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WP.No.11281/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2023

PRONOUNCED ON : .03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.11281 of 2011

1.P.K.Venugopal
2.M.Mathukannan

... Petitioners

Vs.

1.The Chairman, Chennai Port trust,
Chennai-600 001
2.The Traffic Manager, Traffic Department,
Chennai Port Trust, Chennai-600 001
3.V.Shanthi
4.B.Muralidharan
5.B.Anbucheziyan
6.Gunasekaran

..Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a certiorarified mandamus calling for the for records of respondents particularly that of 2nd respondent vide No.B6/0034/2010-T dated 01.03.2010 and quash the same as illegal and consequently direct the 1st and 2nd respondents to conduct fresh selection of Assistant Traffic Managers in a transparent manner.

For petitioners : Mr.T.S.Rajamohan

For respondents : Mr.R.Sankaranarayanan ASGI

Asst. by Mr.Niranjana Rajagopal for R1 and R2

Mr.L.Chandrakumar for R4 and R5

Ms.R.Meenal for R3 and R6



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ORDER

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The Petitioners/employee of Port Trust, being aggrieved by the selection of respondents 3 to 6 to the post of Assistant Traffic Manager based on marks scored in written examination and their experience in the department to which they belonged, filed this writ petition praying to quash the letter dated 01.03.2010 of the Traffic Manager, Chennai Port Trust addressed to one E.Manikandan, who sought for information under RTI Act, 2005.

2. Questioning the said selection, the petitioners pleaded malpractice in the conduct of the examination and a scheme devised to prefer the employees selected by giving them additional marks without any logic.

3. The petitioners are working in Chennai Port Trust. The 2nd Respondent –Traffic Manager, Traffic Department issued Circular vide A2/4978/2006/T dated 11.08.2008 notifying filling up to the post of Assistant Traffic Manager, by direct recruitment on redeployment basis under Regulation 5A of the Madras Port Trust Employees (Appointment, Promotion etc) Amendment Regulation 2004. They applied for the post of Assistant Traffic Manager, which is a redeployment post.

4. The notified vacancies were 4 in number. Petitioners forwarded their applications and the applications were scrutinized and were called upon to appear for the



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written examination. According to the petitioners, the method adopted by the 1st and 2nd respondent in conducting the examination and selecting the respondents 3 to 6 suffer from serious infirmities.

5. The learned counsel for the petitioners would submit that in the selection process, awarding marks for experience to the respondents 3 to 6 viz., V.Shanthi, B.Muralidharan, B.Anbucheziyan and Gunasekaran is unlawful and the very selection process is total jeopardy of the 1st and 2nd respondents and estopped in law from adopting such process.

6. Official respondents-Port trust filed counter affidavit stating that totally 131 candidates appeared for the examination and the National Maritime Academy had declared the results on 30.10.2008 and 37 candidates who had scored 50% and above were called for interview on 3.11.2008. 36 candidates attended the interview and the interview committee selected 4 candidates for the post of Assistant Traffic Manager viz., (1) V.Shanti, (2) B.Anbucheziyan, (3) B.Muralidharan and (4) S.Gunasekaran.

7. The learned Additional Solicitor General of India, appearing for the Port Trust, submits that selection list was approved by the Chairman. The Ministry vide Gazette Notification dated 04.08.2000 approved the manner of appointment to the post of Assistant Traffic Manager. The respondent-Port trust, on redeployment basis under



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Regulation 5-A of the MPT Employees Amendment Regulations 2004, conducted the competitive written examination and the said examination was postponed on 21.08.2008 due to one day General strike by the Trade Union. In the mean time, respondent received an order passed by this court in writ petition No.20149 of 2008, filed by the Chennai Port Employees' Progressive Union against Chennai Port Trust challenging Regulation 5 A of the Madras Port Trust Employees' (appointment, promotion) Amendment Regulation 2004. In the said writ petition, an interim order was passed as follows:-

“ the proposed examination to be held on 20.08.2008 shall go on. However, the results shall not be published until further orders.'

8. In view of the above order passed by this court, the appointment could not be made until further orders passed in the writ petition. Thereafter, the respondent-Port Trust filed vacate stay petition. In the said petition, this court by order dated 13.10.2008, vacated the interim stay and ordered as under:-

“Permitted to publish the result, however, making it clear that any appointment of promotion will be subject to the final result in the writ petition.”

9. The learned Additional Solicitor General submits that after the written examination, 36 candidates attended the interview and the petitioners in first batch of writ petitions taken part in the examination and attended the interview without any protest and therefore, those petitioners cannot agitate the selection process in the writ petitions.



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10. The learned Additional Solicitor General would submit that as per Regulation 5A, the employees already in service are being considered for selection, provided they possess the prescribed qualification and experience. As such, the petitioners who are serving employees in Chennai Port Trust, raised allegation that syllabus was not prescribed by the Chennai Port Trust for the examination which cannot be accepted.

11. On the other hand, learned counsel for the petitioners 3 to 6 would contend that respondents 3 to 6 were selected to the post of Assistant Traffic Manager based on the eligibility criteria prescribed to the said post. The Standing Selection Committee constituted by the Chairman for selection of candidates against the direct recruitment posts under Class-I during the year 2008 selected the above 4 candidates for appointment to the post of Assistant Traffic Manager based on the marks obtained in the written examination, experience and the performance at the interview and therefore, the averments put forth by the petitioners that the appointments were made on the basis of their background was not sustainable.

