

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.Nos.2010 of 2013, 269 and 270 of 2014

W.A.No.2010 of 2013 :-

Dr.S.Anbalagan

... Appellant

versus

1 THE DIRECTOR OF COLLEGIATE
EDUCATION COLLEGEL ROAD CHENNAI 600 006.

2 THE JOINT DIRECTOR OF
COLLEGIATE EDUCATION CHENNAI REGION
CHENNNAI 600 015.

3 THE REGISTRAR
UNIVERSITY OF MADRAS CHENNAI 5

4 THE SECRETARY
SIR THEAGARAYA COLLEGE CHENNAI 21

5 Dr.K.Kesavan ... respondents

Appeal filed against the order passed by this Court dated
12.10.2012 passed in W.P.No.19085 of 2012.

W.P.No.19085 of 2012 : Writ petition have been filed under
Article 226 of the Constitution of India to issue a writ of
certiorarified Mandamus to call for the records pertaining to
the proceedings of the 2nd respondent in Na.Ka.No.1335/A2/2012
dated 9.7.2012 quash the same and direct the 2nd respondent to
grant approval to the petitioners appointment as Assistant
Professor of Zoology and Botany respectively with effect from
16.6.2010

W.A.Nos.269 of 2014:-

Dr.Suresh

... Appellant

versus

1 THE DIRECTOR OF COLLEGIATE
EDUCATION COLLEGEL ROAD CHENNAI 600 006.

2 THE JOINT DIRECTOR OF
COLLEGIATE EDUCATION CHENNAI REGION
CHENNNAI 600 015.

3 THE REGISTRAR
UNIVERSITY OF MADRAS CHENNAI 5

4 THE SECRETARY
SIR THEAGARAYA COLLEGE CHENNAI 21

5 G .RAMESH ... respondents

Appeal filed against the order passed by this Court dated 16.2.2012 passed in W.P.No.15944 of 2011

W.P.No.15944 of 2011: Writ petition have been filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus to call for the records pertaining to the proceedings No. A-11/RSK/Lect. Approval/2011/316 dated 9.5.2011 issued by the 1st respondent quash the same and direct the 1st respondent to grant qualification approval for the petitioner appointment dated 29.4.2010.

W.A.Nos.270 of 2014:-

Dr.Suresh ...Appellant/3rd Party

versus

1 THE DIRECTOR OF COLLEGIATE
EDUCATION COLLEGEL ROAD CHENNAI 600 006.

2 THE JOINT DIRECTOR OF
COLLEGIATE EDUCATION CHENNAI REGION
CHENNNAI 600 015.

3 THE SECRETARY
SIR THEAGARAYA COLLEGE CHENNAI 21

4 G .RAMESH ... Respondents

Appeal filed against the order passed by this Court dated 12.10.2012 passed in W.P.No.19086 of 2012.

W.P.No.19086 of 2012 :Writ petition have been filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus to call for the records pertaining to the proceedings of the 2nd respondent in Na.Ka.No.3290/A2/2012 dated 2.7.2012 quash the same and direct the 2nd respondent to grant approval to the petitioners appointment as Assistant Professor of Commerce with effect from 16.6.2010.

For appellant : Mr.K.Thilageswaran

For Respondents: Mr.K.Karthikeyan,
Government Advocate for R-1 and R-2
Mr.G.Thilagavathi, for R-3
Mr.B.Ravi, for R-4
Mr.R.Subramanian, for R-5

COMMON JUDGMENT

(made by K.K.SASIDHARAN, J.)

This is a classic case of abuse of process of court by two college lecturers, filing Writ Petitions in collusion with the college management, challenging the communication sent by the Joint Director of College Education to the College Committee, to forward the service certificates of the appellants in W.A.Nos.2010 of 2013 and W.A.Nos.269 and 270 of 2014, who were selected originally and the writ court quashing the said communication and directing approval of appointment of the Writ Petitioners behind the back of selected candidates in whose favour the impugned communication was issued.

