

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM :

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.592 of 2020

Dr.P.Elangovan

.. Appellant/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,
Pachaiyappa's Trust Board,
113, E.V.R. High Road,
Shenoy Nagar, Chennai - 30.
 4. Officer Commanding,
1 (TN) Armed 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 - 600 019.
- .. Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 12.03.2020 passed in W.P.No.4807 of 2020.

W.P.No.4807 of 2020:

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 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 Appellant

: Mr.G.Murugendran

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The present appeal questions the correctness of the impugned judgment dated 12.03.2020, whereby the learned Single Judge has declined the relief claimed by the appellant in respect of the process of the appointment of Caretaker for 1 (TN) NCC Armd of Pachayaippa's College unit and also issue a direction to forward the relinquishment documents of the fifth respondent Dr.D.Chidambaram, who was the earlier Caretaker of the said unit.

2. The background in which the dispute arose was that the fifth respondent, who was working as Caretaker of the NCC unit at Pachaiyappa's College, had proceeded on leave and due to his absence, the NCC activities of the Institution were held up. The Officer Commanding of 1 (TN) Armd Sqn NCC, Chennai, despatched a letter dated 10.11.2018, which is to the following effect:

"Tele:044-26423154 1 (TN)
Armd Sqn NCC
Email-Id: 1tnarmdncc@gmail.com 28, Dr.Alagappa
Road,
Purasawalkam, Chennai-84.

105/2/Trg
Nov 2018

10

The Principal
Pachaiyappa's College

सत्यमेव जयते

NCC ACTIVITIES : REG

1. It has been observed that over a period of last 3 - 4 months the NCC activities in your college has come to a standstill.

2. The enrolment forms and training programme for the year 2018 has also not been received till date.

3. It is learnt that the ANO Cap D.Chidambaram has proceeded on leave and there is no Caretaker Officer in the college to supervise NCC activities and

training of cadets. Dr.B.Devan, who has been nominated temporarily in charge has also failed to deposit the documents as per para 2 above.

4. You are requested to nominate a suitable caretaker officer temporarily in place of the ANO and resume NCC activities forthwith.

5. The enrolment forms and training programme should reach this office by 20 Nov 2018.

6. In case no action is taken to resolve the issues the refreshment allowance for cadets will not be sanctioned and action will be initiated to withdrawn NCC from your institution.

(Ashit Ranjan)
Col
Officer Commanding"

3. A perusal of the said letter demonstrates that the Principal of the College had been requested to nominate a suitable Caretaker Officer temporarily in the place of the earlier incumbent and resume NCC activities forthwith.

4. The Rules governing the appointment of a Caretaker has been extracted in paragraph 11 of the impugned judgment, but in order to understand the arguments advanced on behalf of learned counsel for the appellant, the same is again extracted herein below:

"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."

5. The running of the unit in the Institution was still hampered and therefore, a notice was sent on 27.11.2018 by the Officer Commanding to the Principal of the Institution that in the event no steps are taken for nominating the Caretaker, the Institution would be placed under suspended animation. The said letter was in reference to the earlier letter dated 10.11.2018 extracted hereinabove.

6. The Principal of the Institution appears to have issued a Circular on 05.12.2018 and on 12.12.2018, he drew official proceedings announcing the appointment of the appellant as Caretaker in the place of the earlier incumbent with immediate effect with a further direction to the appellant to meet the Officer Commanding for further proceedings.

7. It may be pointed out that the Institution has only a duty to nominate and not to appoint, but the letter dated 12.12.2018 mentions the word appointed instead of nomination.

8. The Principal of the Institution forwarded the said proceedings to the Officer Commanding vide letter dated 14.12.2018 and taking notice of it, the Officer Commanding, on 31.12.2018, sent a reply to the Principal that since the earlier incumbent Dr.D.Chidambaram was absent from duty with effect from 14.08.2018 without any information, he is required to sent his relinquishment application and in the event, he is untraceable or unwilling to sign the relinquishment documents, three show cause notices at a gap of fifteen days should be issued to the individual and failure to reply will result in unilateral processing of his case for relinquishment. The aforesaid letter dated 31.12.2018 is extracted hereinunder:

"Tele:044-26423154

1 TN

Armd Sqn NCC

Email-Id: 1tnarmdncc@gmail.com

28, Dr.Alagappa

Road,

Purasawalkam,

Chennai-600 084.

