



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.10.2019
CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.15345 of 2017

and

W.M.P. (MD)Nos.12158 and 12159 of 2017 and 17680 of 2019

T.Chandrasekaran

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by the Chief Secretary to Government,
Fort St. George,
Chennai - 9.

2.The Secretary to Government,
Higher Education (C2) Department,
Fort St. George,
Chennai - 9.

3.The Commissioner and Director of Technical Education,
Directorate of Technical Education,
Guindy,
Chennnai - 600 025.

4.The Director,
All India Council for Technical Education,
Nelson Mandela Marg,
Vasantkunj,
New Delhi - 110 067.

5.The Chairman,
Governing Council,
NMS Kamaraj Polytechnic College,
Pazhavilai - 629 501, Kanyakumari District.

6.The Principal,
NMS Kamaraj Polytechnic College,
Pazhavilai - 629 501,
Kanyakumari District.

7.Thiru.K.M.Thiruvasagam,
Lecturer in Automobile Engineering,
NMS Kamaraj Polytechnic College,
Pazhavilai - 629 501,
Kanyakumari District.

... Respondents



Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned selection order bearing No.N.M.S.K.B./0238/2017, dated 26.07.2017, issued by the fifth respondent selecting the seventh respondent as Head of the Department of Mechanical Engineering as evidenced under the Right to Information reply given by the sixth respondent, dated 26.07.2017, quash the same and a consequential direction to the respondents to issue orders promoting the petitioner to the post of Head of the Department of Mechanical Engineering with retrospective effect from the date of eligibility in pursuance of the orders passed by the Hon'ble Division Bench of this Court in a batch of Writ Petitions in W.P.(MD)No.9860 of 2017 etc. batch, dated 22.04.2016 and also in obedience to the directions issued by the Hon'ble Division Bench of this Court in W.P.No.11256 of 2003, dated 06.01.2005, with consequential monetary and service benefits.

For Petitioner	: Mr.PL.Narayanan for Mr.D.Selvanayagam
For R1 to R3	: Mr.VR.Shanmuganathan Special Government Pleader
For R4	: Mr.N.Dilipkumar
For R5 and R6	: Mr.V.Panneer Selvam
For R7	: Mr.C.Arul Vadivel @ Sekar

ORDER

This Writ Petition has been filed seeking to quash the impugned selection order of the fifth respondent, bearing No.N.M.S.K.B./0238/2017, dated 26.07.2017, selecting the seventh respondent as Head of the Department of Mechanical Engineering as evidenced under the Right to Information reply given by the sixth respondent, dated 26.07.2017, and a consequential direction to the respondents to issue orders promoting the petitioner to the said post with retrospective effect from the date of eligibility in pursuance of the orders passed by the Division Bench of this Court, dated 22.04.2016 made in W.P.(MD)No.9860 of 2017 etc. batch and also in obedience to the directions issued by the Division Bench of this Court in W.P.No.11256 of 2003, dated 06.01.2005, with consequential monetary and service benefits.

2. According to the petitioner, he was initially appointed as Instructor on 01.09.1983 in the fifth respondent Polytechnic College and thereafter, he was promoted as Associate Lecturer, then as Senior Lecturer and then as Lecturer (Selection Grade). The petitioner had put in 33 years of service in the fifth respondent Polytechnic College. The fifth respondent is a Government aided Technical Institution and is managed by the Governing Council as per Grant-in-Aid Code framed vide G.O.Ms.No.1282, Education Department, dated 26.07.1967. As per Article 11 of Grant-in-Aid Code, a staff services committee has to be constituted with the approval of the



third respondent - Director/Commissioner of Technical Education for appointment of staff members to the respective Government Aided Polytechnic Colleges. As per the said Article, the staff selection Committee is to be convened only for the initial and direct recruitments and not for promotion to higher posts. Contrary to the said provisions, the Government aided Polytechnic Colleges, like the fifth respondent constituted Selection Committee at every stage of promotion and the staff members are being forced to appear for interview before the Staff Selection Committee to compete with the external candidates. The experience rendered by the Staff in the same Institutions are not recognized. All other educational institutions follow seniority criteria for promotion.

