

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2020

PRONOUNCED ON : 29.10.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.12495 of 2020

&

W.M.P.Nos.15407, 15408 & 15409 of 2020

Dr.G.Geetha

... Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. by its Principal Secretary to Government,
Higher Education Department, *सत्यमेव जयते*
Fort St. George,
Chennai-600 009

2.The Director of Collegiate Education,
DPI Campus, Numgambakkam, Chennai-600 006,

3.Dr.C.Poornachandran,
Director of Collegiate Education,
DPI Campus, Nungambakkam, Chennai-600 006 ...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, to call for the records relating/connected to G.O.Ms.No.98 read with G.O.(Ms).No.99 and G.O.Ms.No.100 Higher Education (F1) Department dated 14.08.2020 including the third respondent in panel for Director of Collegiate Education, simultaneously promoting him and insofar as giving posting to the Writ Petitioner only as Officer on special duty instead of Director of Collegiate Education as illegal, arbitrary, mala fide, contrary to G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993 and to consequently direct the first respondent to give promotion to the petitioner as Director of Collegiate Education w.e.f. 17.08.2020, the date on which the third respondent assumed charge, together with monetary and all other attendant benefits together with 15% interest.

For Petitioner : Mr.N.G.R.Prasad for M/s.Row & Reddy

For Respondents : Mr.Vijay Narayan, AG assisted by
Mr.E.Manokaran, Spl.GP. for R1
Mr.Karthikei Balan, GA for R2
Mr.L.Chandra Kumar for R3

ORDER

The present Writ Petition has been filed with the following prayer;

“To issue a Writ of Certiorarified Mandamus, to

call for the records relating/connected to G.O.Ms.No.98 read with G.O.(Ms).No.99 and G.O.Ms.No.100 Higher Education (F1) Department dated 14.08.2020 including the third respondent in panel for Director of Collegiate Education, simultaneously promoting him and insofar as giving posting to the Writ Petitioner only as Officer on special duty instead of Director of Collegiate Education as illegal, arbitrary, mala fide, contrary to G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993 and to consequently direct the first respondent to give promotion to the petitioner as Director of Collegiate Education w.e.f. 17.08.2020, the date on which the third respondent assumed charge, together with monetary and all other attendant benefits together with 15% interest.”

2. The facts and circumstances which gave rise to the filing of the Writ Petition, are stated hereunder:

2.1 The petitioner was originally appointed as Lecturer in 1989 in Kunthavai Nachiar Government Arts College, Tanjore and later she was designated as Assistant Professor. Over a period of time she was promoted as Principal Grade II on 09.12.2017 and subsequently promoted to the post

of Principal Grade I on 30.04.2018. During her entire career, she claims to have worked in various places in different capacities. The petitioner on being promoted to the post of Grade I Principal in 2018, became eligible to be considered for appointment to the post of Director of Collegiate Education (hereinafter referred to as 'DCE'). According to the petitioner, she came within the zone of consideration for appointment to the post of DCE on retirement of one Dr.R.Sarumathi, the then Director of Collegiate Education on 31.05.2019. According to the petitioner, she was the senior most Grade I Principal to be considered for the appointment in the resultant vacancy due to the retirement of Dr.Sarumathi on 31.05.2019, as two other seniors to her, viz., Dr.D.Freeda Gnanarani and S.Manimegalai did not have one year service left for consideration to the post of DCE, in terms of G.O.Ms.No.440 dated 26.10.1990. G.O.Ms.No.440 dated 26.10.1990 is a Policy decision of the Government that promotion to the post of Head of Department, an Officer to be considered for appointment should have not less than one year minimum period of left over service. According to the petitioner, as per G.O.Ms.No.368, dated 18.10.1993, the first respondent was under an obligation to prepare a list of 5 qualified and eligible candidates for promotion to the post of Head of the Department, i.e., DCE

three months in advance before the prospective date of retirement of the existing incumbent. However, as per the said Government Order regulating the subject promotion, the Government had not initiated any action notifying the vacancy nor drawn up the panel from among the eligible candidates in the feeder post. Since there was a delay in preparation of the panel, the petitioner being aggrieved by the inaction appears to have submitted a representation to the Authority concerned and the same having not evoked response, the petitioner had approached this Court in W.P.No.34654 of 2019 seeking direction to consider her claim for promotion to the post of Director of Collegiate Education. This Court, by order dated 13.12.2019 disposed of the Writ Petition and directed 1st respondent herein to consider and pass orders on the claim of the petitioner within a period of six weeks from the date of receipt of a copy of the order. The case of the petitioner was, the time granted by this Court expired on 26.01.2020.

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2.3. While matters stood thus, without implementing the directions of this Court within the stipulated time, all of a sudden G.O.Ms.No.98 Higher

Education (F1) Department dated 14.08.2020 was issued wherein, the 3rd respondent's name was sought to be included, in the panel of eligible candidates along with the name of the petitioner and three other candidates.

The 3rd respondent was admittedly junior to the petitioner, included in the panel along with two other junior candidates, namely, Dr.M.K.Rajkumar and Dr.M.Eswaramoorthy. On the same day strangely, another G.O.Ms.No.99 Higher Education (F1) Department dated 14.08.2020, was issued promoting the 3rd respondent as DCE overlooking the seniority and merit of the petitioner. Simultaneously, another G.O.Ms.No.100 High Education (F1) Department, dated 14.08.2020 was also issued appointing the petitioner and three others as Officers on Special Duty (OSD) on par with the post of DCE. Of them, the petitioner and one Dr.C.Mythili were admittedly seniors to the 3rd respondent and who were eligible in all respects to be considered for appointment to the post of DCE ahead of the 3rd respondent. In regard to two other candidates, though they were seniors to the petitioner and the third respondent, they did not satisfy one year norm in terms of G.O.Ms.No.440 dated 26.10.1990. In the said circumstances, the petitioner being aggrieved by the appointment of the 3rd respondent as DCE

overlooking her seniority and merit, is before this Court, assailing the appointment of the 3rd respondent as DCE.

3. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner would submit that the respondents 1 and 2 have deliberately delayed drawing up of panel after retirement of Dr.R.Sarumathi on 31.5.2019 only with a view to include the 3rd respondent in the panel and facilitate his appointment as DCE ignoring the seniors, despite their eligibility in all aspects. According to the learned counsel, if panel had been drawn up as envisaged in the G.O.Ms.No. 368, dated 18.10.1993, the 3rd respondent could not have come within the zone of consideration at all, and only the following names could have come up for consideration viz.,

Sl. No.	Name	Date of Retirement	Date of Retirement as per G.O.(Ms) No.51 dated 7.5.2020
1	Freeda Gnanarani D.	30.06.2020	30.06.2021
2	Manimegalai S.	31.07.2020	31.07.2021
3	Geetha G.	30.06.2022	30.06.2023
4	Parameswari K.	31.07.2020	31.07.2021
5	Mythili C.V.	31.05.2022	31.05.2023

4. From the above list of candidates, it could be seen that Dr.Freeda Gnanarani D. and Dr.Manimegalai S., though had minimum one year of

service left, but might not be eligible for consideration to the post of DCE, when the final appointment could have materialized, but eligible to be appointed as Officers on Special Duty in terms of G.O.Ms.No.440 date 26.10.1990. The next in line to be considered, was the petitioner as per her seniority and merit. Unfortunately, because of the deliberate delay, the vacancy was not filled up for considerable length of time, despite a direction from this Court dated 13.12.2019 in W.P.No.34654 of 2019 to pass orders on the claim of the petitioner within a period of six weeks. The Government was unmoved even in the face of the direction of this Court and finally passed orders only in August 2020 by promoting the 3rd respondent as DCE.

