



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.5799 of 2008

WEB COPY

1.G.Muthuvadivu

2.R.Vimalanathan

3.M.John Bosco

4.A.Rajendran

5.S.Essakkippappa

6.S.R.Vijaya

7.M.Rani

8.I.Joy Mary

9.C.Asokan

10.J.Charlet

11.V.Ramasamy

... Petitioners

Vs.

1.The Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli,
Tirunelveli District,
represented by its Registrar

2.S.Rajachandrasekar

3.P.Ganapathy

4.K.Mabel Rajasekari

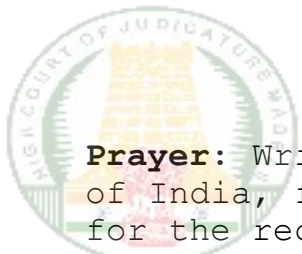
5.G.Thilagarajan

6.S.Antony Selvam

7.P.Thenmozhi

... Respondents

[R2 to R7 impleaded as party respondents as per
the order of this Court, dated 10.02.2011 in
M.P(MD)No.5 of 2008]



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned resolution passed by the 1st respondent's University Syndicate dated 17.02.2001 as Item No.1 in chapter I (2) in Petition No.5,10,11 and 16 and the consequent proceedings in Memo No.MSU/Estt/Admn/Promotion/2005 dated 02.09.2005 (absorbing 11 Assistants) Designated into Assistant with effect from 18.08.2005 and Memo No.MSU/R/Estt/Admn/2007 dated 09.07.2007 and Memo No.MSU/R/Estt/Admn/2007 dated 18.10.2007 (Promoting two Assistants into Superintendents) and the Respondent's University Memo No.MSU/R/Estt/Admn/2008 dated 10.03.2008 (promoting as one Assistant into Superintendent) the respondent University Memo No.MSu/R/Estt/Admn/2008, dated 09.05.2008 (promoting as one Assistant into Superintendent) and quash the same and further direct the respondent's University to implement the Seniority List adopted as per the University Syndicate Resolution dated 14.11.1997 and give all attendant promotions and benefits to the petitioner's herein.

For Petitioners	:	Mr.S.Muthalraj
For Respondent	:	Mr.Mahaboob Athiff
No.1		for M/s.Ajmal Associates
For Respondent	:	Mr.Vijayshankar
No.2 to R7		

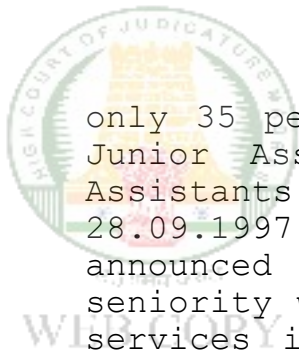
ORDER

This writ petition has been filed seeking to quash the impugned orders giving promotion to Assistants as Superintendent by the 1st respondent University.

2.The case of the petitioners is as follows:

(i)The petitioners were appointed as Tabulators on a consolidated pay with effect from 07.09.1994 and other various dates. They were properly sponsored by the District Employment exchanges in surrounding districts namely, Tirunelveli, Thoothukudi and Nagercoil. In the year 1994 the 1st respondent University called for a list of candidates from the Employment Exchange for filling up the post of Tabulators on regular basis and further permitted the candidates, who were working as daily wages in the 1st respondent University to attend the interview on 25.08.1994 and the Selection Committee selected 40 candidates and the Syndicate accepted the selection list vide its resolution dated 31.08.1994. Thereupon the temporary Tabulators were appointed on regular basis with effect from 08.09.1994.

(ii) About one year thereafter, the 1st respondent University vide Syndicate Resolution dated 16.09.1995 placed the petitioners as Junior Assistants with effect from 08.09.1995. Out of 40 persons,



only 35 persons remained in service and 5 were newly appointed as Junior Assistants and therefore, the strength of the Junior Assistants became 40. Their probation was declared vide order dated 28.09.1997 and the seniority list of Junior Assistants was announced vide Syndicate Resolution dated 14.11.1997 and the seniority was fixed based on the basis of their appointments. Their services in the Junior Assistant post have been regularised vide proceedings dated 24.03.1998. The said regularisation was made with effect from their date of initial appointment as Tabulators. However, no monetary benefits were granted to them.

(iii) While so, the petitioners made various representations regarding their appointment, regularisation, seniority, pension, pay revision and the 1st respondent University based on their representation made one man commission, namely, Lakhmi Kandhan Bharathi, I.A.S., (Rtd) vide Syndicate resolution dated 10.10.1998 and the said Commission had also submitted its report on 29.09.1999, recommending the regularisation of the Junior Assistants to be done with effect from the year 1994 along with monetary benefits. However, subsequently, the University appointed Three Men Commission and it also submitted its report on 06.11.2000 and the said Commission did not agree with the recommendations made by the One Man Commission to regularise all the candidates with effect from their dates of joining with monetary benefits and it has prepared a new seniority list.

