

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved : on 27.04.2017

Order Delivered : on 29.06.2017

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition Nos.5878 of 2016 and 8731 of 2017

and

W.M.P. Nos.5237 & 5238/16 and 9580/17

W.P.No.5878 of 2016:-

1.J.Thennarasu

2.Dr.N.R.Yamuna

3.Tamil Nadu Physical
Education and Sports University
SC/ST Employees Association,

Registration No.499/2013,

rep. by its President,

Dr.P.K.Senthil Kumar,

S/o.Kuppusamy,

Melakottiyar,

Chennai 600 127.

... Petitioners

vs.

1.The State of Tamil Nadu,

rep. by the Secretary to

Government,

Youth Welfare and Sports Development,

Secretariat,
Chennai-9.

2. Tamil Nadu Physical Education
and Sports University,
rep. by the Registrar,
Melakottaiyur (PO),
Chennai 600127.

3.P.Thangarasu (R3 impleaded
as per Court's Order dt.25.04.17) ... Respondents

W.P. No.8731 of 2017:-

1. Tamil Nadu Physical Education
and Sports University
Teachers Association,
rep. by its Secretary,
Registration No.488/2013,
Tamil Nadu Physical Education
and Sports University,
Melakottaiyur,
Chennai 600 127.

2.V.Mangaiyarkarasi ... Petitioners

vs.

1.Government of Tamil Nadu -
Principal Secretary,
Youth Welfare and Sports Department,
Fort St. George,
Chennai 600 009.

2. Vice Chancellor,
Tamil Nadu Physical Education
and Sports University,
Melakotaiyur Post,
Chennai 600 127.

3.Tamil Nadu Physical Education
and Sports University,
rep. By its Registrar,
Melakotaiyur Post,
Chennai 600 127.

... Respondents

W.P.No.5878 of 2016:- Filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus as stated therein.

W.P. No.8731 of 2017:- Filed under Article 226 of the Constitution of India for the issuance of a writ of declaration as stated therein.

For Petitioners in
WP No.5878/16 : Mr.R.Singaravelan,
Senior Counsel for Mrs.M.Srividhya

For Petitioners in
WP No.8731/17 : Mr.Balanharidas

For Respondent No.1
in both WPs. : Mr.R.Muthukumarasamy,
Advocate General, assisted by
Mr.R.Vijayakumar, Addl. Govt. Pleader.

For R2 & R3 in WP.8731/17 & R2 in WP.
No.5876/2016 : Mrs.G.Thilagavathy,
Senior Counsel for Mr.R.Gopinath.

For Respondent No.3
in WP.5878/16 : Mr.V.Stalin, for
M/s.Row & Reddy.

COMMON ORDER

The petitioners in W.P. No.5878 of 2016,

viz., two individuals & an Association called Tamil Nadu Physical and Sports University SC/ST Employees Association, rep. by its President, seek for issuance of a writ of certiorarified mandamus to call for the records on the file of the 2nd respondent in connection with the Appointment Notification, dated 01.11.2015, issued by him in respect of one vacancy in (i) Advanced Training and Coaching, (ii) Exercise Sports Biomechanics and Kinesiology, (iii) Statistics and Computer Application, (iv) Sports Management and (v) Sports Technology disciplines, as per the Notification, dated 01.11.2015, and to quash the same to that extent and to direct the respondent to fill up the vacancy in those disciplines only with SC Category Candidate and not with any other category candidate as per Rule-22 of the Tamil Nadu State and Subordinate Service Rules.

In W.P. No.8731 of 2017, the prayer is for the issuance of a writ of declaration, declaring

the appointment notification, dated 17.03.2017, issued by the 3rd respondent, bearing Advertisement No.TNPESU/R2/002/2017 as illegal, arbitrary and contrary to the approved cadre strength issued under G.O.Ms.No.233, Higher Education (K2) Department, dated 21.07.2016, and consequently to direct the respondents to first fill up the back-log vacancies and to make appointment only with the approved cadre strength and not to make any appointment causing financial burden on the 3rd respondent/University in respect of paying salary and other benefits out of its own self-generated funds arising out of Distance Education Courses.

