

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.22941 of 2011
and
M.P.Nos.2 and 4 of 2011

Dr.M.Govindarasan ... Petitioner

Vs.

The Registrar,
University of Madras,
Tholkappiar Campus,
Chepauk, Chennai - 600 005. ... Respondent

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order passed in F1(B)/ESTT/AERC/Appt./Technical posts/2011/1591, dated 22.09.2011 and to quash the same and consequently direct the respondent to allow the petitioner to join the duty in the post to which the petitioner was already appointed.

For Petitioner : Mr.G.Purushothaman
for M/s.R.Thirumoorthy

For Respondent : Mr.R.Gopinath

सत्यमेव जयते
ORDER

Aggrieved by the proceedings of the respondent in F1(B)/ESTT/AERC/ Appt./Technical posts/2011/1591, dated 22.9.2011, cancelling the appointment of the petitioner to the post of Associate/Senior Research Investigator at Agro-Economic Research Centre, University of Madras, the present writ petition is filed.

2.The facts of the case relevant for the disposal of the writ petition are as under:

Pursuant to the notification dated 04.08.2010 issued by the respondent/University inviting applications for various posts in the Agro-Economic Research Centre at University of Madras, the

petitioner made an application on 19.08.2010 for the post of Research Associate/Senior Research Investigator duly enclosing all the necessary documents.

3.It is averred that the petitioner's name was shortlisted and thereafter, he succeeded in the interview and the respondent/University on verification of all the original documents produced by the petitioner issued an appointment letter vide Letter No.F.1(B)/ESTT/AERC/Appt./Technical Posts/2011/1565, dated 20.09.2011 (which was received by the writ petitioner on 22.09.2011). The said appointment letter, it is stated, was issued pursuant to the approval of the Syndicate of the respondent/University on 07.09.2011. As per the appointment order, the petitioner was to report for duty on or before 05.10.2011.

4.When things stood thus, the respondent/University issued the impugned proceedings dated 22.09.2011 stating that the appointment order dated 20.09.2011 issued may be treated as cancelled.

5.Assailing the said order dated 22.09.2011, the present writ petition is filed for the relief stated supra.

6.The learned counsel for the writ petitioner contended as under:

a)that the impugned order is bereft of reasons as to the cancellation of the appointment of the petitioner and is cryptic.

b)that such non-speaking order has been passed without providing an opportunity of hearing to the writ petitioner or following the elementary principles of natural justice.

c)that the respondent/University having issued an appointment order in favour of the writ petitioner had violated the Doctrine of Legitimate Expectation by cancelling such appointment by a cryptic order.

7.Per contra, the learned counsel appearing on behalf of the respondent/University contended that the post of Research Associate/Senior Research Investigator was reserved for Scheduled Caste (Arunthaiyar), whereas the respondent/University, by oversight, observed that "since no SC (Arunthaiyar) candidate has applied, the vacancy has been considered for SC category". It is contended that one S.C.Sivagurunathan, who belonged to Scheduled Caste (Arunthaiyar), applied for the very same post, but that was lost sight of by the respondent/University and inadvertently appointment order was issued in favour of the petitioner under the impression that Scheduled Caste (Arunthaiyar) candidate was not available.

8.It is contended on behalf of the respondent/University that on noticing the inadvertent error, they immediately issued the impugned order and no reasons could be assigned, as approval of the Syndicate was not obtained on the date of passing the impugned order, but was only subsequently granted on 10.10.2011.

9.In any event, it is contended that since a preferential candidate in the category of Scheduled Caste (Arunthathiyar) is available to be appointed, the petitioner, who belongs to Schedule Caste Category, cannot be given preference and as such, the petitioner has no right whatsoever to seek appointment as prayed for.

10.I heard Mr.G.Purushothaman for Mr.R.Thirumoorthy, learned counsel appearing for the petitioner and Mr.R.Gopinath, learned counsel appearing on behalf of the respondent and perused the documents available on records.

11.At the time of admitting the writ petition, this Court, by order dated 04.10.2011, granted interim stay of the impugned order. Thereafter, when the writ petitioner sought for a direction to the respondent to allow him to join in the post of Research Associate/Senior Research Investigator, this Court, by order dated 14.10.2011, dismissed the miscellaneous petition making it clear that any appointment made to the post, which is the subject matter of the writ petition, would be subject to the result of the writ petition.

12.The only point which is to be considered is whether the respondent/University was right in cancelling the appointment order of the petitioner without assigning any reasons whatsoever and without affording an opportunity of hearing to the writ petitioner

13.It is to be noted that every administrative process will best be vindicated by clarity in its exercise. In the case on hand, the impugned order dated 22.09.2011 merely states that the appointment order is treated as cancelled. No reason whatsoever is assigned for passing such order and the same is not disputed by the respondent/University. Thus, it is apparent that there is no clarity in exercise of the administrative process by the respondent/ University as on 22.09.2011. It is only in the counter affidavit filed by the respondent/University it is stated that the Syndicate ratified the cancellation of the appointment of the writ petitioner only on 10.10.2011.

