

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.24654 of 2014
and
M.P.Nos 1 of 2014, 1 of 2015
and
WMP.No.731 of 2016**

V.Selvaraj

.. Petitioner

- Vs -

1.The Director of Collegiate Education,
D.P.I. Complex
College Road, Chennai 600 006.

2.The Joint Director of Collegiate Education,
Vellore Region, Vellore-9.

3.The Registrar,
University of Madras,
Chennai 600 005.

4.The Secretary,
Pachaiyappa's Trust,
Pachaiyappa's College Campus,
Chennai 600 030.

5.The Principal,
Pachiyappa's College for Men,
Kanchipuram -1.

6.S.Gopalakrishnan

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the respondents 1 to 3 to grant approval of the petitioner's appointment as Asst. Professor in Chemistry in 5th respondent's college in the light of appointment order made in R.C.No.a1/2731/13-II dated 02.06.2014 by the 4th respondent herein.

For Petitioner : M/S.D.Murthy

For Respondents : Mr.K.Karthikaibalan, GA, for RR-1 & 2
: M/S.M.Devendran for R-3
:M/S.K.V.Sunderarajan for R-4
:Mr.R.Dhandapani for R-5
: M/S.R.Muralidharan for R-6

ORDER

Direction is sought for in this writ petition on respondents 1 to 3 to grant approval to the petitioner's appointment pursuant to the appointment issued to the petitioner on 2.6.14 by the 4th respondent herein.

2.It is the case of the petitioner that he has completed his graduation in B.Sc., Chemistry in the year 2003 and, thereafter, completed Post Graduation in M.Sc., Chemistry in the year 2005. The petitioner has subsequently completed M.Phil in the year 2006. Thereafter, he had pursued his P.hd in Chemistry and completed it in the year 2014. It is submitted that he was working as Guest

Lecturer in Chemistry in 5th respondent's college since 16.07.2008 till 3.4.2014 on consolidated basis besides he served as Lecturer in Chemistry in Kanchi Arts and Science College, Kilambi for a period of one year and four months from 03.01.2007 to 30.04.2008.

3.It is the further case of the petitioner that the 4th respondent issued a notification dated 18.02.2014 to fill up the posts of 16 Assistant Professors (Chemistry) in its 6 colleges. The petitioner submitted his application online and was allotted with registration No.10302796. Pursuant to the said application, call letter dated 02.05.2014 was received by him from the 4th respondent for interview and for certificate verification and he attended the interview conducted by the Selection Committee and his certificates were verified. Thereafter the 4th respondent had issued an appointment order dated 02.06.2014, vide R.C.No.A1/2731/13-II appointing the petitioner as Asst. Professor (Chemistry) and posted him in the 5th respondent College. Accordingly, he has joined in service on 04.06.2014 and submitted his joining report which was duly accepted by the 5th respondent, however he was not allowed to discharge his duties as such and he was prevented from signing the attendance register while similarly selected faculties were permitted to sign the attendance register.

Aggrieved by the same, he filed a W.P.No.14889 of 2014 against the respondents before this Court and sought for mandamus to direct the respondents 1 to 3, to grant approval of his appointment as Asst. Professor in Chemistry in the 5th respondent college in the light of the appointment order dated 02.06.2014 issued by the 4th respondent herein. Subsequently amendment petition in WMP No.34659/2016 was filed on 7.6.18 seeking amendment of the prayer on the ground that the petitioner's appointment was cancelled on 04.06.2014 which was allowed by this Court. It is the averment made by the petitioner that while the matter is sub-judice, the 4th respondent/Trust Board has unilaterally appointed the 6th respondent as Asst. Professor (Chemistry) in the 5th respondent College in the place of the petitioner without taking note of the existence of valid appointment order dated 02.06.2014, ignoring the pendency of WP.No.14889/2014 and, thereby, the 4th respondent attempted to get approval of the said appointment from the 6th respondent. As against the same, the present writ petition is filed.

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4.Learned counsel appearing for the petitioner submitted that though the respondent filed a detailed counter, however the crucial issue involved is whether the petitioner's candidature was approved by the Selection Committee

and whether the Ph.d., obtained by the petitioner is as per the norms of the UGC and is in consonance with the requirements of the notification issued by the respondent college.

