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**(2025) 10 MAD CK 0011**

**Madras HC**

**Case No:** Writ Appeal No. 1569 Of 2019, Civil Miscellaneous Petition No. 10776 Of 2019

H.Anandhi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision:** Oct. 28, 2025

**Acts Referred:**

- Kalakshetra Foundation Recruitment Regulations, 2005 &mdash; Rule 3

**Hon'ble Judges:** M.S. Ramesh, J; R.Sakthivel, J

**Bench:** Division Bench

**Final Decision:** Allowed

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### **Judgement**

M.S.Ramesh.J

1. This Writ Appeal has been filed to set aside the order dated 22.03.2019 in W.P.No.32296 of 2018.

2. The appellant herein, who was serving as a Costume Assistant-Grade II at Kalakshetra Foundation / the fourth respondent herein, was relieved of her duties by an order dated 20.11.2018, on the ground that her services, as a probationer, were no longer required. When she had challenged the said order of termination in W.P.No.32296 of 2018, the Writ Petition was dismissed on 22.03.2019, predominantly on the ground that she was overaged at the time of appointment, apart from not possessing the requisite educational qualification for the post, and that non issuance of a show cause notice prior to the termination would not cause any prejudice to her. This said order of dismissal is now under challenge before us.

3. The main contention of the appellant is that no prior opportunity was given to her when she was relieved from the services and thus, the termination order is violative of the principles of natural justice. According to the learned counsel, though the appellant was initially put on probation for a period of two years commencing from 08.06.2010, the probation period was neither extended, nor was it declared to have completed. On the other hand, all the service benefits were periodically being extended to the appellant, including her dearness allowance and increments under the recommendation of the 7th Pay Commission, thereby treating her as a regular employee. With such grounds, the learned counsel sought for our interference to the order passed in the Writ Petition.

4.1 Per contra, the learned counsel appearing for Kalakshetra Foundation / the fourth respondent, would submit that the appellant had continued to be probationer at the time of termination and since, the terms and conditions under Clause (ii) of the appointment order permitted them to terminate her without any notice or reasons, the order cannot be found fault with.

4.2 It is his further submission that as per the recruitment rules of Kalakshetra Foundation, the essential qualifications prescribed for the post of Costume Assistant - Grade II was a degree from a recognized University or its equivalent, with the capacity to assist the costume requirements of new productions, experience in tailoring, etc., and the upper age limit was 30 years. Among these essential qualifications, the appellant did not possess her degree at the time of appointment, but had graduated in B.A History and Heritage Management only after her appointment. She was also above 30 years at the time of appointment and therefore, the fourth respondent was justified in dispensing with her services while she was a probationer. According to him, the learned Single Judge had taken note of these disqualifications and in view of the appellant's status as a probationer, had held that no prior show cause notice was required before the termination.

5. It is not in dispute that the appellant was appointed to the permanent post of Costume Assistant - Grade II through a proper selection process, pursuant to a recruitment notification in the newspapers. Pursuant to her application for the said post, she was called for a personal interview on 07.04.2010 and after being successful in the interview, she was appointed to the permanent post of Costume Assistant - Grade II on 08.06.2010.

6.1 As per Rule 3 of the Kalakshetra Foundation Recruitment Regulations 2005, read with Clause 12 of the Schedule applicable to Rukmini Devi College of Fine Arts, the period of probation for the post of Costume Assistant - Grade II was two years. The essential qualification prescribed thereunder, inter alia, was a degree from a recognized University and the upper age limit was fixed at 30 years.

6.2 Clause 2 of the appointment order dated 08.06.2010 stipulates that the appellant was put on probation for a period of two years from the date of her joining duty, with a condition that the probation may be extended or curtailed at the discretion of the competent authority. It was further stated that during the period of probation, extended or otherwise, the appointment may be terminated at any time, without notice and without assigning any reasons.

6.3 Clause 3 of the appointment order states that after the satisfactory completion of the probationary period, the appellant would be considered for confirmation in the pay scale referred to in the appointment order.

7. It is claimed by the appellant that after her appointment, she had satisfactorily completed the probation period of two years. However, the fourth respondent herein had neither declared her probation nor extended it. On the other hand, they had continued her in service and extended her the pay scale applicable to a permanent employee, with dearness allowance and had also extended the benefit of the 7th Pay Commission. In other words, the appellant herein was treated as a regular employee of the fourth respondent in the permanent post of Costume Assistant - Grade II.

