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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.A. [MD] .No.282 of 2013

and

MP.NO.1 OF 2013

S.Vijayakumar

: Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Higher Education Department,
Fort.St.George, Chennai 600 009.

2.The Director of Collegiate Education,
9th Floor, E.V.S.Sampath Building,
College Road, Chennai 600 006.

3.The Registrar,
Manonmaniam Sundaranar University,
Tirunelveli.

4.The Secretary,
Vivekananda College,
Agastheeswaram, Kanyakumari District.

5.The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg, New Delhi.

6.A.Shankar,
The Librarian, Vivekananda College,
Agastheeswaram, Kanyakumari District.

7.The Regional Joint Director,
Directorate of Collegiate Education,
No.18, Tiruchendur Road,
Tirunelveli 627 002.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent
<https://hcservices.ecourts.gov.in/hcservices/>
against the order, dated 24.01.2013, made in W.P.(MD).No.1074 of
2013, on the file of this Court.

Prayer in WP(MD). 1074/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Quo Warranto directing the 6th respondent to show cause by what authority claims to hold the post of Librarian at Vivekananda College, Agastheeswaram, Kanyakumari District and consequently remove the 6th respondent from the post.

For Appellant : Mr.Veera Kathiravan
Senior Counsel
For Mr.C.K.M.Appaji

For Respondent Nos.1,2&7 : Mr.N.S.Karthikeyan
Additional Government Pleader

For Respondent No.4 : Mr.T.Lajapathi Roy

For Respondent No.5 : Mr.V.Nagarajan

For Respondent No.6 : Mr.G.Murugendran
For Mr.B.William

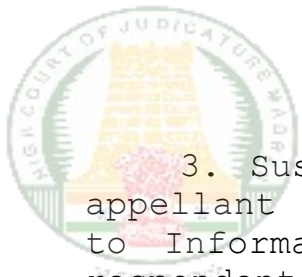
Reserved On 16.02.2017

Pronounced On 01.03.2017

JUDGMENT

This Writ Appeal has been filed as against the order dated 24.01.2013 made in W.P.(MD).No.1074 of 2013.

2. The case of the appellant before the learned Single Judge is that he is a resident of Chennai, involving various social activities. The fourth respondent college is an aided college and affiliated to the Manonmaniam Sundaranar University, the third respondent herein. While so, the first respondent, vide G.O.Ms.No.37, Higher Education (E2) Department, dated 23.02.2010, had accorded permission to fill up and appoint 62 Librarian posts in the aided colleges, as per the norms fixed by the University Grants Commission on the basis of educational qualification and communal rotation. By virtue of the said Government Order, the fourth respondent college was permitted to fill up one post of Librarian. In pursuance of the same, the fourth respondent college issued a paper publication dated 30.09.2010 in a local daily "Dhina Thanthi" inviting applications for the post of Librarian under communal rotation in general category. As per the said publication, the filled in applications should reach the Secretary of the College, on or before 11.10.2010. Ultimately, the fourth respondent college, by proceedings dated 21.02.2011, appointed the first respondent herein as Librarian in the pay scale of Rs.15,600/- + Rs.39,100/- + Rs.6,000/-.

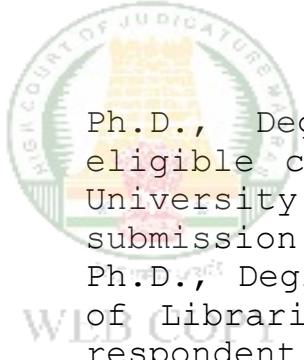


3. Suspecting the qualification of the sixth respondent, the appellant made enquiry by invoking the provision under the Right to Information Act, 2005 and he came to know that the sixth respondent has not qualified the NET/SLET and he has been awarded Ph.D., Degree only on 27.12.2010, viz., much after the last date of submitting the application, viz., on 11.10.2010. Thus, the sixth respondent was ineligible for the post of Librarian in the fourth respondent college. However, knowing fully well that the sixth respondent was ineligible for the post of Librarian, his application was entertained by the fourth respondent college and kept in abeyance till he completes Ph.D., Degree and conducted interview only for the purpose of granting him the post of Librarian in the fourth respondent college.

