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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :20.07.2018
DELIVERED ON: 27.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)No.1442 of 2017
and
C.M.P(MD)Nos.10995 and 10996 of 2017

G.Muthulakshmi

... Appellant/Petitioner

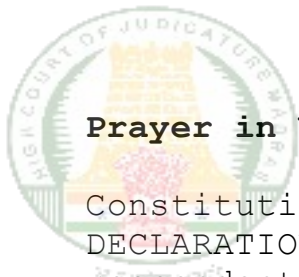
Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Department of Higher Education,
Fort ST.George, Chennai-600 009.
2. The Director of Collegiate Education,
DPI Campus, College Road,
Chennai-600 006.
3. The Regional Joint Director of Collegiate
Education, Tirunelveli Region,
Tirunelveli.
4. The Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli-627 012,
Rep. By its Registrar.
5. The Chairman,
College Committee / Governing Board,
Sri Parasakthi College for Women,
Courtallam-627 802,
Tirunelveli District.
6. The Secretary,
Sri Parasakthi College for Women,
Courtallam- 627 802,
Tirunelveli District.

7.Thangaduraichi

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order dated 08.11.2017 in W.P.(MD)No.8205 of 2016 on the file of this Court.



Prayer in WP(MD) . 8205/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF DECLARATION declaring the selection and the appointment of the 7th respondent herein as Assistant Professor (Tamil) in the 6th respondent Sri Parasakthi College for Women, Courtallam as illegal, null and void and further DIRECT the 5th and 6th respondents to redo the selection for the said post pursuant to the Notification in the Tamil Daily Dhinanthi dated 27.11.2015.

For Appellant : Mr.Isaac Mohanlal,
Senior Counsel for Mr.K.Prabhu
For R-1 to R-3,
R-5 & R-6 : Mr.V.R.Shanmuganathan
Special Government Pleader
For R4 : Mr.Mahaboob Athiff
for M/s Ajmal Associates
For R7 : Mr.G.Prabhu Rajadurai
for Mr.D.Venkatesh

JUDGMENT

(Order of the Court was made by **DR.ANITA SUMANTH, J.**)

Ms.G.Muthulakshmi, appellant/petitioner in W.P.(MD)No.8205 of 2016 challenges the order of the learned single Judge dated 08.11.2017 in this appeal. The prayer in the Writ Petition is a wide one. She had sought a writ of declaration declaring the selection and appointment of the seventh respondent herein as Assistant Professor (Tamil) in the sixth respondent, Sri Parasakthi College for Women (in short and hereinafter referred to as 'College') pursuant to notification in the Tamil Daily 'Dinanthi' dated 27.11.2015, as illegal, null and void and a further direction to the fifth and sixth respondents to redo the selection for the said post.

2.We have heard the submissions of Mr.Isaac Mohanlal, for Mr.K.Prabhu for the appellant, Mr.V.R.Shanmuganathan, for R1 to R3, R5 and R6, Mr.Mahaboob Athiff for Ajmal Associates for R4 and Mr.G.Prabhu Rajadurai, for R7, Ms.Thangaduraichi, the successful candidate whose appointment is challenged.

3.Mr.Isaac Mohanlal labours extensively on the details of qualifications of the appellant to establish that she was fully qualified to be considered for appointment. According to him, the college erred in appointing the seventh respondent when there were better placed candidates, such as the appellant, in the fray for consideration.

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4.Admittedly, the appellant had not written the



National/State Level Eligibility Test (NET/SLET/SET). This, according to Mr. Mohanlal, should not prejudice her selection as she had registered for a Ph.D. prior to 2009 and the University Grants Regulations 2009 (in short '2009 Regulations') exempted candidates from the requirement of clearing the NET/SLET/SET if they had been awarded a Ph.D. as stipulated therein. The appellant has obtained the Ph.D., thereafter. He also relies upon the 2016 Regulations issued by the University Grants Commission (in short '2016 Regulations'), specifically Regulation 3 thereof, that reiterates exemption from NET/SET/SLET, provided that the candidate has registered for a Ph.D. prior to 2009. Learned senior counsel calls into question the appointment process itself on the ground that the meeting of the College Committee that confirmed the appointments was invalid as it was improperly convened.

5. Mr. Prabhu Rajadurai, learned counsel appearing for the seventh respondent takes us through both Notifications of the UGC, 2009 as well as 2016, pointing out that even the Ph.D. obtained by the appellant did not satisfy the specific requirements under the Regulations. In any event, the pre-condition of clearing the NET/CET/SLET to be considered for appointment as faculty and academic staff in UGC Institutions was mandatory as per the judgement of the Supreme Court in the case of *P. Suseela and others v. University Grants Commission* [(2015) 8 Supreme Court Cases 129].