5. The learned counsel would therefore submit that the respondents 1 and 2 have violated the procedure contemplated in G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department dated 18.10.1993 wherein, it is clearly provided that to fill up the posts of Heads of Department (non IAS) proposals will have to be initiated by the Secretaries to Government 3 months in advance of the prospective date of retirement of the existing incumbent. Though the first respondent was aware

of the retirement of earlier incumbent Dr.Sarumathi on 31.5.2019 and there was no legal impediment otherwise, for extraneous consideration, no steps had been initiated by the 1st respondent to fill up the vacancy which was available after 31.05.2019, promptly. The Government had successfully dragged its feet with malicious intent to include the 3rd respondent in the panel and to promote him to the post of DCE. The learned counsel would also refer to the communication dated 12.6.2019, posting the petitioner and 3rd respondent as Principals (Grade-I) in 2018 in order to establish the fact that the petitioner was always ranked senior to the 3rd respondent. The learned counsel would draw the attention of this Court to the self appraisal of the petitioner to highlight the academic credentials/achievements of the petitioner and the number of awards and prizes received by her during her academic pursuits. He would therefore, submit that the impugned appointment of the 3rd respondent cannot be countenanced both in law and on facts and liable to be interfered with.

6. It is pertinent to mention here that at the time of admission of the Writ Petition, this Court granted interim stay of the appointment of the 3rd

respondent and also directed the Government to produce relevant Files pertaining to subject appointment. Accordingly, the relevant Files were also produced.

7. Per contra, the learned Advocate General appearing for the respondents 1 and 2 would make his submissions on the basis of the relevant original Files circulated for perusal of this Court. According to the learned Advocate General, that after receipt of the order passed by this Court directing the Government to take a decision within a period of 6 weeks in W.P.No34654 of 2019 dated 13.12.2019, steps were taken to fill up the vacancy, as detailed remarks needed to be obtained, concerning the candidates to be empanelled for the subject promotion. He would refer to several communications as found in the compiled File relating to the subject appointment starting from the communication dated 29.01.2020 exchanged between the 1st and 2nd respondents in regard to the implementation of the direction of by this Court dated 13.12.2019 and also the follow up action to be taken to fill up the vacancy.

8. While traversing through the Files, the learned Advocate General

would also draw the attention of this Court to a communication dated 13.5.2019 wherein, the then Director of Collegiate Education sought a report in regard to the allegation of plagiarism against the petitioner in the context of her research publication in relation to her Ph.D papers and in response to the same, the University concerned has stated vide communication dated 15.05.2019 that plagiarism was noticed in respect of two publications of the petitioner one to the extent of 29% and the other to the extent of 69%. According to the learned Advocate General, this report was supported with materials enclosed along with the said communication. Thereafter the learned Advocate General would also refer to certain other communications pointing to the fact that there were some allegation of irregularities committed by the petitioner when she was earlier working as Controller of Examinations, Bharathi Women's College, Chennai. An enquiry was conducted by a Committee and the Committee by its report had found certain acts of discrepancy on the part of the petitioner in the discharge of her duties. According to the learned Advocate General that the allegation of plagiarism and certain irregularities said to have been committed by the petitioner would clearly disentitle her to be considered for appointment to the post of DCE, which post as being the Head of

Department of Collegiate Education in the State vested with onerous responsibility and functions.

9. According to the learned Advocate General, a person who suffers from intellectual theft by indulging in plagiarism can never be considered as suitable for the appointment to the post of the Head of Department, merely because she happened to be senior to the 3rd respondent. In fact, he would in this regard refer to UGC Rules, wherein, it is stated that a person involved in more than 60% plagiarism, in Ph.D. pursuits, the Doctorate degree conferred on that person can be withdrawn altogether. In the case of the petitioner, the University itself has found that one of the paper publications of the petitioner was found to be plagiarized to the extent of 69%. Therefore, the petitioner, by the reasons of plagiarism and other irregularity alleged against her, which was the subject matter of preliminary enquiry and the report was also submitted indicting her, she can never legitimately aspire to be appointed as Head of Department.

10. The learned Advocate General would further submit that in the process of consideration of candidates from the feeder posts, the appointing

authority takes into account several factors like merit, ability and suitability and the seniority would assume significance only when the merits of the candidates are nearly equal and similar. In this case, the appointing authority on the subjective consideration, was of the view that the 3rd respondent was more meritorious because of his vast experience on the administrative side and therefore, he was rightly preferred and appointed as DCE. In fact, he would refer to the most crucial Note for Circulation, wherein the names of 5 candidates were considered including the petitioner herein along with Dr.C.V.Mythili ranking No.2, Dr.C.Poornachandran ranking No.3 (3rd respondent) Dr.M.K.Rajkumar ranking No.4 and Dr.M.Eswaramoorthy ranking No.5 and he would draw reference to the noting of the Hon'ble Minister for Higher Education in which, he had written that *“in view of his administrative ability Sl.No.3 may be promoted to the post of DCE for the year 2020-21”* and affixed his signature on the Note on 13.08.2020 and in the Circulation Note, it could also be seen that the Hon'ble Chief Minister has also affixed his signature on 14.08.2011. The File also contained the signatures of Joint Secretary, Principal Secretary and Chief Secretary.

11. According to the learned Advocate General, the competent authorities felt that among the empanelled candidates, the 3rd respondent was the most suitable as the relevant recruitment Rules would place primacy on merit, ability and more so, suitability and the seniority matters only when the merit and ability found to be equal amongst the candidates. The petitioner who was facing the complaint of plagiarism and also certain irregularities in discharge of her duties as Controller of Examinations, she has no *locus standi* to question the suitability of the 3rd respondent. The learned Advocate General would also submit that the 3rd respondent had also faced disciplinary action, as major penalty proceedings was initiated against him in 2006 for unauthorized absence and he was ultimately imposed with the punishment of stoppage of increment for a period of three years and that punishment period was over in 2009 itself. The learned Advocate General would add that strictly viewing, the absence of the 3rd respondent which was the subject matter of major penalty proceedings culminating into the imposition of the above penalty. cannot be termed as unauthorized absence, as he had questioned his transfer order before the then Tamil Nadu Administrative Tribunal and the application was pending

at that time. In any event, the punishment imposed on him in 2006 did not stand in the way of assessment of his suitability otherwise in 2020.

12. The learned Advocate General would submit that after approval of the candidate, namely, 3rd respondent by the competent authority on 13.08.2020, subsequently, the panel was issued vide G.O.Ms.No.98, 14.08.2020 and simultaneously, G.O.Ms.No.99 dated 14.08.2020 was issued announcing the promotion of the 3rd respondent as DCE. In regard to non-drawing of panel for the year 2019, he would submit that there was administrative reason for non-filing up the post in 2019 as the Government in that circumstances, issued G.O.Ms.No.88 Higher Education (F1) Department dated 7.8.2020, drawing 'Nil Panel' for the year 2019-20.

13. As regards the Rule position, governing the impugned appointment, the learned Advocate General would refer to fifth *proviso* of Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as under:

“Provided also that in respect of filing up vacancies in the post of Head of Department, the number of names of

qualified candidates to be considered shall be fixed as twice the number of vacancies plus three in the seniority list in a class, category or service.”

14. He would also refer to third *proviso* to Section 7(1), which reads as under:

“Provided also that if the qualified candidates, after consideration of their claims, are found not suitable for the post, the names of the next qualified candidates, to the extent necessary, shall be considered.”

