

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27-07-2016

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 34917 of 2015  
and  
Writ Petition No. 10740 of 2016

M. Sankaranarayanan ... Petitioner in both the  
Writ Petitions

Versus

1. The Additional Chief Secretary to Government  
Tourism Culture & Religious Endowment Department  
Fort St. George, Chennai - 600 009
2. The Director  
Kalakshetra Foundation  
Thiruvananthapuram  
Chennai - 600 041 ... Respondents in WP.  
No. 34917 of 2015
1. The Chairman  
Kalakshetra Foundation  
Thiruvananthapuram  
Chennai - 600 041
2. The Director  
Kalakshetra Foundation  
Thiruvananthapuram  
Chennai - 600 041
3. Government of India  
represented by The Joint Secretary  
Ministry of Culture  
New Delhi
4. Government of India  
represented by the Secretary  
Ministry of Personnel & Training  
New Delhi
5. Mr. B. Srinivasaragavan ... Respondents in WP.  
No. 10740 of 2016

WP No. 34917 of 2015:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari and Mandamus to call for the records relating to the impugned order passed by the second respondent herein in his proceedings D-2015/2016/Cancellation of appointment of

Deputy Director post on Deputation dated 27.08.2015 and quash the same and consequently direct the respondents herein to allow the petitioner to work as Deputy Director as per the appointment order issued in D-/2015-2016/Recruitment for the post of Deputy Director on Deputation dated 05.08.2015, within time-frame as deemed fit and proper by this Court.

WP No. 10740 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned notification issued by the respondents one to three herein issued in notification in Employment News dated 21-27 November 2015, regarding recruitment to the post of Deputy Director, Kalakshetra Foundation and quash the same as illegal, arbitrary and discriminatory and consequently direct the respondents herein to allow the petitioner to work as Deputy Director as per the appointment order issued in D-/2015-2016/Recruitment for the post of Deputy Director on Deputation dated 05.08.2015, within time frame as deemed fit and proper by this Court.

For Petitioner : Dr. Fr. A. Xavier Arul Raj,  
Senior Counsel  
for M/s. G. Bala and Daisy  
in both the Writ Petitions

For Respondents : Mr. S. Gunasekaran  
Additional Government Pleader for R1  
in WP. 34917 of 2015

Mr. Karthick for R2 in  
WP. 34917 of 2015  
for RR1 and 2 in WP. 10740 of 2016

#### COMMON ORDER

The petitioner in both the writ petitions are one and the same. The issue involved in these writ petitions are interconnected. Therefore, both the writ petitions are taken up together for final disposal and are disposed of by this common order.

2. In the first writ petition namely WP No. 34917 of 2015, the challenge is to the order dated 27.08.2015 passed by the second respondent, by which, the order dated 05.08.2015, appointing the petitioner as Deputy Director on Deputation basis in Kalakshetra Foundation, has been cancelled. The subsequent writ petition in WP No. 10740 of 2016 has been filed to quash the notification issued by the respondents 1 to 3 therein which was published in one issue of the Daily Employment News dated 21-27 November 2015, calling for applications for filling up the post of Deputy Director afresh in Kalakshetra Foundation.

3. In response to a notification published in the Employment News dated 24-30 January 2015 issued by the Kalakshetra Foundation for recruitment to the post of Deputy Director on deputation basis from among the employees of Central, State Government and Union Territories, the petitioner submitted his application dated 20.02.2015 through proper channel. By a communication dated 20.07.2015, the petitioner was called upon to attend an interview on 23.07.2015. The petitioner also attended the interview with the permission of his employer namely first respondent in WP No. 34917 of 2015. After the interview, the petitioner was selected by the Selection Committee of Kalakshetra Foundation and such selection was also approved by the Governing Body of Kalakshetra Foundation on 29.07.2015. On 05.08.2015, the second respondent in WP No. 34917 of 2015 passed an order appointing the petitioner to the post of Deputy Director and also requested the first respondent in WP No. 34917 of 2015 to relieve the petitioner from service so as to enable him to join the post of Deputy Director. However, without any valid reasons, the second respondent in WP No. 34917 of 2015 passed the order dated 27.08.2015, cancelling his appointment as Deputy Director of Kalakshetra Foundation. The petitioner has submitted a representation dated 09.10.2015 to the second respondent in WP No. 34917 of 2015 requesting to give effect to the order of appointment. Since the representation dated 09.10.2015 has not been considered, the petitioner has filed WP No. 34917 of 2015 challenging the order cancelling his appointment. Pending WP No. 34917 of 2015, Kalakshetra Foundation has published a notification in Employment News dated 21-27 November 2015, calling for applications for recruitment to the post of Deputy Director afresh in Kalakshetra Foundation. According to the petitioner, Kalakshetra Foundation has issued the subsequent notification to fill up the post of Deputy Director in a hurried manner to make the relief sought for by the petitioner in WP No. 34917 of 2015 infructuous.

