



W.P.(MD)No.18392 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.04.2022

PRONOUNCED ON : 07.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18392 of 2018

K.Thilagavathi

... Petitioner

-Vs-

1.Tamil University,
Represented by its Registrar,
Thanjavur-613 010.

2.The Vice Chancellor,
Tamil University,
Thanjavur-613 010.

3.J.Devi,
Professor,
Department of Literature,
Tamil University,
Thanjavur-613 010.



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4.The Secretary to Government,
Department of Tamil Development and Hindu Religious
and Charitable Endowments,
Fort St. George,
Chennai-9.

5.The University Grants Commission,
Represented by its Secretary,
Bahadur Shah Zafar Marg,
New Delhi -110 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, declaring that the action of the respondents 1 and 2 in selecting and appointing the third respondent as Professor in the Department of Literature, when the petitioner is not possessing the minimum / essential qualification for appointment to the said post and also when the petitioner is less meritorious than the petitioner in all respect as illegal, arbitrary and unconstitutional and consequently direct the respondents 1 and 2 to select and appoint the petitioner as Professor in the Department of Literature with effect from 03.06.2017 the date on which the third respondent joined duty as Professors with all consequential benefits.



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For Petitioner : Mr.Ajay Khose
for Mr.G.Kandha Vadivelan
For RR1 & 2 : Mr.Isaac Mohanlal,
Senior Advocate
for M/s.Isaac Chambers
For R-3 : Mr.G.Rajagopalan,
Senior Advocate
for Mr.Raguvaran Gopalan
For R-4 : Mr.Subbaraj,
Special Government Pleader
For R-5 : Mr.B.Vijay Karthikeyan

ORDER

This writ petition is filed for Declaration, declaring that the action of the respondents 1 and 2 in selecting and appointing the third respondent as Professor in the Department of Literature, when the petitioner is not possessing the minimum / essential qualification for appointment to the said post and also when the petitioner is less meritorious than the petitioner in all aspects as illegal, arbitrary and unconstitutional and consequently direct the respondents 1 and 2 to select and appoint the petitioner as Professor in the



Department of Literature with effect from 03.06.2017, the date on which the third respondent joined duty as Professor with all consequential benefits.

2. The first respondent Tamil University was created under the Tamil University Act, 1982 (TN Act 9 of 1982) with effect from 15.09.1981. The University has got 5 faculties and 25 departments, including the Department of Literature. Except the Department of Education and Management which is run on self-finance basis, all the other departments are getting financial aid and grant from the Government of Tamil Nadu and the UGC. The total number of posts sanctioned and approved by the Government of Tamil Nadu and UGC for all the Departments other than the Department of Education and Management is as follows:

- (i) Number of posts sanctioned and approved in the cadre of Professor is 30.
- (ii) Number of posts sanctioned and approved in the cadre of Associate Professor is 48 and
- (iii) Number of posts sanctioned and approved in the cadre of Assistant Professor is 11.



Thus, totally 89 posts were sanctioned for the departments which are getting grant-in-aid from the Government of Tamil Nadu and the UGC, as per the report of Dr.V.C.Kuzhandhaisamy Committee. The Department of Literature has two sanctioned posts of Professor, two sanctioned post of Associate Professor and one sanctioned post of Assistant Professor. The petitioner belongs to Backward Community and having a Post Graduate Degree in M.A. (Tamil) and M.Sc. (Yoga) under 10+2+3+2 pattern. The petitioner has got M.Phil., (Tamil) Degree from Bharathidasan University in 1988. The petitioner is the University 3rd Rank Holder in M.A. (Tamil) and having a Certificate of Diploma in Music.