15. As per the *proviso*, five candidates were empanelled and as admittedly, the first two candidates were not suitable in view of one year norm in terms of G.O.Ms.No.440 dated 26.10.1990. Therefore, the Government had rightly included three names apart from the petitioner and Dr.Mythili, above the 3rd respondent and 2 others. In the final panel, five candidates were correctly included as reflected in the impugned G.O.Ms.No.98, dated 14.08.2020.

16. The learned Advocate General would submit that the entire exercise has been done in terms of Schedule-11 appended to Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which provides an

elaborate procedure to be followed in the subject matter of promotion. He would also submit that after coming into force of 2016 Act, the earlier G.O. relied on by the learned counsel for the petitioner particularly G.O.Ms.No.368, dated 18.10.1993, would have no application at all. According to the procedure contemplated, with reference to the Rule dealing with the appointment to the selection posts, the appointment is always on the basis of merit, ability and suitability in particular. The consideration of seniority would arise only if the merit and ability is found nearly equal among the contesting candidates from the panel.

17. The learned Advocate General would submit that in regard to the power of judicial review of appointments made on consideration of merit, ability and suitability of candidates, the scope of interference by Courts is very limited and this Court cannot substitute its assessment in regard to the suitability of the candidate and replace the same with the decision of the appointing authority. According to him, the Hon'ble Supreme Court has categorically held in many decisions that the Courts must be wary in interfering with such appointments, unless the Courts found that the appointments were contrary to the Regulations/Rules and riddled with

material irregularity. As far as the present case on hand is concerned, he would submit that the suitability of the 3rd respondent has been properly assessed on the basis of his merit and ability by the competent authority and the subjective assessment may not be open to judicial review of this Court.

18. As regards the contention of the Courts' power and scope of review in matters of promotion to the selection post, the following judgments are relied on by the learned Advocate General, viz.,

i) (2013) 3 SCC (Cri) 84 (*M.Manohar Reddy and another versus Union of India and others*), wherein, paragraphs 17 to 19 are extracted as under:

“17. The concepts of “eligibility” and “suitability” were later examined by this Court in the decision in Mahesh Chandra Gupta (to which one of us Aftab Alam, J. was also a Member). In Mahesh Chandra Gupta, challenge was made to the appointment of a judge of the Allahabad High Court after the incumbent had assumed his office. In the writ petition, as it was originally filed, the appointment was questioned only on the ground that the incumbent did not possess the basic eligibility for being appointed as a judge of the High Court.

Later on, the appointment was also challenged on grounds of suitability and want of effective consultation process by taking additional pleas in supplementary affidavits. Kapadia, J. (as His Lordship then was), speaking for the Court brought out the distinction between “eligibility” and “suitability” and pointed out that eligibility was based on objective facts and it was, therefore, liable to judicial review. But, suitability pertained to the realm of opinion and was, therefore, not amenable to any judicial review. The Court also examined the class of cases relating to appointment of High Court judges that might fall under judicial scrutiny and concluded that judicial review may be called for on two grounds namely, (i) “lack of eligibility” and (ii) “lack of effective consultation”.

18. In paragraphs 39, 43 and 44 of the judgment the Court said:

“39. At this stage, we may state that, there is a basic difference between “eligibility” and “suitability”. The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of suitability. Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b). This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word “consultation” finds place in Article 217(1) whereas the word “qualify” finds place in

Article 217(2).

43. One more aspect needs to be highlighted. “Eligibility” is an objective factor. Who could be elevated is specifically answered by Article 217(2). When “eligibility” is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of “suitability”, stands excluded from the purview of judicial review.

44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in Supreme Court Advocates-on-Record Assn. and Special Reference No. 1 of 1998. (emphasis added)

19. In paragraphs 71 and 74 of the judgment again the Court observed as under:

Justiciability of appointments under Article 217(1)

71. In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, “eligibility” is a matter

of fact whereas “suitability” is a matter of opinion. In cases involving lack of “eligibility” writ of quo warranto would certainly lie. One reason being that “eligibility” is not a matter of subjectivity. However, “suitability” or “fitness” of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.

74. It is important to note that each constitutional functionary involved in the participatory consultative process is given the task of discharging a participatory constitutional function; there is no question of hierarchy between these constitutional functionaries. Ultimately, the object of reading such participatory consultative process into the constitutional scheme is to limit judicial review restricting it to specified areas by introducing a judicial process in making of appointment(s) to the higher judiciary. These are the norms, apart from modalities, laid down in Supreme Court Advocates-on-Record Assn. and also in the judgment in Special Reference No. 1 of 1998, Re. Consequently, judicial review lies only in two cases, namely, “lack of eligibility” and “lack of effective consultation”. It will not lie on the content of consultation.

(ii) (1997) 4 SCC 575(*Durga Devi Vs. State of H.P.*), wherein, paragraph nos.3 & 4, are extracted hereunder:

"3.In Dalpat Abasaheb Solunke etc. etc. Vs. Dr. B.S. Mahajan etc. etc. (AIR 1990 SC 434) while dealing with some what an identical question, this Court opined:

".....It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise . The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due Compliance with the relevant status. The committee consisted of experts and it selected the candidates after going through all the relevant material before it, In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

"4.In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was Sitting as an appellate authority over the selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability

for appointment. That was the function of the selection committee. The observation of this Court in Dalapt Abasaheb Solunke's case (supra) are squarely attracted to the facts of the present case. The order of the Tribunal Under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10th December , 1992 is quashed and the matter is remitted to the Tribunal for a fresh disposal on other points in accordance with the law after hearing the parties".

(iii) (2017) 2 SCC 609 (*J.Ashoka Vs. University of Agricultural Sciences*), wherein, paragraph no.27, is extracted hereunder:

"27. Whenever the Board of Regents considers a person placed lower in merit in the list of selected candidates recommended by the Selection Committee, it can do so only by recording reasons as to why the case of the person placed above is being overlooked and the person below is considered the best for being appointed. In the present case, adequate reasons have been recorded by the Board, viz., her qualification, length of regular service as Assistant Professor and humanitarian grounds. The competence and merit of a candidate is adjudged not on the basis of the qualification he/she possesses but also taking into account the other necessary factors like career of the candidate, his educational curriculum, experience in the field, his general aptitude, personality of the candidate and all other germane factors which the expert

body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held".

(iv) (1974) 4 SCC 3 (*E.P.Royappa Vs. State of T.N.*), wherein, paragraph nos.88 & 89 are extracted hereunder:

"88.Now, two important considerations must weigh with us in determining our approach to these questions. First, the post of Chief Secretary is a highly sensitive post. It is a post of great confidence lynchpin in the administration and smooth functioning of the administration requires that there should be complete rapport and understanding between the Chief Secretary and the Chief Minister. The 'Chief Minister as the head of the Government is in ultimate charge of the administration and it is he who is politically answerable to the people for the achievements and failures of the Government-confidence of the Chief Minister, the Chief Minister may legitimately, in the larger interests of administration, shift the Chief Secretary to another post, provided of-course that does not involve violation of any of his legal or constitutional rights. There can be no question in such a case as to who is right and who is wrong. The displacement of the Chief Secretary from his post in such a case would not be arbitrary and it would not attract the inhibition of Arts. 14 and 16. It may, however, be pointed out that such an action would not, we think, ordinarily be taken except for the most compelling reasons, because, if resorted to without proper justification, it

would tend to affect the political neutrality of the public service and lead to demoralisation and frustration amongst the public servants.

