

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.08.2019
CORAM
The Honourable Mr.JUSTICE K.K.SASIDHARAN

and
The Honourable Ms.JUSTICE P.T.ASHA
W.A.Nos.1564 of 2017 and 60 of 2018
and

CMP.Nos.20795 of 2017, 6886 and 6887 of 2018

1. Dr. S. Raja Sethu Durai,
Lecturer in Economics,
Pondicherry University,
R. Venkatraman Nagar,
Kalapet,
Pondicherry-605 014.

..Appellant in W.A.No.1564 of 2017/6th Respondent

2. The Pondicherry University
Represented by its Executive Council,
Dr. B. R. Ambedkar Administrative Building,
R. Venkatraman Nagar,
Pondicherry-605 014.

2nd Respondent in W.A.No.1564 of 2017 &
1st Appellant in W.A.No.60 of 2018

3. The Vice Chancellor
Pondicherry University,
R. Venkatraman Nagar, Kalapet,
Pondicherry -605 014.

3rd Respondent in W.A.No.1564 of 2017 &
2nd Appellant in W.A.No.60 of 2018

4. The Registrar
Pondicherry University,
R. Venkatraman Nagar, Kalapet,
Pondicherry -605 014.

4th Respondent in W.A.No.1564 of 2017 &
3rd Appellant in W.A.No.60 of 2018
Vs.

1. Dr. B. Sumathi

1st Respondent in both Appeals

2. Dr. A. Shankaran,
Lecturer in Economics,
Pondicherry University,
R. Venkatraman Nagar,
Kalapet,
Pondicherry - 605 014.

5th Respondent in W.A.No.1564 of 2017 &
2nd Respondent in W.A.No.60 of 2018

3. Dr. R. Lousome,
Lecturer in Economics,
Pondicherry University,
R. Venkatraman Nagar,
Kalapet,
Pondicherry -605 014.

6th Respondent in W.A.No.1564 of 2017 &
3ⁿ
d respondent in W.A.No.60 of 2018

4. Dr. Yasmeen Sultana,
Lecturer in Economics,
Pondicherry University,
R. Venkatraman Nagar,
Kalapet,
Pondicherry -605 014.

7th Respondent in W.A.No.1564 of 2017 &
5th
Respondent in W.A.No.60 of 2018

5. Dr. S. Raja SethuDurai
Lecturer in Economics,
Pondicherry University,
R. Venkatraman Nagar, Kalapet,
Pondicherry -605 014.

7th Respondent in
W.A.No.1564 of 2017 5th Respondent in W.A.No.60 of 2018

Prayer in both Writ Appeals : Writ Appeal is filed under clause 15 of the Letters Patent praying to set aside the order dated 20.10.2017 passed in W.P.No.19970 of 2017.

WP.NO.19970/2017:

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Declaration, declaring the selection and appointment of the respondents 4 to 7 herein as Lecturer/ Assistant Professor of Economics, pursuant to the notification of the third respondent dated 01.04.2010 bearing ref: Advt No.Rc/2010/008, and as evident from the minutes of the first respondent dated 23.06.2010 as illegal and consequently direct the respondents 1 to 3 to appoint the petitioner in the post of Lecturer/Assistant Professor of Economics with effect from 23.06.2010 with all services, seniority, monetary benefits and backwages.

For Appellants : Mr. K.S. Viswanathan for
Mr. S. Sivakumar in W.A.No.1564 of 2017
Mr. A.V.Bharathi in W.A.No.60 of 2018

For Respondents : Mr. L. Chandrakumar for R1
Ms. A.V. Bharthi for R2 and R4
R5 to R7- No appearance
in W.A.No.1564 of 2017
Mr. L. Chandrakumar for R1
Mr. K. S. Vishwanathn for
M/s. S. Sivakumar for R1 and R4
R2, R3 and R5 - No appearance
in W.A.No. 60 of 2018.

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by P.T.ASHA, J)

These intra court appeals arise out of the order passed in W.P.No.19970 of 2011. Writ Appeal No.1564 of 2017 is filed by the sixth respondent in the Writ Petition and Writ Appeal No.60 of 2018 is filed by the respondents 1 to 3 in the Writ Petition.

2. The parties are referred to in the same litigative status as in the Writ Petition.

The above writ petition was filed to declare the selection and appointment of respondents 4 to 7 as Lecturer/Assistant Professor of Economics, pursuant to the notification issued by the third respondent dated 01.04.2010 and the minutes of the first respondent dated 23.06.2010 as illegal and consequently direct the respondents 1 to 3 to appoint the petitioner in the post of Lecturer/Assistant Professor of Economics with effect from 23.06.2010 with all services, seniority, monetary benefits and back wages.