3. The petitioner was appointed as Special Assistant in the Department of Literature by an order, dated 06.07.1988 and she joined duty on 20.07.1988, thereafter appointed as Research Assistant in the Department of Literature on 01.06.1992 and served until 24.06.2007 and was conferred with Ph.D. Degree by the Bharathidasan University in 1996. Then vide order, dated 21.06.2007 was appointed as Lecturer / Assistant Professor in the Department of Literature and completed probation in the post of Assistant Professor on



24.06.2008. Since the petitioner was possessing Ph.D. Degree, on completion of four years of service as Assistant Professor the petitioner was granted stage-II Promotion under CAS scheme and increased the Grade Pay from Rs.6,000/- to Rs.7,000/- with effect from 25.06.2012 and then advanced the petitioner's stage II promotion with effect from 25.06.2007 and granted stage III promotion with effect from 25.06.2012 and stage IV / Associate Professor promotion with effect from 25.06.2015 under the CAS scheme. During the period between 01.07.2013 and 30.06.2016, the petitioner was acting as Head of the Department of the Department of Literature and again from 25.01.2017, was acting as HOD till the date of filing of this writ petition.

4. The contention of the petitioner is that in the year 2013, the first respondent issued advertisement to fill up the posts of Professors and Associates Professors in various Departments by direct recruitment. In the said advertisement, one post of Professor was notified under the MBC category and one post of Professor was notified under the BC category. The petitioner submitted an application to consider her name for the said post. Subsequently, the said recruitment notification was cancelled and another



advertisement was issued for filing up the posts of Professors and Associate Professors on 04.01.2016. Based on the Court orders, the said recruitment notification could not be proceeded with.

5. On 27.04.2017, the first respondent University issued three separate notifications in Dinamani Tamil Daily Calling for applications to various posts in the cadre of Professor and Associate Professor for various departments. The Professor was notified under General Category and another post in the same cadre was notified for SC/ST candidates, as backlog vacancy. Based on the notification dated 29.04.2017, the petitioner submitted an application for appointment to the post of Professor under general category in the Department of Literature, in the prescribed PBAS format with all supporting documents. After scrutinizing the applications and documents, the screening committee issued a call letter, dated 22.05.2017 for interview and the petitioner was asked to appear before the selection committee on 29.05.2017. The petitioner came to understand that five applicants including the petitioner were called for interview for appointment to the above post of Professor under General Category in the Department of Literature and she



came to understand that the other four candidates who were called for interview are namely, 1) Dr. Kavitha, Assistant Professor, Karpagam University, Coimbatore, 2) Dr.J.Devi, Assistant Professor, Urumu Dhanalakshmi College, Kattur, Trichy, (the third respondent herein) 3) Dr.Sivanesan, Associate Professor, Sri Pushpam College, Poondi and 4) Dr.Kodithurai, Assistant Professor, Annamalai University, Chithambaram, were given deployment by the Government of Tamil Nadu in Government Arts College, Burgur. The said Dr.Kavitha has made application to the post of Professor and she was selected and appointed as Professor in the School of Indian Languages and Comparative Literature. One Dr.Savithri, who is working as Assistant Professor in the School of Indian Languages and Comparative Literature challenged the said appointment. Since the petitioner's candidature was not considered, the petitioner has come up with this writ petition.

6. The contention of the petitioner is that the third respondent was working as Assistant Professor in Urumu Dhanalakshmi College, Kattur. The petitioner came to know that the third respondent was working in the said



college as Assistant Professor only from December 2007 and she was taking classes both for P.G and U.G students and she did not take classes exclusively for P.G students. Therefore, she is not possessing 10 years of teaching experience in the post of Post Graduate teaching. The minimum qualification for appointment to the said post is to possess 10 years of teaching experience for P.G students and since the 3rd respondent is not having the requisite qualification, the appointment of the 3rd respondent is illegal. The petitioner submits that though the petitioner's Research work in Sangam Literature has been prescribed as a desirable / preferential qualification and though the third respondent is having Ph.D. degree only in Modern Literature and not in Sangam Literature, instead of giving preference to the petitioner, the third respondent has been selected and appointed to the said post and on this score also the petitioner ought to be appointed.

