

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2016

Coram :

The Hon'ble Mr.Justice K.KALYANASUNDARAM

W.P.No.32400 of 2015
and M.P.Nos.1, 2 & 3 of 2015

Madras University Teachers' Association (MUTA),
(Regd No.37/1977),
Rep. By its General Secretary,
Clock Tower Building, Chepauk Campus,
Chennai - 600 005.

... Petitioner

vs

1.University of Madras,
Rep.by its Registrar,
Centenary Buildings,
Chepauk, Chennai - 600 005.

2.Dept. of Higher Education
Government of Tamil Nadu,
Rep.by the Principal Secretary,
Higher Education, Fort St. George,
Chennai - 600 009.

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the Advertisement released by the 1st Respondent University dated 13.09.2015 for several posts in several cadres and quash the same and consequently, forbear the 1st respondent from, in any manner, selecting/appointing any person.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for
M/s.AL.Gandhimathi

For Respondents: Mr.A.L.Somyaji
Advocate General
Assisted by Ms.Narmada Sampath
for R1
Mr.V.Jayaprakash Narayanan
Special Govt. Pleader for R2.

O R D E R

The petitioner, who claims to be the General Secretary of Madras University Teachers' Association (MUTA) has come with the present writ petition to quash the notification issued by the 1st respondent University dated 13.09.2015 for appointment of various posts in several cadres in the Institute of Distance Education and for consequential direction forbearing the 1st respondent from, in any manner, selecting/appointing any person.

2. The University of Madras, the 1st respondent herein had issued the impugned notification dated 13.09.2015 inviting applications for appointment to various posts in the Institute of Distance Education notifying the last date for receipt of applications as 05.10.2015.

3. The petitioner has challenged the notification mainly contending that the impugned notification was not published as per UGC norms, that no reservation for persons with disabilities was provided in the notification as per Tamil Nadu State Government G.O.Ms.No.87 dated 17.07.2008, that the Institute of Distance Education has to be considered as one unit as per Chapter VIII, but each department has been considered as one unit thereby violating the guidelines issued by the Hon'ble Supreme Court and also depriving the appointments to almost 16 posts belonging to Backward, Most Backward and Schedule Caste candidates and that the 1st respondent university had not followed the UGC Mandated API procedures during the past recruitment and the internal quality assurance cell. The selection committee has not been constituted as per the Regulations of UGC and API scores had also not been evaluated as per the norms prescribed by the 1st respondent University.

4. The 1st respondent filed a counter affidavit stating that the petitioner association has no locus standi in maintaining the writ petition since the members of the petitioner association are not aggrieved by the notification, that the Association has not filed any resolution of the General Body authorising the deponent to this affidavit to file the writ petition and that the petitioner Association has not filed any statutory returns for the past 38 years and therefore the writ petition is liable to be dismissed on the ground of maintainability. It is further averred that if the writ petition was filed in the public interest, it has to be placed before the Division Bench having roster as per the standing orders issued by this Court. Further, as per the decisions of the Hon'ble Supreme Court reported in 2005 (5) SCC 136 [Gurpal Singh v. State of Punjab] and 1998 (7) SCC 273 [Dr.Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors., in service matters, public interest litigations shall not be entertained

which has been approved and followed in the case of Neetu v. State of Punjab reported in 2010 (3) SCC 402.

5. It is further stated in the counter that the advertisement was published in various leading newspapers on 13.09.2015 having circulation all over India, i.e. The New Indian Express, Daily Thanthi, etc. In the notification, it is clearly stated that under the caption "special instructions", relaxation shall be given in case of SC/ST categories as well as differently abled persons and for appointment to various posts, the roster points by which the posts will be filled up were also indicated. When the 1st respondent University attempted to reserve posts for teaching posts, the petitioner association moved a writ petition in WP No.10610 of 1999. The Learned Single Judge of this Court, directed the University to follow the communal rotation treating each department as separate unit. The order of the Single Judge was confirmed by the Division Bench of this Court in W.A.No.1296 of 1991 and the SLP No.4466 of 1992 filed by the University was dismissed by the Hon'ble Supreme Court. In view of the judgment of the Hon'ble High Court and Supreme Court, the 2nd respondent issued a letter dated 19.04.2002 to all the universities to treat each department as single unit.

