



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 10.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. (MD) NO.1296 OF 2011

Y.Yasmine

.. Petitioner

- Vs -

1. The Secretary to Govt.
Education Department
Secretariat, Chennai.
2. The Vice Chancellor
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli 627 012.
3. The Registrar
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli 627 012.
4. The Deputy Registrar (D)
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli 627 012.

5. C.Divya

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records and proceedings relating to the selection process of the 5th respondent for the post of Assistant Professor (Information Technology & Engg.) towards the interview conducted on 6.10.2010 as referred to in the communication of the 4th respondent in MSU/R/RTI/ and 810 (i)/2010 dated 22.11.2010 and the appointment order passed by the 3rd respondent in Ref. No.MSU/R/ESTT/T/APPT/2010 dated 07.10.2010 and quash the same and further direct the respondents to appoint the petitioner as Assistant Professor (Information Technology & Engg.).

For Petitioner : Mr. R.Subramanian

For Respondents : Mr. D.Muruganantham, AGP for R-1
Mr. Mahaboob Athiff for R-3
for M/s.Ajmal Associates
Mr. N.Dilipkumar for R-5
No Appearance for RR-2 & 4

ORDER

The present writ petition has been filed by the petitioner challenging the selection and appointment of the 5th respondent as Assistant Professor (Information Technology & Engg.) vide the above impugned orders.



2. It is the case of the petitioner that pursuant to the notification issued by the 3rd respondent inviting applications from eligible candidates for filling up the post of Assistant Professor (Information Technology & Engg.) as also other posts, the petitioner applied for the same. The petitioner was called for interview to be held on 6.10.20 in which she participated along with other candidates. It is further averred by the petitioner that she belongs to minority Muslim backward class and is eligible for being considered under the 3.5% quota earmarked for minority Muslims under Act 33 of 2007. However, to her shock and surprise, she was not selected for appointment but the 5th respondent was selected and appointed. It is further averred by the petitioner that she came to know that the 5th respondent is none other than the daughter of the Head of the Department of Geology and, therefore, she sought for information under the Right to Information Act with regard to the selection and appointment to the post of Assistant Professor (Information Technology & Engg.), which clearly revealed that the benefits provided under Act 33 of 2007 was not given to the minority Muslim community and, therefore, the present writ petition was filed for the relief supra.

3. Learned counsel appearing for the petitioner submitted that though the petitioner was in possession of the requisite qualification and called for interview, however, without any rhyme or reason and without affording the benevolent provisions of Act 33 of 2007, the candidature of the petitioner was not considered, which in turn defeats the very purpose of the Act. It is the further submission of the learned counsel for the petitioner that only to facilitate the selection of the 5th respondent, who is none other than the daughter of the Head of the Department of Geology, the petitioner was not considered for appointment. It is the further submission of the learned counsel for the petitioner that the 3.5% reservation provided under Act 33 of 2007 to the minority Muslim Backward class was not provided in the respondent University and, therefore, the selection of the 5th respondent is bad and, accordingly, the said selection and appointment has to be set aside and the petitioner should be selected and appointed in the place by allowing the present writ petition.

4. Learned counsel appearing for the respondent University submitted that the selection and appointment was based on the recommendations made by the Selection Committee, which has been constituted for this purpose and without there being any mala fide attributed to the said Selection Committee, the submission of the petitioner that only to facilitate the appointment of the 5th respondent, the petitioner was denied the chance of appointment is bereft of any materials. It is the further submission of the learned counsel for the respondent University that the grounds raised in the writ petition clearly reveal that the petition is liable to be dismissed for non joinder of necessary parties.



5. Learned counsel appearing for the 5th respondent, on the basis of the counter filed, submitted that the petitioner has not alleged that the 5th respondent does not have the requisite qualifications. It is the further submission of the learned counsel for the 5th respondent that the counter speaks about the academic qualifications of the 5th respondent, which is in consonance with the notification prescribing the requisite qualification.

