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W.P.No.6218 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.6218 of 2016

Dr.R.Suresh

.. Petitioner

VS

1.The Joint Director,
Joint Directorate of Collegiate Education,
Chennai Region, Saidapet,
Chennai – 600 015.

2.The Registrar,
University of Madras,
Chepauk, Chennai – 05.

3.The Secretary
Sir Theagaraya College,
No.1047/345, T.H.Road,
Old Washermenpet,
Chennai – 21.

4.Dr.G.Ramesh

*(R4 impleaded vide order
dated 12.08.2022 made in
W.M.P.No.14259 of 2020
in W.P.No.6218 of 2016)*

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to appoint the petitioner as Assistant Professor of Commerce in the 3rd respondent college immediately within the time frame that may be fixed by this Court.



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For Petitioner : Mr.K.Thilageswaran
For Respondents : Mr.S.Ravi Kumar
Special Government Pleader
for R1
Mr.M.Palanimuthu for R2
Mr.B.Ravi for R3
Mr.K.M.Ramesh, Senior Counsel
for R4

ORDER

Writ petition has been filed in the nature of a mandamus seeking a direction to the respondents, the Joint Director, Joint Directorate of Collegiate Education at Chennai and the Registrar, University of Madras and the Secretary of Sir Theagaraya College, to appoint the petitioner as Assistant Professor of Commerce in the third respondent / Sir Theagaraya College at Chennai, within the time frame fixed by this Court.

2. In the affidavit filed in support of the writ petition, it had been stated that the petitioner is a PG degree holder in Commerce and also secured M.Phil and Ph.D in Commerce. He had also passed SLET examination conducted by the State of Tamil Nadu for eligibility to be considered as Lecturer in November, 1999. He has been working as Lecturer for the past seventeen years.



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3. Further, it is stated that an advertisement had been punished in the news paper, The Hindu, on 06.05.2009, by the third respondent, a private but government aided college, inviting applications for the post of Lecturers for Commerce Subject. There were two posts, one for General Category and the other for Backward Class Category.

4. The petitioner had possessed the requisite qualifications and had also applied for the post and attended interview on 23.10.2009. There were twenty candidates. Subsequently, he got to know in September, 2012, nearly about three years later, that one Dr.S.Gayathri was the selected candidate and that the petitioner was placed at waiting list no.1.

5. It was also stated by the petitioner that the selected candidate Dr.S.Gayathri did not come forward to produce the relevant certificates. It had been stated that, therefore, the petitioner had a legitimate expectation that he would now be called upon to produce necessary certificates for verification. But, however, the said offer was never given to him.



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6. On the other hand, it is alleged that the candidate in the waiting list no.2 / Dr.G.Ramesh, who was subsequently impleaded vide an order dated 12.08.2022 in W.M.P. No. 14259 of 2020, had been appointed to the said post on 29.04.2010. The petitioner further stated that the third respondent had forwarded the said appointment to the Registrar of the Madras University / second respondent for approval. However, the second respondent by letter dated 09.05.2011, had stated that the said appointment was not acceptable, since opportunity had not been given to the petitioner herein, who was at waiting list no.1 and, therefore, it was stated to the third respondent that the petitioner should be appointed or a fresh interview should be conducted for selection to the post of Lecturer in the Department of Commerce.

7. The said letter was questioned by the third respondent, by filing W.P.No.15944 of 2011. In the said writ petition, the petitioner herein, Dr.R.Suresh, was not made a party respondent. The said writ petition was allowed by an order dated 16.02.2012. In the said order, it had been very specifically observed by the learned Single Judge as follows:-

"13. Therefore, the question as to whether the management of the College gave sufficient opportunity to the candidate at Serial No.1 or not, may not be a question that the University



may be concerned with. It may be open to the candidate placed at Serial No.1 in the waiting list or to the State Government to question issue, as their role is different....."

8. It was held that the question whether the Management of the College gave sufficient opportunity to the petitioner herein / candidate at Serial No.1 or not, may not be a question that the University may be concerned with. It was held that it may be open to the petitioner herein / candidate placed at Serial No.1 in the waiting list or to the State Government to question the same.

9. Thus a very categorical statement had been stated by learned Single Judge. It had been observed that the petitioner herein had a right to question the appointment of the fourth respondent herein. The petitioner was not made a party in that particular writ petition. Holding that the respondents in that particular writ petition, the University had no right to question the non-appointment of the petitioner herein, the writ petition was allowed.