2. Since both the matters are interlinked, they have been heard together and disposed of by this Common Order.

3. Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioners in WP.

No.5878/16, would submit that petitioner Nos.1 and 2 had applied for appointment to the post of Assistant Professor (Statistics and Computer Application) and (Sports Management) respectively with the R2-University and both of them belonging to SC (Scheduled Caste) Category also attended the interview conducted by the respondent/University. Petitioner No.3, an Association registered under the Tamil Nadu Societies Registration Act and formed for the welfare of the Tamil Nadu Government SC/ST employees and their upliftment in service, has joined as a party to the writ petition since the interest of the Association is also involved in this case. By stating that two posts viz., Assistant Professor - Youth Affairs & Adventure Sports and Sports Technology, meant to be filled up with SC Category Candidates, are shown as General Turn category posts in the impugned Notification, dated 01.11.2015, issued by the R-2 University, learned Senior Counsel would point out that, in the

previous Advertisement-Notification, dated 17.06.2007, the vacancy relating to the aforesaid two disciplines were shown to be exclusively reserved for SC and, that being so, if those vacancies were not filled up during 2007, even if the 200 point roster is adopted, the unfilled vacancies should have been carry forwarded as per Rule-22 of the Tamil Nadu State and Subordinate Service Rules (in short 'Rules'), so as to accommodate the SC candidates in the next Turn. But, in the present impugned Notification, the carry forwarded vacancies which are exclusively meant for SC Category are shown as GT Category, thereby, the protection given under Article 16(4A) and 4(B) of the Constitution of India for the carry forwarded SC/ST vacancies is blatantly invaded. According to him, in terms of the proviso to Rule-22 of the Tamil Nadu State Subordinate Service Rules, the change of either 100 Point or 200 Point Roster cannot change the position of the carry

forwarded vacancies, which according to him, are 4 in Number. In other words, the unfilled vacancies under the SC Category notified in the year 2007 shall have to be carry-forwarded for four consecutive recruitment years, namely, year of recruitment plus three subsequent recruitment years and, before proceeding with the next course of recruitment, it is the duty of the 2nd respondent/University to fill up the carry forwarded vacancies. When it is not done, there is a clear violation of Rule-22 of the Rules and also of the Circular, dated 20.09.2013, of the UGC directing all the Universities to strictly adhere to the reservation policy. Inasmuch as the petitioners apprehend that their valuable rights stemming from the reservation policy is attempted to be taken away, their plea deserves acceptance, he pleaded.

4. Coming to the case of the petitioners

in the other Writ Petition (No.8731 of 2017), Mr.Balanharidas would submit that the University/R3 was created by the Tamil Nadu Physical Education and Sports University Act, 2004, for promoting excellence in the field of physical education and sports. While so, by G.O.Ms.No.233, Higher Education (K2) Department, dated 21.07.2006, the Government had sanctioned for creation of 39 posts of Teaching Staff in the University and 6 posts of Staff for the University Centre. It was provided therein that the expenditure towards the salary for the Teaching and Non-Teaching Staff would be borne by the Government. On that basis, when the University, during the year 2007, had issued the advertisement to fill up 39 posts of Teaching Staff by direct recruitment and certain non-teaching posts as well, the Secretary of the 1st Petitioner-Association applied in response to the Advertisement and he was appointed as Assistant Librarian while the 2nd petitioner as Professor in

the Department of Sports Psychology and Sociology and Sports Management in the R-3 University. While there had been several back-log vacancies even in the 1st selection process undertaken during 2007 and many of those vacancies correspond to reserved category/SC, R-2/Vice Chancellor of R-3, who was appointed during May, 2015 with tenure upto June 2017, proceeded to fill up the vacancies exclusively meant for the SC Category by issuing an Advertisement/Notification, dated 01.11.2015, as if those vacancies are meant for the General Turn, whereupon, the Association of SC/ST employees and candidates belonging to Reserve Category had approached this Honourable Court by filing W.P. No.5878 of 2016 & WMP No.5238 of 2016 and, by orders dated 01.03.2016, status quo was directed to be maintained and such interim order continues even as on date and, by virtue of which, R-3/University is restrained from proceeding further in the matter.

