



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.10.2022

PRONOUNCED ON : 27.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.A(MD)Nos. 793, 794, 867 and 868 of 2013
and
M.P(MD)No.1/2013 in W.A(MD)No.793/2013,
M.P(MD)No.2/2013 in W.A(MD)No.794/2013
and M.P(MD)Nos.1 & 1 of 2013 in W.A(MD)Nos. 867 and 868 of
2013

W.A(MD)Nos.793 & 794 of 2013:

B.Christolite

.. 5th respondent/Appellant

Vs

1.R.Yathavamoorthy

... Petitioner/Respondent

2.The Government of Tamil Nadu,
Rep. by its Secretary,
Personnel & Administrative Reforms Department,
Fort St.George,
Chennai-05.

Page No.1 of 20



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

3.The Vice Chancellor,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Milk Colony,
Chennai-51.

4.The Registrar,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Milk Colony,
Chennai-51.

5.The Selection Committee,
For Recruitment of Asst. Professors,
Fish Processing Technology,
Represented by its Chairman,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Milk Colony,
Chennai-600051.

.. Respondents 1 to 4/Respondents

6.The Registrar,
Tamil Nadu Dr.J.Jayalalitha
Fisheries University,
Nagapattinam.

.. Respondent No.6

[R6 is suo motu impleaded vide
Court order dated 21.09.2022 made
in WA(MD)Nos.793 & 794 of
2013 by JNBJ&NAVJ]

COMMON PRAYER : Writ Appeals filed under Clause 15 of Letters

Patent to allow these Writ Appeals by setting aside the common order,



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

dated 23.04.2013 made in W.P(MD)Nos.10775 & 5537 of 2010, on the
file of this Court.

In both cases:

For Appellant	: Mr.M.Gnanagurunathan for Mr.K.Samidurai
For Respondents	: Mr.S.Natarajan for R1 : Mr.V.Karthikeyan for R6 : No appearance for R2 : Mr.S.Vijayakumar for R3 to R5

W.A(MD)Nos.867 & 868 of 2013:

1.The Vice Chancellor,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Milk Colony,
Chennai-51.

2.The Registrar,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Milk Colony,
Chennai-51.

.. Appellants 1 & 2 in both cases

3.The Dean,
Chairman, Selection Committee,
Fisheries College & Research Institute,
Tuticorin-8.

.. 3rd Appellant in
W.A(MD)No.867/2013



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

3.The Selection Committee,
For Recruitment of Asst. Professors,
Fish Processing Technology,
Represented by its Chairman,
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram, Milk Colony,
Chennai-600051.

.. 3rd Appellant in
W.A(MD)No.868/2013

Vs.

1.R.Yathavamoorthi

..1st Respondent/Petitioner

2.Government of Tamil Nadu,
Rep. by its Secretary,
Personnel & Administrative Reforms Department,
Fort St.George,
Chennai-09.

3.B.Chrisolite

.. Respondents 2&3

4.The Registrar,
Tamil Nadu Dr.J.Jayalalitha Fisheries University,
Nagapattinam.

.. Respondent No.4

[R4 is suo motu impleaded vide
Court order dated 21.09.2022
made in WA(MD)Nos.867 & 868
of 2013 by JNBJ&NAVJ]

COMMON PRAYER : Writ Appeals filed under Clause 15 of Letters

Patent to allow these Writ Appeals by setting aside the common order,
dated 23.04.2013 made in W.P(MD)Nos.10775 & 5537 of 2010, on the



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

file of this Court.

In both cases:

For Appellants	: Mr.S.Vijayakumar
For Respondents	: Mr.S.Natarajan for R1
	: Mr.V.Karthikeyan for R4
	:Mr.M.Gnanagurunathan
	for Mr.K.Samidurai for R3
	: No appearance for R2

COMMON JUDGMENT

J.NISHA BANU, J.
AND
N.ANAND VENKATESH,J.

These appeals have been filed by the Tamil Nadu Veterinary and Animal Sciences University and the 5th respondent in the Writ Petition, against the common order passed by the learned Single Judge in W.P.(MD)Nos.10775 and 5537 of 2010, dated 23.04.2013. During the pendency of these appeals, a separate University called as the Tamil Nadu Dr.J.Jayalalithaa Fisheries University, Nagapattanam was established and the Fisheries College and Research Institute was



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

bifurcated from the Tamil Nadu Veterinary and Animal Sciences University and it was allocated to Tamil Nadu Dr.J.Jayalalithaa Fisheries University, Nagapattanam. In view of the same, this separate University has also been added as a respondent in these appeals.

