

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.A.No.2629 of 2018
and C.M.P.No.21411 of 2018

T.C.Karthikheyan

... Appellant

Vs.

1. R.Arumugam

2. The Principal Secretary to Government,
Department of Higher Education,
Secretariat, Chennai - 600 009.

3. The Secretary to Government,
Department of AdiDravida Welfare Department,
Secretariat, Chennai - 600 009.

4. The Registrar,
Tamil Nadu Open University,
No.577, Anna Salai, Saidapet,
Chennai - 600 015.

... Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letters of Patent against the order dated 31.10.2018 in W.P.No.31001 of 2015. Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent order in so far as the selection of the 4th respondent enclosed with the order of the state information Commissioner The Right to Information Act Commission dated 26.06.2015 by which the petitioner was informed about the selection of the 4th respondent as Assistant Professor in the Political Science and quash the 4th respondent appointment and consequently directing the 3rd respondent to consider and appoint the petitioner as Assistant Professor in Political Science in the Schedule Caste (Arunthathiar) category

For Appellant : Mr.Ajmal Khan, Senior Counsel
for M/s.Mohamed Abbas

For 2nd Respondent : Mr.C.Munisamy
Special Government Pleader (E)

For 3rd Respondent : Mr.P.S.Siva
Shanmugasundaram

For 4th Respondent : Mr.P.Sanjai Gandhi
Standing Counsel

For 1st Respondent : Mr.V.Stalin for
M/s.Raw & Reddy

J U D G M E N T

SUBRAMONIUM PRASAD, J.

The present Writ Appeal is directed against the order dated 31.10.2018 in W.P.No.31005 of 2015, whereby, the High Court has allowed the Writ Petition and has set aside an appointment of the appellant as Assistant Professor, School of Politics and Public Administration, Tamil Nadu Open University. Facts in brief :-

2. The Tamil Nadu Open University came out with a notification inviting application for the post of Assistant Professors in different disciplines vide advertisement No.10 dated 01.08.2014. The advertisement includes two posts of Assistant Professors in Political Science. One post was kept for General Turn and the other one was specifically reserved for SC (Arunthathiyar). Respondent No.1 herein belongs to SC (Arunthathiyar) applied for the post reserved for SC (Arunthathiyar). The appellant also applied for the post. The appellant belongs to Scheduled Caste, but not SC (Arunthathiyar). The appellant was selected for the post. Respondent No.4 challenged this selection on the ground that he was a qualified candidate belonging to SC (Arunthathiyar) category and since he was available, the post could not have been given to the appellant herein.

3. The learned single Judge allowed the Writ Petition on the ground that the post was specifically reserved for SC (Arunthathiyar) and when the Writ Petitioner, who is a qualified SC (Arunthathiyar) was available for appointment, the department could not have appointed the appellant herein on the basis of comparative merit.

4. Heard the learned counsel appearing for both parties and perused the materials placed before this Court.

Findings and Conclusion :-

5. The Government, in order to uplift the Arunthathiyars, has enacted the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the Services under the State within the Reservation for the Scheduled Castes) Act, 2009. Rules have been framed under the said Act. The Government, G.O.(Ms).No.61, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.05.2009, has brought the following amendment:-

AMENDMENT

In the said Rules, in rule 3 in the illustration for the expression

"The seats to Arunthathiyars shall be offered in the rotation 2,32 and 66", the following expression shall be substituted, namely:-

"The seats to be allotted to Arunthathiyars on preferential basis shall be offered in the horizontal rotation such as 2,32 and 66. The preferential seats if filled up, it does not mean that the other qualified Arunthathiyars shall not compete with the rest of the Scheduled Casts members on inter-se merit basis; vice versa, if no qualified Arunthathiyars are available to fill up the preferential seats, it does not mean that the vacancies so arising shall not be filled up by the Scheduled Castes members on merit basis."

6. In view of the above mentioned Rule, respondents No.2 to 4 ought not have appointed the appellant herein, since respondent No.1, who is qualified SC (Arunthathiyar) was available for appointment.

7. Mr.Ajmal Khan, learned Senior Counsel appearing for the appellant placed strong reliance on the interim order passed by the learned single Judge on 25.09.2018. The interim order reads as under:-

"This Writ Petition has been filed by the petitioner challenging appointment of the fourth respondent with a prayer to quash the same and appoint him against the said post.

2. Today, when the Writ Petition is taken up, Mr.P.Sanjay Gandhi, the learned Standing Counsel appearing on behalf of the third respondent University comes with an instruction from the University to accommodate the

petitioner as per rules and regulations without prejudice to the appointment already made of the fourth respondent. Mr.N.G.R.Prasad, the learned Senior Counsel for the petitioner submits that he has no objection for the continuance of the fourth respondent, provided, the petitioner is appointed as per the undertaking given by the Standing Counsel for the third respondent University. The learned Standing Counsel for the third respondent University, however, submits that they will appoint the petitioner as per rules and regulations.

3. In view of the aforesaid, the matter may be called on 25.10.2018. It is hope and trust that the University shall act according to the instructions given to the learned Standing Counsel appearing on their behalf, in the meanwhile by giving necessary appointment order to the petitioner.

Post the matter on 25.10.2018."

8. Despite the said interim order, the learned single Judge, by the impugned order, has allowed the Writ Petition.

9. On the issue of merger, we would like to add few decisions.

(i) In South Eastern Coalfields Ltd v. State of MP and Others reported in (2003) 8 SCC 648, the Hon'ble Supreme Court held as follows:

"The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it."

(ii) In Prem Chandra Agarwal and Another v. Uttar Pradesh Financial Corporation and Others reported in (2009) 11 SCC 479, the Hon'ble Supreme Court held that once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(iii) In State of West Bengal and Others Vs Banibrata Ghosh and Others reported in (2009) 3 SCC 250, the Hon'ble Apex Court held that the Interim Order does not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings.

(iv) The Hon'ble Supreme Court in Amarjeet Singh and Others v. Devi Ratan and Others reported in (2010) 1 SCC 417, held that no person can suffer from the act of the Court and in case an interim order has been passed and the Petitioner takes advantage thereof and ultimately the Petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised.

10. Thus, it is trite law that all interim orders merge into the final order and cannot be relied on in appellate proceedings, because, they lose their existence and this cease to exist.

11. The Writ Appeal is therefore, devoid of merits and deserves to be dismissed and accordingly, the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Department of Higher Education,
Secretariat, Chennai - 600 009.
2. The Secretary to Government,
Department of AdiDravida Welfare Department,
Secretariat, Chennai - 600 009.

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3. The Registrar,
Tamil Nadu Open University,
No.577, Anna Salai, Saidapet,
Chennai - 600 015.

+1cc to M/s.Row & Reddy, Advocate SR.No.81870

+1cc to Mr.E.Mohamed Abbas, Advocate SR.No.82365

+1cc to Government Pleader SR.No.82967

W.A.No.2629 of 2018 and
C.M.P.No.21411 of 2018

KJI (CO)
GMY (04/01/2019)



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