

N THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 30.03.2016

Pronounced on :31-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 11428 of 2016

and

W.M.P. No. 9871 of 2016

V. Anbazhagan .. Petitioner

Versus

1. Union of India
rep. by its Secretary
Ministry of Shipping
Transport Bhavan
Sansad Marg
New Delhi - 110 001
2. The University Grants Commission
Rep. by its Secretary
No.9, Bahadur Shah Zafar Marg
New Delhi - 100 002
3. Indian Maritime University
rep. by its Registrar
East Coast Road
Uthandi, Chennai - 600 119
4. The Search Committee
represented by its Convener
Indian Maritime University
East Coast Road
Uthandi, Chennai - 600 119
5. Ashok Varadhan Shetty
Vice Chancellor
Indian Maritime University
East Coast Road
Uthandi, Chennai - 600 119

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Quo Warranto calling upon the fifth respondent herein to show cause under what authority of Law he is holding the post of Vice Chancellor of the third respondent University and consequently declare the post of Vice Chancellor now held by the fifth respondent as vacant.

For Petitioner : Mr. S. Kumara Devan
For Respondents : Mr. G. Venkatesan
Central Government
Standing Counsel for R1
Mr. K.R. Tamizhmani for R3

ORDER

The petitioner, who claims to be a social worker and presently working as Chief Editor of Tamil Daily "Dhinamathi" has come forward with this writ petition seeking to issue a Writ of Quo Warranto directing the fifth respondent to show cause under what authority of law he is holding the post of Vice Chancellor of Indian Maritime University and consequently declare the post held by him as vacant.

2. In the affidavit filed in support of the writ petition, the petitioner claims that earlier he was working as Reporter and as Chief Reporter in the Tamil Bi-weekly Nakeeran between 1993 and 2007 and he also worked as a Chief Reporter in Tamil daily 'Dhinakaran' from 27th November 2007 to September 2009. He also claims to be one of the members of Accreditation Committee which issues Identification cards to Tamil Nadu Reporters. The petitioner also claims to be holding the post of President of Chennai Union of Journalists and as a Treasurer of the Chennai Press Club.

3. It is the contention of the petitioner that the third respondent University was created under the Indian Maritime University Act, 2008 (Act 22 of 2008) (hereinafter referred to as The Act) to establish and incorporate a teaching and affiliating university at the national level to promote maritime studies and allied research. The vice chancellor of the third respondent University has to be appointed from a panel of not less than three persons as per the The Act. According to the petitioner, The Act was amended relating to the qualification to be possessed by a candidate for appointment to the post of Vice Chancellor and as per the amendment notified on 12.05.2009, an eminent educationist in the area of Maritime Management/General Management/Science and Technology with Ph.D., candidate shall be appointed. According to the petitioner, when the post of Vice Chancellor fell vacant, the fourth respondent/Search committee invited applications from suitable candidates/nominations on behalf of candidates on or before 04.02.2012. As per the

application, the candidate must possess a Ph.D., degree which is the minimum and essential qualification. The fourth respondent originally appointed Dr.G. Raghuram as Vice Chancellor but he resigned within a year of his appointment. The fourth respondent thereafter invited applications for appointment to the post of Vice Chancellor by following the guidelines laid down in Office Memorandum dated 17.07.2012. In this context, the petitioner placed reference on a letter dated 15.03.2013 said to have been written by one Dr. S. Kathirola for considering the same panel for selection and appointment to the post of Vice Chancellor as per the guidelines laid down in the Office Memorandum dated 17.07.2012.