7. The petitioner submitted that based on the API score and also PBAS, the petitioner is more meritorious than the third respondent in all aspects. The petitioner has published more books, research papers and articles than the third respondent. The third respondent is not at all qualified and not



having minimum qualification. Moreover, the petitioner has done her research work in Sangam Literature, which is a preferential criteria stated in the advertisement. The petitioner has served as Editor, who edited and published the Research Paper series in 9 volumes in the year 2015. The petitioner conducted various seminars, workshops, endowment lectures on various topics. The petitioner is more meritorious than the third respondent. In spite of the same, the petitioner was not granted any appointment. Aggrieved over the same, the petitioner has filed this writ petition and the petitioner has raised various other grounds and prayed to allow the writ petition.

8. The first respondent had filed a counter affidavit stating that the writ petition is not maintainable, since the petition has been filed beyond limitation and it is liable to be dismissed in limine. The petitioner was appointed as Lecturer /Assistant Professor and hence, the petitioner is eligible to count her teaching experience only from 25.06.2007 and cannot claim teaching experience prior to that date. Acting as HOD does not give any specific right to the petitioner to be appointed as Professor, since direct appointment to the post of Professor is only by way of merit and hence, the



averments made in paragraph 12 deserves no consideration. Based on Reservation Committee report dated 28.10.2015, fresh notification dated 27.04.2017 was issued including separate recruitment for SC/ST backlog and current vacancies and the Advertisement No.12/2016 was issued to fill up the two sanctioned posts of Professor in the Department of Literature duly allotting first post for General Turn and second post for SC/ST (Backlog vacancy) as per 200 point roster system as per G.O.Ms.No.241 P & AR Department dated 29.10.2007 and the petitioner has not raised any plea against the vacancy position. Totally 26 candidates applied for the said two posts of Professor in Literature Department and after the report of the Screening / Scrutinizing Committee, eligible candidates were called for to attend an interview and eight candidates including the petitioner and the third respondent attended interview and the third respondent was selected under General Turn and another one Dr.Elayappillai was selected under SC/ST backlog vacancy on their merits by the Selection Committee and they were appointed as Professors in the Department of Literature, vide order dated 03.06.2017. Since the petitioner did not come within the zone of selection on merit basis, has filed this writ petition against the selection and appointment



of the third respondent by making false allegations. The candidates are at liberty to apply for more than one post of their choice if the candidate fulfils the qualification and norms prescribed for the said post. One Dr.Kavitha had applied for the post of Professor in Literature Department and the Professor in School of Indian Languages and Comparative Literature. The said Kavitha was selected for the post of Professor in School of Indian Languages and Comparative Literature based on her merit. The first respondent submitted that the qualification prescribed for the post of Professor in Literature by the respondent University in the web-site, is as per the UGC guidelines. In the advertisement, Sangam Literature and Grammar has been prescribed only as desirable qualification and it is not a mandatory or prescribed qualification as per UGC guidelines and hence, a candidate without Research work in Sangam Literature and Grammar shall be appointed as Professor provided the candidate fulfills all other criteria and norms prescribed by the UGC. Hence, there is no irregularity or illegality in appointing the third respondent. Though the third respondent had Research work in Ph.D. in Modern Literature and she had other accomplishments which were considered while granting Academic Performance Indicator (API) score based on Performance Based Appraisal



System (PBAS) as set out in the UGC Regulations and hence, the third respondent was selected by the Selection Committee.

9. The 1st respondent denied the allegation of the petitioner that the third respondent is not having experience to take classes for PG students. The petitioner has conveniently suppressed the UGC Regulation 2010 contained in Clause-4.1.0.(A)(ii) which makes eligible for those who had ten years teaching experience in University / College or experience in research. Further as per Clause-10.1 of UGC Regulation 2010, the service in a College or other Scientific / Professional Organizations should be counted for direct recruitment as Professor (if such an appointment is not as Guest Lecturer or in adhoc or leave vacancy of less than one year but for more than one year), and under clause (g) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (Private / Local body / Government) was considered for counting past services under this Clause. Hence, the claim of the petitioner that the third respondent has not served in a Government College is absolutely misleading and it is against UGC Regulation. As far as the issue of Research work in Sangam Literature



is concerned, the same is only a desirable qualification and it is not mandatory. The allegations as far as API and PBAS score is concerned, the API and PBAS score alone are not the deciding factor of selection as performance in the interview before the Selection Committee would also be considered for the selection of candidates. The third respondent has got higher score in the interview conducted by the Selection Committee and the Committee consisting of Academic Experts.

