

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.469 of 2018

Dr.G. SUDHA

... appellant

Vs

1 Dr.C. THIRUNAVUKKARASU

2 PERIYAR UNIVERSITY
REP. BY REGISTRAR PERIYAR PALKALAI NAGAR
OMALUR MAIN ROAD SALEM 636 011.

3 SELECTION COMMITTEE
PROF. IN BIOCHEMISTRY REP. BY PROF. PERIYAR
UNIVERSITY PERIYAR PALKALAI NAGAR OMALUR
MAIN ROAD SALEM 636 011. ... respondents

Appeal filed against the order passed by this Court dated 21.12.2017 in WP No.26335 of 2014.

Prayer in WP No.26335 of 2014: Petition presented to this Court to issue a Writ of Declaration to declare the appointment of the third respondent as Associate Professor in Biochemistry Department of the first respondent University by Syndicate Resolution dated 03.08.2013 pursuant to the advertisement dated 28.03.2013 bearing Advertisement No.PU/R5/2013/39 as illegal, arbitrary and contrary to law and consequently direct the first respondent to issue fresh notification and fill up the post of professor in Biochemistry by constituting due selection committee in accordance with law and as per the statute of the first respondent University.

For appellant : M/s.L.G.Sahadevan

For Respondents : Mr.Balan Haridas, for R-1

Mr.P.Godson Swaminathan,
for respondents 2 and 3

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

Though the Periyar University issued a notification for appointment to the post of Professor in Bio-Chemistry and the selection process was only in respect of the said post, the appellant, who was a candidate for the post of Professor, was appointed as Associate Professor in Bio-Chemistry, after rejecting the candidature of all the candidates, including that of the appellant and the first respondent for the post of Professor. Since the post of Associate Professor in Bio Chemistry was not notified, the learned Single Judge quashed the appointment of the appellant. The appellant challenged the order in this appeal. After obtaining an interim order staying the cancellation of her appointment, she succeeded in getting a further promotion to the post of Professor in Bio Chemistry and thereby, achieved what she could not achieve in the direct selection for the post of Professor. This case is a reflection of the sorry state of affairs in a University established by the State Government in the name of a great social reformist, fondly called as "Periyar".

Brief facts :-

2. The Periyar University issued a notification dated 28 March 2013 calling for applications for appointment to the post of Professor in various subjects including "Bio-Chemistry". The appellant, the first respondent and others submitted applications. Since call letter was not issued, the first respondent approached the University. He was informed that the appellant was called for interview for the post of Professor and since her performance was not up to the level of Professor, she was appointed in the lower level post of Associate Professor in Bio Chemistry. The list of shortlisted candidates contain the name of seven candidates. The candidature of six others, including the first respondent was rejected. Since there was no notification for the post of Associate Professor in Bio Chemistry, so as to appoint the appellant, the first respondent filed a Writ Petition in W.P.No.26335 of 2014. The Writ Petition was allowed, resulting in quashing the appointment of the appellant as Associate Professor in Bio Chemistry. The learned Single Judge granted liberty to the appellant and the first respondent to apply to the post, in case a fresh notification is issued by the Periyar University.

3. The Periyar University accepted the order. The appellant challenges the order on the ground that there was nothing illegal in appointing her as Associate Professor even though the said post was not the subject matter of selection.

Subsequent events:-

4. This Court taking into account the fact that the appellant has been working in the post of Associate Professor and to maintain status quo during the pendency of the appeals, stayed the order passed by the learned Single Judge.

5. The order of interim stay was misused by the Periyar University by promoting the appellant to the post of Professor in Bio Chemistry on 1 October 2018. It is a matter of record that there was no stay as on 1 October 2018.

6. When the appeal was taken up for hearing on 27 March 2019, the learned counsel for the appellant by placing reliance on the order dated 1 October 2018, submitted that since the appellant has already been promoted as Professor, the challenge made to her appointment as Associate Professor is now only academic.

7. We have, taking into account the submission on behalf of the appellant, perused the interim order. It was found that the interim order of stay was not extended beyond 9 August 2018. Therefore, it was clear that notwithstanding the order quashing the very appointment of the appellant as Associate Professor, she was given promotion as Professor in the very same discipline. We therefore passed an order directing the Registrar of the University to appear in person.

