

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.109 & 110 of 2017
and W.M.P.Nos.6872 of 2017 and 23458 & 23459 of 2018

Dr.G.Raja Jerald Selvakumar

... Petitioner in W.P.No.109 of 2017

Dr.D.Sulochana

... Petitioner in W.P.No.110 of 2017

Vs

1. Director of Collegiate Education,
EVK Sampath Building,
9th Floor,
College Road, Chennai - 600 006

2. Madras Christian College,
Rep. By its Secretary / Principal,
Tambaram East,
Chennai - 600 059

3. Dr.N.Ansuman

4. Dr.B.Madhana Rekha

5. Dr.V.Vijay Devanesan

6. Dr.S.Kalyani

7. Dr.Meera Rajeev Kumar

... Respondents in W.P.Nos.109 & 110 of 2017

COMMON PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration to declare the appointments of Respondents 3 to 7 to the post of Assistant Professor (Public Administration) in Government aided vacancy made by the second respondent College pursuant to the paper advertisement in "THE HINDU" dated 12.06.2016 as illegal and quash the same and consequently appoint the petitioners as the Assistant Professor in the Government aided vacancy.

For petitioner : M/s.Rita Chandrasekhar
in all W.P.'s

For respondent 1
in all W.P.'s : Mrs.P.Kavitha,
Government Advocate

For Respondent 2

in all W.P.'s : Mrs.Issac Mohanlal,
Senior Counsel for
M/s.P.Godson Swaminathan
For Respondents 3 to 7
in all W.P.'s : Mr.P.John

COMMON ORDER

It appears that the petitioners were working as Assistant Professors in the Department of Public Administration of the respondent College pursuant to a selection made on 10.06.2016, vide advertisement dated 22.05.2011. While the petitioners were rendering service continuously, the College came out with a notification on 17.01.2016 for recruitment to the said post along with some more posts, as according to College, the appointment of the petitioners was on a contractual basis, terming the same as 'Stop Gap Arrangement' and not a regular recruitment. Thereafter, the College is stated to have obtained permission from the Directorate of Collegiate Education for such recruitment. The petitioners also, pursuant to the said advertisement, participated in the said recruitment, wherein, 21 persons had participated as against 5 posts in the said Department. But in the said selection process, as no one was found suitable, the second respondent decided to make fresh advertisement to fill up the post vide advertisement dated 12.06.2016 and accordingly continued with the process of selection of 25 candidates some of whom including the petitioners who had earlier participated but not found suitable also participated. As it appears in such selection process, the respondent No.3 to 7 stated to have come out successful and as such have been appointed as Assistant Professors and the service of the petitioners which were stated to be stop gap in nature, were terminated. The petitioner came to challenge the advertisement made for recruitment of the said post, thereafter vide two writ petitions in W.P.Nos.5771 & 32579 of 2016 on the ground that they being continuing in the said post through a regular process of recruitment, the second respondent could not have made the advertisement for the said again with a prayer to quash their termination and allow them to continue in service. So also two more writ petitions vide W.P.Nos.32578 & 32580 of 2016 had also been filed by the petitioners to allow them to be selected pursuant to the selection process made vide the aforesaid advertisement dated 12.06.2016 as they were continuing in the said post and more meritorious. These present two writ petitions have been filed again challenging the very selection process to be not transparent and actuated with malafide to oust the petitioner from service, by selecting persons who are unqualified and terminating the service of the petitioner with a prayer to allow the writ petition by quashing the selection and appointing the petitioners in pursuant to such selection as they

were more meritorious to the persons selected in the department. Today, realising the fact that the petitioner after participating in the selection process could not have challenged the advertisement to be made vide the writ petition No.32577 of 2016 and also 32579 of 2016 and also the fact that unless they challenge the process of selection to be not proper inasmuch as though they are more meritorious they have been ignored they could not succeed in their prayer made to appoint them in the selection process pursuant to the advertisement made on 12.06.2016, which they have made in the present these two writ petitions, the other two writ petitions in W.P.Nos.32578 to 32580 of 2016, were not pressed by the writ petitioners and disposed of the same as not pressed.

2. So the contention of the writ petitioners in these cases that since the selection made in this case was vitiated being not transparent inasmuch as some of the candidates who were found unsuitable in the earlier occasions before two months having made suitable by the Selection Committee in the subsequent selection process and the petitioners who were more meritorious and serving in the institution though on adhoc basis but have been ignored and as such the selection of those persons be quashed and the petitioners be appointed.