10. Questioning that particular order, the petitioner herein as a party aggrieved, as provided in the Appellate Side Rules of this Court, had filed W.A.No.269 of 2014. This writ appeal was clubbed



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along with two other writ appeals, namely, W.A.No.2010 of 2013 and W.A.No.270 of 2014 and a common order was passed by the Division Bench on 15.10.2018. Those two writ appeals were also by similarly placed candidates, who were not selected to the third respondent college. After considering the facts, the Division Bench, finally stated that the appellant / petitioner herein had been denied an opportunity to submit his case before the writ court on account of the tactics adopted by the writ petitioner therein / the fourth respondent herein / Dr.G.Ramesh. It had also been very specifically stated as follows '*the management invented a false reason to deny appointment to the selected candidates*'. In view this particular fact, the impugned order in the writ petition was set aside.

11. This effectively meant that the appointment order of Dr.G.Ramesh, whose candidature was directed to be considered by the University by the learned Single Judge, was interfered with by the Division Bench. Thereafter, it had been further stated in the affidavit filed in support of the writ petition that since the aforesaid right had accrued to the petitioner herein, this writ petition had been filed seeking a mandamus questioning the appointment of the fourth respondent /Dr.G.Ramesh and seeking a direction that the petitioner should be alternatively appointed in his place.



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12. On the side of the first respondent namely, the Joint Director, Joint Directorate of Collegiate Education reference was made to the order dated 02.07.2012 in Na.Ka.No.3290/A2/2012 and it was reiterated and stated that the appointment of Dr.G.Ramesh was irregular and could not be approved by the said authority.

13. The third respondent / the Secretary of College, had filed a counter affidavit. In the said counter affidavit, it had been claimed that the petitioner cannot claim a right of appointment. It had also been stated that the college committee alone is the appointing authority. It had been stated that the University was only an approval agency to approve the educational qualification. It had been stated that the first respondent is the authority to approve the proposal for appointment submitted by the third respondent.

14. In effect, it had been stated that the third respondent / the Secretary of College is the sole authority to decide, who is to be appointed and who need not be so appointed. It had been stated that the other respondents, namely, the Joint Director of Collegiate Education and the Registrar, University of Madras are only



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authorities for namesake alone and they have no authority to question any appointment made by the third respondent.

15. The maintainability of the writ petition was also questioned stating that the selected candidate Dr.S.Gayathri had not been made a party. This point has been stressed by learned counsel for the petitioner during the course of the arguments.

16. It had been further stated that experience certificates were sought to be produced by Dr.S.Gayathri and by the petitioner herein and it had been contended that the said experience certificates should have been counter signed by the Joint Director of Collegiate Education and unfortunately Dr.S.Gayathri and the petitioner herein, who was at waiting list no.1 had not produced such certificates duly counter signed and, therefore, it had been stated that both the candidates were not considered for selection.

17. On the other hand, it had been stated that the selected candidate Dr.G.Ramesh satisfied all conditions as required by the third respondent / the Secretary of College and, therefore, his name was proposed for appointment and forwarded to University and to the Joint Director, Joint Directorate of Collegiate Education.



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18. Learned counsel stated that subsequent to the order of the writ appeal, no proceedings were issued and the fourth respondent / Dr.G.Ramesh, had filed a writ petition seeking approval and pending writ petition, approval was granted and, therefore, the said writ petition was withdrawn. No further details of the said writ petition had been given to this Court either by learned counsel for the third respondent or by learned the Senior Counsel for the fourth respondent.

19. It had been further stated that as soon as approval had been granted, the fourth respondent had been put in place as Lecturer in Commerce Department and has been functioning as such from the year 2010 onwards. It had been pleaded that since he had been working for the past 13 years, it would be extremely harsh for this Court had to interfere with this process.

20. In this connection, learned counsel for the third respondent placed on record orders of the Hon'ble Supreme Court in C.A.Nos.4927 & 4933 of 2022, both filed by the Vice Chancellor, Indian Maritime University and another, in which the respondents were S.Vasudevan & M.S.Ravi Sharma and another, respectively,



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wherein, the Hon'ble Supreme Court had dismissed the appeals and had stated that since, the first respondent in each of the appeals were working gainfully elsewhere, there was no question of reinstatement as Lecturer. However, this observation had been further qualified in the order that the respondent is not to be reinstated in the appellant university pursuant to the orders passed by the High Court and it had been observed that the withdrawal of the appointment order may not be treated as stigmatic.

21. The learned counsel also pointed out that the order of Division Bench and tried to interpret it to the advantage of the third respondent. It was contended by that learned counsel that the Division Bench had only stated that the order in the writ petition had been set aside. It was contended however that the appointment of the fourth respondent had not been set aside and it was also contended that the petitioner herein had not questioned the order of appointment of the fourth respondent. It was therefore contended that the writ petition should be dismissed.

