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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.4807 of 2020
and W.M.P.No.5686 of 2020

Dr.P.Elangovan

...Petitioner

Vs.

1. The Principal-in-charge
Pachaiyappa's College,
Poonamalai High Road,
Chennai - 600 030.
2. The Director of Collegiate Education,
DPI Compound, College Road,
Chennai - 600 006.
3. The Secretary,
Pachayappa's Trust,
113, E.V.R.High Road,
Shenoy Nagar,
Chennai - 600 030.
4. Officer Commanding
1(TN) Armd Sqn NCC
office at Sethu House Annexe,
28, Dr. Alagappa Road,
Chennai - 600 084.
5. Dr.D.Chidambaram,
Assistant Professor of Economics,
Pachaiyappa's College,
Chennai - 600 030.
and also
No.77A, Sadanandapuram,
Thangal, Thiruvottiyur,
Chennai - 6000 019.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus, to call for the entire records pertaining to the circular/notice dated 20.02.2020, issued by the 1st respondent in respect appointment of Caretaker for 1 (TN) NCC Armd of Pachayappa's College unit



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and quash and consequently direct the 1st respondent to forward the relinquishment documents in respect of 5th respondent as required by the 4th respondent.

For Petitioner : Mr.G.Murugendran

For RR 1 & 3 : Mr.Kandavel Doraisami
for Mr.Muthumani Doraisami

For R2 : Mr.E.Manoharan
Special Government Pleader

For RR 4 & 5 : No appearance

ORDER

The petitioner has preferred the present writ petition seeking following prayer:

"To call for the entire records pertaining to the circular/notice dated 20.02.2020, issued by the 1st respondent in respect appointment of Caretaker for 1 (TN) NCC Armd of Pachayappa's College unit and quash and consequently direct the 1st respondent to forward the relinquishment documents in respect of 5th respondent as required by the 4th respondent. "

2. The facts which gave rise to the filing of the present writ petition are briefly stated as hereunder:

2.1 The petitioner was appointed as Assistant Professor of Physics on 27.01.2014 in Pachaiyappa's College (for brevity "the College"), Chennai-30, in the Government grant-in-aid category. Dr.D.Chidambaram, Assistant Professor of Economics of the College, was appointed and working as Associate NCC Officer (ANO)/Caretaker in 1 (TN) NCC Armd Unit of the College. The said Dr.D.Chidambaram had been absent for a long time and the position he enjoyed as ANO/Caretaker in 1 (TN) NCC Armd Unit of the College was not therefore active. Hence, the first respondent/Principal of the College has called for applications from the teaching staff, who were less than 42 years and who were willing to serve as ANO/Caretaker in NCC Armd Unit of the College. A notification was also issued calling for applications on 05.12.2018 and in response to the said notification, the petitioner has submitted his application for consideration on 10.12.2018.

2.2 The first respondent/Principal of the College vide his proceedings dated 12.12.2018, nominated the petitioner as ANO/Caretaker in 1 (TN) NCC Armd Unit of the College. As per the practice and rules, the appointment of the petitioner as



ANO/Caretaker in 1 (TN) NCC Armd Unit of the College has to be approved by the Selection Board consisting of Deputy Director General (DDG) of NCC and others. The Board will conduct an interview and based on the qualification of the candidates, the best suitable candidate will be sent for ANO/Caretaker training for a period of twelve weeks. After successful completion of training, the candidate will be appointed as ANO/Caretaker by the NCC Directorate.

2.3 While so, the petitioner, by virtue of his nomination by the first respondent/Principal of the College on 12.12.2018, he appears to have started discharging his duties as ANO/Caretaker. The original appointee Dr.D.Chidambaram continued to be absent and he had not handed over the charge nor he surrendered his ID card or other documents to facilitate the petitioner to take charge of the post in real terms.

2.4 The grievance of the petitioner herein is that while his appointment, which is designated as ANO/Caretaker, was subsisting a Circular/Notice dated 20.02.2020 was issued by the first respondent/Principal of the College, inviting applications for appointment of ANO/Caretaker. According to the petitioner that it was not open to the first respondent/Principal of the College to call for applications once again in the face of his appointment as ANO/Caretaker on 12.12.2018. According to him, the issuance of the Circular/Notice dated 20.02.2020 is tainted with malafides and it is intended to unseat the petitioner as ANO/Caretaker. Further, according to the petitioner that after his nomination, he started discharging his duties as ANO/Caretaker and therefore, he cannot be suddenly discharged from the position without cancelling his appointment. Hence, the petitioner is before this Court challenging the Circular/Notice dated 20.02.2020.