3. The facts in brief which has culminated in the filing of the above Writ Petitions are as follows:

The first respondent had issued a notification dated 1.04.2010 inviting applications for the post of Lecturers in various faculties. The faculty which is the subject matter of present Writ Petition is Economics. The recruitment notification has invited applications for two posts of Reader, four posts of Lecturer for the Department of Economics, of the four posts of lecturer, one each reserved for SC, ST, OBC and PH categories. The specialization that was prescribed for the said posts was

1. Econometrics
2. Mathematical Economics/Statistics
3. Economics of Education/Health Economics and
4. International Economics.

4. The minimum qualification and experience that was prescribed for the said post was:

Good academic record with a Ph.D degree in the concerned or allied disciplines

55% of the marks, or equivalent grade wherever grading system is followed at the Master's degree level.

A minimum of eight years of experience of teaching and/or of research in a regular position equivalent to that of Assistant Professor in a University/College or Accredited Research Institution with evidence of published work with a minimum of 5 publications as books and/or research/policy papers in indexed/ISBN/ISSN numbered journals and as ISBN/ISSN numbered books.

Contribution to educational innovation, design of new curricula and courses and technology-mediated teaching learning process with evidence of having guided doctoral candidates and research students.

A satisfactory score as stipulated in the Academic Performance Indicator (API) system developed by UGC.

5. The writ petitioner and respondents 4 to 7 had submitted their applications for the said posts. The writ petitioner and the 6th respondent both belonged to the OBC category. It was the case of the writ petitioner that she is a Ph.D holder in Economics from the Central University of Puducherry with Health Economics as her area of specialisation. She was a gold medallist in M.Phil in Economics with her area of specialisation being Economics of Education from the very same university. She has to her credit eight publications as books and a number of articles published both in national and international journals. Her work experience included the following:

a) Faculty Associate/Consulting Editor, in the Institute of Charter Financial Analyst of India in the Business School Research Centre, Chennai.

b) giving Guest Lectures on Economics for MBA students, Research Associates at the Centre for Economics and Social Studies, Hyderabad; part time Lecturer in Department of Economics of Pondicherry University.

c) Lecturer in Economics in PVS College, Karaikal.

6. The Writ Petitioner would submit that she had submitted her application for selection to the notified post of Assistant Professor vide the above Advertisement dated 1.04.2010 and the first respondent university by their letter dated 26.05.2010 had called her for certificate verification on 18.06.2010. The petitioner was initially interviewed for selection by the local

members of the Executive Council of the first respondent University. The Committee consisted the second respondent as Chairman and the Registrar of the first respondent University besides five others. The interview was held on 23.06.2010 but however the results were not notified.

7. On 23.05.2011, the writ petitioner had submitted an application to the respondent university seeking a copy of the proceedings of the Selection Committee which was held on 19.06.2010. The said information was furnished to the petitioner. On perusal of the said proceedings she came to learn that the Committee had recommended the selection of respondents 4 to 7 and the 6th respondent had been recommended to the vacancy in the OBC category. The petitioner was empaneled as a wait listed candidate. Thereafter the University had published an Annual Calendar for 2011-12 in July 2011. The details of the faculty members in each department including their qualifications were furnished in the said Calendar. On perusal of the same, the petitioner came to learn that the sixth respondent did not have the specialisation as prescribed in the recruitment notification. His area of specialisation was Financial Macro Economics and Applied Economics all of which not been notified as essential area of specialization; whereas the petitioner had specialised both in Economics of Education and Health Economics and was therefore the suitable candidate.

8. The University had thereafter issued a notification for recruitment for two posts of Assistant Professor of Economics vide their Notification dated 09.05.2011. The area of specialisation prescribed in that Notification was Environmental Economics and International Economics. The petitioner on enquiry came to learn that the vacant positions of Readers had been converted into the posts of Lecturer in Economics. From the note that the petitioner had received under the RTI it appeared that the Head of the Department of Economics in his note dated 23.08.2010 had recommended appointment of a candidate with specialisation in Health Economics and Economics of Education and had suggested the appointment of the petitioner who was wait listed in the interview held on 23.06.2010. The petitioner was aggrieved by the fact that despite being qualified as per the specialisation details given in the recruitment notification dated 01.04.2010, she had been overlooked and the sixth respondent who did not possess the requisite qualifications particularly with reference to specialisation had been appointed as a Lecturer. Aggrieved by the fact that despite possessing the qualifications as prescribed including specialisation she had been overlooked for accommodating a candidate who did not have the said qualification the writ petitioner has approached this Court.

