

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.08.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.16535 of 2010 and
M.P.No.4 of 2010 and M.P.No.1 of 2015

M.Velmurugan

.. Petitioner

Versus

1.The Chairman,
Chennai Port Trust,
Chennai - 1.

2.The Deputy Chairman,
(Appointing Authority),
Chennai Port Trust,
Chennai - 1

3.The Standing Selection Committee,
Engineering Department,
Chennai Port Trust,
Chennai - 600 001.

4.Mrs.V.M.Tamilselvi
5.Sri.S.Babu
6.M.Manoharan

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus calling for the records of the respondents, particularly that of the third respondent dated 21.02.2009 and quash the same as illegal and unlawful tainted with malafide besides colourable, arbitrary discriminatory and against the service Rules, Employees Appointment Regulations of Chennai Port Trust and consequently direct the respondents to conduct selection afresh by considering the names of the candidates as per their merits, including the petitioner who stands above all in the Gradation List of Junior Engineer Cadre both in terms of Education and Experience.

For Petitioner : Mr.S.T.S.Rajamohan

For RR1 to 3 : Mr.R.Karthikeyan
For RR4 to 6 : Mr.K.Selladurai

O R D E R

Though M.P.No.1 of 2015 is listed today for hearing, by consent of both parties, the writ petition itself is taken up for final disposal.

2.The petitioner, in the affidavit filed in support of this petition, would submit that, he is presently in service of Chennai Port Trust as a Junior Engineer, Grade-I, Civil Engineering Department and the third respondent has issued a circular in No.E1/5601/2008/E dated 17.11.2008, for filling up of 4 posts of Assistant Engineer (Civil) in the Civil Engineering Department on re-deployment basis. On the basis of the Circular, it was notified under Regulation 5-A of the Madras Port Trust Employees (Appointment, Promotion, etc.), Amendment Regulations - 2004.

3.The petitioner would submit that as per the said Circular, prospective applicants must hold a degree in Civil Engineering from a recognized Engineering College/University or must have passed Sections A and B of the Institutions of Engineers (India) or possess qualification equivalent thereto and experience and must be thoroughly conversant with the design of reinforced concrete and steel structure and must also have good knowledge and experience in surveying Clause 3 of the above said Circular. The petitioner has applied to the respondents for considering his candidature for the post of Assistant Engineer (civil) and according to him, he fulfills all the relevant criteria for selection to the said post.

4.The second respondent has conducted an interview for selection of 4 posts of Assistant Engineer, by means of an oral interview and selected respondents 4 to 6. The petitioner, aggrieved by the selection of respondents 4 to 6, has filed this writ petition raising among other grounds that:-

(a)The respondents 4 to 6 were temporarily recruited, with regard to a particular project and their tenure is being extended from time to time and in terms of the Circular, the persons under re-deployment can alone be considered and not temporary employees.

(b)It is further contended by the petitioner that while selecting the respondents 4 to 6, the Madras Port Trust Employees (Appointment, Promotions, etc.,) Regulations 1977 have been given a complete go-by.

(c)While selecting respondents 4 to 6, only oral interview was conducted and on the date of interview itself, the result of the selection was announced and the oral interview conducted by the respondents 1 to 3 is only an eye wash to accommodate the respondents 4 to 6 in the said posts.

5.Therefore, the petitioner prays for quashment of the selection of respondents 4 to 6 with a consequential prayer to conduct fresh selection by considering the names of the candidates as per their merit including the petitioner.

6.The Chief Engineer, Madras Port Trust, on behalf of the respondents 1 to 3, has filed his counter, stating among other things that, during the year 1996, about 108 vacancies in the category of Supervisor Grade II (Civil) (Re-designated as Junior Engineer (C) arose for the reasons on account of the natural vacancies consequent on promotion of Supervisor Grade I and II as Assistant Engineers; Posts created for Ennore Project and Ennore; Posts created for Fishing Harbour Stage II at Chennai and Posts created for construction of Multi Storeyed Transit shed at Chennai Port. All the vacancies were filled up during the year 1997 by approving the candidates after conducting an interview as per the Recruitment Rules. It is further averred in the counter that the respondents 4 to 6, along with others, were appointed under Regulation 10 of the above said Regulations and as such, their appointments cannot be termed as temporary.

7.It is the further stated in the counter that in response to the selection of 4 posts Assistant Engineer, 36 persons have applied and that the petitioner also is one among the persons who participated in the interview and the respondents 4 to 6 were declared as successful candidates and they also joined duty on 22.07.1997, 28.07.1997 and 13.08.1997 respectively.

8.The respondents 1 to 3 have also taken a stand that the respondents 4 to 6 were appointed under Regulation 10 and not under 24 and they were posted to Ennore Project. Since, it has become a public limited company, they are once again called to the service and taken back to the service of Madras Port Trust.

