

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26335 of 2014

and

M.P.No.1 of 2014 & W.M.P.No.21752 of 2016

Dr.C.Thirunavukkarasu,
Assistant Professor,
Department of Biochemistry and
Molecular Biology,
Pondicherry University,
(Central University),
R.V.Nagar, Kalapet,
Puducherry - 605 014.

.... Petitioner

Vs.

1.Periyar University,
Rep. by its Registrar,
Periyar Palkalai Nagar,
Omalur Main Road,
Salem - 636 011.

2.Selection Committee,
For the post of Professor in Biochemistry,
Rep. by Professor Periyar University,
Periyar Palkalai Nagar,
Omalur Main Road,
Salem - 636 011.

3.Dr.G.Sudha,
Associate Professor,
Biochemistry Department,
Periyar University,
Periyar Palkalai Nagar,
Omalur Main Road,
Salem 636 - 011.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration to declare the appointment of the third respondent as Associate Professor in Biochemistry Department of the first respondent University by Syndicate Resolution dated 03.08.2013 pursuant to the advertisement dated 28.03.2013 bearing Advertisement No.PU/R5/2013/39 as illegal, arbitrary and contrary to law and

consequently direct the first respondent to issue fresh notification and fill up the post of professor in Biochemistry by constituting due selection committee in accordance with law and as per the statute of the first respondent University.

For Petitioner : Mr.Balan Haridas

For R1 & R2 : Mr.P.Godson Swaminath for
Mr.Issac Mohanlal

For R3 : Mr.V.Anand

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O R D E R

The resolution passed by the Syndicate University on 03.08.2013, pursuant to the Advertisement dated 28.03.2013 bearing Advertisement No.PU/R5/2013/39 is sought to be declared as illegal, arbitrary and contrary to law and consequently direct the first respondent to issue fresh notification and fill up the post of professor in Biochemistry by constituting due selection committee in accordance with law and as per the statute of the first respondent University.

2.The grievances of the writ petitioner is that he is also one of the candidate participated in the process of selection for recruitment to the post of Professor in Biochemistry. The process of selection was undertaken pursuant to the notification issued by the respondent University on 28.03.2013.

3.On a perusal of the said notification, it is clear that the applications in the prescribed form in eight copies are invited from the eligible candidates for the post of Professor in the following Departments:

SI.No.	Advertisement No.	Name of the Department	Community
1	PU/R5/2013/39	Biochemistry	GT
2	PU/R5/2013/40	Chemistry	SC*
3	PU/R5/2013/41	English	SC*
4	PU/R5/2013/42	Food Science and Nutrition	GT
5	PU/R5/2013/43	Psychology	GT
6	PU/R5/2013/44	Tamil	GT

Thus, the recruitment was notified for the post of Professor in Biochemistry also. The petitioner is fully qualified to participate in the process of selection as per the notification.

The selection process was conducted by the University selection committee and the committee found that none of the candidates are suitable to hold the post of Professor in Biochemistry. However, the committee has appointed third respondent to the post of Associate Professor, considering the factor that the third respondent performed better than the other candidates and participated in the process of selection.

4.The learned counsel appearing for the petitioner raised a sole contention that such an appointment made contrary to the recruitment notification is invalid. When the respondents have notified for selection to the post of Professor in Biochemistry, then they ought to have appointed the third respondent only as Professor in Biochemistry and, even as per the constitutional principles, a separate notification is to be issued for the purpose of recruiting the candidates for appointment to the post of Associate Professor in the University.

5.University being a state has to follow the rule of transparency in the matter of selection and appointment. Equal opportunity for public appointment is a constitutional mandate. All the citizens of this Great Nation are to be provided an opportunity to participate in the selection process for a particular post which is notified. No appointment can be effected in respect of un-notified posts. This being the legal principles to be followed, this Court is of the opinion that all the appointing authorities cannot go beyond the scope and the terms and conditions stipulated in the recruitment notification issued.

6.The learned counsel appearing on behalf of the University contended that the University has got a power to relax the rules. The power of relaxation cannot be exercised so as to vitiate the terms and conditions notified in the recruitment notification. Power of relaxation is granted only to mitigate an injustice, if any, occurred against a person who is in service or during the selection. However, such a power cannot be utilized for the purpose of violating the terms and conditions of the notification. Power of relaxation is to be exercised cautiously and sparingly. The power of relaxation cannot deprive the candidates from participating in the process of selection for a particular post or cadre. Thus, the arguments advanced that the power of relaxation exercised by the selection committee cannot be considered and the same is to be rejected.

7.The learned counsel appearing for the third respondent contended that the third respondent participated in the process of selection and performed upto satisfaction of the selection committee and the committee considered her and appointed to the

post of Associate Professor and she cannot be blamed for that. Further, the third respondent was found suitable for the post of Associate Professor by the selection committee and accordingly, appointed. Thus, there is no infirmity in the order of appointment.

8.The learned counsel appearing for the third respondent brought to the notice of this Court that the third respondent has already worked for about three years. The service experience, if any, in a particular post also deserves to be considered at the time of undertaking the process of selection.

9.Considering the arguments as advanced by the respective learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents, this Court is of the opinion that the Competent Authorities issued the notification for recruitment to the post of Professor in Biochemistry, neither in violation of the terms and conditions stipulated nor at the liberty to appoint or to fill up the post, which is not notified. In other words, there was no notification for recruitment in respect of the post of Associate Professor. Thus, the appointment made to the post of Associate Professor is certainly contrary to the notification and in violation of the constitutional scheme of recruitment as contemplated by the Hon'ble Apex Court of India.

10.In this regard, this Court is of the view that the order of appointment made in favour of the third respondent is invalid and contrary to the recruitment notification issued and a separate selection ought to have been conducted by issuing a separate notification for appointment to the post of Associate Professor. If at all no suitable candidates were available at the time of the process of selection, the selection authorities have to issue a fresh notification for selection and they ought not to issue any appointment order to a post which is not notified in the recruitment notification.

11.In this view of the matter, the impugned orders passed by the first respondent University by Syndicate Resolution dated 03.08.2013 pursuant to the Advertisement dated 28.03.2013 bearing Advertisement No.PU/R5/2013/39 is quashed and the respondents 1 and 2 are at liberty to issue a fresh notification for recruitment to the post of Professor in Biochemistry and accordingly proceed with the selection in accordance with the law. In the event of issuing any such notification, the writ petitioner and the third respondent are also at liberty to submit their respective applications and participate in the process of selection and their cases also to be considered along with all other eligible candidates, who are participating in the process of selection.

12. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

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To

1. The Registrar,
Periyar University,
Periyar Palkalai Nagar,
Omalur Main Road,
Salem - 636 011.

2. Professor,
Selection Committee, Periyar University,
For the post of Professor in Biochemistry,
Periyar Palkalai Nagar,
Omalur Main Road,
Salem - 636 011.

+1cc to Mr. Balan Haridass, Advocate SR.No.91725

+1cc to Mr. P. Godson Swaminathan, Advocate SR.No.91506

+1cc to Mr. V. Anand, Advocate SR.No.92397 (16/02/2018)

W.P.No.26335 of 2014

CNR (CO)
GN (02/02/2018)

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