



Writ Appeal No.1597 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1597 of 2019
and C.M.P.No.10942 of 2019**

1.Tamil Nadu Veterinary and
Animal Sciences University,
Represented by its Registrar,
Madhavaram Milk colony,
Chennai – 51.

2.R.Prabhakaran

... Appellants

Vs

Dr.Peer Mohammed

... Respondent

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 23.10.2017 passed by the learned Single Judge in W.P.No.9707 of 2013.

For Appellants : Mr.S.Vijayakumar
Senior Counsel
Assisted by Mr.D.Melwin Dabaz

For Respondent : Mr.R.Syed Mustafa



Writ Appeal No.1597 of 2019

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JUDGMENT

(Judgement of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred challenging the order passed by the learned Single Judge, wherein, the learned Single Judge had set aside the order issued by the 1st appellant herein dated 30.03.2012 under which the respondent was declared not-selected for the Career Advancement Scheme for teachers of the 1st appellant University and directed to grant Career Advancement as a Professor with effect from 10.01.2011 along with all other consequential benefits including arrears payable on granting of such Career Advancement Scheme.

2. Heard Mr.S.Vijayakumar, learned Senior Counsel for the appellants and Mr.R.Syed Mustafa, learned counsel for the respondent.

3. Mr.S.Vijayakumar, learned Senior Counsel appearing for the appellant would contend that the Career Advancement Scheme as introduced by the U.G.C. had been followed by the 1st appellant University in its letter and spirit. Various candidates who are eligible to be considered un-



Writ Appeal No.1597 of 2019

der the Career Advancement Scheme were graded as per the guidelines issued by the U.G.C. Under the said guidelines, the petitioner secured 46.5 marks only. A minimum of 50 marks out of 100 marks will only qualify a candidate to become eligible for elevation for a higher academic grade pay. Therefore, the results of the selection were declared by the 1st appellant, wherein, the respondent was declared to be not selected. However, the learned Single Judge had held that the Career Advancement Scheme is only an elevation of a person to be eligible to have Career Advancement and it is not in a physical post and therefore, the policy that had been adopted by the university cannot be in a relation to the Career Advancement.

4. He would further submit that the learned Single Judge after analysing the various marks awarded to other candidates had held that the respondent would be entitled to a higher mark and that the interview had not been conducted in a fair and transparent manner. He had also given a finding that when an allegation had been made against the 2nd appellant, the same has not been meted out by him and therefore, that would also go against the appellant/ University. In that context, the learned Single Judge had allowed the claim of the respondent by quashing the order of the ap-



Writ Appeal No.1597 of 2019

pellant/ University. Therefore, he would submit that the order impugned would have to be set aside, as the respondent has not obtained the minimum marks of 50.

5. Countering his arguments, Mr.R.Syed Mustafa, learned counsel appearing on behalf of the respondent would submit that the Chairman of the Committee namely the Vice Chancellor had been inimical to the respondent and therefore, he had given a lower marks in the interview to the respondent, even though he had scored more than one of the successful candidate in all other aspects. He would make a strong contention that in the interview, no questions were asked to him. He would submit that he had raised ground of malafides as against 2nd appellant and only for that reason, the 2nd appellant had been impleaded in the Writ Petition in his personal capacity. The 2nd appellant had not chosen to even enter appearance in the Writ Petition and a counter affidavit had been filed by the 1st appellant even on behalf of the 2nd appellant. He would submit that the malafides have been alleged as against a particular appellant, it is for that appellant to answer the same. The 1st appellant who had filed a counter affidavit on behalf of the 2nd appellant cannot assail allegations made in the affidavit. He would further submit that



Writ Appeal No.1597 of 2019

even in the counter affidavit filed by the 1st appellant none of the allegations raised by the respondent in his affidavit filed in support of the Writ Petition had been meted out. Therefore, it is presumed that the allegation raised by the respondent are all true. He would further submit that there is no error or infirmity in the order impugned before us to warrant interference.

6. We have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

7. A perusal of the affidavit filed in support of the Writ Petition, would indicate that the respondent had made allegations against the 2nd appellant herein as regards to the malafide. The respondent had specifically made an averment that the 2nd appellant was inimical in view of the respondent approaching this Court earlier and obtained favourable orders. Such a specific allegation had not been meted out by the 2nd appellant. He had not even appeared before the learned Single Judge which had been recorded in the order.



Writ Appeal No.1597 of 2019

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8. As rightly pointed out by the learned counsel appearing for the respondent, when malafides had been alleged against an individual and he had been added as a party to the proceedings, it is for individual to resist the claim of malafides or otherwise the same would have to be assumed to have been proved. It is not disputed by the respondent that one another individual who had scored lesser marks than the respondent had been given a higher marks in the interview. It is true that the grant of marks in the interview cannot be questioned, as has been held by the Hon'ble Apex Court in various judgments. But, however, when an allegation had been made against the Chairman of the Committee, who had been impleaded as a 2nd respondent in the Writ Petition and when no affidavit had come from him, in the way in which the interview had been conducted, we can only presume that the allegations made against him are true. In such view of the matter, we are inclined to hold that the reasonings arrived at by the learned Single Judge does not warrant any interference.

9. Considering the fact that the respondent, even though was entitled



Writ Appeal No.1597 of 2019

for Career Advancement since he had not worked in the post of a Professor, he would only be entitled to get the benefits given under the impugned order notionally. But, however, the respondent would be entitled for all pensionary benefits based upon such notional fixation of his salary.

10. With the above observations, the order passed by the learned Single Judge is modified in that aspect alone.

11. In fine, this Writ Appeal is partly allowed and the direction issued by the learned Single Judge to grant the benefits including arrears payable by granting of benefits alone is set aside. The respondent would be only entitled to all monetary benefit notionally on and from the date on which the other candidates were granted Career Advancement and would be entitled to the pensionary benefits including the difference which would arise in implementation of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



Writ Appeal No.1597 of 2019

(R.S.K.,J.) (K.B., J.)
14.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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and
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Writ Appeal No.1597 of 2019
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Writ Appeal No.1597 of 2019

14.02.2024