6. The 1st respondent has further stated that G.O.Ms.No.87 Social Welfare & Nutritious Meal Scheme Department dated 17.07.2008 was issued giving guidelines in respect of following the 200 point roster. As per the said roster, it was directed that the 200 point roster has to be divided into 6 blocks (in respect of disabled persons comprising of 3 categories i.e. visually impaired, hearing impaired and physically disabled are concerned, they should be accommodated on the ratio of 1:1:1) and for each block, for every 33 vacancies, one disabled person should be selected since each department in the 1st respondent University has to be considered as a single unit as the teaching staff strength in most of the departments are very few, the turn for differently abled persons may not fall due.

7. It is also stated in the counter affidavit that the vacancy identification committee has been constituted by the Vice Chancellor in the meeting held on 20.07.2015 to identify the vacancy position in the various departments and the same was approved by the Syndicate at its meeting held on 27.07.2015. As per the orders, the advertisement for the posts of Assistant Professors, Librarian and Director for Physical Education in the University Constituent Colleges, Nemmeli & Tiruvottiyur, IDE and University Libraries has been issued in the newspapers and the same was published in the University Website. The deponent, being a member of the syndicate was present in the meeting held on 27.07.2015 and recorded his dissent without specifying the

nature of dissent and having failed to persuade the syndicate filed the writ petition to settle his personal scores with the University.

8. It is further stated in the counter that the Vice Chancellor has constituted the committee consisting of 14 members for internal quality assurance cell as per UGC Regulations 2010 and the duly constituted internal quality assurance cell / screening committee is to process the API score for listing the eligible candidates and the selection being processed as per the norms prescribed by the UGC and also the statute of University of Madras. It is also stated that in the selection of teachers to the University, the Vice Chancellor has no special power and the appointment has to be made by the syndicate of which the Vice Chancellor is also a member and hence prayed for dismissal of the writ petition.

9. The petitioner has filed a reply affidavit contending that the Indian Express is having circulation only in Tamil Nadu and not all over India. As per the direction of this Court in WP No.10610 of 1999 and W.A.No.1296 of 1991, the communal roster has not been followed and that as per the information given by the University, the internal quality assurance cell has not made any API scores till date. Further, the constitution of the internal quality assurance cell is also not as per UGC Regulations.

10. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner would contend that 3% reservation for disabled persons as per G.O.Ms.No.87 dated 17.07.2008 was not followed. The Institute of Distance Education has to be considered as one unit and the 1st respondent University has artificially treated each department as one unit, in order to deprive and defeat the object of achieving social justice. The learned Senior Counsel has further contended that as per the regulations of UGC, the advertisement was not published in a National Daily Newspapers however, in the instant case, the advertisement was made only in regional newspapers and further internal quality assessment was not done as per UGC Regulations. Hence, the notification is liable to be quashed.

11. Per contra, Sri A.L.Somyaji, learned Advocate General while reiterating the contentions made in the counter, further submitted that the writ petition itself is liable to be dismissed on the ground of maintainability since the members of the Association are not aggrieved persons. It is further submitted that the Public Interest Litigation in service matters cannot be entertained in view of the decision of the Hon'ble Supreme Court reported in 2005 (5) SCC 136 [Gurpal Singh v. State of Punjab]. The learned Advocate General would further

submit that as the University has given advertisement to fill up 51 posts in all India edition and also published in the University website, within a short time, the University received 1803 applications from different states, which is evident for the wide publicity given in this case. Further, in order to implement the orders of this Court and the Hon'ble Supreme Court passed in the case filed by the petitioner Association, the 2nd respondent had issued a letter dated 19.04.2002 to all the universities to treat each department as single unit and therefore now the petitioner association cannot turn round and allege that the Institute of Distance Education has to be treated as one unit to apply reservation policy.

12. The learned Advocate General has relied upon the following judgments -

In 1998 (7) SCC 273 [Dr.Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors., the Hon'ble Supreme Court has held as follows -

19. Our attention has been drawn to a judgement of the Orissa Administrative Tribunal in Smt. Amitarani Khuntia Versus State of Orissa 1996. (1) OLR (CSR)-2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgement is relevant: "....A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.

