

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.06.2019

Delivered on: 18.06.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.31828 of 2018
and

W.M.P.No.37065 of 2018

Dr.M.Ganesan

Petitioner

vs.

1. The Chancellor,
Tamil University,
Raj Bhavan,
Guindy,
Chennai-600 022
2. Government of Tamil Nadu,
rep.by its Secretary,
Tamil Development and Information
Department,
Fort St.George,
Chennai-600 009
3. Search Committee,
rep.by its Chairman,
Tamil University,
No.422, South 2nd Main Road,
Sri Kapaleeswarar Nagar,
Neelangarai,
Chennai-600 115
4. Tamil University,
Rep.by its Registrar,
Trichy Main Road,
Thanjavur-613 010
5. Dr.G.Balasubramanian
Vice Chancellore,
Tamil University,
Trichy Main Road,
Thanjavur-613 010

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Declaration declaring that the G.O.(2D) No.30, Tamil Development and Information (T.D.2.1) dated 5th October 2018, issued by the 2nd respondent published in Part II-Section 2 of the Tamil Nadu Gazette No.345, dated 5th October 2018 whereby appointing the 5th respondent as the Vice Chancellor of the 4th respondent University for a period of three years as illegal, arbitrary, contrary to law and consequently direct the respondent No.1 to 4 to consider and appoint the petitioner as the Vice Chancellor of the 4th respondent University pursuant to the Selection already conducted or in the alternative issue fresh notification inviting application for the post of Vice Chancellor in the 4th respondent University and after due selection process appoint the eligible person to the post of Vice Chancellor in the 4th respondent University within the time frame stipulated by this Court.

For Petitioner .. Mr.Balan Haridass

For Respondents .. Mr.A.N.Thambidurai,
Spl.G.P.for R1 and R2
Mr.Vijay Narayan,
Advocate General for R3
Mr.S.R.Rajagopal,
Additional Advocate General
for Mr.M.Sivavarthan for R4
Mr.T.R.Rajagopalan, Sr.Counsel for
M/s.K.S.Karthik Raja for R5

ORDER

The fourth respondent University was established under the Tamil University Act 1982. The University was established to provide higher research in Tamil Language and advanced study in allied branches such as linguistics, translation, lexicography, music, drama and manuscriptology. The University has introduced M.Phil., and Ph.D., programme in 1992 for disciplines such as language, literature, translation and sculpture. The Chancellor of University, the first respondent herein, under powers conferred on him from the provisions of Tamil University Act, in consultation with the second respondent, has notified for filling up the post of Vice-Chancellor in the fourth respondent University. The qualifications as prescribed in the Notification are as follows:

“(1) Ph.D., Degree in Tamil (or) Tamil related subjects;

(2) Not less than twenty years of experience in teaching and research in Universities or Post Graduate Colleges or publicly funded research

institutions or in all taken together;

or

Not less than ten years of experience as Professor in a University system:-

(3)Not less than six years of administrative experience in Universities or post graduate colleges or publicly funded research institutions in positions such as Dean, Head of the Department or any other such administrative positions of equal or higher degree of responsibility or in all taken together;

(4)Must have published not less than five research papers in University Grants Commission listed journals after acquiring Ph.D. Or authored not less than two books (non edited books) if adequate number of such University Grants Commission listed journals are not available; and

(5)Must have presented not less than two papers in international level academic or research events and possess experience of having conducted not less than one such academic or research event."

2.The second respondent issued G.O.No.149, dated 02.07.2018, constituting the Search Committee, to recommend a panel of three names to the first respondent for appointment of Vice Chancellor of the 4th respondent University. The Search Committee so constituted consists of the following members.

Sl.No.	Name	Nominee of
	Hon'ble Mr.Justice M.Jayachandran, former Judge, High Court, Madras	Chancellor
2	Mr.S.K.Prabhakar, I.A.S., Principal Secretary Public Works Department, Fort St.George, Chennai-600 009	Government
3	Dr.M.Manivel Professor and Head (Retired) Madurai Kamaraj University, Madurai	Senate of the 4 th Respondent

Sl.No.	Name	Nominee of
4	Dr.K.Karunakaran Former Vice Chancellor, Tamil University, Thanjavur	Syndicate of the 4 th respondent
5	Dr.K.Vaidyanathan Former Vice Chancellor, Tamil Nadu Physical Education and Sports University, Chennai	Syndicate of the 4 th respondent

The Hon'ble Mr.Justice M.Jaichandren(Retd.,) was nominated as Chairman of the Search Committee.

