

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.3809 of 2020
and
W.M.P.Nos.4509 & 4512 of 2020

S.V. Durga Prasad

... Petitioner

Vs.

1.The Secretary to Government,
Ministry of Shipping,
Transport Bhavan,
New Delhi - 110 001.

2.The Executive Council,
Indian Maritime University,
East Coast Road,
Uthandi, Chennai - 600 119.

3.The Vice-Chancellor,
Indian Maritime University,
East Coast Road,
Uthandi, Chennai - 600 119.

4.The Registrar,
Indian Maritime University,
East Coast Road,
Uthandi,
Chennai - 600 119.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, to call for records pertaining to the order passed by the fourth respondent vide the proceedings in Letter No.IMU/HQ/ADMN/COE/2014/01 dated 11.02.2020 and to quash the same as illegal, improper and ultravires and consequently direct the second respondent to extend the petitioner service as Controller of Examination in the respondent University for a further period of five years as per Rule 12 of the Recruitment Rules read with Statute 5(A) (2) of the Indian Maritime University Act, 2008.

For Petitioner : Mr. R. Singaravelan,
Senior Counsel, for R.Jayaprakash

For Respondents: Mr. R. Rajesh Vivekanandhan, for R1
Mr. G. Sankaran, for R2 to R4

O R D E R

By consent given by either side, the main writ petition is taken up for final disposal at the admission stage itself.

2. The third respondent University had issued a notification calling for applications to fill up the post of Controller of Examination by way of direct recruitment. The petitioner participated in the said selection and he was appointed as Controller of Examination by the University on 05.02.2015. Before the petitioner entered service in the third respondent University, he was working under the Director General of Shipping, Mumbai. According to the petitioner, the petitioner is entitled to be considered for re-appointment subject to his satisfactory performance after the end of five years as per the prevailing rules.

3. The grievance of the petitioner is that the University attempted to give a fresh notification calling for applications for appointment to the post of Controller of Examination. Therefore, the petitioner had approached this Court by filing W.P.No.2194 of 2020 seeking for mandamus to extend his services for a further period of five years. While this writ petition is pending, the fourth respondent has passed an order rejecting the claim made by the petitioner for extension of the term as Controller of Examination. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Mr. R. Singaravelan, learned Senior Counsel appearing on behalf of the petitioner submitted that when the petitioner was initially appointed as Controller of Examination, the rules provided for extension of term for a period of five years on satisfactory performance. Based on this rule, the petitioner had sought for extension of his term and had approached this Court. In the meantime, the fourth respondent has passed an order dated 11.02.2020 stating that the petitioner will not be eligible for extension of the term and he will be Governed only by the present rule only which provides for considering the petitioner for re-appointment subject to satisfactory performance during the earlier tenure. The learned counsel submitted that this order was passed by the Registrar who does not have jurisdiction and this should have been conveyed to the petitioner only by the Vice Chancellor of the University.

5. Mr.G. Sankaran, learned counsel appearing on behalf of the third and fourth respondents submitted that the petitioner is not entitled for extension of service as claimed by him. The learned counsel further submitted that the rule as it stands now only provides for a consideration of the candidate for re-appointment subject to the satisfactory performance in the earlier tenure. The learned counsel submitted that the petitioner must also participate in the process of appointment along with other candidates and at the time of selection, the past performance of the petitioner will also be taken into consideration. The learned counsel concluded his arguments by submitting that the petitioner is not entitled either for extension of service or for re-appointment as a matter of right and it is only subject to his satisfactory performance during the earlier tenure and he satisfying all the other requirements which are necessary for considering the re-appointment of the petitioner as the Controller of Examination.

6. This Court has carefully considered the submissions made on either side and perused the materials available on record.

7. There is no serious dispute with regard to the facts of the case. The case only involves deciding the issue as to whether the petitioner is entitled for extension of period of term for a period of five years or whether the petitioner is entitled for being considered for re-appointment for a further term of five years.

8. A careful reading of the impugned order dated 11.02.2020 shows that the rule was different at the time when the petitioner had joined as a Controller of Examination in the third respondent University in the year 2015. At that point of time, the rule provided for extension of the term for five years subject to satisfactory performance. Subsequently, Rule 5 A came into force in the year 2017 and as per this statutory rule, the Controller of Examination who is appointed for a term of five years, shall be eligible for re-appointment subject to satisfactory performance. As on today, this rule governs the field and the petitioner is also subject to this rule.