89. Now, here the post of Chief Secretary was admittedly a selection post and after careful examination of the merits of the senior most eleven officers of the Tamil Nadu Cadre of the Indian Administrative Service, the second respondent selected the petitioner for the post of Chief Secretary. The petitioner worked as Chief Secretary from 14th November, 1969 up to 6th April, 1971 and evidently during this period he acquitted himself creditably. It was not the case of either of the respondents that the petitioner was not found equal to the task, or that his work was not satisfactory. In fact the affidavit in reply filed on behalf of the first respondent clearly indicates that the petitioner discharged the duties of his office efficiently and to the satisfaction of every one concerned. Yet the petitioner was transferred first to the post of Deputy Chairman and then to the post of Officer on Special Duty and in his place Sabanayagam, who was admittedly junior to him, was not only promoted but also confirmed. The result of confirmation of Sabanayagam as Chief Secretary was that the petitioner, though senior and proved competent, was permanently excluded from the post of Chief Secretary. This clearly shows, contended the petitioner, that his transfer first to the post of Deputy Chairman and then to the post of Officer on Special-Duty was not on account of administrative

reasons but solely to displace him from the key post of Chief Secretary. That perhaps might have been legally and constitutionary unobjectionable, if the post of Deputy Chairuan and Officer on Special Duty were of the same status and responsibility as the post of Chief Secretary, but the argument of the petitioner was that neither of these two posts could be regarded as of equal status and responsibility as the post of Chief Secretary because the post of Chief Secretary is always a unique and unrivalled post in the State administration. The transfer of the petitioner from the post of Chief Secretary first to the post of Deputy Chairman and then to the post of Officer on Special Duty coupled with the promotion and confirmation of Sabanayagam in the post of Chief Secretary was, therefore, clearly arbitrary and violative of Arts. 14 and 16. This contention, plausible though it may seem, cannot be accepted by us, because there is no adequate material placed before us to Sustain it. The premise on which this contention is founded is that the posts of Deputy Chairman and Officer on Special Duty were not of the same status and responsibility as the post of Chief Secretary, but we cannot say on the material on record that the validity of the premise has been established by the petitioner. So far as the post 'of Deputy Chairman is concerned the petitioner himself accepted that post as being of the same status and responsibility as the post of Chief Secretary and did not raise objection against it and we need not, therefore, say anything

more about it. The only question is as to the post of Officer on Special Duty. We think that this post has not been satisfactorily established by the petitioner to be inferior in status and responsibility to the post of Chief Secretary. This of-course does not mean, and we are not prepared to go as far as the learned Chief Justice in asserting positively that post was equal in status and responsibility to the post of Chief Secretary. The fact that sales tax accounts for a very large segment of the revenues of the State and it runs into about 120 crores of rupees does not necessarily make the post of Officer on Special Duty equal in status and responsibility to that of the Chief Secretary. What has to be seen for equivalence is the status and the nature and responsibility of the duties, attached to the two posts. Merely giving the salary of one post to the other does not make for equivalence. We are, therefore, not prepared to accept the thesis that the post of Officer on Special duty was equal in status and responsibility to the post of Chief Secretary as claimed by the respondents. We entertain serious doubts about it. But equally it is not possible for us to hold it established on the material on record that this post was inferior in status and responsibility to the post of Chief Secretary, though prima facie it does appear to be so. We cannot, therefore, say that the petitioner was arbitrarily or unfairly treated or that equality was denied to him when he was transferred from the post of Chief Secretary and in his place Sabanayagam, his

junior, was promoted and confirmed. The challenge based on Arts. 14 and 16 must therefore fail".

(v) (2013) 5 SCC 1 (*State of Punjab Vs. Salil Sabhlok*), wherein, in paragraph no.14, it has been held as under:

"14. Rao next submitted that Article 316 of the Constitution has left it to the discretion of the State Government to select and appoint the Chairman and Members of a Public Service Commission and having regard to the doctrine of separation of powers which is part of the basic structure of the Constitution, the High Court cannot direct the Government to exercise its discretion by following a procedure prescribed by the High Court. He cited Supreme Court Employees Welfare Association v. Union of India & Anr. [(1989) 4 SCC 187], Suresh Seth v. Commissioner of Indore Municipal Corporation [(2005) 13 SCC 287], Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr. [(2008) 1 SCC 683] and Asif Hameed & Ors. v. State of J & K & Ors. [(1989) 2 Supp. SCC 364] in support of the aforesaid submission. He submitted that the appointments to the constitutional offices, like the Attorney General, Advocate General, Comptroller & Auditor General, Chief Election Commissioner, Chairman and Members of the Union Public Service Commission and appointments to

the topmost Executive posts, like the Chief Secretary or Director General of Police, has to be made within the discretion of the Government inasmuch as persons in whom the Government has confidence are appointed to the posts. He relied on *E.P. Royappa v. State of Tamil Nadu & Anr.* [(1974) 4 SCC 3] and *State of West Bengal & Ors. v. Manas Kumar Chakraborty & Ors.* [(2003) 2 SCC 604] for this proposition."

(vi) (2010) 9 SCC 655 (***Hari Bansh Lal Vs. Sahodar Prasad Mahto***),

wherein, para 20 is extracted hereunder:

"20. In *State of Mysore Vs. Syed Mohmood* (AIR 1968 SC 1113 : (1968) 3 SCR 363), it was held that suitability or otherwise, the appointing authority is the best person and the court cannot issue a positive writ without giving the authority/Government opportunity in the first instance to consider his/her claim for promotion. The same view has been reiterated in *Statesman (P) Ltd., Vs. H.R., Deb* (AIR 1968 SC 1495 : (1968) 3 SCR 614)."

(vii) (2010) 9 SCC 655 (***Hari Bansh Lal Vs. Sahodar Prasad Mahto***),

wherein, paragraph no.21 & 22, are extracted hereunder:

"21. In *State Bank of India and Others vs. Mohd. Mynuddin*, (1987) 4 SCC 486, after adverting to earlier decision of this Court in *The State of Mysore & Anr. vs. Syed Mahmood &*

Ors., (1968) 3 SCR 363 this Court held:

"5.....The ratio of the above decision is that where the State Government or a statutory authority is under an obligation to promote an employee to a higher post which has to be filled up by selection the State Government or the statutory authority alone should be directed to consider the question whether the employee is entitled to be so promoted and that the court should not ordinarily issue a writ to the government or the statutory authority to promote an officer straightway. The principle enunciated in the above decision is equally applicable to the case in hand."

22.It is clear from the above decisions, suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules".

19. The learned Advocate General would therefore submit that the power of judicial review in these matters is extremely limited, particularly, in examining the suitability of the candidates in the appointment to the selection posts. In this case, the records have been produced including the ACRs which were relied on by the competent authority for the year 2018-19 and 2019-20. According to the learned Advocate General, the ACRs of the other contesting candidates, were also produced for the said years. He would therefore, submit that the appointment of the 3rd respondent is entirely within the frame work of the Rules and procedure contemplated

therein. The power of review of this Court may not be extended to the substitution of the Court's view on the suitability of the 3rd respondent *vis-a-vis* the petitioner.

20. Finally, the learned Advocate General would submit that legal standard which has been evolved by the British Courts that what a “Reasonable Man in the circumstances would have taken decision ought to be the yardstick to be applied by this Court. He would therefore, appeal to this Court that if the impugned appointment is in order in the perception of a “Reasonable Man”, the judicial review may not extend beyond the perceptive framed work of the “Reasonable Man” and interfere with the appointment by substituting its views.