3. Mr.G.Murugendran, learned counsel for the petitioner would strenuously contend that the first respondent/Principal of the College is not an authority to call for applications from the eligible teaching staff of the College for appointment as ANO/Caretaker when the petitioner was in fact appointed in the said post vide order of the first respondent/Principal of the College dated 12.12.2018. In the face of the petitioner's appointment as ANO/Caretaker by the first respondent/Principal of the College himself and in the face of the continuance of the petitioner as ANO/Caretaker since 12.12.2018, the question of appointing any other person in the said post in 2020 did not arise at all. According to the learned counsel for the petitioner, the petitioner's name is found as ANO/Caretaker in the academic calendar of the College for the year 2019-2020. The learned counsel for the petitioner would also submit that there was a process of selection before appointing the petitioner as



ANO/Caretaker and in the absence of cancellation or termination of such appointment, the issuance of the impugned Circular/Notice dated 20.02.2020 was abuse of process of law and violation of NCC rules. In substance, the learned counsel for the petitioner would further submit that once the appointment of the petitioner is subsisting and the petitioner is allowed to discharge his duties as ANO/Caretaker, the question of the petitioner being replaced suddenly by the College management is not warranted at all and such action on the part of the first respondent/Principal of the College amounted to malafide and arbitrary exercise of power.

4. Per contra, the learned counsel appearing for the first respondent/Principal of the College would submit that the contention of the petitioner is misconceived and not supported by facts or records. First of all, the learned counsel would submit that the petitioner was never appointed as ANO/Caretaker. The first respondent/Principal of the College had made an attempt to appoint the petitioner and as a first step, in that attempt, the petitioner was nominated on 12.12.2018 by the Principal of the College. Till date, his nomination has not been accepted by the Selection Board. As per the rules governing the appointment, a definite procedure has been laid in the selection of candidates for appointment to the post of ANO/Caretaker that procedure has not been gone through in the case of the petitioner, as the nomination by the first respondent/Principal of the College has not been taken to the logical end of approving the appointment of the petitioner.

5. According to the learned counsel for the first respondent/Principal of the College, the appointment of the petitioner remained as nomination because of the fact that the earlier incumbent Dr.D.Chidambaram had not relinquished his duty nor surrendered his ID cards or other documents relating to the post of ANO/Caretaker. Preceding the issuance of the impugned Circular/Notice dated 20.02.2020, the College treated the absence of Dr.D.Chidambaram as desertion and the post of ANO/Caretaker held by him, was treated as vacant. Pursuant as per the direction of the Pachaiyappa's Trust board dated 17.02.2020, immediately, the impugned Circular/Notice dated 20.02.2020 was issued calling for applications. The learned counsel would submit that without responding to the Circular, the petitioner approached this Court as if he has got a lien over the post of ANO/Caretaker and the action initiated by the first respondent/Principal of the College for appointment of a regular ANO/Caretaker is to be interfered with. The learned counsel would also submit that after the impugned Circular/Notice, a committee was constituted comprising of Principal-in-charge, College Committee Members (2), Ex-NCC ANO's (2), a person having in depth knowledge in the field of NCC.



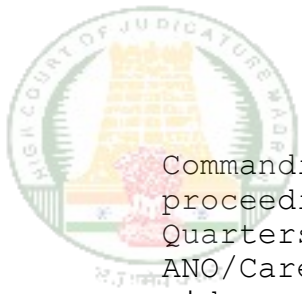
6. According to the counter affidavit filed on behalf of the first respondent/Principal of the College, an interview was also conducted, in respect of seven candidates, who responded to the Circular dated 20.02.2020 by the Committee Members following the norms such as Physical Proficiency Test (PPT), Officer Like Qualities (OLQ), NCC certificates and Personal interview. In view of the pendency of the present writ petition, the result of the selection has not been declared by the Committee.

7. The learned counsel for the first respondent/Principal of the College would further submit that the nomination of the petitioner was only a stopgap arrangement and it was not confirmed by the Commanding Officer (CO) of 1 (TN) Armd NCC Unit. The nomination was necessitated, since the NCC Headquarters was pressing the College to initiate the process of selection or else the Headquarters threatened to withdraw the NCC Unit from the College. Only in such compelling circumstances, the College had to initiate steps for filling up of the post on a regular basis and therefore, no malafide could be attributed to such bona fide action initiated by the College. In support of his contention, a detailed counter affidavit has also been filed on behalf of the first respondent outlining the process of appointment and the procedure followed.

8. Learned Special Government Pleader, Mr.M.E.Manoharan, appearing for the 2nd respondent, has also made his submissions.

9. Heard Mr.G.Murugendran, learned counsel for the petitioner and Mr.Kandavel Doraisami, learned representing counsel for Mr.Muthumani Doraisami, learned counsel on record for the first and third respondents and Mr.E.Manoharan, learned Special Government Pleader for the second respondent.

10. The grievance of the petitioner as projected in the writ petition appears to be a little strange as his very nomination made on 12.12.2018 for appointment to the post of ANO/Caretaker, which is construed as appointment, did not go through the process of selection at all by the Competent Selection Board. The training, which was contemplated after the selection was not undergone by the petitioner. When an application was made by the petitioner for consideration on 10.12.2018 as claimed by him, the first respondent/Principal of the College has simply nominated the petitioner as ANO/Caretaker within two days i.e., on 12.12.2018. It is very much obvious that there was no selection conducted as per the rules governing the appointment and no procedure was followed. Hence, the proceedings dated 12.12.2018 cannot be construed as a valid or legal appointment for the petitioner to claim a right over the post under the said proceedings. In fact, the communication dated 12.12.2018 has directed the petitioner to meet the



Commanding Officer (CO) of 1 (TN) Armd NCC Unit for further proceedings. Admittedly, there was no further proceedings at NCC Quarters end and hence appointment of the petitioner as ANO/Caretaker by the first respondent/Principal of the College vide proceedings dated 12.12.2018 cannot be construed as an appointment at all in the eye of law.