No.114/Pers/1
Dec 2018

31

The Principal
Pachaiyappa's College

RELINQUISHMENT OF COMMISSION :

CAPT D CHIDAMBARAM SD ANO : REG

1. Refer your letter No.D.No.1466/2018-19 dated 14 Dec 2018.

2. Since Capt D Chidambaram is absent from duty wef 14 Aug 2018 without any information, and NCC activities of the College are affected, the said ANO is required to relinquish his commission as per your recommendations.

3. The following are required to be forwarded to the unit for processing of case for relinquishment and appointment of a Caretaker Officer.

(a) Relinquishment of Commission Application Part I, II, III & IV

(b) Authentication Sheets

(c) Statement of Case & Delay Report.

(d) Relinquishment of Commission letter from Capt D Chidambaram.

(e) Relinquishment of Commission recommended from Principal of the Institution.

(f) ID Car/Canteen/Smart Card submitted to this unit Cap D Chidambaram

4. In case the individual ANO is untraceable or unwilling to sign the relinquishment request three show cause notices at a gap of 15 days each needs to be issued to the individual and failure to reply will result in unilateral processing of case for relinquishment.

5. Fwd for your information and necessary action.

(Ashit Ranjan)

Col

Officer Commanding

Copy to:-

NCC Group HQ Madras 'A' - for info. Pl.
Chennai-84.

Capt D Chidambaram - -do-"

9. It appears that there was some difference of opinion in the manner of the nomination of the Caretaker, upon which the Management had called upon an explanation from the Principal, who vide a letter dated 11.1.2019, informed the Secretary-in-charge of the College Management that he had nominated the appellant on a temporary basis. Subsequently on the request of the appellant, he had been relieved from the temporary position

and one Dr.A.Saravanakumar, another Assistant Professor was nominated as Caretaker on purely temporary basis. Thereafter, applications were called for and six persons had applied, including the appellant, whereafter, a recommendation was made in favour of the appellant for appointment as Caretaker with effect from 13.12.2018. This information of the College Management has been filed along with the type set of papers, followed by another Memorandum dated 06.2.2019 announcing the appellant's appointment as Caretaker of the unit.

10. The appellant claims to have continued to function by virtue of such arrangement and there is a letter dated 14.9.2019 calling upon Dr.D.Chidambaram, the earlier incumbent, to surrender his NCC ID Card upon relinquishment of his charge as Caretaker.

11. On 09.1.2020, the Officer Commanding sent a letter to the NCC GP Headquarters for issuing a warning to the College and withdrawing the running of NCC unit therein, as the College had failed to forward the relinquishment documents. In the same letter, it was also stated that the proposal of the appellant cannot also be processed since there has been no formal relinquishment of the earlier incumbent. The said letter is extracted hereinunder:

"Tele:044-26423154 1 TN
Armd Sqn NCC
Email-Id: 1tnarmdncc@gmail.com 28, Dr.Alagappa
Road,
Purasawalkam,
Chennai-600 084.

No.206/11/Pers 9
Jan 2020

NCC GP HQ Ms "A"
Chennai-84

WITHDRAWAL NOTICE:PACHAYAPPA'S COLLEGE CHENNAI-REG.

1. The present ANO of Pachayappa's college Capt Dr.D.Chidambaram has been Absent from college and NCC duties since 14.08.2018 and as per Pachayappa's college letter no.1466/2018-19 dated 14.12.2018 the service assistant professor of economics has been terminated wef

2.The college had nominated Shri Dr.P.Elangovan, assistant professor of physics and caretaker after vide letter no 1466/2018-19 dated 14.12.2018.

3. A no. of letters has been written to the college

forward documents for Relinquishment of commission in respect of Dr.D.Chidambaram, however, till date the Relinquishment documents have not been received.

4. Due process of selection board appearance be the CTO Dr.P.Elangovan can also not be processed since the appointment of incumbent ANO has not been relinquished.