4. Fr. Arulraj, learned counsel appearing for the petitioner would contend that the order appointing the petitioner as Deputy Director was cancelled without any notice and without following the established procedures contemplated under law. According to the learned counsel for the petitioner, the notification, which is impugned in WP No. 10740 of 2016, has been issued hurriedly to appoint the fifth respondent to the post of Deputy Director. Therefore, the petitioner has arrayed the fifth respondent as party to WP No. 10740 of 2016. The learned counsel for the petitioner would further contend that the petitioner has already undergone the process of selection in a manner known to law which was also approved by the governing body of Kalkshetra Foundation. While so, the appointment of the fifth respondent is illegal, arbitrary and uncalled for. Further, without issuing any notice, the order of appointment,



appointing the petitioner as Deputy Director, ought not to have been cancelled by the second respondent in WP No. 34917 of 2015. In such view of the matter, the learned counsel for the petitioner prayed for allowing both the writ petition.

5. Mr. Karthick, learned counsel appearing for Kalakshetra Foundation, relying on the counter affidavit filed on behalf of Kalakshetra Foundation in both the writ petitions with identical averments, would contend that the writ petitions are not maintainable. According to the learned counsel, Kalakshetra Foundation is an autonomous body under the Ministry of Culture, Government of India and it is governed by the Kalakshetra Foundation Act, 1993. The recruitment to various posts in the Foundation is governed by the recruitment rules. It is further stated that there is only one post of Deputy Director exists in the Foundation which is next to the post of Director. It is an important administrative post. The duties and responsibilities include assisting the Director in the day to day administration of the Foundation. It is further stated that as per the Recruitment Rules, it is a composite method of recruitment namely promotion/deputation. Promotion can be considered from among the existing employees in the foundation holding the feeder posts, whereas, deputation is by consideration of outsiders who are officers holding different posts in Central and State Government. The composite method of recruitment is ordinarily prescribed by the Government of India when there is only one post in the cadre.

6. According to the learned counsel for the Foundation, it is true that the petitioner participated in the selection process and he was appointed to the post of Deputy Director. However, the Foundation received a grievance petition through the Ministry of Culture to the effect that such a composite method of recruitment has not been followed whereby eligible in-service candidates have been left out from the field of consideration. The foundation therefore sought some clarification from the Ministry of Culture and found that the selection process initiated by it, in which the petitioner was appointed as Deputy Director, was not in consonance with the recruitment rules. In the light of the above, the order of appointment issued to the petitioner was cancelled on 27.08.2015. According to the learned counsel for the respondent, before the order dated 27.08.2015 was passed, the petitioner was neither relieved from his parent department nor joined the duty as Deputy Director in Kalakshetra Foundation. The learned counsel for the respondent also brought to the notice that subsequently, the Ministry of Culture, by letter dated 28.09.2015 addressed to the second respondent in WP No. 34917 of 2015, conveyed the approval of the competent authority i.e., the Honourable Minister of State, (Independent Charge) for culture for issuing a fresh notification calling for applications to fill up the vacancy by following the recruitment rules. In the light of such

clarification, the notification, which is impugned in WP No. 10740 of 2016 was issued by the Foundation. In the meantime, the petitioner has filed the first Writ petition in WP No. 34917 of 2015 to quash the order cancelling his appointment as Deputy Director. In the first writ petition, this Court has not granted any interim order. Thereafter, the Foundation has issued the notification, which is impugned in WP No. 10740 of 2016, clearly indicating that the method of recruitment was by way of composite method namely by promotion/deputation including short term contract. In the second writ petition, this Court granted interim stay.

