

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.A.No.680 of 2012
and
M.P.Nos.1 and 3 of 2012
and
M.P.No.1 of 2013
and
Contempt Petition No.1267 of 2012

1. Dr.S.Dhanasekaran
2. K.S.Giridharan
3. Dr.T.Gnana Sambandam
4. Dr.G.A.Rathy
5. Dr.P.Malliga
6. Dr.R.Thegarajan

... Appellants in
W.A.No.680 of 2012
and petitioners in
Contempt Petition No.
1267 of 2012

Versus

1. The Board of Governors
rep.by Chairman
National Institute of Technical
Teachers Training and Research
Taramani, Chennai 600 113.

2. The Director
National Institute of Technical
Teachers Training and Research
Taramani, Chennai 600 113.

3. The Secretary
Ministry of Human Resources and
Development, New Delhi.

4. Dr.V.K.Natarajan
5. Dr.G.Janardhanan
6. Dr.ESM Suresh

7. Dr.Mary Kutty Abraham
RR4 to 7 impleaded as party
respondents vide order of Court
dated 06.12.2012 in M.P.No.2 of 2012
in W.A.No.680 of 2012

8. Dr.Mary Kutty Abraham
9. P.Ganesh Kumar

.. Respondents 1 to 9
WA No.680 of 2012

RR8 and 9 impleaded as party
respondents vide order of court
dated 06.12.2012 in M.P.No.2 of 2012
in W.A.No.680 of 2012

Dr.S.R.K.Prasad, Chairman
The Board of Governors
National Institute of Technical
Teachers Training and Research
Taramani, Chennai 600 113.

Dr.S.Mohan
The Director
National Institute of Technical
Teachers Training and Research
Taramani, Chennai 600 113.

3. Mr.Ashok Thakur, I.A.S.,
The Secretary
Ministry of Human Resources and
Development, New Delhi.

... Respondents 1 to 3
in Contempt Petition
No.1267 of 2012

Prayer : (i) Writ Appeal against the order of this Court
dated 27.03.2012 passed in W.P.No.4811 of 2011.

Writ petition praying to call for the records pursuant to the
impugned advertisement bearing advertisement No.1/2010 published in
The Hindu dt 25.7.2010 on the file of the 2nd respondent herein the
Director National Institute of Technical Teachers Training and
Research Govt. of India Ministry of Human Resource Development
Tharamani Chennai 113 and to quash the same.

(ii) Contempt petition under Section 11 of the Contempt of
Court Acts, 70/71 to punish the respondents for having committed
contempt of court for disobeying the order dated 03.04.2012 passed
in M.P.No.1 of 2012 in W.A.No.680 of 2012.

For Appellants
in W.A.No.680 of
2012 and Contempt
petition No.1267 of 2012

: Mr.L.Chandrakumar

For Respondents
in W.A.No.680 of 2012

: Mr.A.Mohan for R2
Mr.V.P.Sengottuvel
for R3
: Mr.V.Chockalingam for R5
: Mr.V.Ayyadurai for R6

For Respondents
in Contempt Petition
No.1267 of 2012

: Mr.Kartik Mukundan
for RR8 and 9
RR1, 4 and 7 Not ready
: Mr.A.Mohan for R2
Mr.V.P.Sengottuvel
for R3
R1-Not ready

COMMON JUDGMENT

(Judgment of the Court was delivered by K.Ravichandrabaabu,J.,)

W.A.No.680 of 2012 is filed against the order passed in W.P.No.4811 of 2011 dated 27.03.2012 by the learned Single Judge in closing the writ petition with a direction to the second respondent therein to recruit persons, who possess the requisite qualification, as per the impugned advertisement dated 25.07.2010. During the pendency of this writ appeal, interim order was granted by this Court in M.P.No.1 of 2012 dated 03.04.2012 directing the respondents not to make any appointment as per the Advertisement dated 25.07.2010 until further orders.

2. Contempt petition No.1267 of 2012 is filed by complaining that such interim order granted by this Court on 03.04.2012 in M.P.No.1 of 2012 is violated by making three appointments antedating the same as if they were made earlier to the date of the order passed in the stay petition.

3. Both the Writ Appeal and the Contempt Petition are taken up for hearing today and disposed of by this common order.

4. We heard Mr.L.Chandrakumar, learned counsel appearing for the appellants and the Contempt petitioners and the learned counsel appearing for the respondents.

5. Insofar as the writ appeal is concerned, it is the contention of the learned counsel for the appellants that when the writ petition itself was filed challenging the Advertisement bearing

No.1 of 2010 on the ground that such an advertisement was not in conformity with the qualifications prescribed for recruitment to the subject matter posts, the learned Single Judge was not justified in disposing of the writ petition by simply directing the second respondent therein to recruit persons, who possess the requisite qualification, as per the impugned advertisement. In other words, it is the contention of the learned counsel that if the impugned advertisement itself is found to be wrong and not in conformity with the prescribed qualification to the post for which it was issued, question of directing the second respondent to recruit the persons, who possess the requisite qualification as per the impugned advertisement does not arise and therefore the order of the learned Single Judge is totally erroneous and has to be set aside.