21. Mr.N.G.R.Prasad, learned counsel for the petitioner, by way of reply would submit that the petitioner has filed a reply affidavit strongly denying the allegations of plagiarism. According to the reply affidavit, till date no notice has been issued to the petitioner on the said allegation. According to the learned counsel, Doctorate Degree (Ph.D.) was conferred on the petitioner in 2015 itself and in that regard, no enquiry nor any show

cause notice was ever issued. He pointed out that Ph.D. degree was conferred by High Power Committee of the University where the petitioner had done her Research and the Court cannot sit in judgment over the Committee's recommendation for conferring Ph.D on the petitioner.

22. According to the learned counsel, the other allegation of irregularity was invented only to defeat the just claim of the petitioner, since no charges were framed against her nor any show cause notice was issued in regard to the allegations. These allegations have been concocted with a malicious view to paint the petitioner in poor light in order to justify the appointment of the 3rd respondent, whose appointment is otherwise tainted with mala fides and illegality.

23. The learned counsel, Mr.L.Chandra Kumar, appearing for the 3rd respondent would submit that the 3rd respondent was more suitable candidate to be appointed as HoD because of his administrative experience. In fact, the learned counsel would submit that because of his ability and acumen required for the post, he was made additional charge as DCE for a period of five months from March, 2020 and therefore, he was eminently

suitable to be appointed as DCE. According to the learned counsel, the petitioner having involved in financial irregularities and also in plagiarism, was not entitled to question the appointment of the 3rd respondent. On the other hand, the 3rd respondent enjoyed a clear record of service for the relevant period of five years and also acquired vast administrative experience and therefore he was found to be most suitable in terms of the Rules. In matters of appointment to Selection Post, the claim of seniority by the petitioner over the 3rd respondent is of no relevance.

24. The learned counsel would also submit that the 3rd respondent has already taken charge as DCE on his appointment immediately with effect from 17.08.2020 and has been discharging his duties. In fact, the learned counsel would submit that in view of the stay order granted by this Court, the functioning of the DCE has been paralyzed. The learned counsel would finally add that the petitioner, in view of the allegations levelled against her, has no *locus standi* to question the appointment of the 3rd respondent.

25. This Court considered the submissions of Mr.N.G.R.Prasad, the learned counsel for the petitioner, Mr.Vijay Narayan, the learned Advocate

General, assisted by E.Manokaran, learned Spl.G.P. and Mr.Karthikai Balan, learned Government Advocate for respondents 1 and 2 and Mr.L.Chandrakumar, the learned counsel for respondent No.3. Perused the entire materials and pleadings placed on record including the Original Files/ACRs produced before this Court.

26. At the outset, this Court has to address the preliminary submissions made on behalf of the petitioner, that non-drawing up of panel for the year 2019-20 had deprived the petitioner of her original place in the panel and thereby denied a valuable opportunity of being considered for eventual appointment to the post of DCE. After retirement of one Dr.Sarumathi on 31.05.2019 as DCE, the petitioner was stated to have submitted representation requesting the Government for filling up of the post and from the records, it could be seen that the Government, in fact, originally issued G.O.Ms.No.95 Higher Education (F1) Department, dated 30.05.2019, notifying vacancy in the post of DCE as “1” for the year 2019-20. This Court interestingly finds a “Note for circulation” (Higher Education (F1) Department), dated 07.08.2020 wherein, the competent authority has recommended the petitioner’s name for consideration for the

appointment in 2019 vacancy. What happened ultimately to that recommendation raises more questions than answers, as no follow up papers were found to be available in the Files. On the other hand, ironically for the said year, the Government issued G.O.Ms.No.88 Higher Education (F1) Department bearing the signature of the appointing authority dated 17.08.2019 after a period of one year from the date of issue of G.O.Ms.No.95 dated 30.05.2019, notifying the panel for the year 2019-20 as 'Nil'. The File papers disclose that due to administrative reason, the panel could not be drawn up. However, no specific administrative reasons have been spelt out or found in the File excepting the empty expressions “administrative reasons” as to why the panel could not be drawn up for the year 2019-2020, despite the notification under G.O.Ms.No.95 dated 30.05.2019 notifying the vacancy as 'one' for the year 2019-20.

27. When the petitioner herein approached this Court earlier in W.P.No.34654 of 2019 and obtained a direction from this Court on 13.12.2019 to consider her claim for appointment to the post of DCE within six weeks, no appropriate action appeared to have been initiated by the authority concerned. This Court could not lay upon any communication in

the file on this aspect towards implementation of the directions of this Court. The learned Advocate General has drawn reference to certain correspondences exchanged between the 2nd and 1st respondents in that regard. But none of the correspondences could show any action being initiated by the Government for drawing up of the panel for filling up the vacancy, that arose after 31.05.2019 after the direction was passed by this Court. Whether the reason for the delay was to eventually include the 3rd respondent in the panel or not as alleged by the petitioner would only be in the realm of presumption and no definite inference could be drawn categorically from the file that the delay was intentional and with a view to include the 3rd respondent in the panel in order to accommodate him ultimately in the position as DCE.

28. But what is curious and perplexing is that when G.O.Ms.No.95 was issued way back on 30.5.2019 notifying “one” vacancy for the panel year 2019-20, subsequent G.O. was issued only on 07.08.2020 and numbered as G.O.Ms.No.88 notifying as 'Nil vacancy' for the year 2019-20 on the eve of consideration of the present panel for the year 2020-21, which

included the 3rd respondent. It could be further seen in the File that when the 3rd respondent was recommended to be appointed as DCE in preference to others in the panel, process towards appointment to the impugned post, seemed to have started from 07.08.2020 at the level of Joint Secretary who signed the proceedings on 07.08.2020 and the Principal Secretary's signature was also affixed in the proceedings on 07.08.2020 itself. Thereafter, the Hon'ble Minister for Higher Education signed the proceedings on 13.08.2020 recommending the name of the 3rd respondent, which was counter signed by the Chief Secretary on the same day and on the following day, i.e. 14.08.2020, signature of the Hon'ble Chief Minister was affixed. Therefore, there is lot more explanation is required from the Government as to why G.O.Ms.No.95 was not acted upon and why G.O.Ms.No.88 was hurriedly issued by notifying the earlier vacancy as 'NIL', and on the same day, initiated the process of the present selection. Even assuming that it was a simple case of unintended mistake of the administration and not critically material to come to a conclusion on the preliminary objection, yet, ultimately this Court in exercise of the power of judicial review, has to evaluate the appointment of the 3rd respondent as

DCE for the year 2020-21 was in order in the above stated background.

29. The first Government Order issued in this regard is G.O.Ms.No.98 Higher Education (F-1) Department dated 14.08.2020 i.e. when the petitioner came to know about the inclusion of the 3rd respondent. The G.O.Ms.No.98 in para 2, it is stated as under:

“After careful examination, the Government approved the name of Dr.C.Poornachandran, Principal, Government Arts College, Paramakudi for inclusion of the panel for promotion to the post of Director of Collegiate Education for the year 2020-21”.

30. From the above, it could be seen that on 14.08.2020, it was only a disclosure of empanelment of all the eligible officers and the empanelment as per para 3 of the G.O. to be displayed in the Notice Board in order to receive any objections from the Officers in the feeder grades. Para 3 thus reads as under:

"The Director of Collegiate Education is directed to display the orders issued in Notice Board and send the copy of the said order to the Regional Joint

Directors of Collegiate Education and Grade-I Principals through Registered Post. Any person who wishes to make appeal against his/her non-inclusion in the panel shall do so within a period of two months from the date of issue of this order”

On the same day, the Government announced the appointment of the 3rd respondent vide G.O.Ms.No.99 Higher Education (F1) Department dated 14.08.2020 notwithstanding para 3 of the earlier G.O.Ms.No.98 as extracted above.