11. In the counter affidavit filed on behalf of the first respondent, it is stated that the post of ANO/Caretaker is a selection post and the following procedure is contemplated as stated in paragraph nos.3 and 4 which are read as under:

"3. It is respectfully submitted that the posts of Caretaker and Associate NCC Officer (ANO) are selection posts. The selection is governed by rules prescribed in ANO's handbook issued by NCC directorate. The NCC handbook lays down eligibility conditions for ANO, age limit and other conditions of eligibility, selection process, responsibility, privileges and rank pay.

4. It is respectfully submitted that the rules governing the appointment of Caretaker and ANO reads as follows:

"Appointment of Caretaker:

The Institution having NCC should nominate a candidate from among the Teaching Staff for appointment of Caretaker to look after the NCC. Caretaker appointment is to be granted to any Institution for two years in two spells only one year at a time. The Commanding Officer (CO) of the concerned NCC unit is empowered to appoint a Caretaker for one year. In case, further extension for one more year is required, then the sanction Deputy Director General (DDG) NCC must be obtained. During this two years period selection and appointment as ANO should be made by the Unit. No one will be engaged for appointment of Caretakers for more than two years."

A Caretaker will be required to appear before the Selection Board consisting of Deputy Director General (DDG) NCC and others. The Selection Board will conduct interview and based on the qualification of the candidates, a best suitable candidate will be sent for Associate NCC Officer (ANO) training for a period of 12 weeks. After, successful completion of training by the candidate, he will be appointed as an Associate NCC Officer (ANO) by the NCC Directorate."

12. From the above, it could be seen that the appointment of the petitioner as ANO/Caretaker vide proceedings of the first respondent/Principal of the College dated 12.12.2018, in the absence of the above procedure and confirmation by the Selection



Board, has not crystallised into a regular appointment at all to stand the test of procedural adherence as per the handbook issued by the NCC Directorate. In such circumstances, this Court is unable to appreciate as to how the petitioner would claim to have been regularly appointed and his appointment cannot be disturbed midway without his appointment being cancelled. First of all, his so called appointment on 12.12.2018 does not satisfy as to the period of appointment. In fact, as per the guidelines extracted in paragraph no.4 of the counter affidavit, no ANO/Caretaker will be engaged for more than two years. Looking at it from any dimension, the petitioner's claim that his appointment was regular is far-fetched and the same cannot be countenanced either in law or on fact.

14. The petitioner's nomination as ANO/Caretaker assuming that it was an appointment, at best could only be an internal stopgap arrangement in view of the fact that the NCC Headquarters was threatening the College that the NCC Unit will be withdrawn in the absence of regular ANO/Caretaker. This was because the earlier incumbent Dr.D.Chidambaram, who was appointed as ANO/Caretaker, had abandoned the post and was absent for a long time and the consequences of such unauthorized absence resulted in absence of relinquishment from Dr.D.Chidambaram and in the absence of relinquishment, the nomination/appointment of the petitioner on 12.12.2018 could not be processed further in terms of the handbook and the rules made thereunder. Therefore, it is very clear that the nomination/appointment of the petitioner remained on paper and has not ripened into a regular appointment at all. It may be true that the petitioner by virtue of such nomination had acted as ANO/Caretaker, however, that did not mean that the appointment of the petitioner was regular and valid. Therefore, the petitioner cannot call himself a regular ANO/Caretaker having not gone through the selection process and having not approved by the Selection Board, besides, having not gone through the training. Therefore, he cannot call himself as a regular ANO/Caretaker in the first place, much less claiming a right to occupy the post in exclusion of the regular candidates to be appointed to the said post. On the whole, the claim of the petitioner to remain as ANO/Caretaker and in that view he has a right to challenge the impugned Circular/Notice dated 20.02.2020 is unfounded, misconceived and cannot stand the test of judicial scrutiny.

15. In the above circumstances, this Court has no hesitation in discrediting the claim of the petitioner as the writ petition in the considered view of this Court is devoid of merits and substance and liable to be dismissed.

Resultantly, this writ petition is dismissed as being devoid



of merits. No costs. Consequently, connected writ miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd/mrm

To

1. The Principal-in-charge
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office at Sethu House Annexe,
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Chennai - 600 084.

+1cc to Mr.G.Murugendran, Advocate, S.R.No.22005

+1cc to Mr.Muthumani Doraisami, Advocate, S.R.No.22036

W.P.No.4807 of 2020

EV(CO)
KKV/14/07/2020