After so submitting, learned counsel would state that the 2nd respondent/Vice Chancellor, who is at the verge of his tenure in a month or so, under the guise of a subsequent Notification, dated 11.01.2017, issued through R-3 University, took up the exercise of filling up 2 posts of Associate Professor and 4 posts of Assistant Professor in the Physical Education Department, conducted the interview on 27.02.2017 and, on the very next date, ie., on 28.02.2017, got approval from the Syndicate for the list of selected candidates and issued appointment orders in their favour, when the fact remains that those posts were sanctioned by the Government on a specific condition that the financial burden in respect of those posts should be borne by the University out of its own funds. According to the learned counsel, by such illegal act, R-2 had virtually overreached the interim orders of this Court.

Not stopping with that, by way of the

present impugned Notification, dated 17.03.2017, at the instance of R-2, the University called for Applications from eligible candidates for recruitment to six posts (Associate Professor-3 posts & Assistant Professor-3 posts) including one post of Assistant Professor-Nutrition and Dietetics as if all those posts are regular posts having financial support of the Government, whereas, the Government had already made it clear that the financial burden arising out of all those six posts should be borne by R-3/University out of its own funds, but, once again the said posts are attempted to be filled up with a clear intention to overcome the rule of reservation and by circumventing the interim orders of this Court, and such exercise on the part of R-2 at the fag end of his tenure is not legally sustainable. Learned counsel would emphasize that the University has no financial generation system other than the funds generated from the Distance Education activity which is also

very limited in nature. Thus, the appointments sought to be made illegally for the posts not sanctioned by the Government would ruin the financial stability of the University. Learned counsel would add that when the NCTE norms make it clear that the post of Dietitian in the Physical Education Department is a part-time post, there cannot be any appointment for the same on permanent basis particularly when the University has a separate department called 'department of Exercise Physiology and Nutrition' to impart education relating to diet in the Physical Education Department and further, the financial burden arising out of the appointments in question would be Rs.93,60,00/- which sum will have to be met from the distance education, but, it is absolutely impossible to generate such huge sum through Distance Education Mode. Therefore, for the reason that the present endeavour to fill up the posts would dilute the orders of status quo passed by

this Court and that back-log/carry forwarded vacancies meant for reserve category would also be wiped out by violating the roster system, learned counsel pleaded that the prayer deserves acceptance by this Court.

5. Learned Advocate General Appearing for the respondents/State would submit that the 1st petitioner (in W.P. No.5878 of 2016)/Mr.J.Thennarasu had actually applied for the post of Assistant Professor-Sports Technology and not for Statistics & Computer Application and similarly, another petitioner/Dr.N.R.Yamuna had actually applied for the post of Assistant Professor-Statistics & Computer Application and not for Sports Management. When they have complained before this Court that two carry forwarded vacancies have not been filled up, they should have challenged the impugned Notification before even taking part in the Interview, but, having

participated in the selection process by appearing for the interview, when the results are awaited, they cannot seek to challenge the impugned Notification on the ground that Rule-22 of the Rules is not followed with reference to the carry forwarded vacancies. Further, even the Notification/Newspaper Advertisement, dated 01.11.2015, came to be issued in terms of 200 Point Roster as per the instructions of the Government in G.O. Ms. No.55, P&AR(S) Department, dated 08.04.2010, after due verification with the Youth Welfare and Sports Development Department and the Personnel and Administrative Department under the guidance of the University Grants Commission, New Delhi, making it clear that the vacancies arising on and from 29.04.2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from Serial Number-1 under Schedule-III with effect from the said date. Explaining further, learned Advocate General would

submit that when the first Notification, dated 17.06.2007, was in terms of 100 point roster system, the subsequent Notification, dated 29.05.2008, was by mistake given as per the 100 point roster system instead of 200 point roster system vide G.O. Ms. No.241, P & AR (K) Department, dated 29.10.2007. But, the 3rd Notification, dated 01.11.2015, has been issued properly based upon 200 point roster vide G.O. Ms. No.55 P&AR (S) Department, dated 08.04.2010; thus, there is no illegality or violation of rules and regulations. According to him, the SC/ST Association have not approached the University regarding the reservation even after the lapse of three months from 01.11.2016 to 02.02.2016, rather, only after completion of the interview on 03.02.2016, they made a representation to the University on 08.02.2016 which shows that they are not interested in the reservation but only in creating hurdles in the smooth functioning of the University

Administration. Therefore, there being no merit in the case of the petitioners, both the writ petitions may have to be dismissed, he pleaded.

