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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.10.2021	23.12.2021

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.No.2271 of 2018 and
C.M.P.Nos.13989 of 2021 and 18130 of 2018

The University of Madras,
Rep. By its Registrar,
Chennai-600 005.

... Appellant/1st Respondent

-vs-

1. Dr.S.Bhaskaran

... Respondent/Petitioner

2. P.Dhanasekaran

3. V.Kalaiappan

4. University Grants Commission,
Rep. by its Chairman,
Bahadur Shah Zafar Marg,
New Delhi-110 002.

... Respondents/Respondents

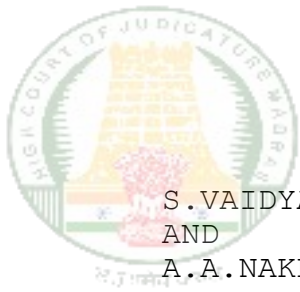
(R4 impleaded as per order dated 31.10.2018 in CMP.19448/18)

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to
set aside the order dated 23.10.2017 made in W.P.No.8601 of
2017.

Prayer in W.P.No.8601 of 2017:

Writ Petition filed Under Article 226 of the Constitution
of India, to issue a Writ of Mandamus, directing the first
respondent to promote the petitioner as Assistant Librarian in
the University of Madras pursuant to the petitioner's
representation dated 25/3/2013 to the first respondent.

For Appellant : Mr.Stalin Abhimanyu
For R1 : Mr.Sudharshana Sundar
For R2 & R3 : Dr.A.E.Chelliah, Senior Counsel
For Mr.R.Prathaban
For R4 : Mr.P.R.Gopinathan



J U D G M E N T

S.VAIDYANATHAN, J.,
AND
A.A.NAKKIRAN, J.,

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This Writ Appeal has been filed, challenging the order dated 23.10.2017, passed by the learned Single Judge in W.P.No.8601 of 2017, in and by which, relief was granted to the 1st Respondent for appointing him as Assistant Librarian

2. For the sake of brevity, the parties are referred to by their original nomenclature in this Writ Appeal as "Appellant/University, R1/Writ Petitioner, R2, R3 and R4/UGC" in this judgment.

3. It was the case of the 1st Respondent / Writ Petitioner that he has been working as Technical Officer and is eligible to hold the post of Assistant Librarian. Though he had sufficient qualification, namely, M.Phil., he was not considered for promotion to the post of Assistant Librarian and four other persons were promoted to the said post. On enquiry, it was informed to him that as he was an Assistant Technical Officer, the post of Assistant Librarian was filled up from the cadre of Technical Officer.

3.1. It was further case of the Writ Petitioner that in the Syndicate Meeting held in the month of March, 2013, it was decided to go ahead with the appointment of Assistant Librarians immediately after the Selection Committee Meeting. Thereafter, though his juniors, viz., R2 and R3 were called for interview, the name of the Writ Petitioner was omitted to be called for an interview. He made a representation dated 23.03.2013 to the University for suitable consideration and there was no response on the same.

3.2. It was the grievance of the Writ Petitioner that though his name ought to have been considered even in the year 2008, pursuant to the possession of requisite qualification, the reason given for not promoting him was highly untenable and was in violation of Article 14 of the Constitution of India. If the post is not a promotional post, then there should have been an advertisement for selection of Assistant Librarian. The act of the University in promoting juniors, when the senior is fully qualified, is highly arbitrary in nature.

3.3. It was stated by the Writ Petitioner that narrating all these facts, he filed a Writ Petition, the order of which is impugned herein by the University for a suitable direction. Learned Single Judge, after a thorough perusal of the entire



averments made in the Writ Petition, held that denial of promotion on the ground of lack of qualification particulars in the proposal is highly improper and is unsustainable. It was urged that though his name was sent for legal opinion along with R2 and R3, pursuant to non-furnishing of particulars with regard to the qualification of the Writ Petitioner, it was simply returned by the Legal Advisor on the ground of bereft of educational qualification and hence, it was crystal that though he had completed M.Phil., and Ph.D., qualifications, he was purposefully denied promotion so as to accommodate R2 and R3 herein. On that sole ground, learned Single Judge directed the University to grant promotion to the Writ Petitioner in the post of Assistant Librarian.

4. Learned Counsel for the Appellant / University submitted that the Writ Petitioner was initially appointed as an Assistant Technical Officer and thereafter, re-designated as Technical Officer and he, without having any vested right, had approached this Court and the learned Single Judge, without appreciating the promotional avenues in respect of the said post in a proper perspective, simply allowed the Writ Petition, thereby the procedure for selection of a candidate has been given a go-by. The selection to the post of Assistant Librarian is by way of direct recruitment and the Writ Petitioner has adopted the tactics obtaining the said post by way of promotion in a short cut method.