6. It is the further submission of the learned counsel for the 5th respondent that the Selection Committee, constituted for the purpose of shortlisting the candidates, interviewed the candidates and shortlisted them on the basis of a process of selection and the petitioner having participated in the selection process and submitted herself to the said selection process cannot now turn back and question the selection process. Neither the selection process has been questioned nor the selection committee has been impleaded as a party respondent and the allegation of the petitioner that only to facilitate her appointment on the sole ground that she being the daughter of the Head of the Department of Geology is nothing but clutching a weak straw to strengthen her case. It is the submission of the learned counsel that the father of the 5th respondent was not one of the members of the selection committee and that the selection committee comprised of experts and nominees from the Government and also the nominee of the Chancellor. The University and the Selection Committee having not been impleaded as a party, the petition is liable to be dismissed for non-joinder of parties.

7. It is the further submission of the learned counsel for the 5th respondent that the notification for selection specifically prescribed that the post of Assistant Professor (Information Tech & Engg.) was to be filled up on the basis of communal reservation to the backward class and the petitioner, with open eyes, had applied for the same and had underwent the selection process and when the communal roster has been followed and the post having been filled up with a backward class candidates, the petitioner claiming that she is competing under the backward class Muslim category, is not entitled to participate in the selection process.

8. It is the further submission of the learned counsel for the 5th respondent that the post graduate degree obtained by the petitioner is through Distance Education mode, which has been held to be invalid by the Hon'ble Apex Court in the decision reported in **2018 (1) SCC 468** and, therefore, the candidature of the petitioner cannot be considered as the petitioner falls short of the mandated qualifications prescribed in the notification. In fine, it is the submission on behalf of the 5th respondent that the petitioner has no case or grievance to canvass before this Court and, therefore, the present writ petition deserves to be dismissed.

<https://hcservices.courts.gov.in/hcservices> This Court paid its undivided attention to the submissions



advanced by the learned counsel on either side and also perused the materials available on record.

10. Though at the outset this Court is not inclined to entertain this writ petition on the simple ground that the 5th respondent was selected and appointed a decade back in the post of Assistant Professor (Information Technology & Engg.) and has been continuing in the said post since then and inspite of the filing of the present writ petition, no interim orders were passed initially and that even the appointment of the 5th respondent has been put in issue only in the year 2017 by filing an amendment petition to amend the prayer and, therefore, on the very short ground, this petition could be dismissed, but, however, in view of the materials available on record and the submissions advanced, this Court, in the fitness of things, would like to decide the issue on merits rather than on technicality.

11. Four pronged attack has been made with regard to the selection and appointment of the 5th respondent, viz.,

- i) that the reservation granted under Act 33 of 2007 has not been followed;
- ii) that no person belonging to minority Muslim has been selected and appointed in the respondent University;
- iii) that the selection and appointment of the 5th respondent is hit by inherent bias, as the 5th respondent is related to the Head of the Department of the Geology Department; and
- iv) that the 5th respondent is not possessed of the requisite experience mandated in the notification.

12. The first and second ground of attack go together and are taken up together for discussion. The grievance of the petitioner is that neither the 3.5% reservation granted to minority Muslims by Act 33 of 2007 has been followed in the present selection process and furthermore, there are no minority Muslims working in the University and, thereby, the 3.5% reservation has been thrown to the winds.

13. A perusal of the records reveal that the petitioner has applied for the post only under the category of backward class. The application of the petitioner does not reveal that she has claimed her reservation under the minority Muslim category. Further, it is the pointed attack of the 5th respondent that the post notified pertains only to backward class and not minority Muslim and that being the case, the petitioner having partaken in the selection process, cannot now come and claim that 3.5% reservation has not been granted to minority Muslims.

14. It is to be pointed out that inspite of the pointed submission on behalf of the 5th respondent that the communal reservation of the said post only relates to backward class, which



was notified, however, the petitioner has not placed any relevant material before this Court to counter and negate the said submission. Rather, the petitioner has merely alleged that 3.5% reservation given for minority Muslims under Act 33 of 2007 has not been followed. Really if the petitioner was aggrieved that 3.5% reservation as provided under Act 33 of 2007 has not been provided, the petitioner ought to have challenged the notification at the initial point of time and ought not have partaken in the selection process which pertained to selection on the basis of the communal roster. It is trite that once a person partakes in the selection process, he is bound by the selection process and his failure in the selection process would not entitle him to challenge the non-following of reservation policy.

