

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.93 of 2016

Dr.S.Kuppusamy ... Appellant/Writ Petitioner
Vs.

- 1.The Vice-Chancellor, University of Madras,
Chennai-600 005.
- 2.The Registrar, University of Madras,
Chennai-600 005. ... Respondents/Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order dated 12.10.2015 made in W.P.No.31743 of 2014.

Prayer in W.P.31743 of 2014: Writ petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned appointment notification of Professor dated Nil as far as department of Indian History is concerned on the file of the 2nd respondent and quash the same and consequently direct the respondents to award promotion to the petitioner from Stage 3 to State 4 on and from 26.06.2013 as Associate Professor on the basis of UGC regulations prescribing the minimum academic performance and service requirements for promotion of teachers in universities under Carrier Advancement Scheme published in the Gazette of India dated 18.09.2010.

For Appellant : Mr.AR.L.Sundaresan, SC
for Ms.AL.Ganthimathi

For Respondents : Mr.AL.Somayaji, SC
for Ms.Narmadha Sampath

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 12th October, 2015 made in W.P.No.31743 of 2014.

2 The writ petitioner / appellant herein filed the instant petition seeking to quash the appointment notification dated Nil and further to direct the respondents to promote the appellant from Stage 3 to Stage 4 on and from 26th June, 2013 as Associate Professor under the UGC Regulations.

3 The sole contention of the writ petitioner / appellant herein was that the appellant being the senior most Assistant Professor, after the retirement of the Head of the Department of the Indian History Department and also belonging to reserve category, is entitled promotion to the post of Associate Professor and also appointment as the Head of the Department. Thus, the notification inviting applications for filling up one post in the department of Indian History, was illegal.

4 On notice, it was contended by the respondents that the writ petitioner had participated in the selection process, which was deliberately not disclosed in the writ petition and an interim order, not proceeding with the notification was obtained.

5 The learned Single Judge, referring to and relying on a judicial pronouncement of the Supreme Court made in Dhananjay Malik and others Vs. State of Uttaranchal and others¹, dismissed the writ petition, holding that a candidate, having accepted the terms and conditions of the notification for selection and having participated in the selection process, is estopped from challenging the notification. Thus this appeal.

6 The learned Senior Counsel appearing for the appellant submits that there was no challenge to the terms and conditions of the notification except that the post was notified without verifying the availability of the post. The appellant had made a representation earlier to consider him for promotion and appointment on the post. Without disposing of the said representation, the authorities ought not to have notified the vacancy for selection and appointment.

7 We have heard learned counsel appearing for the parties, examined the impugned order, pleadings and documents appended thereto.

8 A common order was passed in the instant petition along with other two writ petitions, i.e., W.P.Nos.10509 and 10686 of 2015. W.P.No.10686 of 2015 was partly allowed, remitting the matter to the first respondent for fresh consideration of the claim of the petitioner for promotion from

1 (2008) 4 SCC 171

the post of Assistant Professor Stage 3 to Associate Professor Stage 4 with effect from 26th June, 2013, not from 13th January, 2015, in accordance with law. The instant petition was dismissed on the ground that the appellant has filed the petition, suppressing the material facts. One post was advertised as non reserved. Thus, the claim of the writ petitioner that he is entitled to preference, without disclosing the fact of participation in the selection process, cannot be accepted. Besides, the appellant participated in the process of selection, in response to the advertisement, after making proper application, thereto.

9 It is noticed that there was no challenge to the selection under non reservation category. The appellant has not produced any material to establish that one post is required to be filled up by reserved category on the sole ground that the appellant was working as Assistant Professor and was the senior most in the department. It is also not under challenge that the post of the Professor in the Indian History department is to be filled up by promotion only, not by direct selection by way of inviting applications from all eligible candidates. In such view of the matter, we do not find any infirmity, irregularity or illegality in the order sought to be impugned in this appeal.

10 Resultantly, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Vice-Chancellor, University of Madras,
Chennai-600 005.

2.The Registrar, University of Madras, Chennai-600 005.

+1cc to M/S.Narmadha Sampath, Advocate, S.R.No.6308

+ 1 cc to Ms.AL.Ganthimathi, Advocate Sr 6010 (8/3/16)

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ak(CO)
srg(10/02/2016)