12. The learned Additional Solicitor General submitted that minimum educational qualification was prescribed in the manner of appointment and applications were invited from the eligible employees. As such, the petitioners challenging the regulations and the selection process is not sustainable.



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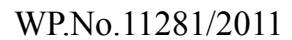
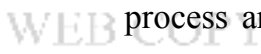
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13. The learned Additional Solicitor General pointed out that in the instant case, the order of appointment was signed by the Chairman on 04.11.2008 and issued to the candidates on 05.11.2008. Respondents 3 to 6 also joined the said post. They were sent for prescribed medical tests.

14. It is emphasized by the learned Additional Solicitor General that the respondents 3 to 6 who were selected to the post of Assistant Traffic Manager viz., Shanthi, B.Muralidharan, B.Anbuezhayan and S.Gunasekaran had acquired the minimum educational qualification and they were selected. Amendment in the manner of appointment was made during the year 2000 which was approved by the Ministry vide Gazette Notification dated 04.08.2000. Therefore, the allegation that amendments were made at the time of recruitment is not sustainable.

15. The learned ASG would further point out that Ministry's sanction was sought to fill up the 4 direct recruitment posts of Assistant Traffic Manager by considering employees on re-deployment basis under Regulation 5 A of the MPT Employees' Regulations vide letter dated 01.03.2008 and the Ministry had approved the same vide letter dated 18.06.2008.

16. The learned counsel for the respondents 3 to 6 would submit that as far as



17. It is also contended by the learned counsel for respondents 3 to 6 that respondents 3 to 6 are deemed to have satisfactorily completed the period of probation in the post of Assistant Traffic Manager (Grade-I) w.e.f. 14.12.2010, 05.11.2010, 30.11.2010 and 18.12.2010 respectively vide orders No.A13/991/10/T dated 01.08.2011 and the final proceedings in this regard is subject to the result of the writ petitions pending before this court.

18. Heard both sides and perused the records including the report of the central vigilance commission carefully.

19. In the instant case, the petitioners had participated in the selection process and appeared in the written test and interview conducted by the Selection Committee and the Selection Committee, after considering overall assessment of the candidates appearing in the selection process have taken a decision and appointed respondents 3 to 6 in the post of Assistant Traffic Manager. First of all, this Court under [Article 226](#) of the Constitution of India cannot sit over the decision of the expert body.

20. The facts of the case would reveal that some amongst the selection committee



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committed lapse in the conduct of selection. However, it is true that there was an extensive process of selection carried out in respect of recruitment of 4 posts of Assistant traffic Manager-Gr.I. Even though there were allegations with regard to leakage of question paper, awarding of marks in the interview etc, the undoubted fact is that the selection process was carried out as per the approval of the Ministry and after written examination and interview, respondents 3 to 6 were selected based on the marks and performance both in the written examination and interview.

21. The Report of the Chief Vigilance officer has not pointed out any material to show that there was leak of question paper. The answer sheets are concerned, it was valued by the National Maritime Academy. As far as grant of additional 10 marks to Traffic Department candidates is concerned, it was given to all the candidates from the traffic department and not only to the petitioners. In such view of the matter, the flaws or lapses set out in the report with regard to conduct of examination or in respect of date/awarding extra marks are concerned, there is no justification for treating the appointment as invalid ab initio and therefore, the impugned order which does not provide any substantive material but holding that the respondents 3 to 6 are responsible for the lapses, cannot be justified. On the other hand, it would be unfair to impose the burden of the lapses found on the part of some members of selection committee, on the respondents 3 to 6, who got selected and appointed as Assistant Traffic Manager. It is actually treating the innocent appointees as wrong doers but actually for the no fault committed by them.



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22. The petitioners participated in the selection process but they are unsuccessful.

Per contra, respondents 3 to 6 got selected and appointed to the post of Assistant Traffic Manager (Grade.I). Actually there is no allegation levelled against the respondents 3 to 6. Secondly, the investigation which was initiated based on the complaints were at the behest of unsuccessful candidates in the selection process. As such, the cancellation of entire process or holding the appointment as invalid abinitio is found to be unjustified.

23. For the reasons stated above, this court do not find any material in the report to hold that the entire selection process is vitiated. There is no justification to deny appointment to the selected candidates viz., the respondents 3 to 6. Cancelling the entirety of selection and holding the appointment of the respondents 3 to 6 as invalid abinitio is wholly unwarranted and unnecessary as the factual situation would throw no concrete or relevant material to cancel the entire process of recruitment.

24. In view of the discussion made above, this Court is of the view that the appointment of respondents 3 to 6 in the post of Assistant Traffic Manager Gr.I, do not require any interference. Accordingly, the writ petition is dismissed. No costs.

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.03.2023



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J.NISHA BANU, J.

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To

- 1.The Chairman, Chennai Port trust,
Chennai-600 001.
- 2.The Traffic Manager, Traffic Department,
Chennai Port Trust, Chennai-600 001

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08.03.2023