5. You are requested to issue the 1st warning to the college for withdrawal of NCC.

(Ashit Ranjan)

Col

Officer Commanding

12. It appears that the College Management through its then Secretary vide a letter dated 17.2.2020 called upon the In-charge Principal to invite fresh applications from willing staff after treating Dr.D.Chidambaram to have deserted from duty and appropriate steps be taken by making a request to the Officer Commanding in this regard. In response to the said letter dated 17.2.2020, the In-charge Principal had issued a notice/circular dated 20.2.2020 calling upon applications from the teaching staff, which has been challenged by the appellant in the writ petition giving rise to the present controversy contending that his proposal by nominating him as the Caretaker had already been completed and therefore, his rights are directly affected by this new action taken by the College Management and the In-charge Principal, which is mala fide, unlawful and amounts to overriding the procedure prescribed for nomination, which had become final earlier.

13. Learned counsel for the appellant has vehemently urged that by virtue of his earlier nomination, which has been intimated by the then Principal, the appellant's processing could not be withheld on account of non-submission of the relinquishment documents and the nomination does not evaporate on account of any such inaction on the part of the Institution. To the contrary the relinquishment is acknowledged by the College itself and the nomination in favour of the appellant was never withdrawn, therefore, any fresh steps are totally without authority in law.

14. Learned counsel for the appellant has also urged that the proceeding dated 17.2.2020 of the College Management is contrary to Rule 9(5) of the Tamil Nadu Private College (Regulation) Rules, 1976, because the Management has no role to interfere in the internal administration of the College, whereby the Principal being the authorized person to nominate had already finalized the proceedings in the year 2018 itself. It

is also contended that the Officer Commanding cannot also interfere by refusing to process the nomination of the appellant as that is also an internal affair of the College under the 1976 Rules.

15. It is also urged by the learned counsel for the appellant that the learned Single Judge while proceeding to dismiss the writ petition has omitted to consider the aforesaid position of law and also the fact that the appellant had been continuing to function as such and the name of the appellant was also reflected in the calendar as Caretaker, therefore, the conclusion that the appellant was working in stopgap arrangement is not correct.

16. The further contention of learned counsel for the appellant is that forwarding of the relinquishment documents was the duty of the Management and now the issue also stands closed with the fact that Dr.D.Chidambaram had finally failed to comply by furnishing the documents. As such, it was the nomination of the appellant which had to be undertaken and processed as it alone survived, and not a new round of nomination or selection which was absolutely uncalled for.

17. We have considered the submissions raised and we find that the role of the Institution according to the Rule applicable is to nominate a candidate from amongst the teaching staff for appointment of the Caretaker. The said Rule has not been disputed by the appellant. Nominate means to propose for or appoint to an office. The word "nominate" has its origin in the Latin word "nominatus", which means to name. It is also specifying or mentioning a particular name in order to fix an appointment. It also in certain circumstances means to appoint a person by name to hold some office or discharge some duty. Some clue to the meaning of the word can be gathered from what was assigned by a Division Bench of this Court in paragraph 25 of the decision in the case of A.Mohambaram v. M.A.Jayavelu and others, reported in AIR 1970 Mad 63.

18. In the instant case, the nomination has to be followed by way of an appointment and it is the Officer Commanding of the concerned NCC unit, who is empowered to appoint the Caretaker for two years with one year spells. The nominated Caretaker will be required to appear before a Selection Board consisting of the Deputy Director General, NCC and others, that shall be entitled to conduct an interview, whereafter, a training for twelve weeks has to be ordained. It is only after the successful training, he will be appointed as an Associate NCC Officer (ANO) by the NCC Directorate. It would thus be seen that the learned Single Judge was right in proceeding to consider this aspect of the matter and hold that the appellant

does not appear to have been appointed through this procedural adherence.