(iv) At this juncture, the University Syndicate vide resolution dated 15.05.2000, decided to promote six senior most Junior Assistants as Assistants and the said promotion was sought to be made on the basis of the Seniority List adopted by the syndicate dated 14.11.1997. There were several correspondence with regard to the promotion, regularisation to the particular post and preparation of seniority list and the University without following the procedure accepted the report of the Three Men Commission and approved the refixation of seniority of the 40 Junior Assistants vide its resolution dated 17.02.2001, where the petitioners seniority was pushed back to the lower rank. Despite their representations, the respondents has vide impugned order promoted three of those Assistants as Superintendents vide proceedings dated 09.07.2007, 18.10.2007 and 10.03.2008. Challenging the same the present writ petition is filed.

3. The learned Counsel appearing for the petitioners submitted that the promotion was given based on the resolution dated 17.02.2001 and it is contrary to the seniority list prepared vide resolution dated 14.11.1997 and therefore, the petitioners are very much affected. Based on their representations the syndicate resolved to rectify the discrepancies in the seniority list, but it has not taken any steps to rectify the same. In view of the impugned promotion orders, the petitioners have been affected and their chances of being promoted to the said posts are being affected and



4.The learned Standing Counsel appearing for the University submitted that there is resolution dated 17.02.2001 and subsequent promotion was granted in favour of other persons. However, the persons, who have been given promotion, are not added as parties in these proceedings. Further the writ petition has been filed challenging the syndicate resolution, which has no statutory effects and a challenge to the syndicate's resolution is impermissible in law in view of the decision of this Court in ***Shantha Srinivasan Vs The Secretary to Government, Housing and Urban Development Department, reported in 2015 (2) CWC 366*** . Therefore, the learned Standing Counsel prayed that this writ petition be dismissed.

5.The facts of the case are not disputed. In the present case the issue to be decided by this Court is whether the petitioners can challenge the syndicate's resolution and whether it has any statutory force of law?

6.In this aspect it would be relevant to refer to the decision of this Court in ***Shantha Srinivasan Vs The Secretary to Government, Housing and Urban Development Department, reported in 2015 (2) CWC 366*** , wherein this Court has held as follows:

3.It is a well settled proposition of law that a resolution, by itself, is not an order and the same cannot be given effect to, unless a proper formal order is passed on the basis of such resolution by the competent authority. Thus, a resolution, by itself, cannot have the force of law. Further, it is pertinent to point out that a resolution is only an expression of opinion in the form of recommendations, which will have a binding effect, only after the same is accepted and proper formal order is passed. It is also to be noted that a resolution cannot be subjected to judicial review, inasmuch as it is a simple minutes of the proceedings.

4. In this regard, it would be apposite to quote the judgment rendered by one of us (Satish K. Agnihotri, J.) in *Chhattisgarh High Court in Payal Travels vs. State of Chhattisgarh and Others*, following a catena of decisions of the Supreme Court. The relevant portion of the said judgment reads thus:

"14. It is a trite law that a resolution is not an order and the same cannot be given effect to unless a proper formal order is passed on the basis of resolution by the competent authority. It has been held in a catena of decisions of the Supreme Court that resolution is a mere guideline or recommendation and the same is not effective *ipso facto*."



5. The aforesaid judgment in Payal Travels case was subsequently followed by one of us in Vaswani Industries Ltd. vs. Souther Eastern Coalfields Ltd. In the order dated 07.02.2012.

WEB COPY

6. The Supreme Court, in New India Assurance Company Ltd. vs. Nusli Neville Wadia and another 2008(3) SCC 279 , while examining the effect of guidelines, observed that resolutions are mere guidelines and not controlled by the statutory provisions. The relevant observation runs thus:

"23. Issuance of such guidelines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant."

7. Further, the Supreme Court, in Sethi Auto Service Station and another vs. Delhi Development Authority and Others², observed thus:

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned. "

8. Thus, applying the well settled principles of law, as summarised above, to the facts of this case, we have no hesitation to hold that the instant writ petition is premature, at this stage."

7. The above said decision is squarely applicable to the case on hand and as held by the Hon'ble Supreme Court that a resolution is not an order and the same cannot be given effect to unless a proper formal order is passed on the basis of resolution by the competent authority and resolution is a mere guideline or recommendation and the same is not effective ipso facto and as such the resolution of the syndicate does not have any statutory force of law and therefore, in the absence of any statutory force of law the same cannot be challenged. Further as rightly pointed by the learned Standing Counsel appearing for the University, the petitioners



without adding the persons, who have been given promotion subsequent to the resolution, has challenged their promotion in the writ petition and therefore, the non-joinder of necessary parties to the *lis* is also fatal the case of the petitioners.

8.The issues are answered accordingly and in view of the same, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Dsk

To

The Registrar
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli,
Tirunelveli District,

+1 CC to Mr.V.KARTHIKEYAN, Advocate (SR-4148[F] dated 10/02/2021)

W.P(MD)No.5799 of 2008

09.02.2021

VB (25.02.2021) 6P 3C