5.It is the further submission of the learned counsel for the petitioner that as per the resolution No.26, dated 20.05.2014, the committee had approved the petitioner's candidature, which culminated in the issuance of the appointment order. Further, it is the submission of the learned counsel that the petitioner was found to be more meritorious than the 6th respondent herein, which resulted in appointment order being issued in his favour. However, curiously, not only his appointment order was cancelled, but the 6th respondent has been appointed in his place, when the matter was subjudice. It is therefore the submission of the learned counsel that the act of the 5th respondent in cancelling the appointment of the petitioner, when the matter was subjudice and acting in detriment to the petitioner, who was selected by the selection committee based on his merit and ability, the act of the 5th respondent in seeking approval of the appointment of the 6th respondent is only to cause grave prejudice to the petitioner and, therefore, the appointment of the petitioner has to be approved and to that effect, this Court may direct the official respondents to grant approval to the

appointment of the petitioner.

6.Initially counter affidavit has been filed by the 4th respondent on 25.3.19, in which the 4th respondent has taken a stand that the educational qualifications obtained by the petitioner was not in tune with the notification, as he had obtained the the Ph.D degree only on 30.4.14, much after the publication of the notification. It is the averment of the 4th respondent that the said fact came to light only on verification of original certificates by the Principal, which led to the petitioner not allowed to join duty by signing the attendance and his appointment was therefore cancelled. It is the further stand of the 4th respondent that the cancellation of the appointment was within the knowledge of the petitioner much before the filing of the present writ petition as the petitioner had filed another writ petition in W.P. 14889/2014, as stated by the 4th respondent in the additional counter filed before this Court on 4.12.20. Therefore, it is the submission of the 4th respondent that the petitioner has approached this Court with unclean hands and, therefore, is not entitled to any relief.

7.It is the further stand of the 4th respondent that erroneously in the

counter filed on 25.3.19, the fact of erroneous and improper appointments made were not brought to the notice of this Court, one of which was that of the petitioner and to plug the said error, the additional counter has been filed, in and by which the 4th respondent has averred that the appointment of the petitioner and the 6th respondent has been made on 2.6.14, which fact has been omitted to be mentioned and erroneously it was averred in the initial counter that the 6th respondent has been appointed in place of the petitioner.

8.It is the further averment of the 4th respondent that the petitioner was not possessed of the requisite qualification on the date when he applied for the post, as he was not in possession of the SLET qualification nor had completed Ph.D before 2009, being the cut off date for exemption of SLET.

9.It is the further averment of the 4th respondent that the selection committee, in its resolution had not recommended the name of the petitioner, as would be evident from the resolution itself, and the 6th respondent was alone recommended for being appointed. However, by mistake, the petitioner was also provided with an order of appointment, and many such appointments having been made, the said irregularity has called for action from the President of the

Trust, who has issued show cause notice in respect of irregular and improper appointments.

10.It is the further averment of the 4th respondent that the marks obtained by the 6th respondent is over and above the marks obtained by the petitioner and, therefore, he was rightly selected for appointment by the Committee and he was provided with the order of appointment, but by oversight or sleight of hand, the petitioner has also been provided with an order of appointment, which has subsequently been cancelled. The overall selection process has been undertaken in a fair and transparent manner and there is no illegality or irregularity in the selection process and, therefore, the relief sought for by the petitioner is wholly misconceived.

11.Respondents 1 to 3, who are the official respondents, have filed a counter, which, in sum and substance, proceeds on the same lines as the counter filed by the 4th respondent and it is prayed that no relief as sought for could be granted to the petitioner.

12.This Court heard the elaborate submissions of the learned counsel for

the petitioner, who took much pains to reiterate the contentions as raised in the grounds, which has been shown above and submitted that the act of the 4th respondent in cancelling the appointment of the petitioner is in violation of principles of natural justice and it was only for the purpose of accommodating the 6th respondent and, therefore, the respondents 1 to 3 should be directed to approve the appointment of the petitioner. However, the said contention is controverted by the learned counsel appearing for the respondents by submitting that the selection and appointment of the petitioner, as claimed, is not supported by the records and, therefore, submitted that the petitioner not having been selected, the appointment order issued to the petitioner is *non-est* in law.