4. It is specifically contended by the petitioner that the third respondent is an University coming under the purview of University Grants Commission (in short UGC) and it is governed by the UGC Regulations. Therefore, in addition to the requirement to possess a Ph.D., degree, the candidate is required to possess 10 years of minimum experience as Professor in a University or ten years experience in an equivalent position in a reputed research or academic administration organisation in terms of Clause 7.3.0 (1) of the regulations. As per the qualifications prescribed, Dr. S. Kathirola was given to understand that his name was included in the panel of four persons, which includes the name of the fifth respondent herein. According to the petitioner, the fifth respondent does not possess the requisite qualification for appointment to the post of Vice Chancellor, but he was appointed and posted as Vice Chancellor and he has taken charge on 02.01.2014. According to the petitioner, Dr. Kathirola is possessing all the requisite qualification for being appointed to the post of Vice Chancellor but his name was erroneously ignored. The petitioner also placed reliance on the Writ Petition No. 26280 of 2014 filed by Dr. S. Kathirola for a Declaration to declare the appointment of the fifth respondent as illegal and ultra vires. The said writ petition is pending. It is the specific plea of the petitioner that the qualification prescribed by the fifth respondent is far below the standards and experience as possessed by Dr. S. Kathirola and therefore, according to the petitioner, the said Dr. S. Kathirola is a better candidate who ought to have been selected and appointed to the post of Vice Chancellor instead of appointing the fifth respondent.

5. The learned counsel appearing for the petitioner reiterated the averments made in support of the writ petition and prayed this Court to issue a Writ of Quo Warranto as prayed for.

6. Mr. K.R. Thamizhmani, learned Counsel appearing for the third respondent, on instructions, submitted that the plea of the petitioner that the third respondent University comes under

the purview of University Grants Commission is untenable. The third respondent University is substantially and fully governed by the Indian Maritime University Act. By placing reliance on the advertisement issued by the fourth respondent/committee inviting applications for selection and appointment to the post of Vice-Chancellor, the learned standing counsel would contend that it is clearly stated in the advertisement that the incumbent must possess experience in the Field of Human Resources Management, Maritime Public Administration, Marine or Port Administration. The Committee, after thoroughly scrutinising the applications received for appointment to the post of Vice Chancellor and after subjective consideration, has appointed the fifth respondent as Vice-Chancellor and he has taken charge on 02.01.2014. Challenging the selection and appointment, even as pointed out by the petitioner, Dr. S. Kathirolu has filed WP No. 26280 of 2014 for a declaration to declare him as the eligible person for being appointed to the post of Vice Chancellor of the third respondent University. When the writ petition is pending, the petitioner, who claims to be a social worker and working as Chief Editor of a Tamil Weekly, has filed this writ petition seeking for issuance of a Quo Warranto. It is evident from the averments made in the affidavit filed in support of the writ petition that the petitioner herein is not having any public interest but he is battling for and supporting the cause of Dr. S. Kathirolu. Therefore, the learned counsel for the third respondent prayed for dismissal of this writ petition.

7. I heard the counsel for both sides and perused the materials placed on record. At the outset, the plea of the petitioner that the third respondent University comes under the purview of UGC Regulations is untenable. The third respondent University is infact wholly and substantially governed by the Indian Maritime University Act and the Rules made thereunder. Therefore, the application of UGC Act or Rules for selection and appointment to the post of the Vice Chancellor of the third respondent University does not arise. Further, in the advertisement issued by the fourth respondent, the qualification prescribed and the essential experience required have been clearly spelt out. It is not the case of the petitioner that the petitioner did not possess the qualifications or experience indicated in the advertisement issued by the fourth respondent Committee. But it is the case of the petitioner that the experience possessed by the petitioner is low in standards when compared with the qualification and experience possessed by Dr. S. Kathirolu. As rightly pointed out by the learned counsel for the third respondent, the averments made in the affidavit filed in support of the writ petition, if read as a whole, would only indicate that the petitioner has no genuine grievance to be ventilated to expound a public cause, rather, he appears to be supporting the cause of Dr. S. Kathirolu, an unsuccessful

candidate in the selection process for appointment to the post of Vice Chancellor. Even otherwise, Dr. S. Kathirolu himself has filed a writ petition in WP No. 26280 of 2014 and it is pending before this Court. If Dr. S. Kathirolu succeeds in the writ petition, it is for the official respondents to act according to the outcome of the writ petition. When such a substantial writ petition filed by Dr. S. Kathirolu is pending, the petitioner is not entitled to file this writ petition for issuance of a Co Warranto. Further, the petitioner has filed this writ petition after a period of two years of the fifth respondent assuming charge as Vice Chancellor of the third respondent University and the reason for such delay is not explained.