The facts :-

W.A.No.2010 of 2013:-

2. The 4th respondent Sir Thiagaraja College, Chennai, is a Government aided private college. The college Committee issued a notification dated 6 May 2009, calling for applications for appointment to various posts. The appellant submitted his application for appointment to the post of Assistant Professor in Zoology. He was selected by the Selection Committee after holding interview. The College Committee, without giving appointment order to the appellant, appointed the fifth respondent, who was earlier placed in the waiting list. The Managing Committee approached the Directorate of College Education for approval of appointment of fifth respondent. The Joint Director of College Education having found that the appellant and another candidate by name Kavitha N.Sambantam have already been selected, called upon the College Committee to send the proposal for appointment of those two selected candidates. The fifth respondent without impleading the appellant as a party, has challenged the communication sent by the Joint Director of College Education on 9 July 2012 to the College Committee in W.P.No.19085 of 2012. The learned Single Judge allowed the Writ Petition and issued a mandamus directing the Joint Director of College Education to approve the appointment of fifth respondent. Feeling aggrieved by the said decision, the appellant has come up with this intra court appeal by taking leave.

W.A.Nos.269 and 270 of 2014:-

3. The appellant submitted application for appointment to the post of Lecturer in Commerce pursuant to the notification

issued by the Managing Committee of Sir Thiyagaraja College, Chennai. The Selection Committee selected Ms. Gayathri and placed the appellant in the waiting list. The selected candidate failed to produce the required certificates. Though the appellant was placed as no.1 in the waiting list, appointment order was not given to him. The management on the other hand, appointed the fifth respondent as Assistant Professor of Commerce. The fifth respondent filed a Writ Petition in W.P.No.15944 of 2011, challenging the order passed by the University of Madras refusing to grant approval of his qualification for appointment to the post of Assistant Professor in Commerce. Though the name of the appellant was also referred to in the said Writ Petition, he was not impleaded as a party. The learned single Judge allowed the Writ Petition and a Mandamus was issued to the University to examine the qualification of the fifth respondent. The said order is under challenge in the intra court appeal in W.A.No.269 of 2014.

4. The Managing Committee of Sir Thiyagaraja College submitted a proposal to the Joint Director of College Education for approval of the appointment of 4th respondent who had earlier filed the Writ Petition in W.P.No.15944 of 2011. The Joint Director of College Education found that there was no attempt made by the management to appoint the candidates who were selected originally. The 4th respondent without impleading the appellant as a party, filed a Writ Petition in W.P.No.19086 of 2012. The learned Single Judge notwithstanding the fact that the affected party was not made a party to the Writ Petition, allowed the Writ Petition and a Mandamus was issued directing the Joint Director of College Education to grant approval of appointment. The said order is put in issue in W.A.No.270 of 2014.

Submissions :-

5. The learned counsel for the appellants contended that the appellant in W.A.No.2010 of 2013 was selected as Assistant Professor in 2010. Similarly, the appellant in W.A.No.269 and 270 of 2014 was placed in the waiting list for appointment to the post of Assistant Professor in Zoology. The management, with a view to appoint two other candidates, created a story that approval of qualification was not obtained in spite of giving sufficient opportunity and thereafter, appointed two others as lecturers in Zoology and Commerce. According to the learned counsel, there was no communication received by the appellants, directing them to produce proof regarding approval of their qualification. It was further contended that the respondents filed Writ Petitions without impleading the selected candidates. The learned Single Judge without verifying as to whether the affected parties were before the Court, allowed the Writ Petitions. The learned counsel further contended that the management colluded with the writ

petitioners and played fraud on court. The impugned orders are therefore liable to be set aside.

6. The learned counsel for the writ petitioners supported the impugned orders. According to the learned counsel, the appellants were directed to produce approval of their qualification. Since they have not produced the approval within the prescribed period, writ petitioners were appointed.

7. The learned counsel for the management contended that the presence of the appellants was not necessary for deciding the Writ Petitions and as such, they were not made parties by the writ petitioners. According to him, there was no collusion as alleged by the appellants.

Discussion:-

8. The materials available on record and the documents produced by the management would clearly show that the appellant in W.A.No.2010 of 2010 was selected by the Selection Committee as Assistant Professor in Zoology. The Selection Committee selected S.Gayathri, for appointment to the post of Assistant Professor in Commerce. The appellant in W.A.No.269 of 2014 was placed at S.No.1 in the waiting list.