19. We would further add, that from the documents filed by the appellant himself it is evident on a perusal of the letter dated 10.11.2018 extracted hereinabove, that the nomination requested was for a temporary Caretaker Officer in order to continue the ongoing activities of the NCC that had been left abandoned on account of the departure of the earlier incumbent Dr.D.Chidambaram. The Principal of the Institution on 05.12.2018 issued a Circular and on 12.12.2018, the appellant was appointed as Caretaker. This Circular dated 12.12.2018 has been filed by the appellant himself. It is, therefore, evident that the letter of the Principal dated 11.1.2019 does not reflect the correct facts, inasmuch as, if the appellant was nominated (wrongly stated as appointed on 12.12.2018) by the Principal, then it is not understood as to when was the appellant relieved from the temporary position and Dr.A.Saravanakumar was nominated as Caretaker on temporary basis. This recital in the letter dated 11.1.2019 is unsubstantiated and further it states that applications were called for and six persons applied. The letter then goes on narrating about some nomination in the year 2014 to give an impression as if some fresh proceedings had been undertaken. The letter, therefore, does not advance the cause of the appellant as it appears to be incongruous in its contents.

20. Further, from the documents on record, particularly, the document dated 09.1.2020, it appears that since the relinquishment proceedings of Dr.D.Chidambaram had not been crystallized, therefore, allowing the appellant to appear before the Selection Board as per the Rules could not be processed. Thus, the claim of the appellant that his nomination had resulted in some accrued or vested right of getting appointed is bereft of any lawful claim. There cannot be a deeming vesting of rights by way of fiction unless the procedure of nomination is followed by appointment as per the Rules indicated above, which admittedly was never accomplished in favour of the appellant. There was no accrual of any such right much less vested right to endow the appellant with some legal claim against the post in question. The nomination, which has wrongly been scribed as "appointed" by the Principal in the letter dated 12.12.2018, did not transform into any appointment as per the Rules as discussed by the learned Single Judge.

21. The contention is that the default of the College in not processing the relinquishment documents of the earlier incumbent, cannot be a fault to negate the appellant's nomination. In our opinion the nomination of the appellant began on a temporary note as per the letter dated 10.11.2018. The subsequent nomination (wrongly described as appointment)

dated 12.12.2018 that was forwarded vide letter dated 14.12.2018 was not approved as is evident from the communication of the Commanding Officer dated 31.12.2018. This ultimately culminated in the letter dated 09.01.2020. The communications from the Commanding Officer did not accord approval to the nomination. Even otherwise the offer to head the NCC unit in an Institution is a privilege and is not a substantive retention on some post that can be interpreted so as to create an enforceable right.

22. Consequently, in the absence of any substantive right of the appellant having been affected to claim continuance on the post by virtue of documents relied on by him, the learned Single Judge has rightly declined to grant relief as prayed for.

23. Apart from this, with regard to the contention raised that the Circular dated 20.2.2020 issued by the In-charge Principal, pursuant to the proceedings dated 17.2.2020, is in violation of Rule 9(5) of the 1976 Rules, suffice it to say that the argument is misconceived, inasmuch as it is only the nomination part which is available with the Institution, but the appointment is governed by the Rules of NCC and not by the 1976 Rules. Thus, it is not the case of interference in the internal management of the Institution, but it is a case of appointment of Caretaker not having been finalised by the NCC authorities in accordance with the Rules.

24. The fact that the College Management had failed to despatch the relinquishment documents of Dr.D.Chidambaram also remains undisputed. There is no material to demonstrate that the College had complied with the directions of the Officer Commanding in the letter dated 31.12.2018. Even assuming for the sake of argument that Dr.D.Chidambaram had deserted from the post, the arrangement made in between was in the nature of temporary stopgap arrangement as held by the learned Single Judge in order to avoid the withdrawal of the permission to run a unit in the Institution. In the given circumstances, there was no legally sustainable right which could be enforced by the appellant and therefore, the writ petition was rightly dismissed.

Accordingly, the appeal fails and is hereby dismissed. Consequently, C.M.P.No.8301 of 2020 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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,
Pachaiyappa's Trust Board,
113, E.V.R. High Road,
Shenoy Nagar, Chennai - 30.
4. The Officer Commanding,
1 (TN) Armed Sqn NCC,
Office at Sethu House Annexe,
28, Dr.Alagappa Road,
Chennai - 600 084.

W.A.No.592 of 2020

SKS (CO)
SP(29/09/2020)



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