Tribunals are constituted under Article 323 A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are

constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power." We agree with the above reasoning.

In 2005 (5) SCC 136 [Gurpal Singh v. State of Punjab], the Hon'ble Supreme Court has observed as follows -

12. When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object. Since in service matters public interest litigation cannot be filed there is no scope for taking action for contempt, particularly, when the petition is itself not maintainable. In any event, by order dated 15.4.2002 this Court had stayed operation of the High Court's order.

13. The Hon'ble Supreme Court, in order to curb the frivolous and vexatious litigations filed under the guise of Public Interest Litigations, framed guidelines in the case of State of Uttaranchal v. Balwant Singh Chaufal and Ors. reported in 2010 (3) SCC 402 which would run thus -

We have carefully considered the facts of the present case. We have also examined the law declared by this court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of

the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. (8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

14. The learned Senior Counsel for the petitioner by way of reply, would contend that UGC regulations have to be strictly followed by the respondent while making appointments. As per 3.1.0 of the Regulations, direct recruitment to the post of Assistant Professors, Associate Professors and Professors in the Universities and Colleges shall be made on the basis of merit through All India advertisement and selections by the duly constituted selection committee and as per 4.1.0 (iv), the minimum score as stipulated in the Academic Performance Indicator (API) based on Performance Based Appraisal System (PBAS) set out in these regulations in Tables 1 to 9 of Appendix 3 for appointment to the post of professors. A similar provision was made for appointment of Associate Professors.

15. The learned Senior Counsel, referring to Page No.101 of the typed set submitted that all Universities/Colleges have an obligation of setting up verifiable system for API related information required in these tables within three months of notifications of this regulations and they will have to be documented and collated annually by the Internal Quality Assurance Cell (IQAC) of the Universities/Colleges for follow up

by the Universities/College Authorities. In order to facilitate this process, all teachers shall submit the duly filled in Performance Based Appraisal System (PBAS) proforma in IQAC annually. However, as per the information furnished by the Public Information Officer dated 28.07.2015 enclosed in Page No.147 of the typed set, an answer was given to Question No.3 stating that IQAC was not computed in API score for the past three years. The learned Senior Counsel for the petitioner, relying upon the answer given by the Director, Internal Quality Assurance Cell, submitted that the respondent has not followed the UGC regulations for the past three years and therefore they cannot proceed with the appointment as per their impugned notification.

16. The learned Advocate General appearing for the respondents would submit that the Vice Chancellor of the respondent/University had already constituted the committee consisting of 14 members for the Internal Quality Assurance Cell as per UGC Regulations 2010. The duly constituted IQAC / screening committee would process the API score for listing the eligible candidates processed as per the norms fixed by UGC. It is further submitted that the Director, Internal Quality Assurance Cell, in his letter dated 28.07.2015 has given the names and designations of 14 members of the Internal Quality Assurance Cell and for the question asked to provide details of IQAC work regarding computation of API for different categories for direct as well as CAS recruits for the last three years, answer was given stating that IQAC has not computed any API score for the past three years. So, the reply will no way support the case of the petitioners.

17. The learned Advocate General has further submitted that the Internal Quality Assurance Cell would compute API scoring for the candidates who were already recruited and for direct recruitment, IQAC is not computing API score. Therefore, the contention of the petitioner has to be rejected. The learned Advocate General submitted that explanatory note of Tables 11A and 11B relied on by the learned counsel for the petitioner is applicable only for the candidates who were already selected and for direct recruitment, Appendix III, Table II(c) is applicable which is found in Page No.102 of the typed set which is extracted below -

APPENDIX - III TABLE - II ©

Minimum Scores for APIs for direct recruitment of teachers in university departments/colleges, Librarian/Physical Education cadres in Universities/Colleges, and weightages in Selection Committees to be considered along with other specified eligibility qualifications stipulated in the Regulation.