14.The impugned proceedings dated 22.9.2011 runs counter to the dictum laid down by the Supreme Court in the following decisions:

a) In *Shrawan Kumar Jha and others v. State of Bihar and others* 1991 Supl. (1) SCC 330, the Apex Court held as under:

"3. By an order dated November 2, 1988, the Deputy Development Commissioner cancelled the appointments of the appellants. Mr. Ashok If Desai, learned Solicitor General appearing for the respondents have contended that the appointments have been cancelled because the District Superintendent of Education had no authority to make the appointments; it was a device of by-passing the reservations and that the conditions which are part of the appointment order were not complied with, Mr. UR. Lalit and Mr. A.K. Ganguli, learned senior Advocates, appearing for the appellants have controverted these allegations and have stated that all these teachers were validly appointed and they had joined their respective schools. It is not necessary to go into all these questions. In the facts and circumstances of the case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated November 3, 1988 on this short ground"

b) In yet another decision of the Supreme Court in *Basudeo Tiwary v. Sido Kanhu University and others*, AIR 1998 SC 3261, it was held as under:

"12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, Rules or Regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act, etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily

enquiry notice will have to be held and in holding such an enquiry the person whose appointment is under enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's case (AIR 1991 SC 101). In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, Statute, Rule or Regulation, etc., and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how S. 35 (3) in this case will have to be read.

13. Admittedly in this case notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence, the impugned order terminating the services of the appellant cannot be sustained".
(emphasis supplied)

15. The principle of natural justice has twin ingredients. Firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could, in the given facts and circumstances of the case, vitiate the order itself.

16. In the case on hand, the non-compliance of the above said two ingredients is apparent. No opportunity of hearing was afforded to the petitioner, nor any reason was assigned for passing the impugned order. On this score, the impugned order is liable to be set aside and, therefore, this Court is not traversing into the other rival contentions.

17. The Supreme Court in Basudeo, supra, emphatically observed that even if the appointment was irregular, an enquiry will have to be made and in holding such an enquiry the person whose appointment is under challenge will have to be put on notice. If the petitioner is not put on notice and a conclusion is drawn behind his back, such a conclusion would not be just, fair or reasonable. It was further observed that the audi

alteram partem facet of natural justice is also a requirement of Article 14, as natural justice is the antithesis of arbitrariness.

18.Ex facie, the impugned order is a non-speaking order. According to the respondents, the reasons for cancelling the appointment order issued in favour of the writ petitioner have been clearly stated in the counter affidavit. This contention does not merit acceptance for the simple reason that counter affidavit filed subsequently cannot supply reasons to a thoroughly non-speaking order. A person who is filing affidavit cannot supply wisdom to a person who has passed a non-speaking impugned order. Whenever the order is a non-speaking order and that too coupled with fact that no notice is given to the concerned party, it tantamounts to an arbitrary order.

19.In the case on hand, it is not the case of the respondent/University that the petitioner is not qualified or obtained appointment by producing fake documents. The appointment of the writ petitioner was made after thorough verification of the records and on examining his merits and demerits. Therefore, the petitioner cannot be put to fault for the error committed by the respondent/University.

20.In the result:

(a) this writ petition is disposed of by setting aside the impugned order passed in F1(B)/ESTT/AERC/Appt./Technical posts/2011/1591, dated 22.09.2011, is set aside;

(b) the matter is remand back to the respondent/University to pass fresh orders by giving fair opportunity to the petitioner;

(c) the said exercise shall be done by the respondent/ University within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

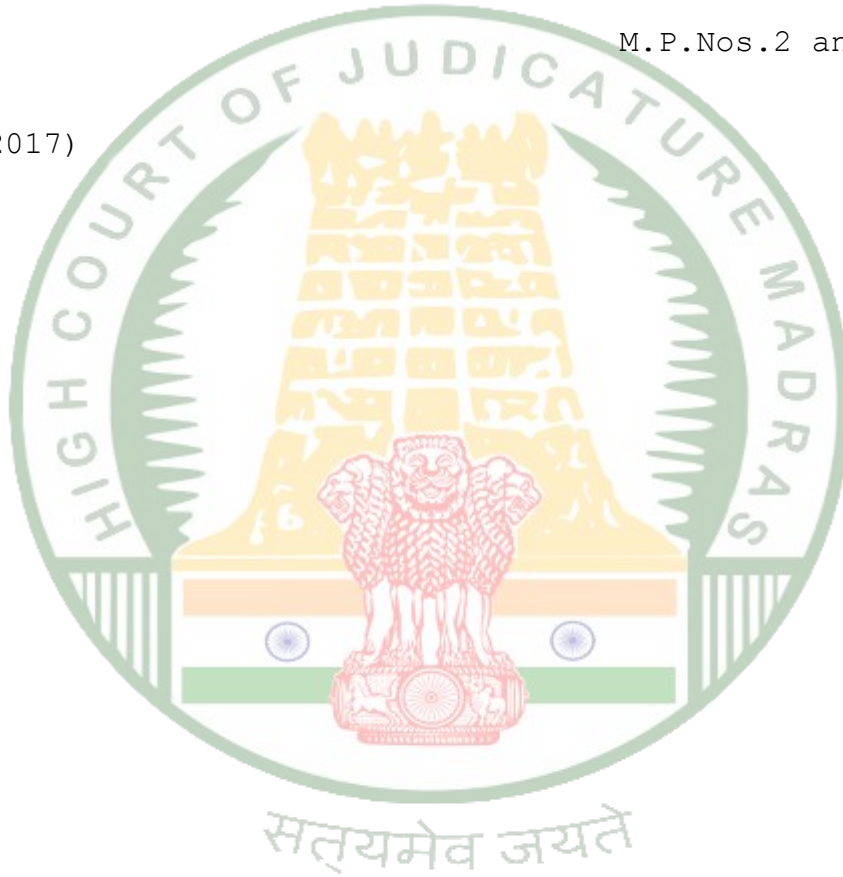
To
The Registrar
University of Madras
Tholkappiar Campus
Chepauk, Chennai - 600 005.

+1cc to Mr.R.Thirumoorthy, Advocates sr.57006

+1cc to Mr.R.Gopinath, Advocates sr.56785

W.P.No.22941 of 2011
and
M.P.Nos.2 and 4 of 2011

mr(co)
ss(25/10/2017)



WEB COPY