4. Immediately, the appellant forwarded his objections to the respondents, by way of legal notice dated 20.09.2012, disputing the qualification of the sixth respondent. In response to the said legal notice, the seventh respondent, by his proceedings dated 04.12.2012, informed that the District Employment Office sponsored the eligible persons for the post of Librarian. However, the candidates sponsored by the District Employment Office have not chosen to attend the interview and therefore, the sixth respondent, who was the only participant in the interview, was selected and appointed as Librarian. Under the above circumstances, the appellant filed W.P.(MD).No.1074 of 2013, seeking to issue a Writ of Quo Warranto, directing the sixth respondent to show cause by what authority he claims to hold the post of Librarian at Vivekananda College, Agastheeswaram, Kanniyakumari District and consequently, remove the sixth respondent from the post of Librarian.

5. The learned Single Judge of this Court, by order dated 24.01.2013, after hearing the learned counsel on either side, while dismissing the Writ Petition, held that the continuation in the office of the sixth respondent cannot successfully be questioned in a Writ of Quo Warranto, on a ground that may be available in a Writ of Certiorari. Aggrieved over the same, the appellant has come up with this Writ Appeal.

6. Today, when the Writ Appeal is taken up for consideration, it is submitted by the learned Senior Counsel for the appellant that the fourth respondent issued a paper publication dated 30.09.2010 in a local daily "Dhina Thanthi" inviting applications for the post of Librarian under communal rotation in general category. The last date for submitting the application is 11.10.2010. It is the further submission of the learned Senior Counsel that the University Grants Commission Regulation prescribes that the candidates must possess a Masters Degree in Library Science/Information Science/Documentation Science or equivalent professional degree with at least 55% marks. However, the candidates, who possess

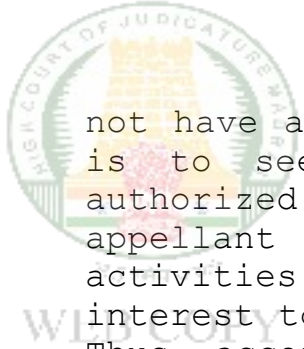


Ph.D., Degree, are exempted from the requirement of minimum eligible condition, viz., National Level Eligibility Test by the University Grants Commission. However, on the last date of submission of application, the sixth respondent does not possess Ph.D., Degree and thus, he was not eligible to apply for the post of Librarian in the fourth respondent college. But, the fourth respondent college blindly entertained the application of the sixth respondent and kept the selection process pending for months together.

7. Moreover, it is the submission of the learned Senior Counsel that the sixth respondent had completed viva-voce examination only on 27.12.2010 and thus, Ph.D., Degree was conferred on him only on completion of viva-voce examination. Thus, according to the learned Senior Counsel, on the last date of submitting the application, the sixth respondent had never possessed Ph.D., Degree and he is ineligible to apply for the said post. In support of his contention, the learned Senior Counsel made reliance on the Judgment of the Hon'ble Supreme Court in **Rakesh Kumar Sharma Vs. State [NCT of Delhi] and another** reported in **2013 (11) SCC 58**, wherein it has been held that there could be large number of candidates, who were not eligible as per the requirement of rules/advertisement, since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant therein would be violative of the doctrine of equality, a backbone of the fundamental rights under the constitution.

8. In support of his contention that the candidates, who do not possess the required qualification on the last date of submission of application, are not eligible to be considered for selection, the learned Senior Counsel made reliance on the Judgment of the Hon'ble Supreme Court in **Ashok Kumar Sharma and others Vs. Chander Shekhar and another**, reported in **1997 (4) SCC 18**, wherein it has been held that a person acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. Relying on the same, the learned Senior Counsel submitted that in the case on hand, since the sixth respondent did not possess the required qualification as on the last date of submission of application, he is not eligible to hold the post of Librarian.

9. Now, turning to the *locus standi* of the appellant to question the appointment of the sixth respondent, the learned Senior Counsel made reliance on the Judgment of the Hon'ble Supreme Court in **Rajesh Awasthi Vs. Nand Lal Jaiswal and others**, reported in **2012 (5) LLN 62 (SC)** and submitted that a person need



not have any special interest or personal interest. The real test is to see as to whether the person holding the office is authorized to hold the same as per law. In the case on hand, the appellant is a social activist, involving various social activities and thus, the appellant need not have any special interest to file the Writ Petition seeking a Writ of Quo Warranto. Thus, according to the learned Senior Counsel, the learned Single Judge ought not to have dismissed the Writ Petition by assigning a reason that the appellant is a permanent resident of Chennai, whereas the fourth respondent college is situated at Kanniyakumari and therefore, it is not known as to how the appellant was interested in the appointment made in the fourth respondent college. Hence, the order passed by the learned Single Judge needs interference.

