



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) Nos.5853 and 5854 of 2015

and

M.P. (MD) Nos.1, 2, 1 and 2 of 2015

S.Kaniprabhu ... Petitioner in W.P.(MD)No.5853 of 2015
D.Palpandiammal ... Petitioner in W.P.(MD)No.5854 of 2015

-Vs-

1.The Vice Chancellor,
Madurai Kamaraj University,
Palakalai Nagar,
Madurai-625 021.

2.The Registrar,
Madurai Kamaraj University,
Palakalai Nagar, Madurai-625 021.

3.The Conveners Committee,
Madurai Kamaraj University,
Palakalai Nagar, Madurai-625 021.

... Respondents
in both Writ Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the resolution No.3 of the approved minutes of the syndicate in circulation dated 16.03.2015 on the file of the respondents 1 and 2 and quash the same and further directing the respondents to publish the results of the selection of the candidates in pursuant to their advertisement No.R108/109 MKU/Estt./Nt/2014, dated 13.02.2014.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 and R3 : No Appearance

For R2 : Mr.T.Sakthi Kumaran

COMMON ORDER

The relief sought for in the present Writ Petitions is to quash the resolution No.3 of the approved minutes of the Syndicate in circulation dated 16.03.2015 on the file of the respondents 1 and 2.



2.The clause incorporated in the notification. However, various Writ Petitions were filed, challenging the clause. However, recruitment notification itself had been withdrawn and entire process was not proceeded with. The said clause is under challenge.

3.This Court is of an opinion that issuing recruitment notification as well as withdrawal of the recruitment notification is administrative prerogative of the employer. The candidates, who are aspiring to secure employment cannot challenge the withdrawal of notification, which was issued based on certain grounds and reasons.

4.The learned counsel appearing on behalf of the second respondent states that on account of certain challenges made, the University had taken a decision to withdraw the notification. Such a decision cannot be questioned by a candidate, who is aspiring to secure employment in the University.

5.In this regard, the second respondent also relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Jai Singh Dalal and others Vs. State of Haryana and another** reported in **1993 Supp (2) Supreme Court Cases 600**. The relevant paragraphs are extracted hereunder:-

"7.It is clear from the above pleadings that in 1990 the State Government resolved to resort to special recruitment to the Haryana Civil Service (Executive Branch) invoking the proviso to Rule 5 of the Rules. Pursuant thereto, it issued the notifications dated December 20, 1990 and January 25, 1991. The names of the candidates were forwarded by the State Government to the HPSC for selection. The HPSC commenced the selection process and interviewed certain candidates. In the meantime, on account of an undertaking given by the Advocate-General to the High Court at the hearing of C.W.P. No. 1201 of 1991 and allied Writ Petitions, the State Government was required to forward the names of the candidate belonging to two other departments of the State Government. Before it could do so, the new Government came into power and it reviewed the decision of the earlier Government and found the criteria evolved by the earlier Government unacceptable and also noticed certain infirmities in the matter of forwarding the names of eligible candidates. It, therefore, resolved to rescind the earlier notifications of December 20, 1990 and January 25, 1991. It will thus be-seen that at the time when the Writ Petition which has given rise to the present proceedings was filed, the State Government



had withdrawn the aforesaid two notifications by the notification dated December 30, 1991. The stage at which the last mentioned notification came to be issued was the stage when the HPSC was still in the process of selecting candidates for appointment by special recruitment. During the pendency of the present proceedings the State Government finalised the criteria for special recruitment by the notification of March 9, 1992. Thus, the HPSC was still in the process of selecting candidates and had yet not completed and finalised the select list nor had it forwarded the same to the State Government for implementation. The candidates, therefore, did not have any right to appointment. There was, therefore, no question of the High Court granting a mandamus or any other writ of the type sought by the appellants. The law in this behalf appears to be well-settled. In the State of Haryana v. Subash Chander Marwaha and Ors. MANU/SC/0400/1973 : (1973) IILL J266SC, this Court held that the mere fact that certain candidates were selected for appointment to vacancies pursuant to an advertisement did not confer any right to be appointed to the post in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment. In that case, an advertisement was issued stating that there were 50 vacancies in the Haryana Civil Service (Judicial Branch). An examination was held by the HPSC and 40 candidate passed the said examination with the required minimum 45% marks. Their names were published in the Government Gazette. The State Government, the appointing authority, made seven appointments out of the said list in the order of merit. Respondents, who ranked 8, 9 and 13 respectively in that list, did not get an appointment although there were vacancies. The reason for not appointing the respondents was that in the view of the State Government, which was incidentally identical to that of the High Court, candidates getting less than 55% marks in the examination should not be appointed as Subordinate Judge in the interest of maintaining high standards of competence in judicial/ service. Respondents 1 to 3 challenged this decision on the ground that the State Government was not entitled to pick and choose only seven out of them for appointment, because to do so Tanta mounted to prescribing a standard which was not contemplated. The State