6. In similar lines, Mrs.G.Thilakavathi, learned Senior Counsel appearing for the respondents/University, by urging this Court to dismiss the Writ Petitions filed by the Association challenging the Notification as not maintainable in the light of the ratio laid down in a catena of decisions of this Court to the effect that an Association cannot project nor assail the service dispute in a representative capacity as only individuals can seek redressal to their grievance if their chances of being considered for the vacant post is deprived, would submit that the petitioner-Dr.N.R.Yamuna has no locus standi to assail the impugned notification as she is neither a proposed applicant nor an aggrieved person in any manner whatsoever insofar as the notified posts are

concerned, as she is already in the service of the University working as a Professor. It is only with vested, motivated and mala fide reasons, to settle scores with the University, the present writ proceedings have been resorted to and both the petitions deserve dismissal. By stating that the University is 100% funded by the State Government, it is submitted that when new courses are determined to be imparted by the University financed by itself relating to the Sports and Physical Education, the University has to primarily satisfy the infrastructure norms prescribed by the Statutory Authority in the matter of imparting such academic courses and to make provisions to generate income by certain education programs which are capable of being imparted alongside the academic activities under the aegis of the State Government. Under these circumstances, the State Government had initially sanctioned 38 posts of Teaching Staff under G.O.Ms.No.233, Higher Education (K2)

Department, dated 21.07.2006, viz., Assistant Professor-22 Nos., Associate Professor-8 Nos. and Professor-8 Nos., in addition to 5 Posts of Non-teaching Staff for the University Centre, with recurring expenditure of Rs.99,51,588/-. Only after the sanction of the posts for the Teaching and Non-teaching Staff, the University was able to initiate the recruitment process by Notification, dated 01.11.2015, and had called for applications as per the Roster permissible at the relevant point of time since the earlier Notification issued in the year 2007 resulted in non-filling up of certain posts and now, the 200 point roster is strictly adhered to. Therefore, the objection raised on behalf of the petitioners to the effect that, without filling up the back-log vacancies, the University should not be allowed to fill up the additional vacancies cannot be sustained legally. Accordingly, she pleaded for dismissal of the writ petitions in threshold.

7. Heard the submissions of Mr.V.Stalin, learned counsel appearing for R-3 in W.P. No.5878 of 2016.

8. Before delving into the core issue, at the outset, it is to be mentioned that, in service matters relating to any Department/University, it is well settled legal position that Associations may not have any grievance and only the affected Teaching/Non-teaching staff can bring out the petitions and hence, the plea of the Associations cannot be entertained.

9. Coming to the case of the individual petitioners in W.P. No.5878 of 2016 that the carry forwarded vacancies should be exhausted through reservation mode, it must be pointed out that G.O.Ms.No.55, P&AR(S) Department, dated 08.04.2010, makes it clear that the vacancies arising on and

from 29th April, 2009 shall be filled up as per Schedule III and all Selections for appointment shall be started afresh from Serial Number-1 in the said Schedule with effect from the said date. When the first Notification, dated 17.06.2007, was given on the basis of 100 Point Roster and now it is claimed that the carry-forwarded posts arising from the unfilled vacancies in that turn needs to be filled only by accommodating SC Category, for examining such claim and arriving at a definite decision in that perspective, the petitioners should aver clearly with all details and also adduce materials, showing as to how many vacancies were notified in 2007, how many vacancies were filled up then under SC/ST Category and how many vacancies were not filled up and thereby carry forwarded under Rule-22. Unfortunately, not a single piece of material has been placed before this Court to examine that point. The petitioners are not even clear about their own claim and