13.This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

14.Though contentions and counter contentions have been raised by either side in support of their stand, however, it is to be pointed out that the relief sought for by the petitioner is only a mandamus for a direction to the respondents 1 to 3 to approve the appointment of the petitioner. However, it is

borne out by record that the appointment of the petitioner was cancelled way back on 4.6.14, which fact has also been placed before this Court in the earlier round of litigation in W.P. No.14889/14 and this Court, vide order dated 7.2.20, while recording the fact that the appointment order issued to the petitioner stood cancelled, had dismissed the petition as infructuous, however, granting liberty to the petitioner to challenge the aforesaid cancellation order. It is to be pointed out in this regard that the order aforesaid, records that the cancellation of the appointment has been informed to the Court by the learned counsel for the petitioner. Once the petitioner has come to know about the cancellation of the appointment order and has also invited the above order from the Court, wherein liberty was granted to him to challenge the said cancellation order, it seems no endeavour has been taken by the petitioner to challenge the cancellation order, but to only pursue this writ petition. It is also not placed before this Court by the learned counsel for the petitioner that the cancellation order has been challenged before this Court by filing any writ petition. In such a backdrop, the relief sought for in this writ petition could only be termed to be a misconceived relief, as there being no valid appointment order in the eye of law, seeking a direction to respondents 1 to 3 to approve the appointment of the petitioner, when there being no valid appointment subsisting, is nothing but a

misconceived relief, which cannot be granted and the only course open to this Court at the present point of time is to dismiss the present writ petition as infructuous. But, this Court is also mindful of the fact that the issue pertains to the year 2014 and two rounds of litigation have already been laid before this Court, the second of which is the present one and leaving the ball in the court of the petitioner to file another writ petition challenging the said order of cancellation would not only lead to multiplicity of proceedings, but would also protract the proceedings leaving the petitioner as well as the 6th respondent vulnerable and, therefore, in the interest of justice and in the fitness of things, this Court, in exercise of its extraordinary powers under Article 226 of the Constitution, deems it fit and necessary to dwell deep into the issue and render a finding as to the validity of the appointment of the petitioner so as to give a quietus to the issue on hand. Though it may be argued that the petitioner is being deprived of challenging the cancellation order, however, it is to be pointed out that the petitioner having kept quiet for almost six years, this Court, of its own volition, is taking up the issue as to the validity of the cancellation order, as no fruitful purpose would be served in relegating the matter back to the petitioner to once again fight it out before this Court as it has been the oft quoted saying that '*justice should not only be done, but should also seem to be done*'. In

such a backdrop, this Court is imploring the task of finding out the truth or otherwise in the cancellation of the petitioner's appointment.

15.To address the validity of the appointment order issued to the petitioner, it becomes just and necessary for this Court to call upon the 4th respondent to produce the original resolution before this Court to find out whether the petitioner was if at all selected by the selection committee.

16.Pursuant to the directions of this Court, the 4th respondent produced the original records pertaining to the resolution relating to the recommendations made with regard to the appointment of the various persons for different faculties in the college under the control of the 4th respondent Trust. A perusal of the said resolution, more especially Resolution No.26, which has been the fulcrum of argument advanced by the learned counsel for the petitioner reveals that the name of the petitioner is nowhere found in the selected list of candidates by the selection committee. It is also to be noted that there are no additions or deletions in the resolution and that the resolution is signed by all the members comprised in the Committee, which has been acted upon by the 4th respondent to appoint the 6th respondent. It also further transpires from the said

minutes of the selection committee that the 6th respondent has obtained 41 marks, while the petitioner has obtained only 18 marks. Therefore, the interse merit between the 6th respondent and the petitioner leans more in favour of the 6th respondent. Further, the minutes of the selection committee also reveals that for the post of Assistant Professor in Chemistry, the 6th respondent has been shown as the selected candidate and the name of the petitioner does not figure anywhere in the said proceedings of the Combined Selection Committee. That being the case, the stand of the petitioner that he was one of the persons selected by the Combined Selection Committee and his name finds place in the selection list is not supported by records.

17. In this backdrop, this Court has to turn itself to the additional counter affidavit filed by the 4th respondent, wherein, it has been unequivocally stated in para-6 that this Court, in one of its order dated 18.12.19, which pertains to appointment of Principals, has observed that the various appointments made to the College by the erstwhile Trustees were not in consonance with the relevant Rules and Regulations and in that context, with regard to various notifications issued for the post of Assistant Professors, appointments had been made by the erstwhile Trustees, which were found to be in violation of the relevant Rules and