2. The 1st respondent/writ petitioner filed two Writ Petitions. W.P.(MD)No.5537 of 2010 was filed challenging the selection of the appellant in W.A.(MD)Nos.793 and 794 of 2013 to the post of Assistant Professor, Fisheries Sciences Faculty in Fish Processing Technology in the appellant University. W.P.(MD)No.10775 of 2010 was filed to declare the process that was adopted and the criteria that was followed in awarding marks for the selection to the post of Assistant Professor as illegal and to award marks to the writ petitioner by adopting pro rata marks system and normalisation method.

3. The learned Single Judge allowed both the Writ Petitions and set aside the appointment given in favour of the 5th respondent in the writ petitions. Aggrieved by the same, all these appeals have been filed,



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY both by the University and the aggrieved candidate.

4. Heard Mr.M.Gnanagurunathan for Mr.K.Samidurai, learned counsel for the appellant in W.A(MD)Nos.793&794/2013 as well as R3 in W.A(MD)Nos.867&868/2013, Mr.S.Natarajan for R1 in all cases, Mr.S.Vijayakumar for R3 to R5 in W.A(MD)Nos.793 & 794 of 2013 as well as the appellants in W.A(MD)Nos.867 & 868/2013 and Mr.V.Karthikeyan for R6 in Crl.A(MD)Nos.793 & 794 of 2013 as well as R4 in W.A(MD)Nos.867 & 868/2013.

5. The appellant University issued an advertisement notification on 29.11.2009 inviting applications to fill up various posts in the University. For the purpose of this case, it will be relevant to take note of Sl.No.24 in the advertisement and Note:1 and 2 which are extracted hereunder:

Sl.No.	Discipline	No. of regular vacancies with reservation**	No. of backlog vacancies with reservation



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

24.	Fish Processing Technology	3	GT(P) SC- Arunthathiyar on preferential basis – Women- DW(P) MBC/DC(P)	-	-
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Note: 1) The turn allotted to SC-Arunthathiyar on preferential basis- Women-DW-(P) in Sl.Nos.2,8,10,12,18,20,23,24 and 25 suitable candidates are not available, the candidates from SC Arunthathiyars Men/SC Women and Men will be considered in the order.

2) If, Priority candidates in the turn allotted above are not available such turn will be filled by Non-priority candidates.

6. Among other vacancies, three vacancies were notified in the discipline of “Fish Processing Technology”, of which one post was reserved for General Turn (GT)- Priority. In response to the



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

advertisement, 15 candidates including the writ petitioner had applied for the post of Assistant Professor. The screening committee constituted under the regulations of the University prepared a list of names of 13 eligible candidates including the writ petitioner, in the discipline of Fish Processing Technology. Except the writ petitioner, no one else fell within the Priority category.

7. A four member committee was constituted and they interviewed 10 candidates out of the 13 eligible candidates. Marks were awarded by the selection committee for each candidate under various Heads. The writ petitioner secured a total of 38.25 marks. The qualifying marks for selection was fixed as 40 marks. Since the writ petitioner did not obtain the qualifying marks, the selection committee did not find him to be a suitable candidate and based on the overall performance, the 5th respondent in the writ petitions was selected to the post of Assistant Professor, since the 5th respondent had secured a total of 64.5 marks and stood first in the list of 10 candidates.



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

8. The learned counsel for the writ petitioner submitted that the selection itself is opposed to the advertisement notification, since the notification made it clear that Non-Priority candidates will be fitted in only if priority candidates are not available and in the present case, the writ petitioner was the only priority candidate, who was available and hence, he ought to have been selected to the post of Assistant Professor. The next ground that was urged by the learned counsel for the writ petitioner is that the writ petitioner was not awarded marks under certain heads and thereby, he was disqualified on the ground that he did not obtain the qualifying marks. This issue was taken into consideration by the learned Single Judge and by applying the prorata marks, the writ petitioner was found to have obtained 41.85 marks and accordingly, the writ petitioner was held to be qualified to be appointed to the post of Assistant Professor.