seemingly, no averment or pleading is available in the affidavit filed in support of W.P.No.5878 of 2016, giving details of the vital aspects as aforementioned. Since the affidavit is bereft of any material particulars, the respondents/State & University would not meet or answer those issues in the counter affidavits. Secondly, as already mentioned, G.O. Ms.No.55, P&AR(S) Department, dated 08.04.2010, issued in the light of Rule-22 specifically states that the vacancies arising on and from 29.04.2009 shall be filled up as per Schedule III and all selections for appointments shall be started afresh from Serial Number-1 under the said Schedule with effect from the said date and this Court is not in a position to find fault with the same as there is no material placed before this Court indicating the actual number of unfilled vacancies carry forwarded after the appointments done in 2007. Thus, it would be only a futile exercise to go into the submissions

advanced by referring to Article 16(4-A) & (4-B) of the Constitution of India. Moreover, had the individual petitioners been really aggrieved by the act of the University in not carry-forwarding the unfilled vacancies meant for the SC Category and not exhausting the same now with the SC Category candidates, they should have challenged the Notification without participating in the selection process. Having allowed the selection process to proceed and taken part in the said process, as rightly pointed out by the other side, they have no locus standi to question the present Notification.

10. Further, although a detailed counter affidavit has been filed, no reply is found therein as to the carry forwarded vacancies. An argument was placed before me that without there being any pleading in the affidavit in regard to the carry forwarded vacancies explaining that several vacancies earmarked for SC Candidates in a

particular year could not be filled up in that year, hence, they should be carry forwarded for three plus one year, no reply could be given by the respondents. I find some force, for, this Court also cannot travel beyond the ambit of pleadings.

11. Coming to W.P. No.8731 of 2017, the 2nd respondent was appointed as Vice Chancellor during May, 2015 and his tenure is upto June, 2017. Therefore, when he is in the verge of completing the tenure, the contention raised against him that he is in a grave hurry to make appointments for personal reasons cannot be so easily brushed aside. Also, the Circular/instructions, dated 19.07.2004, issued by the Ministry of Human Resource Development, Department of Secondary and Higher Education, Government of India, runs to the effect that the Head/Chairman of the Organization who is having control over the entire affairs should refrain from initiating any action to make

selection/promotions two-three months before the expiry of their term or retirement. Further, in W.P. No.5878 of 2016, considering the grievance of the petitioners that the respondents are proceeding to fill up vacancies without applying the rule of reservation, this Court directed for maintaining status quo and such order continues till now, therefore, I do not find any justification for the 2nd respondent to issue another Notification under the guise of filling up additional vacancies that too when he is left with hardly two months to demit the Office. Therefore, finding merits in the objection made against the move by the R-2/Vice-Chancellor for filling up any vacancy, this Court directs the University not to proceed with the impugned Advertisement till R2 demits his office in the month of June, and any such exercise may be taken up only after assumption of charge by the successor of R-2, who shall adhere to the Rules and Regulations/Instructions/Circulars governing the

appointment process.

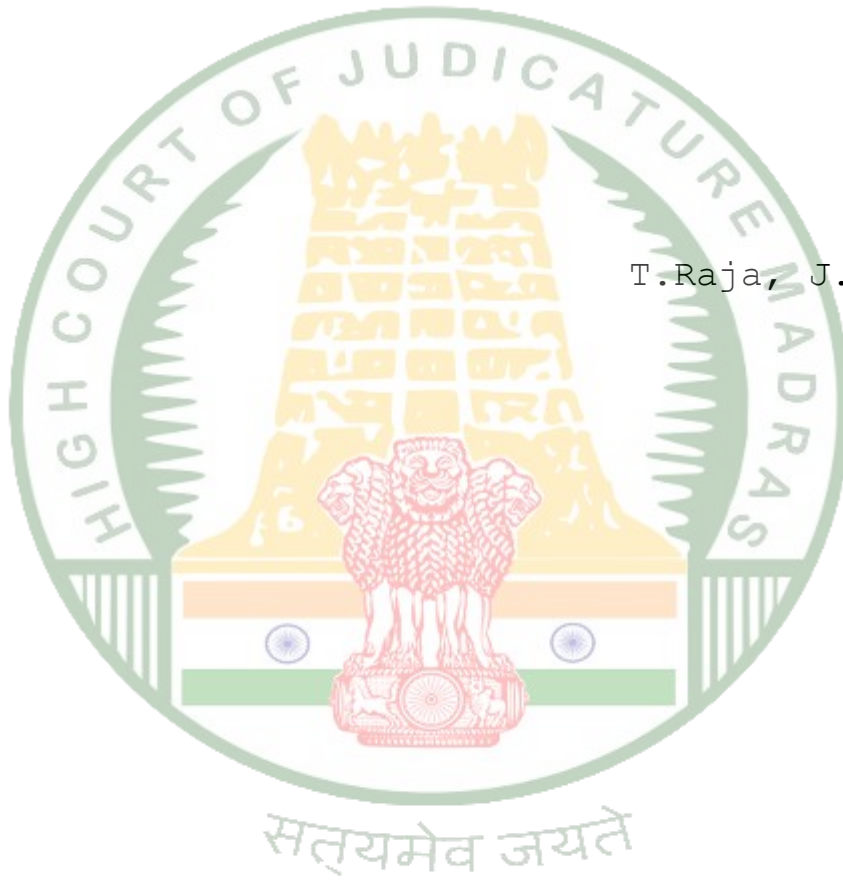
Accordingly, W.P. No.8731 of 2017 is partly allowed as regards R2/individual petitioner and the case stands dismissed as against the 1st petitioner, who has no locus standi to file this petition. W.P. No.5878 of 2016 is dismissed. No costs. Connected Miscellaneous Petitions are closed.