3.The third respondent is not taking any steps when the Government aided Polytechnic Colleges constitutes Staff Selection Committee for promotion at every stage. The petitioner had put in 33 years of unblemished service in the fifth respondent College and he is fully eligible to be promoted to the post of Head of the Department [Mechanical Engineering] as per the ad hoc Rules right from the year 2006 on completion of five years of service as Senior Lecturer. The Management of the College conducted an interview for the post of Head of the Department [Mechanical Engineering] on 03.05.2017 after calling both the internal and external candidates. The petitioner appeared for interview, but he was not selected. The seventh respondent, who has worked only as part-time Lecturer from 02.07.2003 to 02.07.2006 and Lecturer from 03.07.2006 till date only on consolidated pay under self-financing scheme, has been selected. The experience rendered by the seventh respondent cannot be considered as qualification for the promotional post of Head of the Department [Mechanical Engineering] as per AICTE Regulations. The Management has sent the selection order of the seventh respondent to the third respondent for approval. Meanwhile, the petitioner was appointed as Head of the Department [Mechanical Engineering] In-charge without any monetary or service benefits, vide order dated 09.06.2017. Now, the petitioner is challenging the appointment of the seventh respondent in this Writ Petition.

4.According to the learned counsel appearing for the petitioner, the denial of promotion is clear violation of fundamental rights guaranteed under Article 309 of the Constitution of India and also violation of Articles 14 and 16 of the Constitution of India. The failure to consider the petitioner for promotion is against the order passed by the Division Bench of this Court in W.P.No.11256 of 2003, dated 06.01.2015 and W.P.(MD)No.10242 of 2006, dated 20.07.2011 and therefore, the appointment of the seventh respondent is liable to be set aside.

5.The appointment of the seventh respondent is against the law laid down by the Hon'ble Apex Court. The Division Bench of this Court vide judgment dated 22.04.2016, made in W.P.(MD)No.9860 of 2007, has also held that the higher post will have to be



filled up only from the eligible internal candidates, by applying the Government Order mentioned therein. Against the said judgment, Special Leave Petition has been filed before the Hon'ble Apex Court and the same was dismissed and prayed for allowing the Writ Petition.

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6.The sixth respondent filed counter affidavit. The learned counsel appearing for the respondents 5 and 6 submitted that the writ petition filed by the petitioner is not maintainable. The petitioner did not challenge the constitution of the selection committee or the notification issued calling for applications for appointment of Head of the Department [Mechanical Engineering]. As per the Advertisement, out of 32 applications, 18 applications were rejected, as the candidates did not satisfy the qualification norms. Interview letter was sent to 14 candidates, including the petitioner and the seventh respondent. Out of 14 candidates, only 11 candidates appeared for interview including the petitioner and the seventh respondent. The seventh respondent was found suitable for appointment to the post of Head of the Department [Mechanical Engineering] in overall assessment ranking made by the Staff Selection Committee. The petitioner was placed in third rank. Having participated in the selection process, the petitioner is not entitled to challenge the selection of the seventh respondent. The Selection Committee consisted of one representative of the third respondent and two representatives of the fourth respondent. The Selection Committee assessed the eligibility of 11 candidates including the petitioner and the seventh respondent and has assigned the ranking to the 11 candidates. The learned counsel appearing for the respondents 5 and 6 denied the contentions of the learned counsel for the petitioner that after initial appointment by the Selection Committee, subsequent promotions are only based on the seniority. Ad hoc Rules, which have been framed under Article 309 of the Constitution of India, prescribed the method of appointment to the post of Head of the Department [Mechanical Engineering]. As per the said Rule, the Head of the Department shall be filled up by way of promotion or recruitment by transfer or direct recruitment. The said *ad hoc* rules, which were framed on 24.09.1989, are still in force. The petitioner is not challenging the order of appointment issued to the seventh respondent, but he is challenging only the information obtained under the Right to Information Act about the qualification of the seventh respondent and prayed for dismissal of the Writ Petition.