Government on the other hand contended that the rules did not oblige them to fill in all the vacancies and it was open to them to appoint the first seven candidates in the interest of maintaining high standards. It was further contended that there was no question of picking and choosing and since the rules did not preclude it from selecting from the list the candidates for appointment to set a higher standard, the State Government could not be said to have infringed, any legal right of the selectees for appointment. In the background of these facts this Court came to the conclusion that the mere fact that the candidates were chosen for appointment in response to the advertisement did not entitle them to appointment. To put it differently, no right had vested in the candidates on their names having been entered on the select list and it was open to the Government for good reason not to make the appointments therefrom and fill in the vacancies. In a recent decision in *Shankarsan Dash v. Union of India* MANU/SC/0373/1991 : (1992) IILL J18SC, the Constitution Bench of this Court reiterated that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do/not acquire any indefeasible right to appointment against the existing vacancies, It was pointed out that ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for that purpose. Albeit, the State must act in good faith and must not exercise its power mala fide or in an arbitrary manner. The Constitution Bench referred with approval the earlier decision of this Court in *Subash Chander's case*. Therefore, the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria. In the present case the selection was yet to be made by the HPSC. Therefore, the petitioners cannot even claim that they were selected for appointment by the HPSC. The selection process had not been completed and before it could be completed the



State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. It is, therefore, clear from the settled legal position that the petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the HPSC.

10. Assuming (without deciding) that the withdrawal of the earlier notifications by the subsequent notification dated December 30, 1991 does not, *stricto sensu*, attract the provision of Section 19 extracted above, counsel for the appellants overlooks the fact that since the appellants have no legal right to insist on their selection and appointment to the vacant posts in question, the mode of arresting the process recedes in the background as the State Government could have informed the HPSC not to proceed with the selection process as it desired to revise the norm for appointment. Once it is realised that merely because the State Government had sent a requisition to the HPSC to select candidates for appointment did not create any vested right in the candidates called for interviews, regardless of the fact that the selection process had reached an advanced stage, it does not matter whether the selection process is arrested by cancelling the earlier notifications by another notification or by a mere communication addressed to the HPSC. Even if the HPSC were to complete the process and select candidates, such selection by itself would not confer a right to appointment and the Government may refuse to make the appointment for valid reasons. At best the Government may be required to justify its action on the touchstone of Article 14 of the Constitution. In the present case the pleadings do not show that the subsequent notification dated December 30, 1991 is specifically put in issue in the memo of appeal nor is there material placed on record to so hold. Besides, the proviso to rule 5 requires the method for recruitment to be specified by notification after consultation with the HPSC. The consultation with the HPSC has to be in regard to the positive act of specifying the method for recruitment and not in regard to the decision whether or not to resort to special recruitment. The proviso enables



the making of special recruitment but the method of such recruitment has to be specified by notification. It is, therefore, obvious that even after the State Government has decided to resort to special recruitment, it may for valid reasons change its mind and one of the reasons could be that it desires to revise the extant eligibility criteria or substitute the same. This can be communicated to the HPSC for arresting the selection process which need not be done by a notification nor does it require consultation with the HPSC. Prior consultation with the HPSC is required before the issuance of a notification specifying the method of recruitment which was done when the notification of March 9, 1992, was issued. Therefore, counsel's submission that if Section 19 applied, the notification of December 30, 1991 would be rendered invalid for want of prior consultation on the thrust of the words 'in the like manner' employed therein, is clearly misconceived. Even if Section 19 does not apply, *stricto sensu*, we see no reason to hold that a State Government which has the power to specify the method of special recruitment by notification has no inherent power to revise the same if it for good reasons considers the same necessary. To so hold would mean that even if the State Government has committed a mistake it has no power to rectify or correct the same. The authority which has power to specify the method of recruitment must be deemed to have the power to revise and substitute the same in the same manner. On the analogy of Section 19 such an inherent power always exists in the authority to alter, vary, change or replace its creation. For the above reasons we see no merit in this appeal and dismiss the same with costs."

6. In view of the fact that the withdrawal of the recruitment notification is the administrative prerogative of the employer, the same cannot be challenged by the writ petitioners. In the event of issuing any revised recruitment notification, the writ petitioners are at liberty to participate in the process of selection, if they are otherwise eligible and qualified with reference to the recruitment rules in force.



7. With these observations, these Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

WEB COPY

/TRUE COPY/

Sub Assistant Registrar

To

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-82924[F] dated 22/08/2019)

W.P. (MD) Nos.5853 and 5854 of 2015

myr

JM/05.09.2019/7P/2C