9. Per contra, the learned counsel appearing on behalf of the University submitted that even though the writ petitioner was the only candidate, who belonged to the Priority category, even for such a



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

candidate, unless the candidate obtains the qualifying marks, being a priority candidate by itself is not a gatepass for getting selected to the post of Assistant Professor automatically. The learned counsel submitted that the selection committee is bound by the regulation and marks were allotted under each head as per the system or policy which is applied across the board and to demonstrate the same, the learned counsel brought to the notice of this Court the key/methods of allotting marks in the following manner:

**TAMIL NADU VETERINARY AND ANIMAL SCIENCE
UNIVERSITY
RECRUITMENT TO THE POST OF ASSISTANT PROFESSOR
– 2010**

Key to Marks

Worksheet:



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

B.V.Sc. / B.F.Sc. (10 Marks)			M.V.Sc / M.F.Sc. (20 Marks)					
OGPA out of 4.00	OGPA out of 10.00	Marks to be awarded	OGPA out of 4.00	Marks to be awarded	% of Marks	OGPA out of 10.00	Marks to be awarded	% of Marks
3.0	7.0	--	3.5	--	80%	8.0	--	80%
3.2	7.4	2	3.6	4	82%	8.2	4	82%
3.4	7.8	4	3.7	8	84%	8.4	8	84%
3.6	8.2	6	3.8	12	86%	8.6	12	86%
3.8	8.6	8	3.9	16	88%	8.8	16	88%
4.0	9.0 and above	10	4.0	20	90%	9.0 and above	20	90%
B.Sc. / B.E. (10 Marks) I Class - 10 marks II Class - 6 marks III Class - 2 marks			M.Sc. / M.E. / M.Tech. (20 Marks) I Class - 20 marks II Class - 12 marks					
B.V.Sc. / B.F.Sc. / B.Sc. / B.E.								10 Marks
M.V.Sc / M.F.Sc. / M.E. / M.Tech., M.Sc.								20 Marks
M.Phil. (incase of eligibility criteria) / Ph.D.								10 Marks
ICAR Fellowship JRF / SRF / CSIR / PDF / Others – 2.0 marks for each								4 Marks
MEDALS / AWARDS / NCC / SPORTS			- National University / State College - 2.0 - 1.0 - 0.5 NCC / NSS - 0.25					5 Marks
PUBLICATIONS – A			- Research International - Research National - Clinical article/Short Communication - Popular/Abstract - 2.0 - 1.0 - 0.5 - 0.25					5 Marks
PUBLICATIONS – B			Book Booklet/ Pamphlet Manual 1.0 - 0.5 - 0.25					5 Marks
Conference / Seminar / Training participated - 0.5 each								2 Marks
Papers / Abstracts presented in conference: National - 0.5; International - 1.0								2 Marks
RESEARCH			- Student Project / Research Project - 2 each					2 Marks
EXPERIENCE			- University RA / JRF / SRF / TA - 1.5 / year VAS / Private - 1.0 / year					5 Marks
VIVA – VOCE								30 Marks
TOTAL MARKS								100 Marks

QUALIFYING MARKS: SC & ST – 35 / OTHERS – 40



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

10. The learned counsel submitted that after allotting marks to each candidate, it was found that the writ petitioner was able to secure only 38.25 marks and since he did not obtain the qualifying marks, the turn was allotted to a Non-Priority candidate who secured the highest mark of 64.5 marks. The learned counsel submitted that the system of allotting marks is formulated by an expert committee and this Court cannot sit over judgment and evolve a new procedure by allotting pro rata marks and such a course adopted by the learned Single Judge goes against the well settled principles of law.

11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. There is no dispute to the fact that one post of Assistant Professor to the Fish Processing Technology discipline was reserved for General Turn (Priority) candidate. It is also not in dispute that the writ petitioner was the only candidate who fell under this category. The learned Single Judge came to a conclusion that a Non-Priority candidate



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

cannot be considered for appointment against a vacant seat which was reserved for a priority candidate. As a general proposition, we cannot have any disagreement on this finding. However, this proposition expressed by the learned Single Judge cannot be an absolute rule irrespective of whether the candidate secures the minimum qualifying marks or not.