9. The grievance of the petitioner is that the third respondent University is proceeding to call for application for filling up the post of Controller of Examination without considering the claim made by the petitioner for re-appointment. In the considered view of this Court, the third respondent University need not first complete the formality of considering the re-appointment of the petitioner and thereafter take a decision of calling for applications from

the eligible candidates. This is a process which can be simultaneously done by the third respondent University. The petitioner will have to participate in the selection process and the only difference between the petitioner and other candidates would be that insofar as the petitioner is concerned, the University will assess his satisfactory performance during the previous five years and see if he is entitled for re-appointment. Insofar as the others are concerned, they have to satisfy the entire eligibility criteria as fixed in the notification.

10. It goes without saying that the petitioner must also fulfill the eligibility criteria as fixed in the notification. This is the only difference in assessment between the petitioner who is seeking for re-appointment and the other candidates who are seeking for fresh appointment. Therefore, this Court does not find anything wrong in the third and fourth respondent University in issuing notification and calling for applications to fill up the post of the Controller of Examination. The manner in which the process of selection will have to taken up has been sufficiently indicated in this order.

11. This writ petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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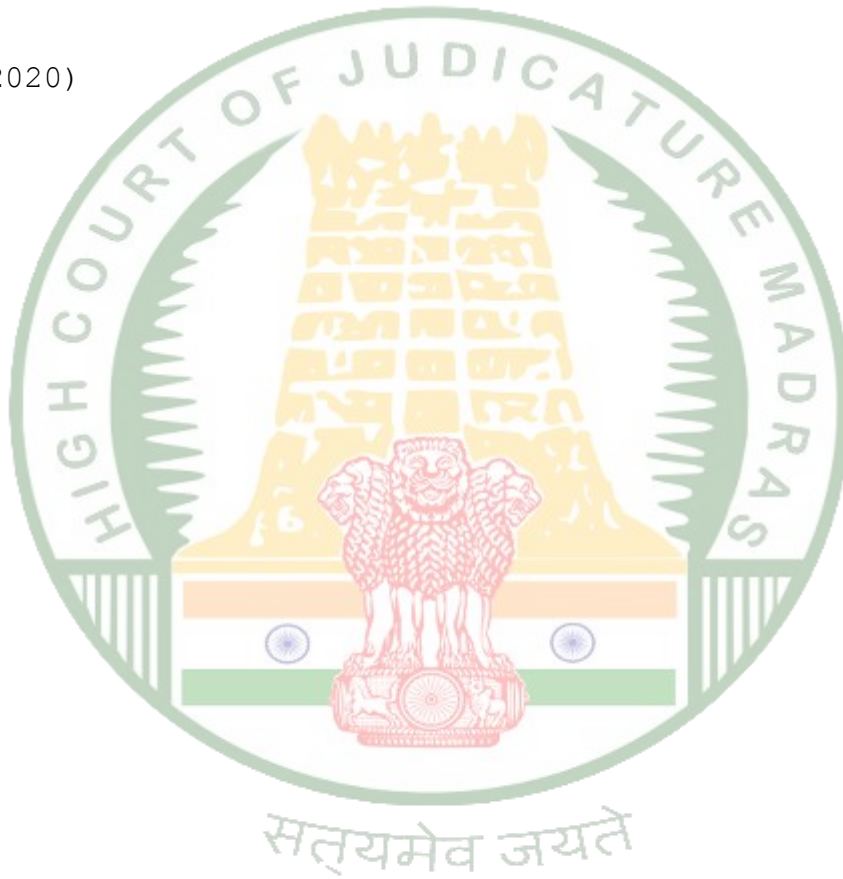
+1cc to Mr.G.Sankaran, Advocate SR.13415
+1cc to Mr.R.Jayaprakash, Advocate SR.13183
+1cc to Mr.R.Rajesh Vivekananthan, Advocate SR.13010

W.P.No.3809 of 2020

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SS (CO)
CB(16/03/2020)



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