



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD)No.17647 of 2018

and

W.M.P(MD)No.15518 of 2018

D.Vetrichelvan

... Petitioner

Vs.

1.The State Information Commissioner,
Tamil Nadu State Information Commission,
Thiyakarayar Road,
Thenampettai,
Chennai - 18.

2.Tamil University,
rep. by its Registrar,
Thanjavur - 613 010.

3.The Appellate Information Officer,
Tamil University,
Thanjavur - 613 010.

4.The Information Officer,
Tamil University,
Thanjavur - 613 010.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent dated 25.04.2018 passed in case number SA71/A/2018, quash the same and consequently, direct the respondents 2 to 4 to furnish the documents sought for by the petitioner in his petition dated 10.07.2015 under Right to Information Act, award cost.

For Petitioner : Mr.V.Ajay khose for
Mr.S.Arunachalam

For Respondents : Mr.K.K.Senthil (for R1)

Mr.B.Vijay Karthikeyan (for R2 to R4)

**ORDER**

The prayer in this writ petition is as follows:-

"To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent dated 25.04.2018 passed in case number SA71/A/2018, quash the same and consequently, direct the respondents 2 to 4 to furnish the documents sought for by the petitioner in his petition dated 10.07.2015 under Right to Information Act, award cost."

2.The case of the petitioner is as follows:-

The second respondent University issued notification on 27.04.2017 calling for applications for appointment to various posts in the cadre of Professor and Associate Professor in various departments. One such post notified was for appointment as Associate Professor in the department of Tamil Studies in Foreign Countries under general category. In response to the notification, the petitioner had applied for consideration of his appointment. The petitioner came to understand that only three candidates were called for interview in respect of the post for which, the petitioner had applied. The petitioner was interviewed along with one Dr.G.Palanivelu and the third person did not attend the interview. After the interview, the petitioner was hoping to be selected. However, it appears that Dr.G.Palanivelu was appointed as Associate Professor in the Department of Tamil Studies in Foreign Countries, by order dated 02/03.06.2017. According to the petitioner, the said Dr.G.Palanivelu is not qualified for appointment to the said post as the petitioner was the qualified person called for the interview.

3.In the above said circumstances, the petitioner approached this Court in W.P(MD)No.12532 of 2017, seeking for declaration that the action of the second respondent in selecting and appointing Dr.G.Palanivelu as Associate Professor in the Department of Tamil Studies in Foreign Countries as illegal and arbitrary and consequential direction to select the petitioner and appoint him as the said post.

4.According to the petitioner, at the time when the writ petition was admitted by this Court, he was directed to challenge the appointment order appointing the said Dr.G.Palanivelu.

5.In these circumstances, the petitioner had approached the fourth respondent seeking certain information in order to establish his claim as against Dr.G.Palanivelu vide his application, dated 10.07.2017, under Right to Information Act. The following documents are sought by the petitioner before the fourth respondent.

"i) The order of appointment appointing Dr.G.Palanivelu as Associate Professor in the Department of Tamil Studies in Foreign Countries.



ii) The application of Dr.G.Palanivelu with performance Based Appraisal System, shortly PBAS, along with the supporting documents, furnished by him.

iii) The reports of the Screening Committee of the 2nd respondent after evaluating the applications of myself and the Dr.G.Palanivelu.

iv) The report of the Interview Committee of the 2nd respondent after interviewing myself and the Dr.G.Palanivelu.

v) The resolution of syndicate of the 2nd respondent giving approval for selection of Dr.G.Palanivelu as Associate Professor in the Department of Tamil Studies in Foreign Countries."

6.However, the fourth respondent vide proceedings, dated 11.08.2017, refused to give any information on the ground that the person working in the same organization cannot seek information, since the petitioner happened to be working as Assistant Professor in the same University. As against the order passed, an appeal was preferred on 21.08.2017 to the third respondent. The third respondent refused to give any information in regard to the request made in serial Nos.1, 2 and 5 on the ground that the same were relating to the third person and in regard to serial Nos.3 and 4, they are confidential relating to the third person and hence, the entire request of furnishing of the information was refused by the third respondent. Thereafter, the petitioner had approached the first respondent by way of a further appeal on 31.12.2017 and in response to the appeal, a notice of enquiry was issued on 18.04.2018 asking the petitioner to appear on 25.04.2018. Notice was also sent to the third respondent for his appearance. However, the petitioner could not appear on 25.04.2018 in view of requirement of his presence in viva-voce examination for his M.phil course scheduled on the same day. Therefore, he sent a request letter on 24.04.2018 to the first respondent to adjourn the enquiry to some other date. However, notwithstanding the request by the petitioner, the first respondent passed an order on 25.04.2018 confirming the order passed by the respondents 3 and 4. The said order passed by the first respondent is put to challenge in the present writ petition.