7.In support of his contentions, the learned counsel appearing for the respondents 5 and 6 relied on the following judgments:-

(i) **Municipal Corporation of Delhi Vs. Surender Singh and others** reported in **2019 (8) SCC 67**, wherein at Paragraphs 17 to 19, it has been held as follows:-

'17.The position noticed above would indicate that the entire grievance with which the petitioners had approached



the High Court was on claiming to be aggrieved by Clauses 25 and 26 contained in Advertisement No.1/2006 issued for recruitment of Assistant Teacher (Primary) for the benefit of the appellant MCD. In order to appreciate the same in its correct perspective, it would be appropriate to take note of the impugned Clauses 25 and 26 which read as hereunder:

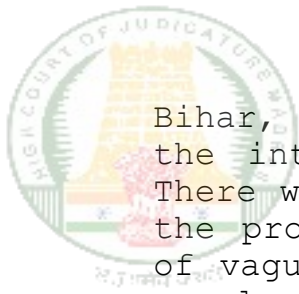
25.The Board has full discretion to fix minimum qualifying marks for selection for each category i.e. SC/ST etc. of post in order to achieve qualitative selection and to pick up the best talent available.

26.The marks obtained by the candidate in written examination will not be disclosed in any case.'

18.From a perusal of the said Clause it is noticed that though under the very Clause there are no cut-off marks specified, Clause 25 would, however, provide the full discretion to DSSSB to fix the minimum qualifying marks for selection. In the instant case, keeping in view that the recruitment was for the post of Assistant Teacher (Primary) and also taking note of the orders passed by the High Court in an earlier petition requiring the maintenance of minimum standards, DSSSB while preparing the select list had stopped the selection at a point which was indicated as the cut-off percentage. In a circumstance where Clause 25 was depicted in Advertisement No.1/2006, when the private respondents herein and the other petitioners before the High Court were responding to the said Advertisement, if at all they had a grievance that the Clause is arbitrary and might affect their right ultimately since no minimum marks that is to be obtained have been indicated therein, they were required to assail the same at that stage. On the other hand, despite being aware of the Clause providing discretion to DSSSB to fix the minimum qualifying marks, they have participated in the selection process by appearing for the qualifying examination without raising any protest. In that circumstance, the principle of approbate and reprobate would apply and the private respondents herein or any other candidate who participated in the process cannot be heard to complain in that regard.'

(ii) **Ashok Kumar and another Vs. State of Bihar and others** reported in **2017 (4) SCC 357**, wherein at Paragraphs 19 and 21, it has been held as follows:-

19.In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment [Anurag Verma Vs. State of



Bihar, LPA No.1991 of 2010, decided on 16.12.2011 (Pat)] that the interpretation of Rule 6 was not free from vagueness. There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90:10 allocation.

21. In this view of the matter, the Division Bench cannot be held to be in error in coming to the conclusion that it was not open to the appellants after participating in the selection process to question the result, once they were declared to be unsuccessful. During the course of the hearing, this Court is informed that four out of six candidates, who were ultimately selected, figured both in the first process of selection as well as in the subsequent selection. One candidate is stated to have retired.''

8. The seventh respondent filed counter affidavit. In addition to the contentions made by the learned counsel appearing for the sixth respondent, the learned counsel appearing for the seventh respondent submitted that the seventh respondent is fully qualified to be appointed as Head of the Department [Mechanical Engineering]. The Staff Selection Committee, which was duly constituted, assessed the eligibility of all the candidates, who attended the interview, gave first rank to the seventh respondent and gave third rank to the petitioner. Further, the petitioner, who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected and hence, the learned counsel prayed for dismissal of the Writ Petition.

9. In support of his submission, the learned counsel appearing for the seventh respondent relied on a judgment of the Hon'ble Apex Court in the case of **Vijendra Kumar Verma Vs. Public Service Commission, Uttarkhand and others** reported in 2011 (1) SCC 150, wherein at Paragraph No.25, it has been held as follows:-

'25. In this connection, we may refer to the decision of the Supreme Court in G.Sarana (Dr.) v. University of Lucknow [1976 (3) SCC 585] wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus: (SCC p.591).

'15. ... He seems to have voluntarily appeared before



the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee.' ' '

10.The learned counsel appearing for the fourth respondent submitted that the fourth respondent nominated two persons to the Staff Selection Committee and they were part of the Selection Committee and they selected the seventh respondent to be appointed as Head of the Department [Mechanical Engineering].