8. The Registrar appeared before us on 28 March 2019 and produced two orders, one cancelling the appointment of the appellant as Associate Professor and the other dated 1 October 2018, cancelling the order promoting her to the post of Professor.

9. The learned counsel for the University submitted that the University is in the process of issuing a notification for fresh selection and the process would be completed within six months. The Registrar has also filed an affidavit dated 30 March 2019 indicating the time schedule for initiating the process of selection and the outer time for its completion.

Discussion :-

10. It is not in dispute that the notification was issued only for the appointment of Professor in Bio Chemistry. The shortlisting of eligible candidates was also done for the said post. The University interviewed 7 applicants, including the appellant, for the post of Professor. None of the applicants were appointed to the post of Professor, as their performance

was not satisfactory. However, very strangely on the basis of the very same interview, the appellant was selected and appointed as Associate Professor.

11. The special resolution passed by the University dated 3 August 2018 clearly shows the illegality committed by the University in the matter of appointment to the post. The relevant resolution in respect of the appointment of the appellant as Associate Professor reads thus:-

In pursuance of the advertisement for the vacancy to the post of Professor, Bio Chemistry, Mrs.G.Sudha, 60-1, SPM Garden, TVS Nagar Road, Goundanpalayam, Coimbatore, had attended the interview held on 25.07.2013 at 11 a.m. The selection committee recommends as follows:-

Dr.Mrs.G.Sudha has performed well among all the candidates for the interview. However, the performance of the candidate was not up to Professor level, but it was only up to Associate Professor only. Therefore, the Selection Committee unanimously recommends that the post be downgraded to Associate professor and Dr.G.Sudha is selected as Associate Professor in Bio-Chemistry.

Further she was advised to withdraw Writ Petitions in W.P.No.26675 of 2009 and 3708 of 2010 filed by her against the University, challenging the selection of Mr.Thirunavukarasu on his selection to the post of Reader in the year 2009. On withdrawal of the Writ Petition by her, the approval of the syndicate is sought for.

Resolution:

On withdrawal of the Writ Petitions in W.P.No.26675 of 2009 and W.P.No.3708 of 2010, Mrs.G.Sudha may be appointed to the post (Associate Professor down graded from the post of Professor) - Bio Chemistry (minutes confirmed).

12. There was no advertisement to the post of Professor. The notification issued by the University shows the available post as Professor. The applicants, including the appellant and first respondent, applied only to the post of Professor. The interview was only to select the candidate for the post of Professor. There was no advertisement separately for the post of Associate Professor. Even then, the appellant was selected as Associate Professor.

13. The University in spite of quashing the selection by the learned Single Judge, proceeded to give her promotion to the post of Professor. The modus operandi is therefore very clear: it was to appoint her as Associate Professor at the first instance and thereafter to promote her to the post of Professor. So, what was not achieved earlier was given to her in a golden plate by the University later, notwithstanding the order quashing her very appointment as Associate Professor. The factual matrix clearly shows that the entire selection process was illegal and the appointment of the appellant was rightly quashed by the learned Single Judge.

14. We direct the Periyar University to complete the fresh selection process by 30 September 2019.

15. We confirm the order passed by the learned Single Judge.

16. The intra court appeal is disposed of with the above direction. No costs. Consequently, C.M.P.Nos.4300 and 6997 of 2018 are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. THE REGISTRAR
PERIYAR PALKALAI NAGAR
PERIYAR UNIVERSITY
OMALUR MAIN ROAD SALEM 636 011.

3 SELECTION COMMITTEE
PROF. IN BIOCHEMISTRY REP. BY PROF. PERIYAR
UNIVERSITY PERIYAR PALKALAI NAGAR OMALUR
MAIN ROAD SALEM 636 011.

+2 cc to M/s.L.G.Sahadevan Advocate, S.R.No.32087

+1 cc to M/s.Balan Haridas, Advocate, S.R.No.32244

+1 cc to M/s.P.Godson Swaminathan,, Advocate, S.R.No.32983

W.A.No.469 of 2018

NM(CO)
SSM(11/04/2019).