31. By another G.O.Ms.No.100 dated 14.08.2020, the Government has appointed the petitioner and three others as Officers on Special Duty (OSD) to be on par with the post of DCE. This was obviously on consideration of the seniority of the petitioner and 3 others over the selected candidate, the 3rd respondent herein. This Court in the circumstances, is unable to appreciate as to how such important appointment to the post of the HoD could be carried through with undue haste, without even providing a time lag between the publication of the panel and the final selection. It is also quite strange to find that the competent authority had signed the

appointment of the 3rd respondent on 13.08.2020, the panel was prepared and published on 14.08.2020 and thereby, the very display of panel was intended to be a *fait accompli*. Moreover, the Hon'ble Higher Education Minister has simply opined in the relevant file that the 3rd respondent was to be appointed (preferred) on the basis of administrative experience and others dutifully followed the opinion and affixed their signatures in the file. Ultimately, what was the decision of the appointing authority and on what basis the 3rd respondent was chosen, cannot be found in the files, as the suitability aspect of the 3rd respondent *vis-a-vis* other candidates was not supported with any shred of material and made available in the files.

32. When the G.O.Ms.No.98 reads that objections need to be called for, this Court is unable to comprehend the purpose behind calling for objections once it was announced on 14.08.2020 itself, the promotion of the 3rd respondent. The calling for objections from the Officers in the feeder Grade, to the empanelment on one hand and appointing the 3rd respondent on the same date (14.08.2020) on the other is an exercise in inanity and a travesty of fair administrative requirement to announce the panel first as

prelude to the final appointment later. Wherefrom such procedure is to be adopted remains unexplained. Even otherwise, from a perusal of the original records, the 3rd respondent was already selected for appointment and the appointment was also approved by the competent authority on 13.08.2020 and therefore, the G.O.Ms.No.98 issued announcing the panel can only be taken as an act of improper representation, as if the panel was being drawn up with eligible candidates towards consideration of appointment from one among the empanelled officers. The manner in which the appointment was pushed through hardly inspired this Court as to the bona fides of the Government in the matter of appointment of the 3rd respondent.

33. Even assuming that, the procedure and method adopted by the Government was the same even earlier in such appointment, in the absence of any time gap between the preparation of the panel and the consideration of inter se merit, ability and suitability among the empanelled candidates becomes questionable as to when the competent authority had the occasion to consider the *inter se* merit of the candidates, in terms of the relevant Rules when so much so is canvassed placing great emphasis on merit,

ability and suitability as the foundational consideration for the appointment. But what was the basis of assessment and what was the material relied upon in choosing the best candidate was not forthcoming at all. This Court's effort to fathom out any material in the files supporting the candidature of the 3rd respondent for his relative ability, merit and suitability in preference to the other empanelled candidates, was in vain. The relevant Files which were circulated for perusal of this Court do not contain any material in favour of the 3rd respondent to justify his preference by the Government, except the Note of the Hon'ble Minister for Higher Education that in view of his administrative ability, the 3rd respondent be promoted and what is the binding role of the Hon'ble Minister in such appointment in terms of the relevant rules and whether the preference indicated by him is to be obeyed faithfully is another issue which this Court is not inclined to unravel, as the impugned appointment could be tested as to its validity on other aspects.

Therefore, it remains a conundrum that the 3rd respondent is found to be more meritorious and suitable for the subject appointment, without any modicum of material justifying such conclusion by the competent authorities.

34. It is needless to mention that when *inter se* merit comes up for consideration among the empanelled candidates, the competent authority has to have some material for forming his opinion in the matter of subjective consideration, in preferring one candidate over the other. The authority is not expected to form an opinion on the basis of his predilections and fond preferences, extraneous to the mandatory requirement of the Rule, namely merit, ability, suitability etc. The words merit, ability or suitability which were harped upon by the respondents seeking to sustain the impugned orders are only decorative or cosmetic expressions in the absence of any valid materials to lend substance or support to such qualities. Otherwise, interpretation of these expressions, merely would be a vacuous semantic exercise, not germane to the adjudication of the *lis*. The authorities behind the cloak of merit and the so-called subjective consideration cannot be permitted to shield the impugned appointment from the judicial review, contending review in such matters is beyond the pale of justiciability. The concept of subjective consideration is no doubt in the realm of forming an opinion by the appointing authority contrary to objective assessment, and the Courts would not in the normal

circumstances, venture into the cerebral process of evaluation involved in the decision making of the appointing authority, provided such process resulting in the final decision was edified on some relevant material and source. In this case, this Court finds that the so-called attributes of better merit, ability and suitability of the 3rd respondent have not been demonstrated to have emerged from any material at all.

35. Normally, while filling up of important posts like the present one, the appointing authority ought to be guided by relevant and relative benchmark of the candidates concerned. In order to ascertain what was the benchmark that was considered as the foundational material for the assessment of the candidate, this Court, called for the production of Annual Confidential Reports (ACRs) of all the empanelled candidates. In terms of the relevant Rules, ACRs of the last five years preceding 2020-21, of the candidates are to be taken into consideration was specifically provided for under Rule 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

36. The learned Special Government Pleader however, would

respond that the ACRs of the Officers for the last five years were not available at all, but for the years 2018-19 and 2019-20 were alone available. This Court perused the available ACRs and ultimately found that the ACRs were incomplete as the designation of the Reviewing Authority, the date of affixture of signature of the reviewing authority, etc., is not found and those columns are left blank. In some ACRs, after retirement of the Reporting Officer, her signature was affixed. In one ACR, very curiously, the Reporting Authority as well as Reviewing Authority is the same, viz, Joint Director, namely, Jothi Venkateswaran. Such sloppy upkeep of the ACRs hardly inspire confidence in this Court to hold that there was some material available for the assessment of the candidates. It appears to this Court that the remarks in the ACRs have been made off handedly without any care for its value and purpose.

37. If all the ACRs are taken cumulatively together as produced, it would only lead to an inexorable conclusion that all was not well with the “subjective consideration” narrative advocated on behalf of the Government. It is pertinent to mention here that this Court is appalled to find the way the File papers have been haphazardly arranged with little care

for its orderly upkeep. Many of the papers relating to the impugned appointment seemed to have been jumbled up and compiled disjointedly. In the circumstances, finding no assistance from the files produced, in order to appreciate the basis of the subjectivity gone into the assessment, this Court in search for guidance decided to examine the matter with reference to the contents of the counter affidavit and the arguments advanced by the learned counsels representing the respondents.

38. It is admitted that merit, ability and suitability are the important criteria for consideration of appointment to the selection post like the present one. In the counter affidavit filed on behalf of the Government, nothing was disclosed as to what was the benchmark which was adopted and followed for assessing the *inter se* merit of the empanelled candidates. In fact, the counter affidavit filed on behalf of the Government and also the counter affidavit filed by the 3rd respondent the focus is more on the shortcomings of the petitioner alleging plagiarism irregularity, etc., such allegations in response to the legal challenge by the petitioner are clearly intended to besmirch the petitioner's credentials with a view to save the appointment of the 3rd respondent, from interference of this Court. It is

unfortunate that both the official as well as private respondents instead of justifying the impugned appointment on the basis of the relevant records and the relative merit of the 3rd respondent, have taken recourse to mudslinging and sully the character and conduct of the petitioner, reducing the legal contest into an *ignoble judicial discourse*. The respondents cannot be allowed to justify the appointment on the basis of the petitioner's fault lines, ignoring the essence of the challenge by the petitioner. By bringing the credentials of the petitioner under a cloud, the 3rd respondent's appointment cannot sought to be justified.