6. We have perused the order passed by the learned single judge. The relevant portion of the said order reads as follows:

"3. After hearing the arguments of the respective parties elaborately, the learned counsel for the petitioners fairly submitted that the petitioners' only apprehension is that, persons who are not qualified as per the required norms even as per the impugned advertisement, are sought to be selected and if that act is safe-guarded or restricted by this Court, his endeavour is achieved by filing the writ petition.

4. However, it is pertinent to note that no institution can ever appoint a candidate, who is not even qualified as per the notification or the impugned advertisement, and it is a mandatory requirement for every institution to appoint persons those who are qualified as per the norms prescribed under the notification or the advertisement.

5. Thus, taking into consideration the limited scope of the prayer now made by the learned counsel for the petitioners, suffice to direct the second respondent to recruit persons, who possess the requisite qualification, as per the impugned advertisement dated 25.07.2010. With this direction, the writ petition is closed. Consequently, M.P.No.1 of 2012 has become unnecessary and the same is closed. M.P.Nos.1 and 2 of 2011 are closed. No costs."

7. It is seen from the order of the learned Single Judge that the counsel for the appellants, who appeared before the learned single Judge as the counsel for the writ petitioners only apprehended that persons who are not qualified, as per the required norms and even as per the impugned advertisement, were sought to be selected and if such an attempt is either prevented or restricted by this Court, the endeavour of the writ petitioners is achieved by

filing the writ petition. Taking note of such apprehension and recording the same in the order, the learned Single Judge passed the above order. However, the order passed by the learned Single Judge is sought to be challenged by filing the present writ appeal on very many grounds out of which, one of the grounds raised is that such submission as recorded by the learned Single Judge in para No.3 of the order is not factually correct and it is error apparent on the face of the records. For proper appreciation, Ground B of the Memorandum of grounds of Writ Appeal is extracted hereunder:

[B] It is submitted that the order of the learned Judge in holding that the Counsel fairly submitted the only apprehension is that unqualified persons as per the required norms are sought to be selected as the only ground of attack, suffers an error apparent on the face of records since the prayer in the writ petition was for Certiorari to quash the advertisement which did not specify the AICTE norms/regulations. Therefore, the reasoning by the learned Judge is a total misconception hence liable to be set aside.

Therefore, it is evident from the submission of the learned counsel for the appellants as well as from the above ground raised in the writ appeal that, he is disputing the recording of the reasons stated at para No.3 of the order by contending that, it is not the submission made before the learned Single Judge and therefore it is an error apparent on the face of the record.

8. Needless to say that, if that is the contention of the learned counsel for the appellants, filing of Writ Appeal is not the proper course of action, as it is for the writ petitioners/appellants herein to approach the learned Single Judge, by filing a review, by raising the grounds as raised in this writ appeal.

9. It is also seen that the learned Single Judge has not dealt with any rival contention of the parties or given any finding on the merits of the qualifications as contended before this Court. When there is no finding regarding such contentions, we are of the view that we cannot go into the same for the first time that too, by considering the present writ appeal, especially when the learned Single Judge has directed the second respondent therein to recruit persons, who possess the requisite qualification, as per the impugned advertisement. Therefore, it is for the appellants to go before the learned Single Judge and file a Review Petition and work out their remedy accordingly.

10. In view of the above stated facts and circumstances, we are of the view that the present Writ Appeal is not maintainable and consequently, the same is dismissed, however, without expressing any view on the merits of the matter or the contentions raised by the parties. Liberty is given to the appellants to file a Review before

the learned Single Judge. No costs. Consequently, the connected miscellaneous petitions are closed.

11. Since we are closing the Writ Appeal, as stated supra, no further order is necessary in the Contempt Petition, which arises out of an interim order passed during the pendency of the writ appeal. Accordingly, the Contempt Petition is also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vj2

To

1. The Chairman
Board of Governors
National Institute of Technical
Teachers Training and Research
Taramani, Chennai 600 113.
2. The Director
National Institute of Technical
Teachers Training and Research
Taramani, Chennai 600 113.
3. The Secretary
Ministry of Human Resources and
Development, New Delhi.

- 1 cc to Mr. Ayyadurai, Advocate, Sr. 24374
1 cc to Mr. Chockalingam, Advocate Sr. 24373
1 cc to Mr.L. Chandrakumar, Advocate, Sr. 24495
1 c to Mr. Sengottuvel, Advocate, Sr. 24498
1 cc to M/s. Karthik Mukundan, Advocate, SR. 24595
2 ccs to Mr. Mohan, Advocate, Sr. 24710

Writ Appeal No.680 of 2012
and Contempt Petition No.1267 of 2012

MG (CO)
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