3.The fourth respondent University issued advertisement inviting applications for appointment to the post of Vice-Chancellor from the eligible academic persons. According to the petitioner, he being fully eligible and qualified with requisite experience, as prescribed in G.O.Ms.No.51, dated 12.03.2018, had applied for the post of Vice-Chancellor in response to the advertisement.

4.In response to the advertisement, totally 35 applications were received by the University and after initial scrutiny, 10 applicants were called for interaction and the petitioner was one of them. The Search Committee, after interaction with the candidates, has finally narrowed down it to three candidates, which included the petitioner, 5th respondent and one Dr.L.Ramamoorthy. After the interactive session by the Committee with the candidates, the Committee recommended three names finally to be interviewed by the first respondent. The first respondent interviewed the three candidates on 29.09.2018, which included the petitioner and the 5th respondent. The candidates were interviewed in alphabetical order. Thereafter, on 29.09.2018, it announced that the 5th respondent was appointed as a Vice-Chancellor of the 4th respondent University. The second respondent has issued G.O. (2D) No.30, dated 05.10.2018, appointing the 5th respondent as Vice-Chancellor of the 4th respondent University for a period of three years. The appointment of the 5th respondent, vide the above Government Order dated 05.10.2018 is put to challenge in the present writ petition.

5.Mr.C.Balan Haridass, the learned counsel appearing for the petitioner, at the outset would submit that the 5th respondent did not satisfy the essential qualification prescribed for appointment to the post of Vice-Chancellor of the 4th respondent University, particularly, the qualification as prescribed in Clause 5, which reads as under:-

"Must have presented not less than two papers in international level academic or research events and possess experience of having conducted not less than one such academic or research event."

According to the learned counsel, the 5th respondent did not possess experience of having conducted not less than one academic or research event in International level. Therefore, he was not eligible to be considered for the subject appointment much less being selected to be appointed as Vice-Chancellor of the 4th respondent University. In support of his contention, the learned counsel for the petitioner would draw the attention of this Court to the declaration by the 5th respondent in his application under Column VI regarding International academic exposures, wherein, the 5th respondent has mentioned that he has conducted International academic in Morphological Studies and Classical Tamil during 2nd and 4th February, 2012 at Dravidian University, Kuppam, Andhra Pradesh. Contrary to his declaration, he has mentioned the same event in Morphological Studies as National academic/research event in the same application form, in Serial No.13, under the caption 'National Achievements'. Therefore, there appears to be a contradiction by the 5th respondent himself in his declaration in his application form, which ultimately would support the case of the petitioner that the 5th respondent had no International experience at all, which was one of the essential qualifications prescribed.

6.The learned counsel for the petitioner, in order to strengthen his argument, would submit that in the communication of the Registrar, dated 28.04.2014, of the Dravidian University, Kuppam, Andhra Pradesh, addressed to the Registrar, Central Institute of Classical Tamil, Chepauk, Chennai, it was confirmed that 'Morphological Studies on Classical Tamil' from 02.02.2012 to 04.02.2012 was a National event and not International, as claimed by the 5th respondent.

7.The learned counsel for the petitioner would draw the attention of this Court to the Certificate issued to one Dr.Saravanan as a participant of the same Seminar on Morphological Studies during February 2012, which described the event as National Seminar on Morphological Studies on Classical Tamil.

8.The learned counsel for the petitioner would submit that in fact, the 5th respondent himself has mentioned in his curriculum vitae describing Morphological Studies on Classical Tamil during February 2012 as National Seminar. The learned counsel for the petitioner would emphatically submit that in

regard to conduct of International academic or research event, normally the Scholar has to be associated with various Committees like Force Programme Committee, Legal Organising Committee, International Organising committee etc. In fact, the petitioner had participated in one of such Committees, viz., Legal Organising Committee as a Chair person on the 11th Tamil International Conference held in 2012. The petitioner was in fact permitted to organise International Seminar on 'Language Endangerment in South Asia' during 13th to 15th March 2013 in collaboration with Central Institution of Indian Languages, Mysore, as could be seen from the Office Memorandum issued by Annamalai University, dated 13.03.2013. Therefore, the learned counsel would submit that the petitioner is eminently suitable, satisfied all the eligibility criteria than the 5th respondent and the 5th respondent being not fully qualified, had been chosen for appointment as Vice Chancellor, which according to the learned counsel, cannot be either countenanced in law or on facts. Therefore, the learned counsel would submit that the appointment of the 5th respondent, vide G.O. dated 05.10.2018, is liable to be declared as illegal.

