



WEB COPY



WA No. 3378 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

**THE HONOURABLE Mr. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE Mr. JUSTICE MOHAMMED SHAFFIQ**

W.A. No. 3378 of 2023
and
C.M.P. No. 27595 of 2023

The Pondicherry University,
Represented by Registrar,
Chinna Kalapet,
Kalapet,
Puducherry – 605 014.

... Appellant

Vs.

1. Dr. Balaji Ganesh. R
B2, Elite Shankar Abodes,
23, Sankaran Pillai Road,
Teppakullam P.O,
Tiruchirapalli – 620002.

2. The Vice Chancellor
Pondicherry University,
Chhinna Kalapet, Kalapet,
Puducherry – 605014.

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 12.07.2023 passed by the learned Judge in W.P. No. 8442 of 2022.

For Appellant : Mr. A.R.L. Sundaresan,
Additional Solicitor General assisted by
Mr. V. Balamurugan.

For Respondents : Mr. Govind Chandrasekhar for R1.

J U D G M E N T

[Judgment of the Court was made by R.MAHADEVAN, J.]

This writ appeal arises from the order dated 12.07.2023 passed by the learned Judge in W.P. No. 8442 of 2022.

2. The case in brief is as follows:

The first respondent herein/writ petitioner has applied to the post of Assistant Registrar in EWS (Economically Weaker Section) Category in the appellant University, pursuant to the Recruitment Notification dated 06.11.2020. After the finalization of results, the first respondent was placed



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in Serial No.1 in the waiting list. Subsequently, the person who got selected to the said post resigned within a period of one year anticipating some action against him for giving fake certificates and hence, as per Rule 22.17(ii) of the Cadre Recruitment Rules, 2019, the University has to fill up the vacancy by appointing the next candidate in the waiting list. However, the first respondent was not considered. Hence, he filed a writ petition seeking a direction to the appellant and the second respondent to appoint him to the said post. The learned Judge, after considering the submissions made on either side and upon perusal of the materials available on record, passed the impugned order directing the appellant and the second respondent to appoint the first respondent in the said post, if he is otherwise suitable, on merits. Challenging the said order, the appellant has preferred the present appeal.

3.Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the appellant submitted that the learned Judge has relied only Clause (ii) of 22.17 of the Pondicherry University Cadre Recruitment Rules, 2019, whereas Clause (i) has not been taken into consideration which states that the University reserves the right to fill or not to fill up the posts



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advertised for any reasons whatsoever. Hence, it is submitted that though the first respondent has been selected and shown as first person in the waiting list, it is not his right to seek an employment and the University reserves the right to evaluate such a candidate in terms of suitability and compatibility; and that, if a direction is issued to appoint him in the said post, the discretionary power of the appellant to verify the antecedents and the character of the first respondent is taken away. He further submitted that as per the said Rule, if the post falls vacant within a period of one year, the candidate in the waiting list can claim the post to be filled up, but in the present case, the Selection Committee was constituted on 01.03.2021 and the selected candidate has resigned on 13.01.2022. Despite the submission of resignation, the post had fallen vacant only on 12.04.2022 after a period of one year and hence, the claim of the first respondent cannot be considered as per the said Rule. Without considering all these aspects, the learned Judge erred in allowing the writ petition filed by the first respondent by passing the impugned order, which is liable to be set aside.

4.Per contra, the learned counsel for the first respondent relied upon



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the decision of the Honourable Supreme Court in ***Gujarat State Dy.***

Executive Engineers' Association Vs. State of Gujarat and Others

reported in ***1994 Supp (2) Supreme Court Cases 591*** and submitted that there is no infirmity in the impugned order passed by the learned Judge and therefore, the same need not be interfered with by this court.

5. Heard both sides and perused the materials available on record carefully and meticulously.

6. It appears that relying upon Rule 22.17(ii) of the Pondicherry University Cadre Recruitment Rules, 2019, the learned Judge has directed the authorities to consider the name of the first respondent. In this regard, Paragraph Nos. 8 and 9 of the order passed by the learned Judge are usefully extracted below:

“8. The drawing of the waiting list has not been disputed, similarly, the fact that the vacancy arose within a period of one year on account of resignation of the 3rd respondent is also not disputed. From the entire counter affidavit, it is not the case of the respondents 1 and 2 that the petitioner has no merits whatsoever for such post. Therefore, in the absence of any pleadings in this regard, now the respondents 1 and 2 cannot introduce a new case questioning the merit of the petitioner belatedly. The Rule 22.17(ii) as indicated above makes it very clear that in the event vacancy



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arises within a period of one year, the next person in the waiting list should be offered. The offer shall be made to the next candidate on the merit.

9.In such view of the matter, it is the duty of the respondents 1 and 2 to offer appointment to the petitioner based on his qualification, if it is otherwise in order to fit in the said category”.

Further, the learned Judge has specifically observed in the impugned order to appoint the first respondent, if he is otherwise suitable to the post of Assistant Registrar, on its merits. As such, it is open to the appellant to consider the name of the first respondent, for appointment to the post in question, purely on merits and in accordance with law, within the time stipulated therein.

7.In view of the above, we are only inclined to dispose of this writ appeal, as agreed by the learned counsel appearing on either side, with a direction to the appellant to consider the name of the first respondent, for appointment to the post of Assistant Registrar, purely on merits, within a period of six weeks from the date of receipt of a copy of this order.

8.Accordingly, this Writ Appeal is disposed of. No costs.



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Consequently, the connected Miscellaneous Petition is closed.

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J.]

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Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

To

The Vice Chancellor
Pondicherry University,
Chhinna Kalapet, Kalapet,
Puducherry – 605014.

[R.M.D., J.]

07.12.2023

[M.S.Q.,



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**R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.**

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W.A. No.3378 of 2023
and
C.M.P. No. 27595 of 2023

Dated: 07.12.2023