10. Per contra, it is the submission of the learned counsel appearing for the sixth respondent that the appellant is the friend of the brother of the sixth respondent. A Civil Suit is pending between the sixth respondent and his brother. Only due to the instigation of the sixth respondent's brother, the Writ Petition was filed. Furthermore, in the notification issued by the fourth respondent, no specific date was fixed to possess the required qualification. In fact, the notification does not say that on the date of submitting the application, the candidates should possess the required qualification. Furthermore, the appointing authority has stated, in response to the legal notice issued by the appellant that in pursuance of the notification, the sixth respondent alone attended the interview and accordingly, he was selected and appointed. Therefore, according to the learned counsel for the sixth respondent, there is no illegality in the appointment of the sixth respondent. Furthermore, the learned counsel, relying upon the Judgment of the Karnataka High Court in the case of **P.S.Venkataswamy Setty Vs. University of Mysore and others**, reported in **AIR 1964 Kant 159**, submitted that in a case of this nature, Writ of Quo Warranto will not lie. Thus, the learned counsel sought for the dismissal of the Writ Appeal.

11. We have considered the above submissions and keeping in mind the said submissions made on either side, we have carefully gone through the materials available on record.

12. Though very many contentions have been raised with regard to the appointment of the sixth respondent in the post of Librarian, the only question, that has to be decided in this Writ Appeal, is as to whether in a case of this nature, a Writ of Quo Warranto will lie. In this regard, we may usefully refer to the Judgment of the Karnataka High Court in **P.S.Venkataswamy Setty's** case, referred to above, wherein in Paragraph Nos.13 and 14, it has been held as follows:-

"Now, in the case before us, the posts held by



the contesting respondents are of a professor or of a Reader in Physics at the University of Mysore. They are certainly not posts or offices created by the Constitution. Section 13 of the Mysore University Act gives a list of statutory authorities of the University, viz., -

- (a) the Senate,
- (b) the Syndicate,
- (c) the Academic Council,
- d) the Faculties,
- e) the Boards of Studies,
- f) the Board of Appointments,
- g) the Committee of Finance, and
- (h) such other bodies as may be declared by statutes to be the authorities of the University."

No declaration under clause (h) assimilating the position of professors and Readers to a statutory authority of the University has been brought to our notice. Nor is there any provision of the Act which enumerates or designates Professors, Readers or teachers as statutory functionaries in the same way as functionaries like the Chancellor, Vice-Chancellor, Registrar, &c. have been. Professors and Readers of the University clearly do not exercise any Governmental functions nor are they invested with the power or charged with the duty of acting in execution or enforcement of the law. They are merely employees under a statutory body. They cannot therefore in any sense be described as holders of public offices in respect of which quo warranto will lie".

13. A cursory look into the said Judgment would go to show that the Professors and Readers of the University clearly do not exercise any Governmental functions nor are they invested with the power or charged with the duty of acting in execution or enforcement of the law. They are merely employees under a statutory body. They cannot, therefore, in any sense, be described as holders of public offices in respect of which quo warranto will lie. Thus, in our considered view, the dictum laid down by the Karnataka High Court is squarely applicable to the facts of the present case. In fact, the learned Single Judge has also rightly held that a Writ of Quo Warranto will not lie in a case of this nature. Therefore, we do not find any infirmity in the order passed by the learned Single Judge.



14. In the result, the order dated 24.01.2013 made in W.P. (MD).No.1074 of 2013, is confirmed and the Writ Appeal is dismissed. No costs.

Connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Higher Education Department,
Fort.St.George, Chennai 600 009.
- 2.The Director of Collegiate Education,
9th Floor, E.V.S.Sampath Building,
College Road, Chennai 600 006.
- 3.The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg, New Delhi.
- 4.The Regional Joint Director,
Directorate of Collegiate Education,
No.18, Tiruchendur Road, Tirunelveli 627 002.

NB

AE/MR/14.03.2017/7P/5C

**JUDGMENT MADE IN
W.A. [MD] .No.282 of 2013
01.03.2017**