7. The learned counsel for the respondent would contend that the petitioner has not joined the post and even before he could join the post of Deputy Director, the order of appointment was cancelled. Further, pursuant to the notification, which is impugned in WP No. 10740 of 2016, the petitioner did not apply for the post of Deputy Director. While so, according to the learned counsel for the respondent, the petitioner has no locus standi to file the writ petitions. In any event, the relief sought for in the second writ petition is not maintainable inasmuch as the fifth respondent in WP No. 10740 of 2016 was appointed by Kalakshetra Foundation as Deputy Director and it was also accepted by the governing body. Later an order of appointment was issued to the fifth respondent in WP No. 10740 of 2016 granting him time till 31.03.2016 to join the post. At that point of time, the petitioner has filed WP No. 10740 of 2016 and obtained an interim stay. In such view of the matter, the learned counsel for the respondents prayed for dismissal of both the writ petitions.

8. In order to add strength to his submission, the learned counsel for the respondents/Kalakshetra Foundation, has relied on the decision of the Honourable Supreme Court in the case of (Indian Council of Agricultural Research and another vs. T.K. Suryanarayanan and others) reported in (1997) 6 Supreme Court Cases 766 wherein it was held that when promotion was given by misreading the Rules, such promotion does not confer any right on the promotee.

9. The learned counsel for the respondent also relied on the decision of the Honourable Supreme Court in the case of (Union of India vs. Rati Pal Saroj and another) reported in (1998) 2 Supreme Court Cases 574 wherein it was held that even after appointment, before completion of probation, the appointment can be cancelled without conducting any enquiry.

10. I heard the learned counsel for both sides and perused. On appreciation of the factual matrix in this case, I am of the considered view that the relief sought for in these writ petitions cannot be granted. In other words, both the writ petitions are not maintainable. No doubt, the petitioner was appointed as Deputy Director by Kalakshetra

Foundation, however, even before he could join the post, the order appointing him as Deputy Director was cancelled. Further, the petitioner was not relieved from his parent department. The order of cancellation came to be passed on the ground that Kalakshetra Foundation has found that the notification and the consequent selection process in which the petitioner was appointed as Deputy Director are not in consonance with the recruitment Rules. For clarity, the Recruitment Rule relating to appointment to the post of Deputy Director is mentioned below:-

"Method of Recruitment : By promotion/Deputation including short term contract

Eligibility Criteria : Promotion/Deputation :

(a) Promotion : Officers in the scale of pay of Rs.6500-200-10500 with 8 years regular service in the grade or officers in the scale of pay of Rs.8000-275-13500 with 3 years regular service in the grade

(b) Deputation : Officers of Central/State Governments, Union Territories, Autonomous bodies (statutory organisations/ recognised research institutions holding analogous posts on a regular basis or 3 years regular service in the scale of pay of Rs.8000-275-13500 or 8 years regular service in the scale of pay of Rs.6500-200-10500 and having good knowledge of accounts and administration.

11. Therefore, it is evident from the recruitment rules of the Foundation that the method of recruitment to the post of Deputy Director provides for filling up the post from among the eligible in-service candidates as well as the outsiders. In the present case, admittedly, in the notification issued for selection and appointment to the post of Deputy Director, in which the petitioner was selected, there was no indication for considering the eligible in-service candidates. In other words, the eligible in-service candidates were totally kept out of the purview of the selection process and therefore, the selection earlier made was contrary to the recruitment Rules of the Foundation. When the mistake came to light, the order appointing the petitioner was immediately cancelled.

12. The learned counsel for the petitioner submitted that before cancelling the order of appointment, the petitioner was not put on notice and the accrued right of the petitioner has been taken away without following the established procedures contemplated under law. It is well settled proposition of law that when there is conflict between the Recruitment Rules and any recruitment notification/ advertisement, the recruitment Rule alone will prevail. Therefore, when the selection process in which the petitioner was appointed was found to be not in consonance with the recruitment rules, the second respondent in WP No.