11.After arguments were heard, on 19.09.2019, Mr.P.L.Narayanan, learned counsel, represented that the petitioner had already filed a petition to amend the prayer on 30.11.2017 and the same was returned on 04.12.2017, for rectifying certain defects and after rectifying the same, the said petition was re-presented and therefore, he took time for verification. When the matter was taken up for hearing on 30.09.2019, Mr.D.Selvanayagam, learned counsel appearing for the petitioner submitted that the petitioner has filed W.M.P.(MD) No.17680 of 2019 in W.P.(MD)No.15345 of 2017 for amendment on 27.09.2019 and the same is pending.

12.The learned counsel appearing for the respondents 5 and 6 and the learned counsel appearing for the seventh respondent contended that the petition filed for amendment after conclusion of arguments, is not maintainable and prayed for dismissal of the said application also.

13.I have heard the learned counsel appearing for the parties and perused the materials available on record.

14.The learned counsel appearing for the petitioner submitted that initially an application for amendment was filed on 30.11.2017 and the same was returned on 04.12.2017 and after the said return, it was re-presented, but the said application was not numbered and was not listed. On the other hand, a fresh application was filed for amendment on 27.09.2019. Due to the delay in filing application after conclusion of arguments, the said petition viz., **W.M.P. (MD) No.17680 of 2019 in W.P. (MD)No.15345 of 2017 is dismissed.**

15.The contention of the petitioner is that after initial appointment by the Staff Selection Committee, the higher post can be filled up only by promotion based on the seniority. The said contention is contrary to Circular No.74787/C3/81 of the third respondent, dated 24.09.1981, wherein it has been specifically mentioned that all the aided posts in Polytechnic Colleges shall be filled up only by way of selection by the Staff Selection Committee. The Government has framed ad hoc rules under Article 309 of the Constitution of India, prescribing the method of appointment to the post of Head of the Department. As per the said Rule, the post of



Head of the Department can be filled up by three methods, i.e., (i) Promotion, (ii) Recruitment by Transfer and (iii) Direct Recruitment.

16.The College has adopted the third method in the appointment and after following the selection process, appointed the seventh respondent as Head of the Department [Mechanical Engineering]. The learned counsel appearing for the petitioner has not controverted the submission made by the learned counsel appearing for the respondents 5 and 6 with regard to the Circular of the third respondent and also the ad hoc rules mentioned in the counter affidavit. In addition to this, the petitioner has not challenged the selection process before the selection was held. On the other hand, the petitioner has participated in the selection process. On being not selected, he has come out with the present Writ Petition challenging the information furnished with regard to the qualification of the seventh respondent. The petitioner has not challenged any order appointing the seventh respondent as Head of the Department [Mechanical Engineering]. It is well settled that unsuccessful candidates are not entitled to challenge the selection process after participating in the selection process. The judgments relied on by the learned counsel appearing for the respondents 5 and 6 and the judgment relied on by the learned counsel appearing for the seventh respondent are squarely applicable to the facts of the present case. In view of the judgments relied on by the learned counsel appearing for the respondents 5 and 6, the judgment of the Division Bench of this Court relied on by the learned counsel appearing for the petitioner, does not advance the case of the petitioner.

17.For the above reasons, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

To

1.The Chief Secretary to Government of Tamil Nadu,
Fort St. George,
Chennai - 9.

2.The Secretary to Government,
Higher Education (C2) Department,
Fort St. George,

<https://hcservices.chennai.gov.in/hcservices/>



3.The Commissioner and Director of Technical Education,
Directorate of Technical Education,
Guindy,
Chennnai - 600 025.

4.The Director,
All India Council for Technical Education,
Nelson Mandela Marg,
Vasantkunj,
New Delhi - 110 067.

+1 CC to Mr.C.ARUL VADIVEL @ SEKAR, Advocate (SR-93636[F] dated 22/10/2019)

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-93756[F] dated 23/10/2019)

+1 CC to Mr.V.PANNEER SELVAM, Advocate (SR-93846[F] dated 23/10/2019)

W.P. (MD) No.15345 of 2017

22.10.2019

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