7.Mr.V.Ajay Khose, learned counsel appearing for the petitioner would submit that the non furnishing of the information sought by the petitioner is contrary to the scheme of the Right to Information Act, 2005 and the stand taken on behalf of the respondents, namely, the particulars sought were relating to the third party cannot be countenanced both in law and on facts.



8.The learned counsel would submit that the information as sought for by the petitioner is in relation to the appointment in the said University in which the petitioner participated and according to him, selected candidate did not have minimum qualification for eligibility for such appointment and on the other hand, the petitioner was in possession of all the qualification and in such circumstances, he had sought certain relevant information in order to sustain his claim in the writ petition filed before this Court questioning the appointment of Dr.G.Palanivelu in W.P(MD)No.12532 of 2017. Therefore, the respondents cannot deny such request made on behalf of the petitioner on the ground that the information sought was confidential and also it pertains to the third party.

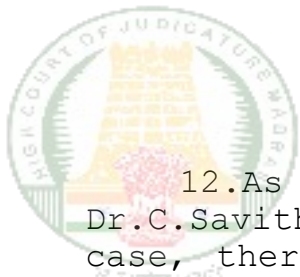
9.The learned counsel would also make out a strong case for grant of information on the ground that in respect of the same selection to another post in the second respondent University, the co-employee of the petitioner, namely, Dr.C.Savithiri, who has sought similar information, had been furnished to her and therefore, denial of information as sought by the petitioner is per se discriminatory and arbitrary and violative of the Article 14 of the Constitution of India. Therefore, he would submit that the order passed by the first respondent confirming the orders passed by the third and fourth respondent cannot be countenanced either in law and on facts and the same is liable to be interfered with.

10.Per contra, Mr.K.K.Senthil, learned counsel appearing for the first respondent would submit that there is a bar in providing information concerning third party as per Section 8(j) of the Right to Information Act. Section 8(j) of the Act is reproduced hereunder:-

"8(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

11.According to the learned counsel for the first respondent, since the information pertains to the selected candidate, Dr.G.Palanivelu, such information need not be furnished to the petitioner. Moreover, the said Dr.G.Palanivelu had raised strong objection in furnishing any information about him in regard to the subject of his appointment.



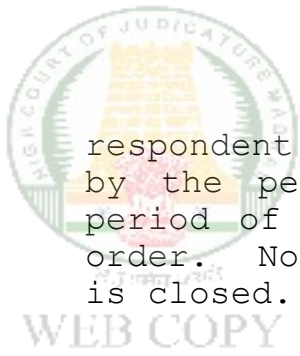
12.As regards the similar information given to Dr.C.Savithiri, the learned Counsel would submit that in that case, there was no objection from any one towards furnishing of information and therefore, the said information was furnished to the said Dr.C.Savithiri.

13.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

14.As rightly contended by the learned counsel appearing for the petitioner, the information as sought by the petitioner is only in relation to the appointment to the public service namely in the State University and when such information is sought, it is not open to the information officer to refuse such information on the specious reasoning that the information pertains to third party or the same is confidential. When the petitioner who had participated in the selection, had questioned academic credential of the selected person, it is always open to him to seek appropriate information from the authority in order to sustain his challenge in regard to unjust or illegal appointment. Therefore, the denial of such information to the petitioner on the stated grounds by the respondents, as rightly contended by the learned counsel appearing for the petitioner, cannot either be countenanced in law or on facts. In fact, the Section 8(j) of the Right to Information Act, 2005 would provide for furnishing of information even in regard to third party if larger public interest is going to be served towards furnishing of such information. In this case, once the appointment to public service is being questioned by a person, who had participated in the selection, it is natural and fair for the petitioner to seek such information to put forth his claim as against the person selected and appointed.

15.This Court is unable to appreciate the stand of the first respondent Commission as to how they can differentiate the case of the petitioner from that of Dr.C.Savithiri in legal context. The difference as sought to be made between the petitioner's request and that of Dr.C.Savithir is that there was no objection from any one in her case cannot be a valid piece of argument, since the validity of seeking information does not depend on the objection to be raised by any parties directly or indirectly concerned. The scheme of the Act is very clear on that aspect and only to infuse transparency in public employment, the Act was brought into force and if such information is going to be blocked at the instance of vested interest, entire scheme of the Act would stand defeated.

16.For the above said reasons, this Court is of the considered view that the petitioner has made out a clear case for grant of relief. In such circumstances, this writ petition is **allowed** and the impugned order of the first respondent in SA71/A/2018 dated 25.04.2018 is hereby set aside. The fourth



respondent is hereby directed to furnish the information as sought by the petitioner vide application dated 10.07.2015, within a period of two weeks from the date of receipt of a copy of the order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-I)

+1 CC To MR.B.VIJAY KARTHIKEYAN, Advocate SR. NO.84652
+1 CC To MR.S.ARUNACHALAM, Advocate SR. NO.84796
+1 CC To MR.K.K.SENTHIL, Advocate SR. NO. 85262

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