	Assistant Professor/ equivalent cadres (Stage 1)	Associate Professor/ equivalent cadres (Stage 4)	Professor/equivalent cadres (Stage 5)
Minimum API Scores	Minimum Qualification as stipulated in these regulations	Consolidated API score requirement of 300 points from category III of APIs	Consolidated API score requirement of 400 points from category III of APIs
Selection Committee criteria/weightages (Total Weightage = 100)	a) Academic Record and Research Performance (50%) b) Assessment of Domain Knowledge and Teaching Skills (30%) c) Interview performance (20%)	a) Academic Background (20%) b) Research performance based on API score and quality of publications (40%) c) Assessment of Domain knowledge and Teaching Skills (20%) d) Interview performance (20%)	e) Academic Background (20%) f) Research performance based on API score and quality of publications (40%) g) Assessment of Domain Knowledge and Teaching Skills (20%) Interview performance (20%)

18. In the case on hand, the petitioner association has filed the writ petition to quash the advertisement / notification issued by the 1st respondent for appointment to the post of Librarian, Deputy Librarian, Assistant Librarian, Professor, Deputy Professor in the cadre of Associate Professor, Assistant Professor and Director of Physical Education. The petitioner has challenged the notification mainly contending that the respondent has not followed the UGC Regulations and reservation was not given as per G.O.Ms.No.87.

19. The respondent has taken a specific stand in the counter that the members of the petitioner association are not the persons aggrieved and the writ petition is filed in the nature of Public Interest Litigation. It is further contended that the deponent who was one of the members in the Syndicate and who was a party to the resolution passed by the Syndicate in the meeting held on 27.07.2015, has descended from the majority

view and has filed the writ petition in the name of his Association to settle his personal scores with the University.

20. It is not in dispute that the members of the petitioner association are not aggrieved by the impugned notification. As per the principles laid down in the judgment of the Hon'ble Supreme Court in the case of Dr.Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors., reported in 1998 (7) SCC 273 and Gurpal Singh v. State of Punjab reported in 2005 (5) SCC 136, in case of service matters, Public Interest Litigations should not be entertained. Though the cases arose out of the orders of the Administrative Tribunal, I am of the considered view that the same principle would apply to the case on hand.

21. Further, the deponent has deliberately suppressed the orders made in the earlier writ petition filed by the petitioner Association. Pursuant to the orders of the High Court and Supreme Court, the second respondent vide letter 2D No.58 Higher Education Department dated 19.4.2002 directed all the Universities to treat each department as separate unit. The deponent who is a member of the syndicate was present in the meeting held on 27.07.2015 in which a resolution came to be passed to make appointment in the 1st respondent university. However, the deponent has deliberately suppressed the above facts. So, this court is of the opinion that the petitioner has not approached the court with clean hands.

22. In the light of the decisions of the Hon'ble Supreme Court and also considering the facts of this case, I am of the view that the writ petition is not maintainable and it is liable to be dismissed.

23. Even on the merits of the case, the respondents have taken a stand which is not disputed by the petitioner, that in the earlier writ petition filed by this petitioner association in W.P.No.10610 of 1991, direction was given to the effect that each department should be treated as a separate unit while making direct recruitment to the post of Professors, Readers, etc. The judgment of the Single Judge of this Court was also confirmed by the Division Bench of this Court and the Apex Court in Special Leave Petition No.4466 of 1992. Further, the learned Advocate General has produced copy of the "The New Sunday Express" Newspaper dated 13.09.2015, which shows that the advertisement was published in the State of Odisha and also the statement containing the details of candidates who have applied from other states. The statement reveals that the respondent has received applications from the States of Telengana, Uttar Pradesh, Karnataka, Kerala, Delhi, Andhra Pradesh, Oddisa and West Bengal. Therefore, I do not find any

force in the contention raised by the learned counsel for the petitioner with regard to the allegations that the advertisement was not published all over India, as per the Regulations.

24. A cursory reading of Page Nos.101 & 102 in the typed set filed by the petitioner would reveal that for the direct recruitment, Appendix III, Table II (c) extracted above would apply and Table II (a) and II (b) would not apply for the direct recruitees.

25. In view of the above finding, I do not find any merits in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rgr
To

1.The Registrar,
University of Madras,
Centenary Buildings,
Chepauk, Chennai - 600 005.

2.The Principal Secretary,
Dept. of Higher Education
Government of Tamil Nadu,
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+1 cc to M/s.Narmadha Sampath Advocate sr.1113
+1 cc to Government Pleader sr.984
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