3. The second respondent who is the contesting respondent and the appointing authority however, resisted such contention of the writ petitioners in the reply affidavit to be of any substance. According to the second respondent no doubt, in the selection made in the month of May some of the candidates who were presently selected were found unsuitable including the petitioners but in view of the pressing need to fill up the vacancies and also having been permitted in this regard by the first respondent, the second respondent felt the need of making fresh advertisement on 12.06.2016 to select and fill up the post of the Assistant Professors in the Department of Public Administration of the College. In such advertisement, the persons who were not selected earlier and also the petitioners who were working there on stop gap arrangement participated. The Selection Committee during the process of selection however, found some of the persons who were not selected earlier, to be suitable and selected them but the petitioners and others to be unsuitable and accordingly, rejected them. Pursuant to the same, the second respondent issued the order of appointment and dispensed with the service of the petitioners which were stop gap in nature. When the selection Committee found the petitioners to be not suitable through a just process of selection, the petitioners thereafter cannot be heard of saying that the process of selection was not transparent and actuated with malafide as they being more meritorious were ignored. The same is more so, in view of the fact that the petitioners being

a minority institution has the independence in selection of the teachers according to its need and the same cannot be questioned by the petitioners. For the said reasons, it is stated that the writ petition is devoid of merits and as such liable to be dismissed.

4. The respondent No.3 to 7 who have been selected pursuant to the advertisement, have not filed any independent reply affidavit.

5. The first respondent also has not filed any counter affidavit. No relief also has been sought for against the first respondent inasmuch as it has only approved the appointment pursuant to the proposal of the second respondent indicating the fact that the respondents No.3 to 7 have been selected and appointment made pursuant to the selection.

6. During the course of argument, learned counsel appearing for the writ petitioners submits that the process of selection was vitiated inasmuch as there was no transparency in the selection process. According to the counsel for the writ petitioners, the entire process was designed to oust the petitioners and accommodate some others in that place. The same can be visualised from the fact that even in the earlier process of selection, some of the persons presently selected pursuant to the advertisement made on 12.06.2016, were found unsuitable, but they have been, in the subsequent selection process, found suitable and appointed. The petitioners who were serving in the institution for more than five years however, were not selected and found unsuitable. Hence, it is submitted that the entire selection process being not transparent and without justifiable reasons and candidates appointed having been picked and choosed from the candidates participating, the selection process is vitiated and be quashed and the fourth respondent be directed to appoint the petitioners.

7. Responding to the aforesaid submission, the learned Senior Counsel appearing for the second respondent, though does not dispute the fact that in this case, some of the respondents who were found unsuitable in the earlier selection made in the month of May, were later on selected in the selection process made pursuant to the subsequent advertisement but submits, according to the Selection Committee in the subsequent selection process, they having been found suitable and the respondent No.2 being a minority institution having the independence of selection of teachers, according to its peculiar requirement against sanctioned vacancy, the same cannot be questioned by the petitioners, who became unsuccessful in the recruitment. The learned Senior Counsel seriously disputes the contention that there was no transparency in the selection process and the

decision making process was vitiated inasmuch as without any rhyme of reasons, the respondents No.3 to 7 were picked and choose from among the candidates ignoring the petitioners who are stated to be more meritorious. It is submitted that the selection committee, applying the parameters prescribed through a process of selection found the respondent No.3 to 7 to be more meritorious considering their merit and suitability and as such selected them. Absolutely, their being no materials indicating the fact that the selection committee decision selecting the respondents No.3 to 7 to have been actuated with any malafide or tainted with bias against the petitioners inasmuch as no materials being there indicating the fact that the petitioners though found to be more meritorious were ignored, the challenge to the process of selection by the writ petitioners therefore in this writ petition is devoid of merit and liable to be dismissed, submits the learned Senior Counsel appearing for the third respondent.

8. However, the second respondent has also produced the record of selection for perusal of this Court to justify their claim that there was no wrong in the decision making process by the Selection Committee for perusal as directed by this Court in the Court today and taken back the same.

9. The learned counsel for the respondent No.3 to 7 have also taken the similar stand as taken by the second respondent and made prayer to dismiss the writ petition.

10. The learned counsel appearing for the first respondent however submits that in the selection process they have got nothing to say as after due selection and the second respondent having intimated it the selection and appointment of the 3 to 7 respondents pursuant to the process of selection, as mandated in the statute, it has approved the proposal of appointment made by the second respondent of the respondent No. 3 to 7.

11. There is no manner of doubt that the second respondent being a minority educational institution, it has the independence in selection of teachers but the aforesaid minority educational institution in such matter is amenable to the writ jurisdiction is not disputed. Therefore the persons participating in such selection process can very well challenge the selection not to have been made in accordance with the modalities / guidelines prescribed and on that ground therefore the same is vitiated or they have been ignored by the Selection Committee even if they were more meritorious than the persons selected. In the aforesaid premises, when in the writ petition the very process of selection was challenged on the ground that the same was not made in terms of any modalities and there was no transparency inasmuch as persons who were found unsuitable two months before, pursuant to the second advertisement, were