9. Per contra, the learned Advocate General appearing for the 3rd respondent Committee would submit that the event conducted by the 5th respondent on Morphological Studies during February 2012 was attended by International Scholars like Professor Jaroslav Vacek, Institute of South Asian Studies, Charles University in Prague and Professor Ewa Wilden, CSMC Hamburg/EFEO Pondicherry. In view of the International Scholars present in the Seminar, the event had all the flavour of International academic/research event. The learned Advocate General would also rely on a academic pursuit involved by the 5th respondent in In-house training on 'Enhancing Interaction Skills with Effective Engagement' for Tamil Language Unit Officers on first and second September 2015 in Ministry of Education, Singapore, which pursuit by the 5th respondent cannot considered to be inferior to any International level of academic/research event. According to the learned Advocate General, the 5th respondent had in possession of the essential and requisite qualification as prescribed and he was no less meritorious than the petitioner herein.

10. The learned Advocate General would also refer to Paragraph Nos.8 and 9 of the counter affidavit filed on behalf of the 3rd respondent, which are extracted hereunder:

"8. With regard to the qualification of the 5th respondent it is submitted that he had completed his Ph.D in Tamil related subject in the year 1989. Further, he had an total teaching experience of 28 years and eight months and had a

further experience as a Professor for around 11 years out of the total 28 years. Further, the 5th respondent had also served as a Dean, Head of the Department and Rector (Pro Vice-Chancellor) for more than 9 years so as to qualifying himself with regard to the minimum administrative experience of 6 years as per the Tamil University Act, 1982. The 5th respondent had also published around 12 research papers after completing his Ph.D., and in addition he had also published 4 (non edited) books. The 5th respondent has also published more than 2 international papers and have conducted an International level academic event in Dravidian University between 2-4th February 2012 and also conducted another International Academic event at Singapore 01-02 of September, 2015. A certificate has been issued to him by the Ministry of Education, Government of Singapore acknowledging that the 5th respondent had conducted the said event. Other than the above, the 5th respondent had also wide international exposure so as to enable him to qualify as per eligibility criteria.

9.It is also submitted that the committee had taken into account the event conducted by the 5th respondent in the Dravidian University on 2-4th February 2012 as an International event. The committee had also considered the other relevant aspects relating to the experience of the 5th respondent in participating in various international events and also his conducting of an international event at Singapore on 01-02 September, 2015. Further there is nothing in the guidelines or under the statutes or the Act which forebears the committee from looking into other documents submitted by the candidates with regard to their eligibility criteria. In the instant case other than the international level event conducted in Dravidian University, the 5th respondent had also conducted an event in Singapore for the Ministry of Education, which was taken as complying with the essential qualification prescribed under the Tamil University Act, 1982 as amended by the Government by its Official Gazette dated 12.03.2018."

11.According to the learned Advocate General the first respondent being the Chancellor of the University, has interacted with all the three finally selected candidates, including the petitioner and the 5th respondent herein and was

satisfied with the academic accomplishment of the 5th respondent and on the basis of the subjective satisfaction and the inter se performance during the interactive session, had finally recommended the 5th respondent for the post of Vice-Chancellor. Therefore, the learned Advocate General would submit that the challenge to the appointment of the 5th respondent only on the ground that the 5th respondent did not possess the qualification of having conducted one academic or research event at International level, cannot stand the test of judicial scrutiny and the same is liable to be rejected.

12. Shri. S.R. Rajagopal, the learned Additional Advocate General appearing for the 4th respondent University would submit that the writ petition seeking to declare the appointment of 5th respondent as illegal is not maintainable in law for the simple reason that the writ, as framed, is in the nature of writ of Quo Warranto and in order to maintain the writ of Quo Warranto, the ingredients of the same need to find place in the writ petition, which are absent in the present writ petition and therefore, the writ petition has to be rejected in limine on that ground alone. The challenge to the appointment of 5th respondent as Vice-Chancellor of the 4th respondent University was in the realm of public interest and therefore, unless a grave statutory violation was pointed out in the writ petition, the writ petition was not maintainable at all. In support of the said contention, the learned Additional Advocate General would rely on the decision of the Hon'ble Supreme Court in Hari Bansh Lal vs. Sahodar Prasad Mahto and Others [(2010) 9 Supreme Court Cases 655], wherein, the Hon'ble Supreme Court of India has held that in the absence of violation of statutory Rules, Court cannot go into suitability or otherwise of a candidate for a particular appointment in a writ of Quo-Warranto. He would therefore urge this Court to reject the writ petition being not maintainable.