10. The third respondent is having ten years experience. The petitioner was appointed as Lecturer / Assistant Professor on 25.06.2007 and the said service was considered and similarly the service of the third respondent as Lecturer from 27.07.2005 has been considered and the third respondent has longer service than the petitioner as a Lecturer and hence, the third respondent has been rightly selected as per service which is in accordance with Clause-10.1 of UGC Regulations 2010. Guiding of M.Phil. and Ph.D. students is not the only criteria for appointment to the post of Professor as per UGC guidelines. The publications made and various other accomplishments of the candidates including the petitioner has been



considered to calculate API score based on PBAS as per UGC Regulations 2010. The percentage for possessing the qualification for selection are given as under:

a)	Academic Background	20%
b)	Research Performance based on API score and quality of publications	40%
c)	Assessment of Domain Knowledge and teaching skills	20%
d)	Interview Performance	20%
	Total	100%

The allegation made against the third respondent per se is malafide and hence, the writ petition is liable to be dismissed.

11. The third respondent has filed a counter affidavit stating that the third respondent is having 12 years of teaching experience at UG level and 8 years teaching experience in PG level and 8 years Research experience. Therefore, the third respondent has fulfilled the qualification as prescribed under UGC regulations. The first respondent has prescribed qualification of Sangam Literature and Grammar, which is a desirable qualification and not



mandatory. Hence, the claim of the petitioner is liable to be rejected. The third respondent was appointed on 03.06.2017 and the writ petition was filed on 21.08.2018, in which there is a delay of more than one year. Hence the writ petition is filed with laches. The third respondent is serving for more than one year, after leaving the job where she was serving in Urumu Dhanalakshmi College, Trichy. The third respondent has possessed qualification of M.A. (Tamil), M.A. (Journalism), M.Phil. (Tamil) and Ph.D. (Tamil) and the area of specialization is Modern Literature. Therefore, the third respondent is eligible as per the academic qualifications also. The claim of the petitioner is erroneous and the same is liable to be rejected and hence, prayed for dismissal of the writ petition.

12. Heard Mr.Ajay Khose, for Mr.G.Kandha Vadivelan, learned counsel appearing for the petitioner, Mr.Isaac Mohanlal, Senior Advocate for M/s.Isaac Chambers, appearing for the respondents 1 and 2, Mr.G.Rajagopalan, Senior Advocate for Mr.Raguvaran Gopalan, learned counsel appearing for the third respondent, Mr.Subbaraj, learned Special Government Pleader appearing for the fourth respondent, Mr.B.Vijay



Karthikeyan, learned counsel appearing for the fifth respondent and perused the materials available on record.

13. The respondents have submitted that the writ petition is filed belatedly and hence, the petition is hit by latches, since the third respondent was appointed on 03.06.2017 and the writ petition is filed on 21.08.2018, which is more than one year. The prayer in the writ petition is for declaration to declare the appointment of the third respondent as illegal and arbitrary, when the appointment is challenged then the petitioner ought to have filed within reasonable time. Since the writ petition is filed after lapse of nearly one year two months, this Court is of considered opinion that the writ petition is hit by delay and latches.

14. The contention of the petitioner is that the third respondent is not having 10 years Post Graduate teaching experience and hence the appointment is illegal. But the first respondent had submitted that the UGC Regulation 2010 contained in Clause-4.1.0.(A)(ii) which makes eligible for those who had ten years teaching experience in University / College or



experience in research. the said portion is extracted hereunder:

(ii).A minimum of ten years of teaching experience in University / College and / or experience in research at the University / National Level Institutions / Industries including experience of guiding candidates for research at Doctoral level.

