respondent to put on magnifying glasses and subject the affidavit of the appellant to scrutiny like an Appeal Examiner.

27. As an alternative to the above argument, Mr. K.N. Thampi, learned counsel for the 6th respondent contended that there cannot be an equality in illegality. In support of the said contention, he relied upon three decisions of the Supreme Court, namely (i) Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, ; (ii) Vice Chancellor, M.D. University, Rohtak Vs. Jahan Singh, ; and (iii) State of Kerala and Others Vs. K. Prasad and Another, .

28. We are conscious of the fact that equality clause cannot be invoked to perpetuate an illegality. But, an order of regularisation of the five candidates was not illegal. It was a valid order, even according to the official respondents. Therefore, the 6th respondent cannot brand the said order as an illegal order. Therefore, even those three decisions relied upon by the learned counsel for the 6th respondent would not lend support to the case of the 6th respondent.

29. Drawing our attention to the difference in the wordings between the advertisement in pursuance of which the appellant was appointed and the advertisement in pursuance of which the 6th respondent was appointed, the learned counsel for the 6th respondent contended that the appellant, who having accepted an appointment on a consolidated pay, cannot seek regularisation. According to the 6th respondent, a regular post was sanctioned only on 03.04.2007. Therefore, she contended that the appellant could not claim regularisation.

30. But, the above contention is unacceptable. Two posts of Lecturers in the Department of Tamil fell vacant in the 5th respondent College, as seen from the records, in the years 2000 and 2002, respectively. For a long time, even the sanctioned posts that fell vacant, were not permitted by the Government to be filled-up. But, when the question assumed alarming proportions, the Government issued G.O.Ms. No. 220, Higher Education Department, dated 12.06.2003, permitting some of the vacancies in five different colleges, including the 5th respondent college, to be filled-up. What was ordered to be filled-up was only the sanctioned posts but, on consolidated pay basis. It is pertinent to note that G.O.Ms. No. 220 did not create ad hoc posts or supernumerary posts or temporary posts. It merely permitted some of the already sanctioned posts to be filled-up, but on consolidated pay basis. The permission granted under the said Government Order to fill-up one post of Lecturer in Tamil was later modified by the Government itself into two posts. Therefore, the 6th respondent cannot contend on the basis of a counter now filed by the official respondents in the writ appeal that the post was sanctioned only in 2007. In the counter affidavit filed before the learned Judge, the Joint Director of Collegiate Education did not take a stand that the post in respect of which the appellant is claiming regularisation was sanctioned only in 2007. The fact that the Government did not give permission to fill-up even sanctioned posts is borne out by the pleadings on record. Therefore, it is futile to contend that the appellant was not appointed to a sanctioned post.

31. At the cost of repetition, we should point out (i) that the appellant is admittedly fully qualified to hold the post; (ii) that there is only one method of recruitment for regular appointment to the post; (iii) that it was by the same method of recruitment that the appellant was selected and appointed; and (iv) that the appointment of the appellant was also by the very same authority, who is competent under the statutory provisions. In such circumstances, the official respondents cannot throw out the claim of the appellant for regularisation after

12 years of her appointment.

32. In view of the above, we hold that the appellant is entitled to regularisation of her services. The order, dated 05.09.2008, refusing to regularise her services after having selected the appellant for appointment, not once but twice, by a regular process of recruitment, is wholly illegal. The distinction between those routine cases where people come up with a challenge to the selection process, after being unsuccessful and the cases of this nature has not been taken note by the learned Judge. Therefore, the writ appeal is deserves to be allowed. Accordingly, the writ appeal is allowed. The order of the learned Judge is set aside and the writ petition stands allowed. There will be a direction to the 5th respondent to regularise the services of the appellant, on par with those who were selected and appointed along with her, by the proceedings dated 25.11.2007. No costs. Connected miscellaneous petition is closed.