

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.1045 of 2015

Dr.A.Baskar

... Petitioner

Vs.

1.Union of India,
Union Territory of Puducherry,
Rep. by the Chief Secretary to Government,
Government of Puducherry,
Puducherry - 605 001.

2.The Secretary to Government,
Dept. of Agriculture & Forests,
Govt. of Puducherry,
Puducherry - 605 001.

3.Pandit Jawaharlal Nehru College of
Agriculture & Research Institute,
Rep. by its Chairman,
Serumavilangai,
Nedungadu Post,
Karaikal - 609 603.

4.Dr.Omar Hattab

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent Nos.1 to 3 to desist from withdrawing the selection of the petitioner for the post of Dean as made by the Selection Committee in pursuance of the notification No.514/CS (Agrl)/A1/2014 dated 15.05.2014 and to appoint the petitioner as Dean of the third respondent College.

For Petitioner : Mr.V.M.G.Ramakkannan

For R1 & R2 : Mr.Syed Mustafa,
Government Pleader (Pondy)

For R3 & R4 : Mr.Manisundar Gopal

O R D E R

The petitioner has filed the Writ Petition praying to issue a WRIT OF MANDAMUS, directing the respondent Nos.1 to 3 to desist from withdrawing the selection of the petitioner for the post of Dean as made by the Selection Committee in pursuance of the notification No.514/CS (Agrl)/A1/2014 dated 15.05.2014 and to appoint the petitioner as Dean of the third respondent College.

2. According to the learned counsel for the petitioner, the notification for selection process was issued by the third respondent institute pertaining to the recruitment and promotion and with regard to the Constitution of the Selection Committee in accordance with the Rule 13(1) & (2) and Rule 13(2) (V) for the purpose of selection for the appointment of Dean, pursuant to the notification dated 15.05.2014, the petitioner had appeared before the Selection Committee and satisfied all the recruitment Rules and Regulations. Thereafter, he came to know from the communication dated 23.12.2014 received under the Right to Information Act, from the second respondent that he was selected for appointment as Dean of the third respondent Institute, based on the recommendation made by the Selection Committee constituted in pursuance of the said notification dated 15.05.2014. Despite selection of the petitioner for the post of Dean was made in pursuance of the above said notification dated 15.05.2014, the respondent Nos.1 to 3, instead of appointing the petitioner as Dean, have taken an adverse decision to defer the entire selection process, which was already completed in pursuance of the notification dated 15.05.2014 and therefore, the petitioner has filed the above writ petition before this Court for the aforesaid prayer.

3. The learned counsel for the petitioner also brought to the notice of this Court that in paragraph No.14 of the counter affidavit filed on behalf of the respondent Nos.1 to 4 in W.P.No.24137 of 2014, it is stated that it was decided at the level of the Chief Secretary to Government, Puducherry to notify the above amended Recruitment Rules for the post of Dean in the official website of the College, there is no need to notify the same in the Government Gazette and since the College is governed by the Society, the decision of the Governing Body is final. Therefore, the petitioner is entitled for the relief as prayed for in the writ petition.

4. The learned Government Pleader appearing for the respondent Nos.1 and 2 would submit that paragraph No.14 of the counter affidavit filed on behalf of the respondent Nos.1 to 4 in W.P.No.24137 of 2014 is required for clarification and it is

contrary to the Rules. Therefore, the statement may not be correct and they have to follow the procedure as per the Rules.

5.The learned counsel appearing for the third and fourth respondents submitted before this Court that the third respondent is going to proceed with the fresh notification for recruitment to the post of Dean by following the Rules and Regulations of the third respondent Institute. Further, he strongly objected that the prayer in the writ petition is not maintainable. Hence, the writ petition is liable to be dismissed. The committee has recommended the petitioner's name to the Government for approval. As on today, there is no provisional selection list published and no appointment order was issued. Therefore, in the light of the settled principles of law laid down by the Hon'ble Supreme Court of India and this Court, the prayer sought for by the petitioner is liable to be dismissed as not maintainable.

6.The learned counsel appearing for the third and fourth respondents has relied upon the decision of the Hon'ble Supreme Court of India in the case of State of Andhra Pradesh /Vs./ D. Dastagiri reported in (2003) 5 SCC 373 and the relevant fourth paragraph is extracted as under:

"4.In the counter-affidavit filed on behalf of the respondents in Civil Appeal No. 915 of 2000, in para 16 it is stated that the process of selection was cancelled at the last stage i.e. before publishing the list of selected candidates on the sole ground that the State Government wanted to introduce prohibition and obviously the Government felt that there was no need of Excise Constables during imposition of prohibition in the State. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but, it is not disputed that the select list was not published. In para 16 of the counter-affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list remained to be published, that does not advance

the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint the candidates as Excise Constables. It is not the case of the respondents that there was any mala fides on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in not appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of the appellant State cannot improve the case of the respondents. Similarly, such a submission cannot confer right on the respondents, which they otherwise did not have."

7. Further, the learned counsel appearing for the respondent Nos. 3 and 4 submitted that the third respondent Institute will issue a fresh notification by following the Rules and Regulations of the third respondent Institute. Therefore, the petitioner cannot claim any vested right in the appointment to the post of Dean in the 3rd respondent Institute.

8. In view of the same, the petitioner has no legal vested right to seek the relief as prayed for. Therefore, there is no merit in the writ petition, Court has no hesitation to reject the contention of the petitioner and the writ petition is liable to be dismissed.

9. In view of the above facts and the decision of the Hon'ble Supreme Court of India, this Writ Petition stands dismissed. The third respondent Institute is directed to complete the selection process for recruitment to the post of Dean as expeditiously as possible, preferably, within a period of six months, from the date of receipt of a copy of this order.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Serumavilangai,
Nedungadu Post,
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+1cc to Mr.V.M.G.Ramakkannan, Advocate, SR.No.40800

Kak (07/08/2019)

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