8. Her services were continued for more than 8 ½ years. The averment made in her affidavit filed before the Writ Court that there was no adverse remarks during her service and that her annual performance report also recorded her integrity as being of a high order, has not been denied by the fourth respondent in their counter affidavit. When the Recruitment Regulations governing the fourth respondent fixes the probation period at only two years, there is a duty cast on the employer to either declare the probation of having been completed, subject to her satisfactory service or extend the same for a further fixed period. Having failed to exercise either of these options, the fourth respondent appears to have treated the appellant as a regular employee, and extended all the service benefits applicable to a regular and permanent employee. Her annual performance was also determined and awarded as 'integrity of a high order'.

9. It is no doubt true that the appellant neither possessed the essential qualification of her degree at the time of her appointment nor was she below the age of 30 years. It is not the case of the fourth respondent that the appellant had suppressed the fact of her non possession of the requisite qualification or the fact of having exceeded the prescribed age limit. On the other hand, the appointment order appears to have been issued by the fourth respondent consciously, despite these shortfalls, and even after the completion of her initial two year probation period, her services were continued for more than 8 ½ years. The termination order issued on 20.11.2018 treats her status as that of a probationer and it was a simpliciter termination without prior notice.

10. Though the fourth respondent is not required to assign any reasons while terminating the services of a probationer, the manner in which the fourth respondent had dealt with the entire case of the appellant from appointing her to the post of Costume Assistant - Grade II and failing to extend her probation period after two years, constrains us to draw an inference that the appellant was indeed being treated as a regular or permanent employee. In such a scenario, the termination order ought to have been preceded by a show cause notice, giving her at least an opportunity to explain as to why her services should not be terminated, more particularly in view of long service of over 8 ½ years.

11. The appellant has also stated in her affidavit that during the course of her service, she had donated one of her kidneys to her husband, who had undergone transplantation and was undergoing dialysis fortnightly. This apart, she was also supporting her two school going daughters at the relevant point of time.

12. The Writ Court, as well as during the course of this Writ Appeal, the appellant was protected with interim orders of stay of the termination order, owing to which she has been continuing her services under the fourth respondent till date, for more than 15 years. Her performance in the appointed post, as well as her integrity, has been certified to be of a high order and even till date, no adverse remarks were imputed against her.

13. As observed by us in the earlier portion of our order, the appellant was initially recruited to a sanctioned post of Costume Assistant - Grade II through a regular selection process, conducted pursuant to a recruitment notification published in the newspapers. Though she did not possess the educational qualification and was also claimed to be over aged, the respondents had appointed her and placed her under probation. She had continued in her services for over 8 ½ years with an unblemished record. This is not a case of an illegal appointment, but can only be termed to be an irregular appointment, as distinguished by the Hon'ble Supreme Court in the case of State of Karnataka vs. Umadevi, reported in [(2006) 4 SCC 1].

14. In a recent decision of the Hon'ble Supreme Court in Vinoth Kumar and others vs. Union of India and others, reported in [(2024) 9 SCC 327], reference was made to Umadevi's case, as well as other similar cases, and had recommended the case of irregular appointments, whose services continued for considerable time, for regularization of the services. Recommendations were also made to the Government to consider regularization of such services. In Vinoth Kumar's case, the employees therein were appointed, after selection process, involving written tests and viva voce interviews. In this backdrop of the facts, it was held that reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights of the employees that have accrued over a considerable period through continuous service.

15. In the peculiar circumstances of this case, we deem it appropriate to hold that the irregularity committed by the fourth respondent in recruiting the appellant in a sanctioned post, who apparently did not possess the requisite qualification at the time of her appointment, should not be put against her. We have also taken into consideration that subsequent to her appointment, she has acquired the qualification of B.A in History and Heritage Management, which is also the prescribed qualification for the said post.

16. Her overage at the time of appointment has also not caused any prejudice to the fourth respondent, which fact is reflected in her annual performance reports. Thus, as a special case, and in the light of our findings, we deem it appropriate and justifiable to permit the appellant to continue her services, for which purpose, the termination order dated 20.11.2018 requires to be set aside.

17. The learned Single Judge, while dismissing the Writ Petition challenging the termination order, had found that the appellant did not possess the requisite qualification of a degree nor the required age limit and therefore, held that the termination without notice was proper. In the light of our foregoing reasons and observations, we are constrained to interfere with the said order.

18. Accordingly, the Writ Appeal stands allowed. The termination order dated 20.11.2018 issued by the fourth respondent to the appellant is set aside. So also, the order passed by the Writ Court in W.P.No.32296 of 2018 dated 22.03.2019. Consequently, there shall be a direction to the respondents herein to continue the services of the appellant and pass necessary orders declaring her probation of having been satisfactorily completed, within a period of two (2) weeks from the date of receipt of a copy of this order. No Costs.

Consequently, connected miscellaneous petition is closed.