6. Admittedly, the appellant holds a Ph.D., and has not written the NET/CET/ SLET. The specific argument of Mr. Mohanlal is to the effect that the appellant has registered for a Ph.D. prior to 2009 and is thus entitled to the protection of the exemption provided under Regulation 3 of the 2009 Regulations.

7. Mr. Prabhu Rajadurai however points out that the award of Ph.D., would have been in compliance of the UGC (Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities in Colleges) Regulations, 2009 so as to be eligible for such exemption. According to him, the Ph.D., awarded to the appellant is not in compliance with the aforesaid Regulations and hence, even on that score, the petitioner is disentitled to her claim. We are of the view that the argument of Mr. Mohanlal is liable to be rejected even without reference to the aforesaid contention of Mr. Rajadurai in the light of the categorical pronouncement of the Supreme Court in the case of *P. Susheela* (supra).

8. There is a chequered history to the 2009 Regulations itself. Prior to the coming into force of the same, an M.Phil/Ph.D. holder was exempt from the requirement of a National/State Level Eligibility Test, subject to certain conditions imposed in relation to the M.Phil/Ph.D. itself. While this was so, the Central Government constituted a committee to review the



scheme of National Eligibility Test. The final report of the committee expressed the view that the NET / SLET should be retained as a mandatory requirement for appointment of Lecturers at Under Graduate and Post Graduate levels irrespective of candidates possessing the M.Phil., degree or Ph.D.

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9.A policy direction along the aforesaid lines was issued by the Central Government on 12.11.2008 in terms of section 20 of the University Grants Commission Act, instructing the authorities to bear in mind that the requirement for NET/SLET was compulsory for all candidates seeking appointment as faculty in Universities and Colleges under the UGC.

10.The 2009 Regulations however continued to provide an exemption from NET / SLET for Ph.D. holders. The conflict between the policy directive issued by the Central Government in terms of section 20 of the UGC Act and the 2009 Regulations itself, as well as the question as to whether a candidate who had obtained a Ph.D. prior to 2009 could claim a legitimate expectation or vested right to be considered for appointment as faculty in UGC Institutions, came up for decision before this Court in the case of *P.Suseela and others vs. The University Grants Commission and another* [2011 (2) CTC 593]. The claim was negatived in the light of the clear policy directive issued by the Government.

11.The matter travelled to the Supreme Court and in a judgment reported in [2015 (8) SCC 129], in the case of *P.Susheela* (supra), the Supreme Court has upheld the policy directive of the Central Government under section 20 of the UGC Act to the effect that the Eligibility Test was a mandatory requirement in the appointment of faculty to Colleges and Universities.

12.The conclusion of the Bench specifically notes that the directions of the Central Government under Section 20 of the UGC Act pertain to questions of policy having an impact upon national purpose and consequently, the Regulation making power of the UGC would be subservient to directions issued under section 20 of the Act. That the UGC was an expert body, did not militate against such a conclusion.

13.Thus, the settled position as on date is that the minimum required eligibility in matter of appointments of faculty to UGC Universities and Colleges is the NET / CET / SLET only.

14.Mr.Mohanlal also refers to Regulation 3 of the 2016 Regulations. The Regulation imposes five conditions to be satisfied by a Ph.D. holder seeking exemption from the requirement of NET / CET / SLET and reads as under:-

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'3.The proviso prescribed under Regulation 3.3.1, 4.4.1, 4.4.2, 4.4.2.2, 4.4.2.3, 4.5.3 and 4.6.3 in the



University Grants Commission (Minimum Qualification for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in higher education) (3rd amendment) Regulations 2016 regarding exemption to the candidates registered for Ph.D., programme prior to July 11, 2009 shall stand amended and to be read as under:-

Provided further, the award of degree to candidates registered for the M.Phil / Ph.D Programme prior to July 11, 2009 shall be governed by the provisions of the then existing Ordinances/Bylaws/Regulations of the Institutions awarding the degree and the Ph.D., candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfillment of the following conditions:-

a) Ph.D. Degree of the candidate awarded in regular mode only;

b) Evaluation of the Ph.D. Thesis by at least two external examiners;

c) Open Ph.D. Viva of the candidate had been conducted;

d) Candidate has published two research papers from his/her Ph.D. Work out of which at least one must be in a referred journal;

e) candidate has made at least two presentations in conference / seminars, based on his/her Ph.D. work.