39. In fact, from the files, it could be seen that the petitioner's name was recommended consistently for the promotion, as the allegations against her were not part of the consideration at all. This Court, in the circumstances, is unable to appreciate as to how the allegations against the petitioner could be played up by the respondents as if the petitioner at the relevant point of time suffered disqualification and was not found suitable. Ostensibly the allegations were brought up to prejudice the mind of this Court and divert its focus from the essence of the challenge. In this regard, it is crucial to refer to the impugned G.O.98, dated 14.08.2020. The said G.O.

mentioned three references, viz., G.O.440 dated 26.10.1990, which deals with one year norm, i.e. not an issue here as between parties. The second one is the 2nd respondent's letter No.14301/J2/2020 dated 22.7.2020. The said letter, in fact, is a certificate declaring that the petitioner was not facing any disciplinary action issued by the DCE which reads as under:

**Office of the Director of Collegiate
Education, Chennai-600 006**

Rc.No.14301/J2/2020

Dated: 22. 07.2020

CERTIFICATE

This is to certify that Dr.Geetha.G. who is working as Principal, Thiru Vi.Ka.Govt.Arts College, Thiruvarur has not come under any adverse remarks during the period from 02.05.2018 to till date.

No disciplinary action is pending against her and no punishment has been awarded during the above period.

Director of Collegiate Education(FAC)”

The third one is G.O.Ms.No.88 Higher Education (F1) Department dated 7.8.20 notifying “NIL” vacancy in the post of DCE for the panel year 2019-20 and apprising “ONE” vacancy for the year 2020-21. On the basis of the above certificate of recommendation by the then DCE, the 1st respondent issued Office Note as under:

“OFFICE NOTE:

Dr.G.Geetha,
Principal,
Thiru Vi Ka Government Arts College,
Thiruvavarur.

"The Director of Collegiate Education has recommended her name for inclusion in the panel for the post of Director of Collegiate Education, since she has more than one year of left over service. She is due to retire on 30.06.2023. The individual is fully qualified for promotion to the post of Grade I Principal/Joint Director of Collegiate Education. There are no adverse remarks in her personal files. No disciplinary case / action is pending. No punishment has been awarded.

2. In the circumstances, the name of Dr.G.Geetha, may be recommended for inclusion in the panel for the post of Director of Collegiate Education. For orders.

40. In fact, in the run up to the final preparation of the panel, in all the communications, the competent authority has consistently certified that the petitioner was fit and recommended for promotion to the post of DCE. Similar certificates were issued to all other candidates empanelled in this selection. There is also another interesting angle to the contention raised on behalf of the respondents stressing on the blemished career of the petitioner.

Along with G.O.Ms.Nos.98 and 99, G.O.Ms.No.100 dated 14.08.20 was issued, simultaneously appointing the petitioner and three other senior officers to the 3rd respondent as OSD on par with DCE with reference to G.O.Ms.No.440 dated 26.10.90. The said G.O. reads as under:

“The question of prescribing a minimum period of left over service prior to one's retirement, for promotion / appointment as Head of Department has been engaging the attention of the Government for some time past. The Government after careful examination of the matter, direct that, to be eligible for promotion as Head of a Department, an officer should have not less than one year minimum period of service before retirement. For those who do not have such a minimum period of left over service but are otherwise found to be fully qualified, fit for promotion as Head of Department and deserving recognition on the crucial date of preparation of panel shall be compensated by appointing them as Officer on Special Duty with a specific assignment and with the same scale of pay as that of the Head of Department. 2. All Departments of Secretariat are requested to amend the relevant special / Adhoc rules with which they are concerned, based on the above orders of the Government immediately.”

41. From the above, what falls out is that an Officer who is otherwise fit for appointment as HoD shall alone be compensated with OSD status. When the petitioner can be found fit for appointment as OSD notwithstanding the allegations against her, the same allegations are held against her is another lacuna, which demands credible answer from the authorities. Presumably the allegations have been put forth to discredit the petitioner's candidature and to credit the 3rd respondent with relative superiority. In these circumstances, this Court has to necessarily brush aside the allegations as being made to smear the *locus standi* of the petitioner to agitate her right and to remain in the contention for the subject appointment. Instead of justifying its action and sustaining the impugned appointment of the 3rd respondent on the unimpeachable ground that the appointment was indeed made only in terms of the procedure and the rule position, scandalizing the legal contest by making allegations against the petitioner, as if that alone will clinch the issue in favour of the impugned appointment is a downright attempt to reduce the constitutional jurisdiction of this Court in adjudicating the matters extraneous to the kernel of the challenge in the Writ Petition, presumably as a diversionary ploy to sidetrack this Court from examining the *inter se* claims critically. In the considered opinion of

this Court, picking holes in the character and conduct of the petitioner would certainly not advance the case of the 3rd respondent materially. In the counter affidavit filed on behalf of the Government, nothing is stated positively in favour of the 3rd respondent by pointing out any specific materials that were taken into account in support of the impugned action. The counter affidavit is woefully bald and bereft of any worthy substance, hardly convincing this Court towards reaching positive result. Moreover, it is further intriguing to note as to what happened to the candidature of Dr.C.V.Mythili who was ranked as No.2 in the panel and senior to the 3rd respondent. The said candidature, in fact, was credited excellent gradation as reflected in the ACRs and was also recommended for consideration. Strangely, nothing is disclosed whether she was in the reckoning at all, despite being senior and empanelled.

42. One more objection of the learned Advocate General that after coming into Tamil Nadu Government Servants (Conditions & Service) Act, 2016, G.O.Ms.No.368 dated 18.10.93 would have no application, this Court finds that this objection is contrary to the fact. The new Act itself referred to the said G.O. which could be found in Annexure-I appended to the Rules.

In fact, the entire procedure for preparation of the panel and promotion exercise is on the basis of said G.O. which obviously has been made as part of the of the statutory scheme. The preparation of the panel as delineated in Annexure I appended to the Act reads as under:

"I. Preparation of Estimate of Vacancies:

1.
2. Proposals to fill up the posts to Heads of Department (non IAS) will have to be initiated by the Secretaries to Government themselves three months in advance of the prospective date of retirement of the existing incumbent as all the relevant particulars would be available in the Secretariat. If the initiative to send the proposals is left with the Heads of Department themselves, there are found to be delays caused by subjective considerations, such promotion proposals will have to be suitably monitored by the Secretaries to Government themselves so that orders are issued before the retirement of the existing incumbent and the case of those who have a minimum service before retirement of the previous incumbent are not omitted because of administrative delay."

Therefore, the said submission is factually incorrect and liable to be rejected. In fact, the above requirement of advance preparation of panel was

not adhered to and it reinforces the preliminary objections made on behalf of the petitioner about non-preparation of panel three months before the retirement of the then existing incumbent Dr.Sarumathi on 31.5.2019.

43. In regard to the last submission made by the learned Advocate General that whatever the conclusion could be reached by a reasonable man, that reasonable man's perception should be the guiding basis for this Court, this Court is not inclined to accept such submission for the simple reason that the “Reasonable Man's theory” was invented during Victorian era of British times and the legal standard has also been adopted by Indian Courts over a period of time. But this Court is of the opinion that “Reasonable Man's Perception Standard” applied in legal parlance, cannot have any guiding force in the administrative law when the Government's action is being questioned in constitutional Court. The theory of perception of reasonable man may be applied in the domain of private law with reference to contractual matters and to some extent in criminal jurisprudence and that principle of reasonable man's perception cannot be *ipso facto* be applied in the sphere of disputes relating to public administration. Therefore, this Court is unable to persuade itself with the reasonable man's perception

theory, in the case on hand and be bound by such standard as a legal imprimatur. In fact, on the other hand, this Court is of the view that such submission is probably stemmed from desperation, as the Government having placed itself in the tight spot unable to support its action with any material substance, hitched on to the fragile advocacy of pleading "reasonable man's concept". The power of constitutional Court's review of this nature, cannot be left to be judged on the basis of what uninformed reasonable man could have decided in the circumstances. A lay man's view is no substitution of the Court's view premised on complex legal consideration, even though the reasonable man principle is an accepted legal fiction as a representative of prudent and sensible person.