15. On perusal of the UGC Regulations, wherein the prescription of qualification is that minimum of ten years teaching experience in University / College and / or experience in research including guiding candidates for research at Doctoral level. The petitioner is having 12 years of teaching experience at UG level, 8 years teaching experience in PG level and 8 years Research experience. The qualification prescribed is only teaching experience and it is not stating that UG level teaching should not be taken into account. Moreover, the third respondent is having 8 years research experience. Therefore, this Court is of the considered opinion that the third respondent is having qualification and the allegation of the petitioner that the third respondent is not having qualification is incorrect.



16. The next contention raised by the petitioner is that the petitioner had done research work in Sangam Literature, which has been prescribed as a desirable / preferential qualification and hence the petitioner ought to be granted appointment but the third respondent is having Ph.D. degree in Modern Literature and not in Sangam Literature, instead of giving preference to the petitioner, the third respondent has been selected and appointed to the said post. On this score also the petitioner ought to be appointed and the appointment of the third respondent is incorrect. Moreover the petitioner has scored more marks in API and PBAS than the third respondent. Hence the petitioner who has scored higher marks ought to be appointed. The first respondent submitted that the Sangam Literature is only preference and not mandatory, after considering the merits of the petitioner and the third respondent the Selection Committee has selected the third respondent and hence there is no infirmity in the selection. As far as the plea on higher marks the respondents submitted that based on higher marks alone the petitioner would not be eligible to be appointed and the learned counsel for the respondents relied on **Maharashtra Public Service Commission Vs.**



Sandeep Shriram Warade and others reported in **(2019) 6 SCC 362**,

wherein, it is held as follows:

“14. the preference mentioned in the advertisement cannot be interpreted to mean that merely because a candidate may have had the requisite experience of testing in a research and development laboratory he / she possessed the essential eligibility and had a preferential right to be considered for appointment.

15. The view taken by the Tribunal finds approval in [Secretary \(Health\), Department of Health & F.W. and Another vs. Dr. Anita Puri and Others](#), 1996 (6) SCC 282, observing as follows: “7. Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid



advertisement conferring preference for higher qualification?
The answer to the aforesaid question must be in the negative.
When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed..... In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.”

This Court is of the considered view that Sangam Literature is only preference and not mandatory, moreover it is within the domain of the Selection Committee to consider the overall merits of the candidate and the petitioner has not established any such infirmity and hence, on this plea the petitioner fails.



17. The next contention of the petitioner is that the petitioner has not signed the application and the same ought to be rejected as defective application and the petitioner relied on the remarks of the selection committee on this regard. The first respondent submitted that the third respondent has not signed in the API papers and it is incorrect to state that the third respondent has not signed the application and hence it cannot be considered as defective application. Therefore, this Court is of the considered opinion that this plea of defective application is incorrect.

18. The learned counsel appearing for the third respondent submitted that the petitioner's retirement is on 22.06.2022 and even if the claim of the writ petitioner is considered, then the writ petitioner cannot be posted in the said post. Hence the prayer in the writ petition cannot be entertained and only fresh recruitment ought to be called for. Moreover the third respondent was considered by the Selection Committee and the committee consisting of eminent persons in the Education field and the Selection Committee has not violated any statutory rules.



19. The Hon'ble Supreme Court in its judgment rendered in ***B.Srinivasa Reddy Vs.Karnataka Urban Water Supply and Drainage Board Employees' Association and others*** reported in ***2006(11) SCC 731(1)*** has held that for the challenge under the writ of Declaration or Writ of Quo Warranto, it is settled principle that the High Court in exercise of its jurisdiction under Article 226, in a matter of this nature is required to determine at the outset as to whether the case has been made out for issuance of Quo Warranto or Declaration and the jurisdiction is limited one which can be issued only when the appointment is contrary to the statutory rules. The petitioner has not made out any case to substantiate that the third respondent is contrary to the statutory rules.