Regulations and, therefore, after scrutiny of the record, 152 such appointments were found to be illegal as those candidates were found to be unqualified, which prompted the President of the Trust to issue show cause notice to those persons for cancellation of their appointment. Therefore, it clearly transpires from the said counter that all is not well with the Management of the Trust by the erstwhile Trustees and it leaves a sour taste in the mouth of this Court, but judicial discipline warrants this Court not to amplify much on the conduct of the Trust and the erstwhile Trustees. Had the Trust been functioning properly under the erstwhile Trustees, the scenario, as envisaged above, leading to the issuance of show cause notice for cancellation of more than 152 appointments would not have arisen. However, the said appointments, including the one pertaining to the petitioner, wherein the name of the petitioner was not found in the list of selected candidates, but who has been provided with an order of appointment, were the cause of concern for the Trust leading to a large scale revamping and investigation of the appointing process. The petitioner being not a direct beneficiary for appointment on the basis of the resolution of the Combined Selection Committee, the appointment order issued to the petitioner leaves a lot to be said against the petitioner, but to maintain the judicial decorum this Court desists itself from saying anything further, but to merely hold that nowhere the

petitioner was selected and the appointment order issued to the petitioner is wholly unjust and illegal, which has been rightly found out and cancelled by the 4th respondent immediately and, therefore, the said cancellation could in no way be said to be arbitrary, illegal or unsustainable in the eye of law.

18. For the reasons aforesaid, this Court is of the considered view that while the prayer sought for in this writ petition has become infructuous, the cancellation of appointment order of the petitioner is just and reasonable and does not require any interference and, accordingly, this writ petition is liable to be dismissed. Accordingly, the same is dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, in the circumstances of the case, there shall be no order as to costs.

07.12.2020

Index : Yes / No
Internet : Yes/No
jrs/GLN

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To

1.The Director of Collegiate Education,
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Chennai 600 006.

2.The Joint Director of Collegiate Education,
Vellore Region,
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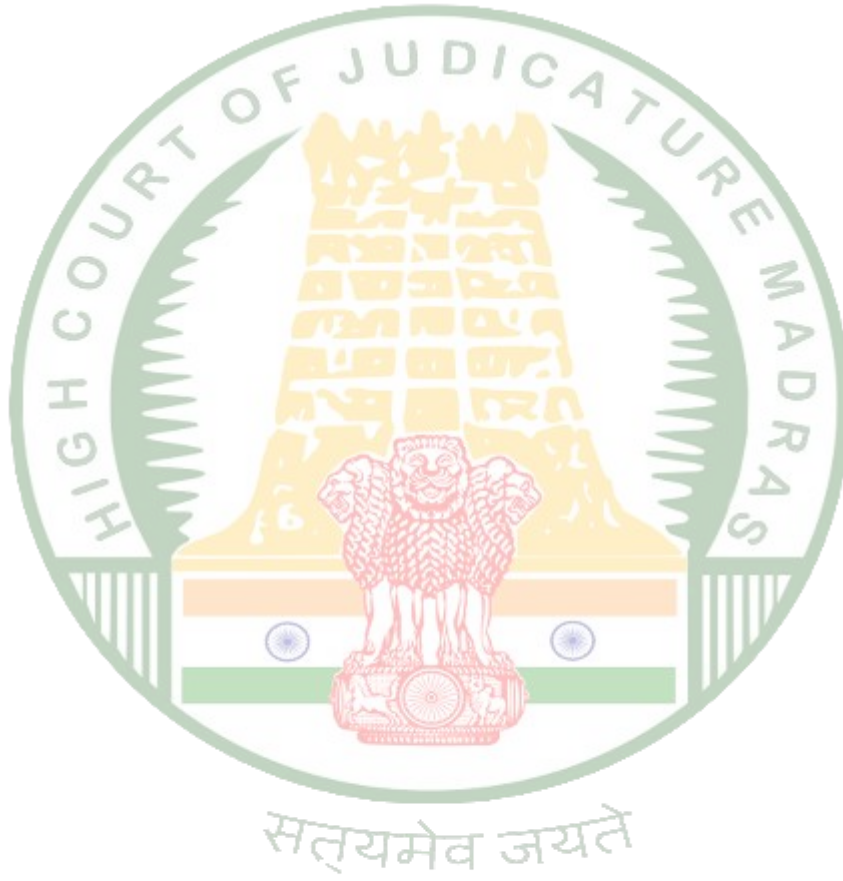
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5.The Principal,
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6.S.Gopalakrishnan,
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M.DHANDAPANI, J



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