34917 of 2015 was justified in passing the order cancelling the appointment of the petitioner as Deputy Director. In any event, as on the date of cancellation of the petitioner's appointment, he was not relieved from his parent department and therefore, no prejudice will be caused to him. In any event, even before the petitioner could join the post of Deputy Director, it was duly cancelled on finding that the entire selection process are vitiated for not following the procedures contemplated under the Recruitment Rules. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (Union of India vs. Rati Pal Saroj and another) reported in (1998) 2 Supreme Court Cases 574, which was also relied on by the learned counsel for the respondent, wherein it was held in para Nos. 7 to 9 as follows:-

"7. The respondent, in the present case, in the strict sense, governed by Regulation 13 of The Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955, since the appointment has been withdrawn after the appointment order was issued and not before. The Indian Administrative Service (Probation) Rules of 1955 also do not apply to the respondent because he does not belong to the Indian Administrative Service as a probationer. He is in the intermediate stage of a person who has accepted the appointment offer but has not joined the new service. What are his rights?

8. His position appears more akin to the position of a selected rather than a probationer because he has not joined the new service when the appointment is cancelled. He continues to belong to the Service which he had joined and to which he belonged prior to his present selection. One thing at least is clear - he cannot have higher rights than a probationer. It is well settled that a probationer's service can be terminated during the period of probation if he is found unsuitable. No enquiry is necessary for such termination of the services of a probationer. In the case of Samsher Singh v. State of Punjab & Anr. [1974 (2) SCC Page 831], a Bench of this court consisting of seven Judges, inter alia, held that the services of a probationer can be terminated when the authorities are satisfied regarding his inadequacy for the job, or unsuitability for temperamental or other reasons not involving moral turpitude, or when his conduct may result in dismissal or removal but without a formal enquiry. An enquiry is necessary only when the termination is by way of a punishment, and to determine this the substance of the order and not the form is decisive. The same position has been re-affirmed in Anoop Jaiswal v. Government of India & Anr. [1984 (2) SCC 369] where the decision on

Samsher Singh v. State of Punjab (supra) has been quoted extensively. Before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If it comes to the conclusion that the probationer is not suitable he is liable to be discharged. He cannot, in this situation, claim the benefit of Article 311(2).

9. There is no reason why the same right to terminate the offer of appointment on the ground of the prospective employee's unsuitability should be denied to the Central Government. An employee who has not yet joined the Central Government Service cannot be put on a higher pedestal than a probationer. If an employee who has been offered a post by the Central Government is not in a position to join on the date fixed under the appointment letter and there is no prospect of his joining for several years to come, the Central Government would be entitled to terminate the appointment as the person appointed is not available to the Central Government within a reasonable time of the appointment and hence he is not suitable. This does not cast any stigma nor is it a punishment for the prospective employee. If the employee has a right to be appointed by virtue of his acceptance of the offer of appointment that right has to be exercised within a reasonable time. It is not a right which remains for an indefinite period of time. In the same way, if the Government discovers after the offer of appointment, circumstance relating to the prospective employee which make him unsuitable for the post, the appointment can be cancelled. If the circumstances raise a doubt about the suitability of the candidates for the post or the Service in question, the doubt should be dispelled within a reasonable time. Otherwise the employer is entitled to cancel the appointment. This is not by way of a punishment nor does it cast a stigma on the prospective employee.

13. In the above decision, the Honourable Supreme Court has drawn a distinction between a probationer who joined the service but his performance was not satisfactory and a person who was selected and appointed to the post but did not join the duty within the time stipulated. While drawing such a distinction, it was held that the offer for appointment or the order of appointment before completion of probation, as the case may be, can be cancelled without conducting any enquiry inasmuch as such an order of cancelling the appointment would not amount to a stigma or a punishment. In the present case also, the order of appointment was cancelled even before the petitioner could join the post. Further, in



the present case, the petitioner is already working as Section Officer in the Secretariat of the State Government and therefore, no prejudice will be caused to him by reason of the cancellation of the order of appointment appointing him as Deputy Director of Kalakshetra Foundation. Further, the order of appointment was cancelled as it was not in consonance with the Recruitment Rules and not as a measure of punishment to the petitioner. Therefore, the argument of the counsel for the petitioner that the petitioner was not put on notice before cancelling his appointment cannot be countenanced.

14. As regards the relief sought for in WP No. 10740 of 2016, admittedly, the petitioner has not participated in the selection process. The petitioner, for the reasons best known, did not participate in the subsequent selection process, however, he has filed the writ petition and obtained an interim stay. It is not known as to what prevented the petitioner from participating in the selection process. It is brought to the notice of this Court that pursuant to the notification, which is impugned in WP No. 10740 of 2016, the fifth respondent was selected to the post of Deputy Director on 29.02.2016. The fifth respondent was given time till 31.03.2016 to join the post of Deputy Director. In the interregnum, the petitioner has filed WP No. 10740 of 2016 and obtained interim stay on 22.05.2016. The fact remains that the appointment of the fifth respondent has not been challenged by the petitioner.