9.Insofar as the conducting of interview is concerned, it is averred by the respondents 1 to 3 in paragraph No.17 that, 10 marks were awarded for qualification; 10 marks were awarded for experience and 10 marks were awarded for personality, smartness and performance in the interview and the petitioner herein had secured only 25 marks and whereas, the respondents 4 to 6 had secured 28.5; 28 and 27.5 marks respectively, at the time of interview and therefore, they were selected. Hence, the respondents 1 to 3, for the reasons stated above, have prayed for dismissal of this writ petition.

10.The learned counsel for the petitioner has drawn the attention of this Court to the Circular No.E1/5601/2008/E dated 17.11.2008 issued by the Engineering Department of the Chennai Port Trust and would submit that the applications were invited from the eligible employees in all Departments to fill up four vacancies in the category of Assistant Engineer(C)-Class II in the scale of pay of Rs.8600-250-14,600 by re-deployment under Regulation 5A of the Madras Port Trust Employees'(Appointment, Promotion, etc.), Amendment Regulations, 2004 and therefore, the respondents 4 to 6 who are temporary employees, cannot be considered for the said post.

11.It is further submitted by the learned counsel for the petitioner that in terms of the above said Regulations, oral interview alone cannot be conducted to find out the suitability of the candidates and recruitment through oral interview was resorted only to accommodate the respondents 4 to 6 to the said post and the results were announced on the same date of interview and hence, the entire selection process is only an eye wash and hence, he prays for interference of this Court.

12.Per contra, Mr.R.Karthikeyan, learned counsel for the respondents 1 to 3 has produced the proceedings of the Chief Engineer of the Madras Port Trust in No.EA2/8055/96/E dated 14.07.1997 and would submit that the respondents 4 to 6 were appointed under Regulation 10 and therefore, their services cannot be deemed to be temporary. It is the further submission of the learned counsel for the respondents 1 to 3 that even assuming for the sake of argument that the respondents 4 to 6 were appointed as temporary employees, there is no bar for the prospective candidates to participate in the selection process in the light of Regulation 25(2). Refuting the submission made by the learned counsel for the petitioner, the learned counsel for the respondents 1 to 3 would submit that while conducting the selection process, oral interview alone cannot be a criterion.

13.The learned counsel for the respondents 1 to 3 has invited the attention of this Court to Regulation 7 and would submit that to fill up vacancies in any category/categories, arising in Classes I, II and III which are to be filled in by direct recruitment, the Chairman may constitute Standing Committees every year consisting of not less than three officers, who shall, after a written examination, oral interview or both, drawn up a list of candidates recommended as suitable for appointment to the same and since, the said Regulation confers powers on the Selection Committee for the purpose of selecting suitable candidates, nothing can be said against with regard to the said process adopted by the Standing Committee and would further add that the said Regulation has not been put to challenge by the petitioner in the manner known to law. Hence, for the reasons stated above, the learned counsel for the respondents 1 to 3 prays for dismissal of this writ petition.

14.This Court has carefully considered the rival submissions and also perused the materials placed before it.

15.It is relevant to extract the following Regulations of the Madras Port Trust Employees (Appointment, Promotion, etc.,) Regulations, 1977:-

"3 (f) 'Permanent employee' means an employee who holds a lien against a regular post whether permanent or temporary.

(g).....

(h)'Temporary post' means a post carrying a definite scale of pay sanctioned for a limited time.

(i)'Lien' means right/title of an employee to hold a regular post, whether permanent or temporary, either immediately or on the termination of the periods of absence.

5.A Eligibility of existing employees for direct recruitment:

When the posts are required to be filled by direct recruitment, the same shall be circulated amongst the employees already in service and the applicants may be considered provided they possess the prescribed qualifications and experience. Age limit in their case will not apply.

Note: Provided that once the employee is re-deployed, the resultant vacancy shall be deemed to be abolished.

6.Authorised permanent and temporary strength:-

The authorised permanent and temporary strength of the various grades shall be as in the Schedule of Employees prepared and sanctioned from time to time under Section 23 of the Act.

7.Constitution of Staff Selection Committee:

To fill up vacancies in any category/categories, arising in Classes I, II and III which are to be filled in by direct recruitment, the Chairman may constitute Standing Committees every year consisting of not less than three officers who shall after a written examination or oral interview or both, draw up a list of candidates recommended as suitable for appointment to the same.

.....

10.Approved Candidates:

(1) All appointments shall be made by the appointing authority - (a) from the list of candidates as per Regulation 7 or 8 as the case may be, after approval by the Chairman or (b) from the list of candidates drawn as per Regulation 9, after orders have been passed by the Deputy Chairman on appeals, if any.

(2) The select list and panel drawn as per Regulations 7, 8 and 9 shall be valid for a period of one year and may be extended for a further period of six months with the approval of the Chairman.