5. Learned counsel for the Appellant has also filed an affidavit dated 28.10.2021, stating that the Respondents 2 and 3 made a representation, stating that they belong to Scheduled Caste Community, having necessary qualification and requested the University authorities to consider their request for appointment as Assistant Librarian sympathetically. Based on their representation, in the Syndicate Meeting held on 12.08.2011, it was resolved to constitute an appropriate Selection Committee to conduct interview for them. After completing all the formalities and obtaining legal advice, finally, the appointment of Respondents 2 and 3 was ratified by the Syndicate in its meeting held on 26.04.2013. However, in the affidavit, it was fairly conceded in Paragraph No.18 that there were mistakes committed by the then Administration of the University and all steps are being taken now to rectify all mistakes committed earlier. It was further conceded that when the post of Assistant Librarian is not a promotional post, there was some blunder perpetrated in the previous administrative process.

6. Learned counsel for R2 and R3 represented that the Writ Petitioner was not qualified in 2012 and every time, he



was blocking the promotion of others. Based on the representation made by R2 and R3 and after ascertaining their qualification, they were called for interview by the Selection Committee and appointed as Assistant Librarian. They had come out successful in the NET examination as early as in 2004 and 1999 respectively, whereas the Writ Petitioner cleared his NET examination only in 2012 and made application after acquiring necessary qualification prescribed by UGC. Therefore, their promotion to the post of Assistant Librarian need not be disturbed.

7. The Impleaded Respondent, namely, UGC stated that UGC, which was enacted by Parliament under Entry 66, List II of the VII Schedule of the Constitution, plays the role of co-ordination and determination of standards in Universities. Before the learned Single Judge, it was stated that under service conditions existed at the relevant point of time, there was no occasion for consideration of the Writ Petitioner's claim for promotion. In the counter affidavit filed before this Court, the minimum qualification prescribed for the post of Assistant Librarian has been brought to the attention of this Court, which reads as under:

"4.5.3. University Assistant Librarian /
College Librarian

(i) A Master's Degree in Library Science / Information Science / Documentation Science or an equivalent professional degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) and a consistently good academic record with knowledge of computerization of library.

(ii) Qualifying in the national level test conducted for the purpose by the UGC or any other agency approved by the UGC.

(iii) However, candidates, who are, or have been awarded Ph.D degree in accordance with the "University Grants Commission (Minimum Standards and Procedure for Award of Ph.D Degree), Regulations 2009 shall be exempted from the requirement of the minimum eligibility condition of NET / SLET / SET for recruitment and appointment of University Assistant Director of Physical Education / College Director of Physical Education & Sports."

7.1. It was finally stated in the counter affidavit that the University of Madras is a State University, coming under the purview of UGC and is duty bound to adhere to the Regulations and its Amendments.



8. Heard the learned counsel on either side and perused the material documents available on record.

9. The Writ Petitioner has sought for promotion to the post of Assistant Librarian, who had initially worked as Assistant Technical Officer, and has been re-designated as Technical Officer in the technical side. Both the technical wing and the Library wing are completely different and it cannot be merged, as there are Rules to that effect. Assistant Librarian is the Feeder Category, which is meant only for Direct Recruitment. On a cursory look at the affidavit of the University itself, it is evident that the post of Assistant Librarian is not a promotional post, as neither the UGC Regulations nor the Standing Regulations of the University of Madras provide for such promotion. Of course, it is true that the Respondents 2 and 3 herein are qualified to be appointed as Assistant Librarian, but, at the same time, it cannot be lost sight of the fact that the post should be filled up by way of Direct Recruitment and unless until there is a proper notification / advertisement for the purpose of recruitment to the post of Assistant Librarian, they cannot be appointed as Assistant Librarian on the basis of the resolution of the Syndicate Meeting.

10. It is not the case of the University of Madras that Syndicate has got special powers or reservation to accommodate a person from the technical side to that of Assistant Librarian. Syndicate cannot act or pass a Resolution contrary to the Regulations, that too after the orders of this Court dated 12.10.2009 passed in W.A.No.1126 of 2006.