9. The University has responded to the said Writ Petition by contending that the Selection Committee had after detailed consideration of the qualifications of each including their performance during the interview selected the names of respondents 4 to 7 and wait listed the writ petitioner in the OBC category. According to the respondents, the Selection Committee had adopted the following yardsticks for shortlisting the candidates which included academic record, performance in interview, publication, experience, communication skills, command over the subject, etc. The contention of respondents 1 to 3 was that respondents 4 to 7 had qualified in all respects and therefore their names had been recommended and the name of the writ petitioner had been wait listed. They would further contend that the unsuccessful candidate is estopped from challenging the selection after having participated in the selection process. They therefore sought for the dismissal of the writ petition.

10. The learned Single Judge considered the material on record and came to the conclusion that the sixth respondent did not possess the qualification in the area of specialization and therefore considering the fact that the writ petitioner possessed the said qualifications, the respondents had erroneously appointed the sixth respondent in the OBC category. Consequently the learned Single Judge has allowed the writ petition and set aside the appointment of sixth respondent. The learned Single Judge has also directed respondents 1 to 3 to appoint the petitioner in the post of Lecturer/Assistant professor of Economics with effect from 23.06.2010 with all the attendant benefits. Challenging the said order, the unsuccessful candidate namely the sixth respondent has filed W.A.No.1564 of 2017 and likewise the respondents 1 to 3 have filed the W.A.No.60 of 2018.

11. During the course of the arguments, learned counsel for the writ petitioner submitted that the sixth respondent has been sanctioned Extra-ordinary leave (EOL) for three years by the first respondent in order to enable him to take up an appointment with the School of Economics at the University of Hyderabad. The first respondent has also permitted the sixth respondent to take leave with effect from 04.01.2017 and the post of Assistant Professor Economics, OBC category was kept vacant. Pending the appeal, the sixth respondent had also submitted a letter dated 16.07.2019 stating that since his probation has been declared at the University of Hyderabad, he intended to resign from the post of Associate Professor in the Department of Economics at the first respondent University. Pursuant to this letter, the sixth respondent who is the appellatant in W.A.No.1564 of 2017 had also submitted his resignation. The resignation letter was forwarded to the first

respondent University on 17.07.2019. The first respondent has also accepted the resignation with effect from 04.01.2017 subject to the ratification by the Executive Committee. Therefore as on date the post of Lecturer in the Department of Economics in the OBC category is lying vacant.

12. From the records it is clearly evident that the writ petitioner who was the wait listed candidate, fulfilled the minimum qualification as well as the specialization criteria. As soon as she had come to know that the sixth respondent did not possess the specialisation prescribed in the notification but had still been appointed, she had challenged the same by filing the instant Writ Petition. The participation of the writ petitioner in the subsequent recruitment drive cannot be held against her claim. She was under the genuine impression that the sixth respondent was fully qualified and it was only thereafter that she came to know otherwise and without delay she has approached this Court. Taking into consideration the resignation of the sixth respondent and the fact that the writ petitioner is possessed with the requisite qualification as well as the specialisation, the respondents 1 to 3 shall consider her for appointment to the post of Lecturer, Department of Economics which has fallen vacant on account of the resignation of the sixth respondent.

13. In the result, taking into account the resignation of the sixth respondent W.A.1564 of 2017 filed by the sixth respondent is dismissed as infructuous. Consequently, W.A.No.60 of 2018 is disposed off with a direction to the Respondents 1 to 3 to consider the writ petitioner for appointment as a Lecturer in the Department of Economics which has fallen vacant on account of the resignation of the sixth respondent. Such exercise shall be done within a period of eight (8) weeks. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
1. The Pondicherry University
Represented by its Executive Council,
Dr. B. R. Ambedkar Administrative Building,
R. Venkatraman Nagar,
Pondicherry-605 014.

2. The Vice Chancellor
Pondicherry University,
R. Venkatraman Nagar, Kalapet,
Pondicherry -605 014.

3. The Registrar
Pondicherry University,
R. Venkatraman Nagar, Kalapet,
Pondicherry -605 014.

+2cc to Mr. L. Chandrakumar, Advocate sr.67683
+2cc to Mr. A.V.Bharathi, Advocate sr.67441, 67440

W.A.Nos.1564 of 2017 and 60 of 2018
and
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