20. From the above discussion, it would be evident that both the petitioner and the third respondent are qualified persons. Based on the qualification and merits, the Selection Committee has come to the conclusion that the third respondent is eligible than the petitioner. Since the petitioner has not made out any case that the appointment of the third respondent is contrary



to the statutory rules, the judicial review is very limited. This Court is of the considered opinion that there is no violation of any statutory rules. Therefore, this Court is of the considered opinion that the petitioner has not made out any case to interfere with the appointment of the third respondent.

21. After reserving orders in this case, a similar case was heard by this Court in **W.P.(MD) No. 12532 of 2017** in the case of **Dr.D.Vetrichelvan**. While hearing Dr.D.Vetrichelvan's case the learned counsel appearing in the Dr.D.Vetrichelvan case had circulated a memo and submitted the said memo shall be considered for the present case also. After considering the said memo this Court has passed an order in Dr.D.Vetrichelvan's case as under :

"21. The Learned counsel for the petitioner submitted a memo stating that regarding the appointment of Assistant Professor and Associate Professor, a Public Interest Litigation is filed in W.P. (MD).Nos.17709 and 18416 of 2019, wherein, the allegation in the said Public Interest Litigation is that the first respondent University has appointed the said candidates for extraneous considerations and the said



Public Interest Litigation will have a bearing on the merits of the present case and the petitioner has circulated a letter to the Registry to tag this Writ Petition along with the said Public Interest Litigation.

22. After considering the aforesaid memo, this Court is of the considered opinion that the claim of the petitioner in the Public Interest Litigation is a larger issue where the allegation of appointing any person with extraneous consideration should be considered. However, in the present case, this Court has only considered the merits between the petitioner and the third respondent and the selection process and method of appointment by the Selection Committee. In the Public Interest Litigation, the scrutiny of judicial review is whether extraneous considerations were taken or not and that issue was not dealt with in the present Writ Petition. It is left open to the petitioner to address the Public Interest Litigation based on the issue raised thereunder and the merit of this Writ Petition is only whether the petitioner and the third respondent are qualified or not and that has been considered supra.



23. This Court has come to the conclusion that both the petitioner and the third respondent are meritorious candidates and the Selection Committee has considered the candidature of the third respondent and has appointed him. There is no violation of any statutory rules by the Selection Committee and the appointment of the third respondent is valid according to the merits alone. The petitioner is at liberty to address the issue of extraneous consideration before the Public Interest Litigation and that has nothing to do with this case. In fact, the Public Interest Litigation was filed in a larger interest. Therefore, the petitioner is at liberty to address the Hon'ble Division Bench on the larger interest separately.

24. This writ petition is devoid of merits and hence this Writ Petition is dismissed. There shall be no order as to costs.”

The said observation is applicable to this case also and it is left open to the petitioner to address the Public Interest Litigation based on the issue raised thereunder and the merit of this Writ Petition is only whether the petitioner



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and the third respondent are qualified or not and that has been considered supra. In the present case also this Court has come to the conclusion that both the petitioner and the third respondent are meritorious candidates and the Selection Committee has considered the candidature of the third respondent and has appointed her. There is no violation of any statutory rules by the Selection Committee and the appointment of the third respondent is valid. The petitioner is at liberty to address the issue of extraneous consideration before the Public Interest Litigation and that has nothing to do with this case. In fact, the Public Interest Litigation was filed in a larger interest. Therefore, the petitioner is at liberty to address the Hon'ble Division Bench on the larger interest separately.

22. This writ petition is devoid of merits and hence, this Writ Petition is dismissed. There shall be no order as to costs.

07.07.2022

Index : Yes / No
Internet : Yes / No
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W.P.(MD)No.18392 of 2018

To

The Secretary to Government,
Department of Tamil Development and Hindu Religious
and Charitable Endowments,
Fort St.George,
Chennai-9



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