13. At this, the learned counsel for the petitioner would submit that such an argument advanced on behalf of the learned Additional Advocate General is misconceived for the simple reason that the writ petition is not filed by any third party, but by a candidate, who has been short listed to be interviewed by the Chancellor of the University and therefore, he can very well maintain the writ petition as framed.

14. Mr. T.R. Rajagopal, the learned Senior counsel appearing for the 5th respondent would submit that the 5th respondent was an eminent academic personality and his academic achievements were not less meritorious than the petitioner herein and in any event, he satisfied all the eligibility criteria as prescribed and the first respondent, being the ultimate authority to be satisfied, had selected him for

appointment, which cannot be questioned successfully unless there was any grave irregularity in such selection. No such grave irregularity was pointed out, at the instance of the petitioner herein, except contending that the 5th respondent did not possess qualification of conducting International academic or research event, which was contrary to records. He would adopt the other arguments advanced on behalf of the learned Advocate General.

15.By way of reply to the Counsels submissions made on behalf of the respondents, the learned counsel for the petitioner Mr.Balan Haridass would submit that it is not open to the appointing authority to change the Rule of the game during the process of selection. He would rely on decisions of the Hon'ble Supreme Court of India in support of the above contention in K.MANJUSREE VS. STATE OF ANDHRA PRADESH AND ANOTHER [(2008) 3 SUPREME COURT CASES 512] and in TEJ PRAKASH PATHAK AND OTHERS VS. RAJASTHAN HIGH COURT AND OTHERS [(2013) 4 Supreme Court Cases 540). Apart from the above, the learned counsel would also rely on the decision of the Hon'ble Supreme Court of India in HITENDRA SINGH AND OTHERS V.PANJABRAO DESHMUKH KRISHI VIDYAPEETH AND OTHERS [(2014) 8 Supreme Court Cases 369].

16.As far as the last decision is concerned, the learned counsel for the petitioner would submit that the beneficiary of the faulty selection cannot hold on to the selection, as that would be a travesty of justice, when deserving candidates were left out. Therefore, he would draw support from the decision and submit that if the 5th respondent is appointed on the basis of the faulty selection, the Court ought not to hesitate to interfere with the appointment. He would therefore submit that the respondents are attempting to tinker with the qualification in order to sustain the appointment of the 5th respondent and therefore, as per the above decisions of the Hon'ble Supreme Court, the selection was faulty and the resultant appointment of the 5th respondent is liable to be interfered with.

17.Heard the learned counsels, considered the submissions of Mr.Sri.Balan Haridass, the learned counsel appearing for the petitioner and also on behalf of the respondents by the learned Advocate General and the learned Additional Advocate General and also Mr.T.R.Rajagopalan, the learned Senior Advocate appearing for the 5th respondent.

18.The only point for consideration in this writ petition is as to whether the 5th respondent satisfied the requirement as prescribed under Clause.5 qualification viz., 'must have conducted not less than one academic or research event in International level.

19. Although the learned counsel for the petitioner took pains to impress upon this Court that the so called declaration of the 5th respondent about the International event conducted by him in Morphological Studies on Classical Tamil during February 2012 was only a National event as per the 5th respondent's own declaration, nevertheless, from the nature of event and the participation, the studies/seminar appeared to be an International event in view of the fact that International Scholars had participated in the event. In fact, the learned Advocate General, who made his submissions, has emphasized this factor, which is rightly so in the opinion of this Court.

20. The arguments advanced on behalf of the petitioner by the learned counsel that the 5th respondent himself had described the Morphological Studies as National event in his own Curriculum Vitae or even in his application, need not be given too much credence or weightage as such description alone does not take away the importance of the event, where admittedly International Scholars participated. It appears that the petitioner is attempting to make out a case from nothing in order to belittle the experience of the 5th respondent herein.

21. In any event, the 5th respondent was involved in In-house training on 'Enhancing Interaction Skills with Effective Engagement' for Tamil Language Unit Officers on first and second September 2015 in Ministry of Education, Singapore. This would go to prove that the 5th respondent indeed had experience in the conduct of International events in terms of conduct of academic or research programmes. Moreover, the 5th respondent himself was one of the final three selectees in the selection process and he was also found to be meritorious, to be called for personal interview with the Chancellor of University, the first respondent herein. Once the Search Committee has recommended the candidates in the final phase selection process, zeroing it on three candidates, the final decision was entirely left to the discretion of the first respondent, viz., the Chancellor of University, for selection of a candidate for appointment as Vice-Chancellor of the 4th respondent University.