15. Further, it is to be pointed out that though it is the case of the petitioner that there are no minority Muslims working in the University, however, the said stand of the petitioner falls to the ground on the basis of his own material in the form of reply to the representation made under the Right to Information Act, which has clearly spelt out that 2 persons are belonging to minority Muslims are working in the University. Therefore, it cannot be gainsaid that the University is flouting the reservation policy by not providing for opportunities to minority Muslims. Therefore, the first two grounds raised by the petitioner does not merit acceptance.

16. The pivotal contention of the petitioner challenging the selection and appointment of the 5th respondent solely rests on the father of the 5th respondent being the Head of the Department of Geology and, therefore, the selection committee was biased in selecting the 5th respondent for the post.

17. From the above allegation, it is amply evident that the petitioner has raised the allegation of bias against the selection committee in the selection of the 5th respondent. That being the case, it is incumbent on the part of the petitioner to have impleaded the selection committee as a party respondent to the petition, which the petitioner has failed to do. In the absence of the selection committee being a party to the petition, the allegation of bias raised against the selection committee cannot stand the test of legal scrutiny and, therefore, the said ground deserves to be rejected. Further, it is to be pointed out that neither the father of the 5th respondent, who is alleged to be the employee of the University was a member of the selection committee nor any material has been placed before this Court to show that the father of the 5th respondent had in any way influenced the decision/selection making process of the selection committee. Further, it is not to be lost sight of that the members of the selection committee are not only from the University, but the selection committee had also persons, who were nominated by the



Government and also by the Chancellor. That being the case, without there being any iota of material, casting aspersions of the selection committee that it had acted in bias in selecting the 5th respondent does not merit acceptance. Mere allegation of the petitioner cannot partake the character of proof to hold that there existed bias in the selection of the 5th respondent.

18. The last of the ground raised by the petitioner is that the 5th respondent is not possessed of the requisite experience as mandated in the notification and, therefore, her selection is bad in law. Though such a contention is raised by the petitioner, it is to be pointed out that the very ground hinges on the notification to be appreciated. However, for reasons best known, the petitioner, though has annexed very many documents, has not annexed the notification as a document in the typed set of papers. Without the notification being a part of the documents, relying upon the same to contend that the experience mandated in the notification has not been fulfilled by the 5th respondent and, therefore, her candidature has to fail, cannot be accepted, more so, when the 5th respondent has also raised a ground that the petitioner has obtained the post graduate degree through distance education, which has been held to be invalid by the Hon'ble Apex Court. Though it is to be pointed out that the 5th respondent, in her typed set of documents, has annexed the notification, however, the complete advertisement, which contains the intricate details relating to qualification and experience has not been placed in the types set and in the absence of the same being placed before this Court, this Court is not inclined to appreciate the said contentions raised by the parties on either side and, therefore, this Court is not dwelling deep into the said contentions.

19. From a substantive analysis of the materials, as discussed above, this Court is of the considered opinion that the allegations raised against the selection process as also the appointment of the 5th respondent as Assistant Professor (Information Technology & Engg.) does not suffer the vice of any illegality and, accordingly, the petition is liable to be dismissed.

20. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



SSL/GLN

To

1. The Secretary to Govt.
Education Department
Secretariat, Chennai.

WEB COPY

2. The Vice Chancellor
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli 627 012.
3. The Registrar
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli 627 012.
4. The Deputy Registrar (D)
Manonmaniam Sundaranar University
Abishekapatti, Tirunelveli 627 012.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-10387[F] dated 11/03/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-10256[F] dated 11/03/2021)

+1 CC to M/s.SPL GP (SR-10603[F] dated 11/03/2021)

W.P. NO.1296 OF 2011
10.03.2021

KK(23.06.2021) 7P 8C