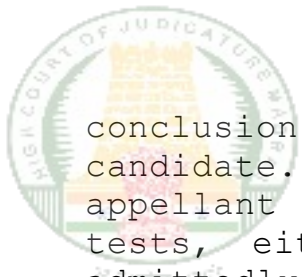
(a) to (e) as above are to be certified by the Vice-Chancellor/Pro-Vice-Chancellor/Dean (Academic Affairs)/Dean (University Instructions).'

15. According to Mr. Rajadurai, the appellant satisfies neither condition (d) nor the requirement that conditions under 'a' to 'e' are to be certified by Vice Chancellor / Pro-Vice-Chancellor / Dean / Academic Affairs / Dean. This is an admitted fact. Thus, the appellant does not satisfy the 2016 Notification as well.

16. As an aside, we cannot help but note that the 2016 notification revisits the earlier position regarding the sufficiency of Ph.D., and M.Phil., for appointment to UGC colleges de hors the requirement for clearance of NET/SET/SLET. The wisdom of this decision has been categorically questioned by the Expert Committee as early as in 2008 and held by the Supreme Court to be contrary to national purpose and interest. Since the 2016 Regulations are not in issue before us, we leave it at that.

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17. We find that the learned single judge has delved into a comparison of the qualifications of both candidates coming to the



conclusion that the 7th respondent was indeed the more appropriate candidate. In the light of the admitted position that the appellant has not obtained clearance in terms of the Eligibility tests, either National or State, and the 7th respondent has, admittedly, obtained the qualification under the Eligibility test, nothing more requires to be said on this aspect and we need go no further. The appeal fails on this ground.

18. As far as the process of selection is itself concerned, the argument is that the meeting of the College committee to confirm the selection made by the Selection committee was not conducted in accordance with the applicable regulations. The appellant contends that statutory notice, as required in terms of Regulation 10(3) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 of seven (7) days prior to the convening of the College Committee meeting, was not issued. The entire process of selection was conducted in haste as the appointments were made on 02.03.16 and the meeting to confirm such appointments was called and concluded on 03.03.16.

19. We have called for the original files relating to the College Committee meeting dated 03.03.16 to ascertain the procedure followed in confirming the appointments of the candidates. We find that the College Committee has indeed convened a meeting on 03.03.2016 and approved the appointments of the various candidates recommended by the Selection Committee including the seventh respondent. Seven members out of a total of eleven have attended the meeting and this constitutes proper quorum. The confirmation of the appointments have been made unanimously by all attendees and this is in accordance with Section 13(3) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 that stipulates that all decisions of the committee be taken by majority.

20. As far as the question of notice is concerned, Regulation 10 (3) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 reads thus:-

"Meetings of the Committee:- (1) The meetings of the committee shall be convened by the Secretary with the approval of the President.

(2) No meeting of the committee shall be held except at the premises of the college or the place where the educational agency has its office, the address of which has been furnished by the educational agency to the Director.

(3) No meeting of the committee shall be conducted unless-

(a) at least seven days' notice in writing has been given to the members of the committee; and

(b) at least fifty per cent of the total number of members of the committee are present."



21. At first blush, the provisions of Regulation 15 do appear mandatory. However, non-adherence to the notice period can be called into question only in two situations. Firstly, by the committee members themselves or by any other person prejudiced by such non-adherence to the notice period. In the present case, the challenge is by a disgruntled candidate. However, the decision in the College Committee meeting is required to be taken by majority and hence, even assuming that the notice period of two weeks has not been observed, no prejudice has been caused to the appellant since, ultimately, the decisions have been taken by majority, all seven attendees concurring with the appointments made. The arguments in relation to the irregularity of procedure adopted are thus rejected. As far as the arguments relating to the venue and date of meeting are concerned, we find no merit in, and hence reject the same.

22. For the above reasons, this Writ Appeal is dismissed with no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Secretary to Government of Tamil Nadu,
Department of Higher Education,,
Fort St. George, Chennai - 7.
2. The Director of Collegiate Education,
DPI Campus, College Road,
Chennai-600 006.
3. The Regional Joint Director of Collegiate
Education, Tirunelveli Region,
Tirunelveli.
4. The Registrar ,
The Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli-627 012,
+1cc to M/s. Ajmal Associates, Advocate SR.No.75917
+1cc to M/S.Isaac Chambers, Advocate SR.No.75744

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W.A(MD) No.1442 of 2017

and

C.M.P(MD) Nos.10995 and 10996 of 2017

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