29.06.2017.

Index : yes / no.
Internet : yes / no.

To
The Secretary to
Government,
Youth Welfare and Sports Development,
Secretariat,
Chennai-9.

WEB COPY

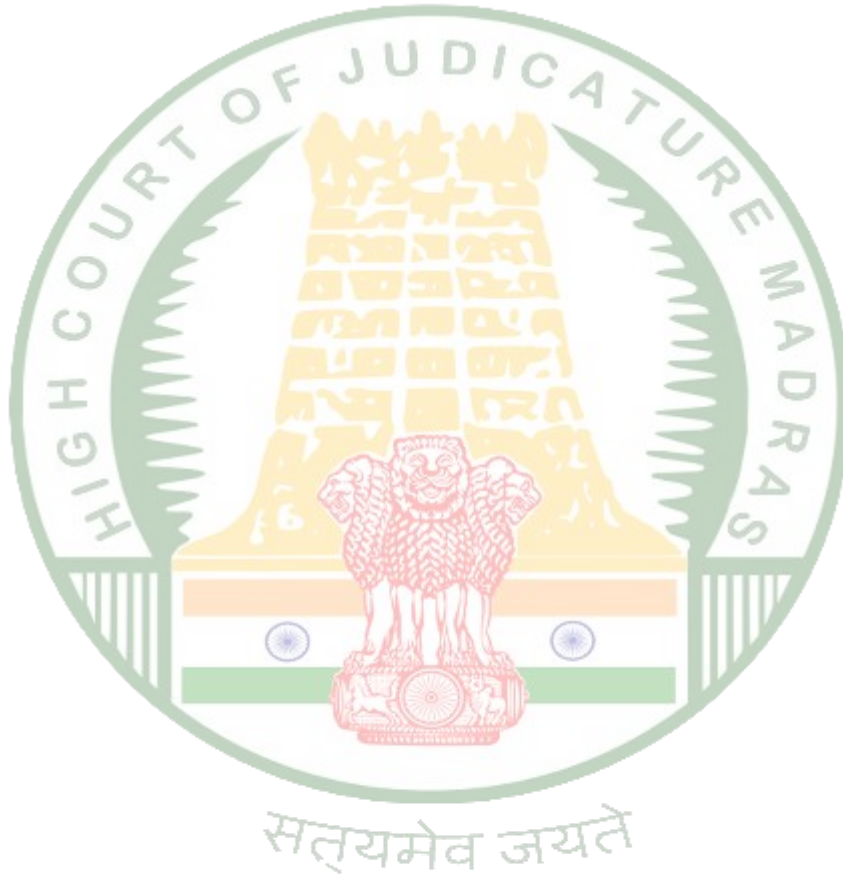


T.Raja, J.

WEB COPY

Pre-Delivery Common
Order in WP. Nos.5878
of 2016 & 8731/17.

29.06.2017.



WEB COPY