11. We want to emphasize that the promotion has not been made mistakenly, rather it has been done wantonly to satisfy somebody, for which, the Registrar, University of Madras has to be proceeded with departmentally. But, unfortunately, the previous Registrar is said to have retired from service and the Registrar has brought highly disrespect to the University. Though no Writ Appeal has been filed against the common order of the learned Single Judge in respect of M.Veerapandi and Selvi, who had filed W.P.Nos.11273 and 11274 of 2013 with the similar prayer, in our view, they are also not entitled to be promoted to the post of Assistant Librarian, unless they participate in the recruitment process. As stated supra, the post of Assistant Librarian is not a promotional post and merely because they possess required qualification, it does not mean that automatically, they should be posted as Assistant Librarian, contrary to the Rules and Regulations of UGC.



12. At this moment, we express our great displeasure over the act of the University for making the Court a party to the commission of illegality. It is argued on the side of the Respondents 2 and 3 that they are seniors to the Writ Petitioner, pursuant to acquiring qualification, prior to the Writ Petitioner. Even assuming that they are seniors, unless until they participate in the due selection process, they cannot be promoted to the post of Assistant Librarian, as no promotion is permissible to the post of Assistant Librarian. That apart, the prayer of the Writ Petitioner is for promotion to the post of Assistant Librarian and the learned Single Judge granted the relief sought for by the petitioner, thereby directing to extend promotion to him in the said post. In our considered opinion, when the promotion of R2 and R3 itself is bad, the order of the learned Single Judge in granting promotion to the Writ Petitioner on par with R2 and R3 is equally not justified. It is not known as to why the University has not filed any appeal against the order passed in W.P.Nos.11273 and 11274 of 2013, which amounts to adoption of selective tactics in respect of those persons and it is also not known whether there is any connivance or collusion between the Officials and the said persons.

13. In the annexure to the typeset of papers, it is seen that R2 and R3 made representations dated 17.09.2010, 22.12.2010 and 02.02.2011 to the Registrar of University of Madras for consideration of promotion to the post of Assistant Librarian. A glance at the representations, especially the one dated 02.02.2011, on the face of it, portrays that it is a kind of threat posed to the Management. SC/ST Association can make a request, but cannot threaten and shall not interfere in the administrative action of any institution so as to compel them to act in a particular manner they wanted.

14. In view of what is stated hereinabove, we find that the order of the learned Single Judge has no legs to stand and is liable to be set aside. To be more precise, none of the persons, including R2 and R3 herein, Veerapandi and Selvi, is eligible to be promoted to the post of Assistant Librarian, without adhering to the proper selection process, on account of the fraud committed by the University. Since the Respondents 2 and 3 have extracted works from them in the post of Assistant Librarian, the salary, if any paid to them shall not be recovered, however, they are not entitled to any benefits for the past services rendered in that post, for, as stated supra, their promotion to the said post itself perpetuated illegality.

15. Of late, it is painful to record here that the University of Madras now-a-days loses its reputation in a



rapid manner and in olden days, it was very proud to say that the degree was obtained from the University of Madras and was, once upon a time, regarded as a precious one. The existence of such reputation in the present days is a million dollar question. It is apposite to mention here that appropriate disciplinary proceedings for capital punishment shall be initiated against the concerned Officials for not maintaining absolute integrity and devotion to duty, which is unbecoming of a member of the service and such irresponsible Officials should be dismissed from service and their dereliction should be entered into their Service Register, so that their promotions and other benefits should be deprived. The umbrella of moral turpitude should be widened to deprive gratuity to the Officials and before depriving the gratuity, an opportunity shall be given to the person concerned, as on technical ground, on the failure to give an opportunity, the persons, who are involved in the act of moral turpitude, etc., should not be allowed to succeed to get their benefits. Though this Court smells rat in the action of the University, this Court has no other option, but to interfere with the order of the learned Single Judge, as this Court do not want to continue the illegality for ever and two wrongs cannot make a right.

16. With the above observation, this Writ Appeal is allowed and the order of the learned Single dated 23.10.2017 made in W.P.No.8601 of 2017 is hereby set aside. For the sake of repetition, it is made clear that the Writ Petitioner, R2 and R3 are not entitled to promotion to the post of Assistant Librarian, unless they succeed to such status in the manner prescribed by the UGC. Since the University of Madras has not clandestinely filed any appeal, this Court cannot pass any specific order against M.Veerapandi and Selvi regarding their dis-entitlement to the post of Assistant Librarian and it is for the University to decide with regard to filing of an Appeal and bringing of this judgment to the notice of the Court, hearing the appeal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

ar



To:

The Chairman,
University Grants Commission,
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2.The Registrar,
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Chennai-600 005.

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+4 ccs to Mr.K.Prathaban, Advocate Sr.NO. 69245

W.A.No.2271 of 2018

KSM(CO)

A.SK(07.01.2022)