15. It is to be mentioned that immediately after cancellation of the order appointing the petitioner, the post of Deputy Director remained vacant for which the notification, which is impugned in WP No. 10740 of 2016, was issued. The second notification was published after obtaining the approval of the competent authority namely the Honourable Minister of State (Independent Charge) for Culture. In the subsequent selection process, the petitioner did not participate. After following the due procedures, the fifth respondent was appointed as Deputy Director but even before he could join the post, this Court granted interim stay on 22.05.2016. As mentioned above, first of all, the petitioner has not participated in the subsequent selection process for appointment to the post of Deputy Director. In the subsequent selection process, the fifth respondent was appointed to the post of Deputy Director, however, the petitioner did not challenge the order appointing the fifth respondent to the post of Deputy Director. While so, I am of the view that the petitioner has no vested or accrued right to file the present writ petition.

16. In the decision of the Honourable Supreme Court in the case of (Indian Council of Agricultural Research and another vs. T.K. Suryanarayanan and others) reported in (1997) 6 Supreme Court Cases 766 which was relied on by the

learned counsel for the respondent, the Honourable Supreme Court found that promotions given to the promotees were contrary to the Service Rules. Therefore, it was held that when promotion was given by misreading the Rules, such promotion does not confer any right on the promotee. In Para No.8 of the decision, it was held as follows:-

"8. We are, however, unable to accept the submissions made by the learned counsel appearing in both these SLPs. Even if in some cases erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory service Rules in law courts. Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective on 01.10.1975 should not be adhered to because in some cases erroneous promotions had been given. The statutory rules must be applied strictly in terms of the interpretation of rules as indicated in the decision of a three-judge Bench of this Court in Khatra Mohan case. When the said Service Rules were introduced w.e.f. 01.10.1975, one-time exercise was required to be made to decide the fitment of the employees in different grades. Except in case of fitment in Grade T-L-3 category 1 and consequential accelerated promotion to Grade T-2-3 of category 2, on the basis of qualification in no other case accelerated promotion on the basis of educational qualification is permissible. If relaxation of educational qualification is made effective on the date of enforcement of the said Service Rules, it will be a case of review of initial fitment. In all other cases, promotion is to be given in accordance with the said Service Rules and not otherwise. The respondents in these appeals were not entitled to get initial fitment in Grade T-L-3. As a matter of fact, they got initial fitment in grade lower than Grade T-L-3 of Category 1. Therefore, they are not entitled to accelerated promotion on the basis of educational qualification consequent upon the initial fitment in Grade T-L-3 of category 1. The impugned decisions of the Tribunal, therefore, cannot be sustained."

17. Thus, it could be evident that even promotions given contrary to the Service Rules were held to be void by the Honourable Supreme Court. In the present case, the selection

of the petitioner to the post of Deputy Director was found to be contrary to the recruitment Rules. When the petitioner has not joined the post to which he was appointed, he has no accrued right, much less any service right. Even before the petitioner could join the post to which he was selected, the order of appointment was cancelled on the ground that the selection process were not in consonance with the Recruitment Rules. Subsequently, after following the recruitment rules, the fifth respondent was appointed to the post of Deputy Director, which has not been questioned by the petitioner till date. In such view of the matter, I do not find any reason to interfere with the orders, which are impugned in these writ petitions. The writ petitions are therefore dismissed. No costs. Consequently, connected M.P. Nos. 1 and 2 of 2015 in WP No. 34917 of 2015 as well as WMP Nos. 9377, 9378 and 11017 of 2016 in WP No. 10740 of 2016 are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Additional Chief Secretary to Government  
Tourism Culture & Religious Endowment Department  
Fort St. George, Chennai - 600 009

+2cc's to M/s.Menon, Karthik, Mukundan & Neelakantan,  
Advocate, S.R.Nos.42649 & 42650

+1cc to Mr.G.Bala & Daisy, Advocate, S.R.No.42651

WP No. 34917 of 2015

and

WP No. 10740 of 2016

BVR(CO)

CA(08/08/2016)

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