picked and choosed ignoring more meritorious candidate without any justifiable reasons, which was resisted by the respondent to be not correct this Court in exercise of its writ jurisdiction called for the records with regard to such selection. During the course of examining the records, it appears to this Court that there was no modalities on the Board before such selection. Nothing was also put in black and white by the selection committee how to make such selection. No doubt marks have been awarded in different columns to some of the candidates and some of the candidates were made unsuitable but what was the modalities for such marks and not finding one at a suitable was not their in the record before selection. Some of the candidates also who were not awarded any marks during participation in the earlier selection process, with the remarks that they were unsuitable, have been awarded marks in the subsequent selection process and taken into the zone of consideration. Furthermore, persons securing same marks in the earlier selection process though were not selected but with the same marks some of them have been selected now. No doubt the second respondent being the minority education institution having independence in selection of teacher fixed the modalities for selection to such post. But the same must be made in accordance with such modalities. The said independence of the respondent No.2 does not extend to the extent of selecting any persons they like without any criteria, though they have the independence to prescribe the suitability criteria fitting into the post in the institution. The same is also subject to qualification criteria prescribed for such post by the UGC. In this case therefore, there being no modalities on board and persons found completely unsuitable and not awarded marks on any column on the earlier occasion, when participated in the subsequent recruitment have been awarded marks and some of them have also been selected, this Court is of the view that the allegations made in this writ petition that there was no transparency in the selection process and as such selection process was vitiated appears to this Court to have substance. In such premises, this Court is of the view that the selection of the respondents No.3 to 7 cannot be sustained. However, simultaneously there being no materials indicating the fact that the petitioners in the selection though found to be more meritorious but were ignored their prayer to appoint them pursuant to such selection appears to this Court to be without any substance and cannot be allowed.

12. But while holding that the decision making process was vitiated and as such the selection of the respondents No.3 to 7 cannot be sustained, it cannot be lost sight that the second respondent has the pressing need of teachers and the respondents No.3 to 7 being appointed are imparting education to the students in the Department of Public Administration near about

two years and are qualified persons. Removal of this petitioners at this juncture is not at the academic interest of the student. But this Court has already hold that their selection was not proper and vitiated. In such premises, this Court is of the view that if an order is passed directing the respondent to commence with the selection process of the candidate who had applied then pursuant to the advertisement made on 12.06.2016 taking note of their qualification on that date as prescribed then, making the modality of selection in this regard aware to the candidates well ahead of the selection and the respondent No.3 to 7 are allowed to continue till the new incumbents join pursuant to the fresh selection, the same shall cause prejudice to none. However, the learned counsel appearing for the writ petitioners submits that the second selection made by the same Selection Committee shall be nothing but an eye wash inasmuch the said Selection Committee shall have a binding tie with the earlier selection and as such the first respondent be directed to make selection afresh making them aware of the modalities of selection. I am unable to concede such prayer of the writ petitioners inasmuch as that would affect the independence of the second respondent in selection of teachers as a minority educational institution. But to dispel the apprehension of the petitioner, it would be proper if the second respondent is directed to reconstitute the selection committee dropping the members who were in the earlier selection committee but not in the capacity of Ex-officio members and take any other suitable persons in their place and continue with the process of selection within stipulated period, with the further observation the same shall not be treated as a stigma in any manner on the persons dropped from the Selection Committee and the new Selection Committee shall conduct the selection without any binding tie to the earlier selection made and conduct the same according to the modalities to be there on the Board, protecting the service of the respondents No. 3 to 7 till the new selection is made, the same shall serve the purpose.

13. Therefore this Court allows this writ petition in part with a direction to the respondent to constitute a selection committee afresh taking of the Ex-officio members and also some other members as it deem fit and proper, but without including in the said committee the members who were there in the earlier Selection Committee not in the capacity of Ex-officio members, within a period of eight weeks from the date of receipt of a copy of this Order or 31st October 2018 whichever is later making the modalities of selection aware to the candidates ahead of such selection who had applied pursuant to the advertisement dated 12.06.2016. It is made clear that the qualification the candidates possess pursuant to the aforesaid advertisement as it then was, shall only be taken into consideration and no experience or qualification earned by such candidates subsequent

to the same shall have any bearing in the process of selection. It is also made clear that during the interregnum the respondent No.3 to 7 shall continue to serve in their present post and shall also be protected with the continuity of service, if found suitable for appointment pursuant to such fresh selection but the said observation shall not have any binding tie on the part of the Selection Committee to select them, if they are found less meritorious than other candidates. Furthermore the drop of the independent members of the earlier Selection Committee shall not be construed as a stigma on them inasmuch as the same is directed to dispel the apprehension of the writ petitions that those persons allowed to be continued they shall have binding tie with the earlier selection made by them and which is likely to affect the subsequent selection.

14. With the aforesaid order, these writ petitions stand disposed of being partly allowed. However, in the circumstances there shall be no order as to costs.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

sd

To

1. Director of Collegiate Education,
EVK Sampath Building,
9th Floor,
College Road, Chennai - 600 006

2. Madras Christian College,
Rep. By its Secretary / Principal,
Tambaram East,
Chennai - 600 059

+1cc to Mr. Rita Chandrasekar, Advocate, S.R.No.62524

+1cc to Mr. P. Godson Swaminath, Advocate, S.R.No.62773

W.P.Nos.109 & 110 of 2017

GSP (23/10/2018)