



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.11.2016
CORAM :
THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P(MD)No.5455 of 2011
and
M.P.(MD)No.1 of 2011

Ganesh Raja

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by the Secretary,
Department of Higher Education,
Secretariat, Chennai.

2.The Registrar-in-Charge,
Mother Teresa Women's University,
Kodaikanal,
Dindigul District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Proc.No.2477/WU/Estt/2011, dated 01.04.2011 on the file of the Respondent No.2 and quash the same as illegal and consequently, to direct the respondents to reinstate the petitioner in service with continuity of service and back-wages.

For Petitioner : Mr.T.Lajapathi Roy

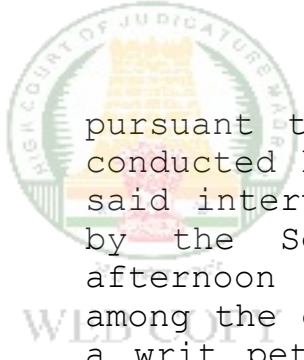
For 1st Respondent : Mr.M.Alagudevan
Spl. Govt. Pleader

For 2nd Respondent : Mr.B.Pugalendhi
Addl. Advocate General

O R D E R

The writ petition has been filed against the cancellation order passed by the second respondent in Proc.No.2477/WU/Estt/2011, dated 01.04.2011 and quash the same as illegal and consequently, direct the respondents to reinstate the petitioner in service with continuity of service and back-wages.

<https://hcservices.courtsgov.in/hcservices/> In the case of the petitioner that the petitioner applied for the post of Helper in the second respondent department



pursuant to the notification issued on 16.2.2011. Interview was conducted by the Selection Committee on 1.3.2011. Pursuant to the said interview, the petitioner was selected to the post of Helper by the Selection Committee and he joined duty on 1.3.2011 afternoon itself. Meanwhile, one P.Jothilakshmi, who was one among the candidates applied for the post of "helper", has filed a writ petition in W.P.(MD)No.2788 of 2011 challenging the order of selection. On misrepresentation of fact, the petitioner in the said W.P.(MD)No.2788 of 2011, had obtained an order of interim injunction on 10.3.2011 from this Court. Meanwhile, the second respondent-University, cancelled the order of appointment of the petitioner, vide Proc.No.2477/WU/Estt/2011, dated 01.04.2011. Aggrieved by the cancellation order dated 01.04.2011, the petitioner has come before this Court by filing the present writ petition.

3.The second respondent filed counter, wherein it is stated that an advertisement in Notification No.265, dated 19.12.2010 was published in Dhinamani, Dindigul Edition for the post of Helper. Pursuant to the said Notification, interview was conducted on 24.1.2011 and the selection Committee had selected Ganesh Raja, the petitioner and placed the same before the Executive Council on 14.2.2011 for approval. But, the Executive Council had not approved the appointment in view of Section 19 of the Mother Teresa Women University Act 1984 holding that the appointment given against Section 19 of the Mother Teresa Women University Act 1984 is invalid. Hence, the second respondent decided to give re-advertisement. Accordingly, re-advertisement notification No.271 was published in Daily Thanthi News paper on 16.02.2011. Interview was also held on 01.03.2011. Along with the women candidates, the third respondent and the petitioner had also participated in the interview. In the said interview, again, the petitioner was selected by the Selection Committee and appointment order was also issued to him on 01.03.2011 and on the same day itself he joined duty. Subsequently, the appointment of the petitioner was reported to the Special Executive Council meeting held on 21.03.2011 vide Agenda item No.2011-28 and the same was not approved in view of Section 19 of the Mother Teresa Women University Act 1984, which is extracted hereunder:

"No person, other than a women shall be appointed as an officer of the University (other than the Chancellor and the Pro-Chancellor referred to in Section 9) or to any post (either teaching or non-teaching) in the University.

Provided that no qualified woman is available for appointment as an officer of the University or to any post in the University, a qualified person other than a woman, may be appointed as such officer or to such post, as the case may be."

<https://hcservices.courts.gov.in> The appointment given to a male candidate is not valid in view of women candidates participated in the Selection. It is also stated that the Election Model Code of Conduct had come



into force from the date of announcement i.e. on 01.03.2011. In this connection, the Election Commission has stated as follows:

"No appointment or promotions in Government/Public Undertakings shall be made during this period, without prior clearance of the commission."

Therefore, as per the resolution of the Executive Council as well as in view of ban order issued by the Election Model Code of Conduct, the appointment order issued to the petitioner Mr.G.Ganesh Raja decided to be illegal by the University.

5.Heard both sides.

6.The learned counsel appearing for the petitioner submitted that on both occasions, the petitioner was selected to the post of Helper, on merits, by the Selection Committee, when no experienced and suitable woman candidate available. The petitioner was appointed on 01.03.2011 and was working for a period of one month continuously. Thereafter, the second respondent passed an order vide Proc.No.2477/WU/Estt/2011, dated 01.04.2011 cancelling the appointment of the petitioner. Mrs.P.Jothi Lakshmi, who had applied for the post of Helper twice filed a writ petition in W.P.No.2788 of 2011 and obtained an order of interim injunction on 10.03.2011 for the post of helper. But, she had not joined duty. Therefore, the cancellation order passed by the second respondent, while the petitioner was in service for more than a month is illegal and the same has to be set aside.

7.The learned Additional Advocate General appearing for the second respondent submitted that the very appointment is contrary to the provisions of the Act and it cannot be sustained and the appointment shall be considered as invalid appointment as per the decision of the Special Executive Council meeting held on 21.03.2011. According to the learned Additional Advocate General, as per Section 19 of the Mother Teresa Women University Act 1984, male candidates shall be appointed, only in the absence of women candidates. But, in the present case, though more than eight women candidates have attended interview, a male candidate/petitioner was given appointment. Moreover, the Election Model Code of conduct came into force on 01.03.2011. Hence, the impugned order dated 1.4.2011 passed by the second respondent stating that as per the Executive Council Resolution No.2011-28, dated 21.03.2011, the appointment of the petitioner as Helper is invalid with effect from 01.03.2011 afternoon is sustainable and the same cannot be interfered with.

8.Since there is an legal embargo under Section 19 of the Mother Teresa Women University Act 1984, this Court cannot interfere with the impugned order passed by the second respondent University. In view of the above circumstances of the case, this



writ petition deserves to be dismissed. However, pursuant to the issuance of a fresh notification, if women candidates are not available, the case of the petitioner may be considered as per proviso to Section 19 of the Act and age relaxation shall be given to the petitioner in case, if he is selected.

9. In the result, the writ petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(cs-I)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

1. The Government of Tamil Nadu,
Rep. by the Secretary,
Department of Higher Education, Secretariat, Chennai.
2. The Registrar-in-Charge, Mother Teresa Women's University,
Kodaikanal, Dindigul District.

+1 CC TO MR.T.LAJAPATHI ROY, ADVOCATE, SR NO.75014

+1 CC TO MR.B.PUGALENDHI, ADVOCATE, SR NO.74621

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.78095

cla

MAS/SV-MMS/SAR1:15.06.2017:4P-6C

W.P (MD) No.5455 of 2011
30.11.2016