



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2018

CORAM:

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THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

W.P. (MD) No.21103 of 2017

P.Ganesan

... Petitioner

Vs.

1.The Secretary,
Labour and Employment,
Govt.of Tamil Nadu,
Secretariat,
Chennai - 9.

2.The Commissioner,
Directorate of Vigilance and Anti Corruption,
Chennai - 28.

3.T.Rajasekar

4.V.Selvakumar

5.M.S.Peer Mohamed

6.S.Ramesh Kumar

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to take proper action on the petitioner's representation dated 04.11.2016.

For Petitioner : Mr.R.Murali

For Respondents : Mr.M.Rajarajan, G.A.for R1 and R2

Mr.Rupert J.Barnabas for R3

Mr.N.Tamilmani for R4

Mr.A.Muthukumar for R5

Mr.S.Arivalagan for R6

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

Petitioner has moved the present Writ petition seeking for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to take proper action on his representation dated 04.11.2016.



2. We entertain a doubt on the maintainability of the present petition as Public Interest Litigation since the Hon'ble Supreme Court in a decision reported in **2010(9) SCC 655 (Hari Bansh Lal Vs. Sahodar Prasad Mahto and others)** had held that Public Interest Litigation is not maintainable in the service matters except Writ of quo warranto when appointment has been shown to be contrary to the statutory provisions.

3. The case of the petitioner is that the Staff Committee approval, which was a necessary requisite for direct recruitment, had not been obtained towards filling up of 142 vacancies of Office Assistants in Government Industrial Training Institute. Office Assistant posts fell within Group-D services and recruitment beyond 50 persons on requiring expenditure beyond Rs.60 lakhs would require Staff Committee approval. Further, no proper advertisement of calling for the said posts had been effected and thereby, the respondents had violated G.O.Ms.No.44 Labour and Employment Department, dated 29.09.2011. The said G.O. came to be issued pursuant to order of this Court in W.A.(MD) No.1027 of 2013 dated 09.06.2014 and states:

"3. In the High Court order 3rd read above, the Honourable High Court of Madras in its order dated 02.08.2012 in W.P.No.26162 of 2010 and M.P.No.1 of 2010 has quashed the selection process for appointment to the posts only from candidates sponsored through Employment Exchanges and has ordered that the State Government should take immediate steps to fill up the posts by inviting applications from all eligible persons along with names sponsored by the Employment Exchange by advertising in newspapers and other media to enable all the eligible persons to complete for the posts. The observation of the Honourable High Court in the said order is as follows:

"A writ in the nature of mandamus is issued directing the respondents to advertise the posts in all leading newspapers and other media to enable all the eligible persons to complete for the post. The advertisement should show the number of posts to be filled up, the qualification for the post. The age limit and relaxation in age if any. The post reserved for different categories. The respondents should also constitute selection committee, who shall adopt the criteria of selection before commencement of selection process laying down marks for qualification, experience, interview, etc., depending upon on the post to be filled up.

In view of the different Government Orders placed on record, it is directed that



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the State Government should take immediate steps to fill up the posts, by inviting applications from all eligible persons, along with names sponsored by the Employment Exchange after laying down criteria for selection, so as to select best available talent."

4.The Director of Employment and Training has filed appeal in Writ Appeal No.1027 of 2013 and M.P.No.1 of 2013 against the aforesaid order, dated 02.08.2012 in W.P.No.26162 of 2010 and M.P.No.1 of 2010.

5.In the High Court Judgment 5th read above, the Honourable High Court has dismissed the Writ Appeal filed by the Director of Employment and Training, reiterating that posts should be filled up by issuing advertisement in atleast two newspapers out of which one must be in vernacular language having wide circulation in the respective State, apart from calling for list from the Employment Exchange in order to comply with Articles 14 and 16 of the Constitution of India and ordered that "Registry is directed to forward the copy of the Judgment forthwith to the Chief Secretary to the Government of Tamil Nadu, who in turn directed to circulate the copy of the Judgment to all the Secretaries of various departments, for strict compliance."

4.The respondents 1 to 5 had gone about the process of selection after merely causing news items in respect of the said posts.

5.Learned counsel for petitioner further submitted that by informing each of the Government Industrial Training Institutes to be an independent unit and that in respect of each one thereof, the number of posts, was one, the third respondent had avoided following the rule of reservation as per roster. Learned counsel submitted that the present case, related to a recruitment scam which would not fall within the description of "service matters" and as such, this Court would entertain the present Writ petition.

6.Learned Government Advocate appearing for R1 and R2 submitted that in the light of the decision of the Hon'ble Supreme Court **2010(9) SCC 655** which informed the bar against public interest litigation in respect of service matters except for quo warranto writ petition, this Court would not entertain the present Writ petition. Learned counsel would contend that the petitioner was a whistle blower.

7.Learned counsel for the third respondent referred to this



Court paragraph no.6 of the affidavit the petitioner, which reads as follows:

"6.I respectfully submit that, I am the erstwhile employee of the department of the employment and training and worked as store keeper and gave VRS from the department in the year 2012. In fact as on today I am associated with NGOs to fight against corruption. My wife is also an employee in the same department, and because of my activities my wife was punished by the authorities and unnecessary transfers were made and my wife was posted at faraway places without valid reasons. And not satisfying with the same charge memo is also issued to my wife and the same was separately agitated by her in accordance with law. To avoid the allegation of suppression the above facts are placed before this Hon'ble Court."

He further contended that the petitioner was a discontented element who sought to pursue a personal cause in the guise of public interest litigation. He further contended that the wife of the petitioner had been transferred after having been stationed at one place for over 18 years. She, as also very many others, had been so transferred. He would also contend that the petitioner had made a false representation of belonging to a NGO. The website of such body informs that it was not functional at Sivagangai District. Petitioner who had been in service of the third respondent informs as having obtained very high qualifications. He had never been on study leave throughout his service. Petitioner had taken voluntary retirement from service on 31.03.2010. For a period of 5 years, not having disclosed that he had entered upon second marriage, he had not even claimed pension. He had not disclosed his having entered upon a second marriage.

8.We, being of the view that it is not open to this Court to split hairs to circumvent an order of the Supreme Court which specifically barred entertainment of Public Interest Litigations in service matters except on questions of quo warranto. The issue raised by petitioner namely, wrongful recruitment and appointment indeed is a matter relating to service and hence, this Court would not entertain this petition. This petition shall stand dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

1.The Secretary,
Labour and Employment,
Govt.of Tamil Nadu,
Secretariat, Chennai - 9.

2.The Commissioner,
Directorate of Vigilance and Anti Corruption,
Chennai - 28.

+ 1 CC TO Mr.RUPERT J.BARNABAS, ADVOCATE IN SR No. 75992
+ 1 CC TO Mr.N.TAMILMANI, ADVOCATE IN SR No. 75993

NBJ

TE/SKN/SAR-1 : 07/09/2018 : 5P/5C

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