44. Further, the arguments advanced on behalf of the Government by the learned Advocate General that in the matter of subjective consideration, the power of review of the Court is very limited, as this Court is not an expert to substitute its assessment over that of the appointing authority's decision, there cannot be two opinions on this aspect of the matter. However, what is to be seen in this case is whether there was any material at all in the first place to form an opinion by the competent authority. The

answer is in the negative. The judgment relied on by the learned Advocate General may not be pitch forked in the factual matrix of this case, unmindful of its applicability. Subjective considerations pre-supposed assessment of *inter se* merit, but no such assessment appeared to have been made at all. None of the judgments relied on, was founded on similar facts, where admittedly no material shown to have been the source of subjective consideration. Therefore, the decisions relied on do not help the case of the respondents a wee bit. First of all, no proper ACRs have been maintained in respect of the candidates concerned for the last five years. Rules stipulate that in order to assess *inter se* merit, ability and suitability, the procedure has been elaborated under Clause II of Section 7 of the Act, as under:

“Consideration of (2) Suitability:

In respect of suitability, the merit and ability with reference to the personal files (Annual Confidential Reports) for a period of 5 years prior to the crucial date as a check period should be taken into consideration. During the period of assessment of 5 years the following aspects should be taken note of:

- (i) Any punishment (major or minor) has been awarded
- (ii) Any charges under Rule 17 (b) or Show Cause Notice

under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are pending against him.

(iii) Any criminal case pending in the Court

(iv) Under suspension

(v) Any case is pending in the Tribunal for disciplinary proceeding

(vi) Any enquiry is pending with D.V.A.C

(vii) Adverse remarks in the Personal File”

45. According to the above rule in respect of suitability, merit and ability will have to be considered with reference to ACRs of the candidates of the last five years prior to the crucial date. However, for non-availability of ACRs of all the empanelled candidates of the last five years, no semblance of explanation was forth coming from the 1st respondent. Nothing is whispered in the counter affidavit on this most crucial aspect. Therefore, this Court is forced to draw adverse inference against the government, more particularly in view of the fact that the 3rd respondent has chosen to file ACRs for the last five years in the typed set of documents. Even assuming that the Government has not been maintaining proper ACRs

for the last five years, then the question arises as what was the benchmark adopted in the selection. The Court would certainly not allow the authorities to hide behind a smoke screen on the premise of merit, ability and suitability, as a blanket cover for their action which can otherwise be judicially reviewed by this Court.

46. In the conspectus of the above discussion, this Court is compelled to come to a conclusion that there has been wholesale violation of the Rules and the procedure, as the 1st respondent unfortunately has handled the important exercise of appointing HoD in a most cavalier fashion, opposed to fair play and good conscience. This Court, therefore, finds that the promotion of the 3rd respondent is not only contrary to the Rules, but also the appointment appears to have been actuated on extraneous consideration. The procedure followed and the method adopted by the 1st respondent in appointing the 3rd respondent is riddled with infirmities all over and hence, there cannot be any hesitation for this Court to come to a finding that the impugned promotion has to go lock, stock and barrel.

47. Before parting with this case, this Court finds that the

administration has been complacent and careless in maintaining proper records/files of the Officers and particularly, the prosaic manner in which, the ACRs were written and shoddily maintained even in regard to the ACRs that were produced before this Court giving the impression that the Government is not eager to attach due importance to the qualities of merit, ability, etc. The disorderly upkeep of the Files/ACRs is not only disconcerting but shocking too. Therefore, in order to ensure that future appointments are to be insulated from the infirmities that affected the present appointment, this Court finds it necessary in public interest to issue suitable direction. In fact, the necessity becomes mandate when admittedly no bench mark has been evolved as on date in order to assess the *inter se* merit of the candidates. The ACRs were not maintained properly and the personal files relating to the Officers found to be incoherent and unintelligible, raising doubts of its reliability. The documents, notings, correspondence and the Government Orders were compiled in a slipshod manner and this Court could not see any semblance of orderliness in the arrangement of the File papers.

48. In the circumstances, the Government is directed to evolve a fair

procedure in the process of assessment of *inter se* merit and ability of the Officers, without giving any room or scope for possible abuse in the future selection. In this regard, the Government may also constitute a high power Committee comprising eminent administrators with vast experience for framing definite and proper guidelines in order to evolve proper standards of benchmark to be applied uniformly in respect of appointments to all selection posts.

49. Since the post of DCE is a crucial and important position, the 1st respondent is directed to initiate whatever measures as indicated above that are necessary and expedient towards achieving reliable and acceptable standards, supporting the statutory requirement of merit, ability and suitability in appointment to the selection posts in order to avoid such appointments becoming too easily vulnerable to frequent judicial interference.

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50. The Government may initiate and complete the above exercise within a period of three months from the date of receipt of a copy of this order.

51. In the result, the Writ Petition is partly allowed and the impugned Order in G.O.Ms.No.99 High Education (F1) Department, dated 14.08.2020 is hereby quashed and consequently, the promotion of the 3rd respondent is set aside. As far as G.O.Ms.No.98 Higher Education (F1) Department, dated 14.08.2020 is concerned, this Court finds no reason to quash the same in the circumstances as narrated above. As far as G.O.Ms.No.100 Higher Education (F1) Department dated 14.08.2020, the same stands quashed in so far as the petitioner and Dr.C.V.Mythili are concerned. The limited quashment of G.O.Ms.No.100 Higher Education (F1) Department dated 14.08.2020 is on the basis of the peculiar facts and circumstances that the very appointment of the petitioner and Dr.C.V.Mythili as OSD was inconsequence of the promotion of the 3rd respondent as Director of Collegiate Education vide G.O.Ms.No.99 Higher Education (F1) Department dated 14.08.2020. The petitioner and the other candidate Dr.C.V.Mythili whose names would also come up for consideration for promotion to the post of Director of Collegiate Education when a review promotion exercise to be done pursuant to the directions of this Court.

52. As far as Dr.D.Freeda Gnanarani and S.Manimegalai are concerned, as they were found ineligible by applying the one year norm in terms of G.O.Ms.440 dated 26.10.1990. Their postings as OSD need not be set aside as the contest is only between the petitioner and Dr.C.V.Mythili on one hand and 3rd respondent and two other empanelled candidates on the other.

53. The official respondents are directed to redo and review the exercise of appointing/promoting the eligible candidates to the post of Director of Collegiate Education after framing proper benchmark guidelines in order to assess *inter se* merit, ability and suitability of the candidates who come within the zone of consideration.

54. It is made clear that the existing material which was produced before this Court is either unworthy or inadequate and cannot be relied upon for the purpose of *inter se* assessment of merit and ability of the contesting candidates. Such review exercise has to be carried out with reference to date of the impugned empanelment and from the date of promotion of the 3rd

respondent. No costs. Consequently, all connected WMPs are closed.

Suk/dn

29.10.2020

Note: Issue order copy by today itself

Index: Yes/No

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W.P.No.12495 of 2020

V.PARTHIBAN, J.

dn/suk



Order in
W.P.No.12495 of 2020

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