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W.P.Nos.26206, 26207 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2023

PRONOUNCED ON : 08.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.26206 and 26207 of 2011
and M.P.Nos.1 and 2 of 2011

P.Elumalai

... Petitioners in both WPs.

Vs.

1.The Chairman, Chennai Port trust,
Chennai-600 001

..R1 in both WPs

2.The Standing Selection Committee
Chennai Port Trust
Chennai-600 001

..R2 in WP.26206/2011

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

..R2 in WP.26207/2011

3.V.Shanthi

4.B.Muralidharan

5.B.Anbuezhayan

6.Gunasekaran

..Respondents 3 to 6 in both Wps



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PRAYER in WP.26206/2011 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a certiorarified mandamus calling for the records of the 2nd respondent appointing respondents 3 to 6 vide proceedings of the Standing Selection Committee dated 03.11.2008 and quash the same and consequently direct the 1st and 2nd respondents to conduct fresh selection of Assistant Traffic Managers in a transparent manner.

PRAYER in WP.26207/2011 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a certiorarified mandamus calling for the records of the 2nd respondent vide Circular A2/4978/2006/T dated 11.08.2008 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.M.Narayanasamy (WP.26206 & 26207/2011)

For respondents : Mr.R.Sankaranarayanan ASGI

Asst. by Mr.Niranjana Rajagopal for R1 to R3

Mrs.R.Meenal for R3 to R6.

COMMON ORDER

The Petitioner who is working as Assistant Stock Verifier in the Accounts Department of Port Trust, being aggrieved by the selection of few of their colleagues to a post based on marks scored in written examination and their experience in the department to which they belonged, filed the above writ



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petitions. Questioning the said selection, the petitioner 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.

2. The challenge in the above two writ petitions are that notification dated 11.08.2008 do not indicate any written examination and no syllabus was postulated to prepare for the examination. The selection process was done in a clandestine way. The petitioner also submitted that the interview conducted on 03.11.2008 and the order of appointment issued on 5.11.2008 and the entire selection process is illegal and the procedure of awarding marks for experience would only render the very selection process as illegal.

3. The 2nd Respondent in W.P.No.26207 of 2011 –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. The petitioner applied for the post of Assistant Traffic Manager, which is a redeployment post. The notified vacancies were 4 in number. Petitioner's



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application was scrutinized and the candidates were called upon to appear for the written examination. According to the petitioner, the method adopted by the 1st and 2nd respondent in conducting the examination and selecting the respondents 3 to 6 suffer from serious infirmities.

4. The learned counsel for the petitioner would submit that in the selection process, awarding marks for experience to the respondents 3 to 6 viz., V.Shanthi, B.Muralidharan, B.Anbuezhayan 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.

5. The petitioner also sought for a direction to the respondent-Port Trust, to conduct fresh selection of Assistant Traffic Manager in a Transparent manner.

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



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attended the interview and the interview committee selected 4 candidates for the post of Assistant Traffic Manager viz., (1) V.Shanti, (2) B.Anbuchejian, (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 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-Port Trust 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.'



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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 petitioner also taken part in the examination and attended the interview without any protest and therefore, the petitioner cannot agitate the selection process in the writ petitions.

10. 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 petitioner who is also serving employee in Chennai Port Trust, raised allegation that syllabus was not prescribed by the Chennai Port Trust which cannot be accepted.



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11. On the other hand, respondents 3 to 6 who were selected to the post of Assistant Traffic Manager were considered 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 petitioner that the appointments were made on the basis of their background was denied by the respondents.

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

13. The learned Additional Solicitor General pointed out that in the



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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 respondents 3 to 6 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 of the writ petitioner that amendments were made at the time of recruitment is not sustainable.

15. The learned Additional Solicitor General would further point out that the appointment of respondents 3 to 6 to the post of Assistant Traffic Manager was on temporary basis under Regulation 25(1) of the MPT Employees' (Appointment, Promotion etc) Regulations on deployment basis, and Ministry's sanction was sought to fill up the 4 direct recruitment posts of Assistant Traffic Manager by considering employees of the post on re-deployment basis under Regulation 5 A of the MPT Employees' Regulations vide letter dated



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01.03.2008 and the Ministry had approved the same vide letter dated 18.06.2008.

16. It is also pointed out that while reviewing the appointments made to the post of Assistant Traffic Manager under the erstwhile MPT Employees' Regulations, the services of the above selected candidates in the post of Assistant Traffic Manager were regularized under Regulation 14 of the Chennai Port Trust Employees' Regulations 2008, w.e.f. 05.11.2008, vide T.M's order No.A2/530/09/T dated 19.09.2009, subject to the final result of the pending W.P.No.26362 of 2008.

17. It is the submission of 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 subject to the outcome of W.P.Nos.11281 of 2011, 10637/2011, 10638/2011 and 10939 of 2011.

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



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far as respondents 3 to 6 are concerned, they have no role in the irregularity in the selection process and therefore, the allegations of the writ petitioner that the procedure followed by the Departmental Promotion Committee, is without substance.

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

20. In the instant case, the petitioner 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.

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



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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.

22. 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 petitioner. 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



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Assistant Traffic Manager. It is actually treating the innocent appointees as wrong doers but actually for the no fault committed by them.

23. The petitioner participated in the selection process but he is 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.

24. 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.



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25. 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. Connected MPs are closed.

08.03.2023

Index:Yes/No
Speaking/Non-speaking order
nvsri

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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