8. In this context, useful reference can be made to the decision of the Honourable Supreme Court in Hari Bansh Lal vs Sahodhar Prasad Mahto & Ors delivered on 30 August, 2010 in Civil Appeal No. 7165 of 2010 (Arising out of S.L.P. (C) No. 11013 of 2009) wherein it was held as follows:-

"19. After considering various issues, the Constitution Bench highlighted about the role of the Chief Secretary and the ultimate decision of the Chief Minister in appointing a person for a highest post in the State, namely, Chief Secretary, which reads as under:

"87. Now, two important considerations must weigh with us in determining our approach to these questions. First, the post of Chief Secretary is a highly sensitive post. It is a post of great confidence -- a lynchpin in the administration -- and smooth functioning of the administration requires that there should be complete rapport and understanding between the Chief Secretary and the Chief Minister. The Chief Minister as the head of the Government is in ultimate charge of the administration and it is he who is politically answerable to the people for the achievements and failures of the Government. If, therefore, for any valid reason the Chief Secretary forfeits the confidence of the Chief Minister, the Chief Minister may legitimately, in the larger interests of administration, shift the Chief Secretary to another post, provided of course that does not involve violation of any of his legal or constitutional rights. There can be no question in such a case as to who is right and who is wrong. The displacement of the Chief Secretary from his post in such a case would not be arbitrary and it would not

attract the inhibition of Articles 14 and 16. It may, however, be pointed out that such an action would not, we think, ordinarily be taken except for the most compelling reasons, because, if resorted to without proper justification, it would tend to affect the political neutrality of the public service and lead to demoralisation and frustration amongst the public servants."

If we apply the same principles to the appellant, who was appointed as Chairman of the Electricity Board by the Chief Minister, after fulfilling the criteria, the said appointment cannot be interfered lightly without adequate material about his integrity or inefficiency in service

20) From the discussion and analysis, the following principles emerge:-

- a) Except for a writ of quo warranto, PIL is not maintainable in service matters.
- b) For issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.
- c) Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules.

9. Applying the ratio laid down by the Honourable Supreme Court to the case on hand, in the present case, it is not the case of the petitioner that the fifth respondent is inefficient or did not possess sufficient qualification for selection and appointment to the post of Vice Chancellor of the third respondent. Even if it is so, the suitability or otherwise of the fifth respondent to hold the post of Vice Chancellor is the subject matter of writ petition before this Court pending in WP No. 26280 of 2014 filed by Dr. S. Kathirolu. Further, the appointment of the fifth respondent, in my considered opinion, has not been made by overlooking the statutory Rules and Regulations. While so, the relief sought for in this writ petition cannot be granted.

10. In the result, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. Union of India
rep. by its Secretary
Ministry of Shipping
Transport Bhavan
Sansad Marg+6
New Delhi - 110 001
2. The University Grants Commission
Rep. by its Secretary
No.9, Bahadur Shah Zafar Marg
New Delhi - 100 002
3. Indian Maritime University
rep. by its Registrar
East Coast Road
Uthandi, Chennai - 600 119
4. The Search Committee
represented by its Convener
Indian Maritime University
East Coast Road
Uthandi, Chennai - 600 119

+1 cc to Mr.S.Kumaradevan Advocate sr.20264
+1 cc to Mr.K.R.Tamizhmani Advocate sr.20239

WP No. 11428 of 2016

aa04/04/2016