



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
W.P. (MD) No.22462 of 2018

and

W.M.P (MD) Nos.20322 and 20323 of 2018

WEB COPY

Dr.M.Chandra Mohan

... Petitioner

vs.

- 1.The Secretary to Government,
Higher Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai.
- 3.The Joint Director of Collegiate Education,
Thanjavur.
- 4.The Bharathidasan University,
Tiruchirapali represented by its
Registrar
- 5.The Correspondent/Secretary,
A.Veeraiya Vandayar Memorial Sri Pushpam
College (Autonomous), Poondi,
Thanjavur.
- 6.Udayakumar,
Former Principal,
A.Veeraiya Vandayar Memorial Sri Pushpam
College (Autonomous),
Mela Rajaveethi, Needamangalam,
Thanjavur District.
- 7.The College Committee,
A.Veeraiya Vandayar Memorial Sri Pushpam
College (Autonomous), Poondi,
Thanjavur District
represented by its Secretary
- 8.Dr.M.Ramasamy,
- 9.G.Pathy
- 10.Veeramani
- 11.Selvam



13.Selvakumar

14.Chandrasekar

15.D.Ramprasath

16.S.Praba

17.P.Rekha

18.S.Geethalakshmi

19.S.Jothiramalingam

20.G.Vishnuvasanthanaraj

21.S.K.Thiagarajan

22.Karpagasundari

23.G.Devendran

24.Nambirajan

25.Swaminathan

26.Tharageswari

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records relating to the impugned notification dated 17.05.2017 in "Dina Mani" Tamil daily culminating into the appointments of 19 candidates as Assistant Professors in A.Veeraiya Vandayar Memorial Sri Pushpam College (Autonomous), Poondi, issued by the 5th respondent quashing the same and consequently directing the 5th respondent for proper constitution of the college committee and pursuing thereby through such a college committee, the process of filling up of 19 vacancies for the post of Assistant Professors in A.Veeraiya Vandayar Memorial Sri Pushpam College (Autonomous), Poondi, giving opportunities to all concerned.

For Petitioner : Mr.S.K.Mani
For R-1 to R-3 : Mr.A.Muthukaruppan,
Additional Government Pleader.

For R-5 and
R-7 to R-26 : Mr.S.Venkatesan

For R-6 : Mr.G.Sankaran



O R D E R

Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the respondents 1 to 3, learned counsel appearing for the sixth respondent and the learned counsel appearing for the respondents 5 and 7 to 26.

2. Dr. M. Chandra Mohan, (petitioner herein) has obtained M.Sc Degree in Chemistry, M.Phil as well as Ph.D. Degrees in Chemistry. He has applied for the post of Assistant Professor in response to the advertisement published in the local daily by the fifth respondent. He was not considered for the said post. One S. Jothiramalingam was found fit, eligible and appointment order was issued on 27.05.2017. The writ petitioner, who participated in the selection process pursuant to the notification dated 17.05.2017, challenge the notification on the ground that the said notification is not in consonance with Section 11 of the Private Colleges Regulation Act 1976 as well as UGC norms.

3. This Court is not inclined to entertain this writ petition on the sole ground that having participated in the interview in response to the notification, the petitioner cannot challenge the notification.

4. Further, the learned counsel appearing for the petitioner by referring Section 11 of the Tamil Nadu Private Colleges Regulation Act, 1976 would submit that it is a college committee which is responsible for appointment of teaching and non teaching staff. Whereas in this case the notification has not been called by the college committee. No proper college committee functioning in the 5th respondent institute.

5. The learned counsel appearing for the fifth respondent would submit that a similar plea was taken by another petitioner in W.P. (MD) No.9876 of 2017, which was considered and rejected by the learned Single Judge and the matter was dismissed on 26.06.2018. Writ appeal was also preferred, but later withdrawn.

6. Further, it is also pointed out that the selection committee constituted by the management as in consonance with the guidelines of UGC and based on their recommendations Mr. S. Jothiramalingam was appointed to this post. Due to some ill-motive after lapse of more than one year, the present writ petition is filed challenging the notification.

7. The learned counsel appearing for the petitioner would submit that the act of the fifth respondent is without jurisdiction and therefore it can be challenged at any point of time and any stage. Acquiescence or waiver cannot be a ground to reject the right of challenging an act without jurisdiction.

8. The learned counsel for the petitioner would refer the judgment of the Hon'ble Supreme Court in the case of *Jagmittar Sain*

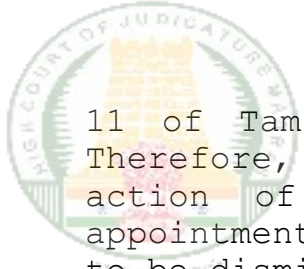
Bhagat and others Vs. Director, Health Services, Haryana and others reported in 2013 10 SCC 136. The relevant portions are extracted hereunder:-

9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply. (Vide *United Commercial Bank Ltd, v. Workmen1, Nai Bahu V. Lala Ramnarayan2, Natraj Studios (P) Ltd. v. Navrang Studios3 and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar4.*)

9. The learned counsel for the petitioner would also refer the judgment of the Hon'ble Supreme Court in the case of *Kiran Singh and others vs. Chaman Paswan and others* reported in 1954 0 AIR(SC) 340. The relevant portions are extracted hereunder:-

6. The answer to these contentions must depend on what the position in law is when a Court entertain a suit or an appeal over which it has no jurisdiction and what the effect of Section 11 of the Suit Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity & that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pose any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District, Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.

10. This Court is bound to point at this juncture that the writ petitioner challenging the notification after participating in the interview and also on very flimsy ground that the committee which has been constituted as per UGC is not in consonance with Section



11 of Tamil Nadu Private Colleges Regulation Act is untenable. Therefore, this writ petition is liable to be dismissed. Since the action of the writ petitioner intent to cause hindrance in appointment of teaching faculty in a college, the writ petition is to be dismissed inlimine with costs.

11. As a result, this Writ Petition is dismissed with cost of Rs.10,000/- payable to the fifth respondent. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar(CS-IV)

To:

1. The Secretary to Government,
Higher Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
2. The Director of Collegiate Education,
College Road, Chennai.
3. The Joint Director of Collegiate Education,
Thanjavur.

+1cc to Mr.S.K.MANI, Advocate, SR.No. 94432

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CP

KK/RP/SAR-4/08.11.2018/5P-5C