22. Learned Senior Counsel appearing on behalf of the fourth respondent, also relied on the counter affidavit filed and stated that the fourth respondent had been working as Lecturer for



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more than a decade now under the third respondent college and also stated that, therefore, it would not be appropriate to interfere with his appointment. It was stated that he was also eligible with requisite qualification to be appointed as Lecturer and had been recognised by the second respondent / University to also act as guide for Ph.D candidates.

23. The learned Senior Counsel stated that at this length of time, the consideration of any of the points raised in the writ petition would seriously prejudice the interest of the fourth respondent. He stated that the first respondent, had permitted claiming and drawing salary in the vacant post, which has been paid from the date of stoppage of salary consequent to the retirement of M.Karunakar only from 05.03.2019 alone.

24. The learned Senior Counsel stated that the fourth respondent had been working continuously from 2010 onwards. He stated that the fourth respondent had suffered severe monetary loss due to non-grant of annual increments and non fixation of pay. He had been paid salary as payable in the year 2016 till date. He had also not been considered for grant of career advancement. He had actually left his previous employment and had he continued in



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that previous employment he would have been Dean of that particular college.

25. I have carefully considered the arguments advanced and perused the relevant records.

26. The entire issue surrounds, the acts of commission, not of the petitioner or of the fourth respondent but directly of the third respondent college. It is disheartening to note that the Secretary of Sir Theagaraya College had played a game of convenience by swinging like a pendulum at each and every stage of the proceedings. The only proper issue which the third respondent / Secretary did was to issue an advertisement calling for the post. Thereafter, the third respondent started to act as if there was no controlling authority over him. The authority of the University and the authority of the Joint Director, Joint Directorate of Collegiate Education has been openly questioned and challenged by the second respondent by stating that it is a private college / government aided and that therefore, the college committee had every right to chose a candidate of their choice, irrespective of the selection process or of the marks obtained during the selection process. I wonder why they issued the advertisement at all. They might have opened the



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door for any body who is walking across and invite them and if they are found fit in whatever manner they require, appoint him /her to any post in the said college. The act of the third respondent has to be condemned and is condemned in no uncertain terms by this Court.

27. After having issued an advertisement, about 20 candidates had applied for the post of Lecturer in Commerce. One Dr.S.Gayathri was selected and Dr.R.Suresh, was at waiting list no.1. The fourth respondent / Dr.G.Ramesh was at waiting list no. 2.

28. Over riding the claim of the petitioner herein, who was in waiting list no.1, it is alleged that the third respondent / College had invited the fourth respondent for verification of his certificate. However, the third respondent, had hit a block there also. The educational qualifications of the fourth respondent have to be verified and counter signed by the University / second respondent. They did not grant necessary approval and they were of the opinion that without giving opportunity to the petitioner herein, who was at waiting list no.1, the third respondent / college should not have proceeded further giving that particular opportunity to the fourth



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respondent. Therefore, letters emanated from the second respondent / University declining to grant necessary approval. The first respondent / Joint Director, Joint Directorate of Collegiate education also was of the same opinion. Those orders were put to challenge before the learned Single Judge.

29. As stated, the learned Single Judge had recognized the right of the petitioner herein to question the appointment of the fourth respondent herein. The petitioner was however not made a party. The writ petition was allowed by issuing necessary directions to the University to examine the certificates produced by the fourth respondent. That order, was set aside by the Division Bench.

30. It is worthwhile to extract the order of Division Bench in their own words:-

"11. The management without issuing appointment orders to the appellants, appointed the writ petitioners. The management thereafter submitted proposals for approval of their appointment. The Joint Director of College Education found that the selected list prepared originally contained the name of the appellant in W.A.No.2010 of 2013. Similarly, it was found that the appellant in W.A.No.269 of 2014 was placed at Sl.No.1 in the waiting list. The Joint Director of Education therefore refused to approve the appointment of the candidates indicated in the proposal.



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12. Subsequently, the appointed candidates have filed Writ Petition in W.P.No.15944 of 2011 challenging the order passed by the University, and Writ Petitions in W.P.Nos.19085 and 19086 of 2012 to quash the communication sent by the Joint Director of Education, calling upon the management to submit proposals for appointment of the appellants.

13. The writ petitioners played fraud on the Court by not impleading the selected candidates as parties to the Writ Petition. It is not as if the names of selected candidates were not referred to in the order passed by the Joint Director of Education. The learned Single Judge considered the claim made by the writ petitioners in the absence of the selected candidates. The appellant in W.A.No.2010 of 2013 was initially selected. The appellant in W.A.Nos.269 and 270 of 2014 was shown as a wait listed candidate. Since the selected candidates for appointment to the post of Assistant Professor in Commerce failed to turn up, necessarily, option should have been given to the appellant in W.A.No.269 of 2014 for appointment to the said post. However, for the reasons best known, the management has chosen a different path. They have appointed other candidates who were not originally included in the select list. The management supported the case of the writ petitioners before the writ court. The course of conduct adopted by the management clearly shows that the Writ Petitions were filed by the subsequently selected candidates in collusion.