13. In the present case, the key to marks for every selection is finalised by the selection committee headed by the Vice Chancellor as the Chairman and members consisting of experts in the faculty including external experts before the interview. The selection committee is the final authority in deciding the pattern of marks to be awarded for Overall Grade Point Average (OGPA) and marks under other criteria. The marks that were fixed by the expert committee has been extracted supra. The expert committee, while fixing the qualifying marks, has fixed it at 35 marks for SC and ST candidates and 40 marks for other candidates. In view of the same, unless a candidate reaches the zone of consideration by securing the qualifying marks, there is no scope for an automatic



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

selection. If the writ petitioner had secured the qualifying marks viz. 40 marks, there is no question of denying the writ petitioner the selection to the post of Assistant Professor, even if the other candidates had secured more marks. The simple reason is that one post was exclusively reserved for GT(P) category and the candidate who secures the qualifying marks gets automatically selected. Hence, the finding of the learned Single Judge can be applied only in such a scenario.

14. Reservation to fill up a post with a candidate belonging to a particular category can be taken forward only if the candidate had secured the qualifying marks. If the candidate had not secured the qualifying marks, it cannot be held that he will be entitled for the post only on the ground that he belongs to the reserved category. This Court must keep in mind that the selection in question pertains to selecting faculty in a teaching post and the standard of education cannot be sacrificed by selecting a candidate, who has not even secured the qualifying marks. In view of the same, the writ petitioner, who did not



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

secure the qualifying marks, was not selected even though he belonged to the priority category and the University has rightly filled up the post with a Non-Priority candidate, who had secured the highest marks. Such selection is in line with the advertisement notification issued by the University.

15. The next issue that arises for consideration is the exercise undertaken by the learned Single Judge at paragraph 20 of the Order in awarding marks on a pro rata basis and revising the marks secured by the writ petitioner to 41.85 marks. As stated above, the key to marks for every selection is finalised by an expert committee and it is applied across the board for all the candidates. The learned Single Judge has basically commented upon the allotment of marks as illogical and illegal. This Court must keep in mind that by undertaking such an exercise, we are getting into the zone of expertise. The Apex Court, in a catena of decisions, has reiterated that this Court must be extremely cautious in exercising judicial review in academic matters, since it falls within the domain of experts in the field. The only exception that has



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

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been given is where there is a violation of statutory provision or regulation or notification. Since this proposition is too well settled, this Court does not want to burden this Order by extracting the relevant portions from all the judgments cited by the learned counsel for the appellant University.

16. The key to marks to be allotted under each head by the expert committee does not violate any regulation or notification. In such a scenario, the learned Single Judge undertaking the exercise of re-evaluating the marks and taking a different view from that of the expert committee, has to be held as exceeding the powers of judicial review under Article 226 of the Constitution of India and it goes contrary to the caution expressed by the Apex Court in various judgments. In view of the same, the re-evaluation of the key marks at paragraph 20 of the Order and enhancing the marks secured by the writ petitioner to 41.85 marks, is clearly unsustainable and requires our interference.



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

17. The learned Single Judge had also taken into consideration the marks allotted for the viva voce but however did not choose to go into the issue. Hence, we are not inclined to get into this issue.

18. The upshot of the above discussion leads to the only conclusion that the Order passed by the learned Single Judge requires our interference. It is brought to our notice that the operation of the Order passed by the learned Single Judge was stayed when the Writ Appeals were entertained and hence, the appellant in W.A.(MD)Nos.793 and 794 of 2013 is continuing to hold the post of Assistant Professor, since the date of her appointment on 08.04.2010. Hence, the reversal of the Order passed by the learned Single Judge in the Writ Petition, willnot result inany administrative hardships.

19. In the result, the common Order passed by the learned Single Judge in both the Writ Petitions are hereby set aside and all these Writ Appeals stand allowed. Considering the facts and circumstances of



W.A(MD)Nos. 793, 794, 867 and 868 of 2013

WEB COPY

the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B.,J] & [N.A.V.,J]

27.10.2022

Index : Yes / No
Internet : Yes

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W.A(MD)Nos. 793, 794, 867 and 868 of 2013

J.NISHA BANU, J.
AND
N.ANAND VENKATESH, J.

PJL

Pre-delivery Judgment made in

W.A(MD)Nos.793, 794, 867 and 868 of 2013

27.10.2022