22. In fact, on direction from this Court, the original records in relation to the appointment was produced and perused by this Court. From the files, it could be seen that the 5th respondent was found to be most suitable among the three candidates interviewed by the first respondent. According to the file noting, the 5th respondent has an impressive academic records having acquired First Rank in the Post Graduate course in linguistics followed by a First Class in M.A. Tamil Literature and a PH.D., with Distinction. The noting further specified that the 5th respondent held important academic positions such as Professor, Head of the Department and Dean and

was also holding the post of Vice Chancellor in the Dravidian University. The 5th respondent had introduced 22 research papers on National and International levels and has also authored four books. He has also functioned as an External Examiner for the Singapore University and he has been invited to the University of Warsaw, Poland as a visiting Professor and has guided 8 Ph.D., and 6 M.Phil Scholars. The observation of the Chancellor was also to the effect that the 5th respondent has articulated a clear vision for the development of the Tamil University and provided the practical and viable course of action for promoting Tamil Language and the related cultural inheritances.

23.The above observation of His Excellency, the Governor, on the Vice-Chancellor of University, the fifth respondent herein, would unequivocally strengthen fully the appointment of 5th respondent as Vice-Chancellor of 4th respondent University.

24.While making a choice among the three meritorious candidates, the discretion, as entrusted with the first respondent, to select one of the three, cannot be questioned successfully unless such discretion is exercised so arbitrarily and unjustly or unfairly in choosing one candidate in exclusion of the other two.

25.In this case, the discretion as vested in the first respondent cannot said to have been exercised arbitrarily, calling for any intervention by this Court. This Court is conscious of the fact that the first respondent is a holder of high Constitutional office in this Country and his choice, which fell on the 5th respondent, cannot be trifled with by this Court unless there is a grave error in such choice being made. When three meritorious candidates were being recommended, ultimately the choice would have to be made on the basis of subjective satisfaction of the first respondent and in this case, the first respondent was satisfied with the over all academic credentials, achievements and accomplishments of the 5th respondent vis-a-vis the other two candidates, including the petitioner herein and therefore, such choice cannot be the subject matter of controversy for this Court to intervene.

26.The arguments advanced on behalf of the petitioner that it was not open to the Select Committee to change the Rules of the game during the process of selection is rather misconceived and cannot be countenanced in law as there was no attempt by the Select Committee to change the Rules of the game. Nowhere it was argued on behalf of the respondents that the 5th respondent was not qualified and therefore, the qualification was brought on par with his suitability. On the other hand, it

was emphasized on behalf of the respondents that the 5th respondent was qualified in all aspects and he was more eminent for the post on the basis of the ultimate satisfaction of the first respondent.

27. On the whole, it appears that it is not the petitioner who is less meritorious, but the 5th respondent appeared to be more meritorious during the interactive session with the first respondent and on the basis of the purposeful interview with the first respondent, the choice fell on the 5th respondent. The notings of the first respondent would bear testimony that all was well with the appointment of the 5th respondent as Vice-Chancellor of the 4th respondent University.

28. In the above said circumstances, this Court is of the view that there was not even an iota of scope for interfering with the appointment of 5th respondent as Vice-Chancellor of the 4th respondent University. The feeble grounds on which the challenge is made, at the instance of the petitioner, in assailing the appointment of the 5th respondent as Vice-Chancellor, have to necessarily fail on all counts, as no case whatsoever has been made out to even remotely consider grant of any relief in the writ petition. Therefore, this Court finds that the writ petition lacks merit and substance and hence, the same is liable to be dismissed.

In the result, the writ petition stands dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Chancellor,
Tamil University,
Raj Bhavan,
Guindy,
Chennai-600 022
2. The Secretary,
Government of Tamil Nadu,
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4. The Registrar,
Tamil University,
Trichy Main Road,
Thanjavur-613 010

+1 cc to Mr.Balan Haridoss, Advocate, S.R.No.49559

+1 cc to Mr.M.Sivavarthan, Advocate, S.R.No.49623

+1 cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.49794

+1 cc to the Government Pleader, S.R.No.50133

W.P.No.31828 of 2018

GJ(CO)
SSM(20/06/2019)



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