25. Emergency Appointments:

(1) Notwithstanding anything contained in the above Regulations where it is necessary in an emergency to fill immediately any vacancy and there will be undue delay in making such appointment in accordance with these Regulations, the appointing authority may temporarily appoint a person otherwise than in accordance with these Regulations, with the prior approval of the Chairman.

Provided that a person appointed under this Regulation shall be replaced as soon as possible and in any case within a period of nine months in the manner laid down in Regulation 10 or 21 as the case may be.

(2) Where a person who has been appointed temporarily to a post under Sub Regulation (1) is subsequently appointed to the post or category of posts under Regulation 7, 8 or 9 as the case may be, the Chairman at his discretion, allow the employee to count the service rendered in such temporary capacity towards his probation in that post or category of post."

16. The Chief Engineer, Madras Port Trust vide proceedings in No.EA2/8055/96/E dated 14.07.1997 has appointed the respondents 4 to 6 and others as Supervisor Gr.II (Civil) in the Engineering Department of the Trust and it came to light under Regulation 10.

17. Admittedly, the petitioner did not make a challenge to the said proceedings. As per Regulation 5A, when the posts are required to be filled by direct recruitment, the same shall be circulated amongst the employees already in service and the applicants may be considered, provided, they possess the prescribed qualifications and experience. Age limit, in their case, will not apply.

18. Admittedly, in response to the filling up of the post, 36 persons had applied which includes the petitioner also. The Standing Committee was also appointed consisting of Dy.CPT (President), The Chief Engineer (Member), Secretary (Member), Shri S.Kirubanandaswamy, Dy.T.M. (Co-opted Member Representing OBC) and Shri S.Baskar Benjamin, Asst. Ex.Engineer (C) (Co-opted Member representing Minority) and though Mr.V.Thuraipandian, Dy.COS (Co-opted Member representing SC/ST) was absent as he was on leave, the Secretary, who is already a Member in the Committee represented SC/ST also and interviewed the candidates and selected respondents 4 to 6.

19. In the oral interview, the petitioner secured only 25 marks and whereas, the respondents 4 to 6 had secured 28.5, 28 and 27.5 marks, respectively, at the time of interview. It is the submission of the learned counsel for the petitioner that since, no written test was conducted, the selection process is biased. However, in terms of Regulation No.7, the Standing Committee consisting of not less than three officers, who shall, after a written examination or oral interview or both, draw up a list of candidates recommended as suitable for appointment to the same and in this case, they resorted to oral interview.

20. It is pertinent to point out at this juncture that, the said Regulation has not been put on challenge by the petitioner and therefore, now, he cannot make complaints in that regard. It is also the submission of the learned counsel for the petitioner that in terms of Circular dated 17.11.2008, applications are invited to fill up the posts under Regulation 5.A of the above said Regulation.

21. Regulation 5.A of the Regulation does not contemplate that the employees in service alone can be considered for filling up the vacancies and the only condition stipulated is that, serving employees can be put on notice, provided, they have possessed requisite qualification. Hence, there is no bar on the part of the respondents 4 to 6 to participate in the selection process and as already pointed out, they were appointed under Regulation 10 which speaks about approved candidates.

22. Even for the sake of argument, if the respondents 4 to 6 are temporary employees, still, it cannot be put as a bar for them to participate in the selection process since, under Regulation 25 (2), it is clear that if a person who has been appointed temporarily to a post under Sub Regulation (1) is subsequently appointed to the post or category of posts under Regulation 7, 8 or 9, as the case may be, the Chairman, at his discretion, allow the employee to count the service rendered in such temporary capacity towards his probation in that post or category of post and hence, the submission made by the learned counsel for the petitioner in this regard is liable to be rejected.

23.It is also the vehement submission of the learned counsel for the petitioner that the selection is vitiated the mala fides and bias, in order to favour the respondents 4 to 6. It is a well settled position of law that with regard to mala fides, there must be a clear and specific averment and it must be strictly proved and in the case on hand, the petitioner has not produced any material to show that the Standing Committee has done the selection process only to favour the respondents 4 to 6.

24.This Court, upon hearing the submission of the learned counsel for both parties and on careful scrutiny of the materials placed before it, is of the considered view, that there is no infirmity in the selection process done by the respondents 1 to 3 and finds no merits in this writ petition.

25.Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

jbm

To

1.The Chairman,
Chennai Port Trust,
Chennai - 1.

2.The Deputy Chairman,
(Appointing Authority),
Chennai Port Trust,
Chennai - 1

3.The Standing Selection Committee,
Engineering Department,
Chennai Port Trust,
Chennai - 600 001.

1 cc to Mr.R.Karthikeyan , Advocate Sr.No.44930
1 cc to Mr.S.T.S.Rajamohan , Advocate Sr.No.45694

ctk(co)
pmk.15.9.2015

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