14. In *Jiten Kumar Sahoo & Ors. vs. Chief General Manager Mahanadi Coalfields Ltd., and others*, 2011 (1) Scale 746, the Supreme Court found that the affected parties were not initially impleaded as party respondents in the writ petitions, although primary relief was to quash their selection and appointment. They were



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impleaded for the first time after ten years. The Supreme Court while allowing the appeals filed by the affected parties, observed that Writ Petitioners were not entitled to any discretionary relief in exercise of the extraordinary jurisdiction of the High Court and that there is no need to deal with the merits of the matter.

15. The appellants were denied of an opportunity to submit their case before the writ court on account of the tactics adopted by the writ petitioners. The management invented a false reason to deny appointment to the selected candidates. Since the appellants were not made parties to the Writ Petitions and a decision was taken behind their back, necessarily, the impugned orders are liable to be set aside.

16. In the result, the impugned orders are set aside. The Writ Petitions in W.P.No.19085 of 2012, W.P.No.15944 of 2011 and W.P.No.19086 of 2012 are dismissed.

17. In the upshot, we allow the intra court appeals. No costs. Consequently, connected miscellaneous petitions are closed."

31. The matter then came back a full circle.

32. After this particular order, the third respondent appears to have offered employment only to the fourth respondent. It is contended that the petitioner herein had not produced experience certificates as counter signed by the Joint Director of Collegiate Education, as is required. Learned counsel for the petitioner however raised issues on that particular aspect stating that



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certificates were actually produced.

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33. This is an issue, which this Court cannot examine under Article 226 of the Constitution of India, since it surrounds examination of a fact. Such fact, can be explained only by the appointing authority or by a competent authority, who can question the order of the appointing authority, in this case, either by the University or by the Joint Directorate of Collegiate Education.

34. In the circumstances stated above, the relief sought in the writ petition will have to be examined, namely, a madamus seeking a direction to appoint the petitioner herein as Lecturer / Assistant Professor of Commerce in the third respondent college. However, the appointment of the third respondent has not been questioned. But, in effect, the appointment is irregular and the appointment is not in consonance with the rules and regulations. The rules and regulations provide that the candidate in the first waiting list should be first offered and thereafter, an order must be passed rejecting him and then the candidate in the second waiting list must be offered the employment.

35. So far as the selected candidate Dr.S.Gayathri is



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concerned, it is a fact which can neither be denied nor disputed that she had not produced the certificates. That fact is on record. It is also on record that in the earlier W.P.No.15944 of 2014, filed by the fourth respondent herein, the learned Single Judge had asserted the right of the petitioner herein alone to question the selection of the fourth respondent. Therefore, I would not hold it against the petitioner for not impleading the said Dr.S.Gayathri as a party to the present writ petition. She stands disqualified as not having produced the experience certificates.

36. So far as the petitioner is concerned, there is a dispute whether he had produced proper certificates or not. Even otherwise, the issue is that he had not been invited for selection but the third respondent had straightaway moved over to the fourth respondent herein. In view of that particular fact, it has to be held that the order of the Joint Director holding the pay of fourth respondent, is proper even though that is not a direct issue in the present case.

37. A direction is therefore given to the third respondent to issue a letter of offer to the petitioner herein, examine the certificates, examine the date of the counter signatures of the Joint Director of Collegiate Education, examine whether on that particular



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date when the selection process opened up, they were counter signed by respondent no. 1 and further examine whether even if they were not so counter signed, whether it was a curable defect or not. After completing this particular exercise alone can the third respondent justify the appointment of the fourth respondent.

38. A direction is therefore given to the third respondent to issue necessary communication to the petitioner herein to produce relevant certificates, examine them in light of the observations above and then, take a decision whether the petitioner was qualified on the date when the selection process. If the petitioner had produced necessary certificates, then appropriate orders in that regard will necessarily have to be passed. This would also necessary imply that orders adverse to the fourth respondent will have to be passed.

39. Let the procedure be followed meticulously in consonance with the rules and regulations and thereafter let the candidate who has been properly chosen be appointed and the name be forwarded to the second and first respondents for necessary approval. This procedure has to be followed. A direction is given that the third respondent should issue communication to the



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petitioner herein within a period of four weeks from the date of receipt of a copy of this order and proceed further in accordance with the directions issued above.

40. Writ petition stands disposed of. No costs.

09.08.2023

Index:Yes
Neutral Citation:Yes
ssm

To

- 1.The Joint Director,
Joint Directorate of Collegiate Education,
Chennai Region, Saidapet,
Chennai – 600 015.
- 2.The Registrar,
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