9. It is the case of the management that the appellants were directed to produce the service certificates duly endorsed by the Regional Joint Director of College Education within the prescribed period. The management therefore appointed two other candidates by name G.Ramesh, petitioner in W.P.No.15944 of 2011 and Dr.K.Kesavan petitioner in W.P.No.19085 of 2012.

10. We have perused the records produced by the management. There is nothing on record to show that neither the appellants nor Mrs.Gayathri were instructed in writing to produce proof regarding approval of their qualification.

11. The management without issuing appointment orders to the appellants, appointed the writ petitioners. The management thereafter submitted proposals for approval of their appointment. The Joint Director of College Education found that the selected list prepared originally contained the name of the appellant in W.A.No.2010 of 2013. Similarly, it was found that the appellant in W.A.No.269 of 2014 was placed at Sl.No.1 in the waiting list. The Joint Director of Education therefore refused to approve the appointment of the candidates indicated in the proposal.

12. Subsequently, the appointed candidates have filed Writ Petition in W.P.No.15944 of 2011 challenging the order passed by the University, and Writ Petitions in W.P.Nos.19085

and 19086 of 2012 to quash the communication sent by the Joint Director of Education, calling upon the management to submit proposals for appointment of the appellants.

13. The writ petitioners played fraud on the Court by not impleading the selected candidates as parties to the Writ Petition. It is not as if the names of selected candidates were not referred to in the order passed by the Joint Director of Education. The learned Single Judge considered the claim made by the writ petitioners in the absence of the selected candidates. The appellant in W.A.No.2010 of 2013 was initially selected. The appellant in W.A.Nos.269 and 270 of 2014 was shown as a wait listed candidate. Since the selected candidates for appointment to the post of Assistant Professor in Commerce failed to turn up, necessarily, option should have been given to the appellant in W.A.No.269 of 2014 for appointment to the said post. However, for the reasons best known, the management has chosen a different path. They have appointed other candidates who were not originally included in the select list. The management supported the case of the writ petitioners before the writ court. The course of conduct adopted by the management clearly shows that the Writ Petitions were filed by the subsequently selected candidates in collusion.

14. In *Jiten Kumar Sahoo & Ors. vs. Chief General Manager Mahanadi Coalfields Ltd., and others*, 2011 (1) Scale 746, the Supreme Court found that the affected parties were not initially impleaded as party respondents in the writ petitions, although primary relief was to quash their selection and appointment. They were impleaded for the first time after ten years. The Supreme Court while allowing the appeals filed by the affected parties, observed that Writ Petitioners were not entitled to any discretionary relief in exercise of the extraordinary jurisdiction of the High Court and that there is no need to deal with the merits of the matter.

15. The appellants were denied of an opportunity to submit their case before the writ court on account of the tactics adopted by the writ petitioners. The management invented a false reason to deny appointment to the selected candidates. Since the appellants were not made parties to the Writ Petitions and a decision was taken behind their back, necessarily, the impugned orders are liable to be set aside.

16. In the result, the impugned orders are set aside. The Writ Petitions in W.P.No.19085 of 2012, W.P.No.15944 of 2011 and W.P.No.19086 of 2012 are dismissed.

17. In the upshot, we allow the intra court appeals. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
ASSISTANT REGISTRAR (CS-VI)

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SUB-ASSISTANT REGISTRAR

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To

1 THE DIRECTOR OF COLLEGIATE
EDUCATION , COLLEGE ROAD, CHENNAI 600 006.

2 THE JOINT DIRECTOR OF
COLLEGIATE EDUCATION , CHENNAI REGION ,
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UNIVERSITY OF MADRAS , CHENNAI 5

4 THE SECRETARY,
SIR THEAGARAYA COLLEGE , CHENNAI 21

+2 CC to MR.K.Thilageswaran Advocate. SR.NO. 5700, 56995
+3 CC to MR.R.Subramanian Advocate. SR.NO.57254, 57258,
57256
+3 CC to MR.B.Ravi Advocate. SR.NO.57257, 57258, 57259
+1 CC to MR.G.Thilagavathi Advocate. SR.NO.57418

W.A.Nos.2010 of 2013
269 and 270 of 2014

CO-VSN
JD 08/12/2015

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