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W.P.No.34077 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.34077 of 2023 and

WMP Nos.33986, 33960 and 33965 of 2023

M. Dhanakantharajan

... Petitioner

Vs.

1. Union of India, By Government of Puducherry,
Through its Chief Secretary,
Chief Secretariat, Puducherry 605 001.
2. Govt. of Puducherry, by its Secretary (Personnel),
Chief Secretariat, Puducherry 605 001.
3. Govt of Puducherry, by it Under Secretary,
Dept. of Personnel and Administrative Reforms,
Chief Secretariat, Puducherry 605 001.
4. The Centra Administrative Tribunal,
By its Registrar, High Court buildings,
Chennai-104.

... Respondents



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Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorari to call for the records of the 4th respondent /Tribunal in M.A.No.614 of 2023 in O.A.No.257 of 2023 dated 28.11.2023 and quash the same.

For petitioner : Mr.J.Srinivasa Mohan

For Respondents : Mr.A.L.Somyaji, Senior Counsel
for Mr.Syed Mustafa, Spl.Govt.Pleader
for respondents 1 to 4
R4- Tribunal

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed challenging the order passed by the Tribunal in M.A.No.614 of 2023 in O.A.No.257 of 2023, dated 28.11.2023 in any by which, the interim order granted on 17.03.2023 was vacated and the respondents were allowed to publish the results of LDCE examination conducted on 6.8.2023, for filling up the vacancies in the post of Assistant.

2. By consent of both the parties, this writ petition is taken up for final disposal.



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3. The brief facts leading to the filing of the writ petition is as follows.

The petitioner herein had filed Original application in O.A.No.257/2023 before the Tribunal along with others, (who filed O.A.Nos.241/2023 and 248/2023) challenging the Recruitment Rules for the post of Assistant on various grounds. Consequently, the Recruitment notification for LDCE was also challenged. At the time of admission, the Tribunal has passed common order dated 17.03.2023 and permitted the Department to conduct LDCE examination, however, retrained them from publishing the result, without leave of the Tribunal. The Interim order passed by the Tribunal is reiterated as follows.

14. By taking into the submission made by the learned counsel on both parties, as an interim measure, applicants in all the O.A.s are allowed to make their application in pursuance of the advertisement issued by the respondents, vide I.D.NOTE/Memorandum, No.A-34012/1/2023/ DP& AR (Exam) dated 16.2.2023, as the last the date of receipt of application is dated 17.03.2023 (t.00 p.m.) i.e. today and such applications of the applicants in all the O.A.s shall be accepted by the respondents till 24.03.2023 evening 5.00 p.m. and allow them to participate in the said LDCE examination conducted by the respondents. Results of the said examination conducted in pursuance of the aforesaid notification shall not be published without the leave of the court.



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3.1. When the above interim order was in force, the respondents herein had filed applications in M.A.Nos.612, 613 614 of 2023 to vacate the interim order on 25.11.2023 and the same were listed on 28.11.2023. On that day, the counsel for the petitioner herein insisted that already date is fixed for final hearing of the original applications and hence, the interim applications may be listed along with the original applications. However, the learned counsel for the respondents/Government replied that, he is not going to argue the matter, but placing certain basic facts. After hearing the counsel, the Tribunal had passed the order on 28.11.2023, vacating the interim order already passed on 17.03.2023 and also preponed the final hearing of the original applications from 13.12.2023 to 30.11.2023. Aggrieved by the above said order, the present writ petition has been filed.

4. The learned counsel for the petitioner vehemently argued before this Court that when the date was fixed for final hearing of the original application on 13.12.2023, the Tribunal had passed the vacating interim order on 28.11.2023 and preponed the final hearing on 30.11.2023. He further submitted that there is no urgency for vacating the interim order



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with just two days for final hearing of the original application. When the Recruitment Rules itself has been challenged, vacating the stay, without hearing the petitioner, affects the rights and interest of the petitioner. Therefore, he seeks to set aside the impugned order of vacating the interim order, till the disposal of the original application.

5. In reply to the same, the learned Senior Counsel appearing for the respondents submitted that the Department had conducted LDCE examination for filling up the post of Assistant by promotion and invited applications from the applicants, working as Upper Division Clerks in the Department. According to the respondents, totally, 324 Assistant posts are vacant and only 13 persons have approached the Tribunal by filing O.A.Nos.241, 248 and 257 of 2023 (including the petitioner), in which, the Tribunal had granted interim order. He further submitted that, without going into the merits of the case, the respondents seek for direction to the Tribunal for final disposal of the original application and in the meantime, no prejudice will be caused to the petitioner.



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5.1. He also stated that ***out of 13 persons, who have moved the Tribunal by filing three original applications (O.A.Nos.241, 248 and 257/2023), seven persons (including the petitioner herein) were already selected to the post of Assistant; one person was absent; and the remaining five persons have not passed the LDCE examination.*** The details of the selected; not selected and absent persons have been shown in the tabular column and the same is placed before this Court.

5.2. The learned counsel for the respondent fairly agreed before this Court that, without prejudice to their right before the Tribunal, the respondents are undertaking not to fill up the five posts for Assistant, till the final disposal of the original application. The selected persons (including petitioner) will be considered for promotion to the post of Assistant and appointment orders will be issued to them by the Department, if otherwise they are eligible.

6. In view of the above statement made by the learned counsel for the respondents, the right of the petitioner herein is protected. Therefore, we



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inclined to dispose the writ petition as follows.

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i) As per the undertaking made by the counsel for the respondents, the respondents are directed to keep five posts vacant in the cadre of Assistant, till the final order passed in the original application by the Tribunal.

ii) As has been stated by the respondents, since the petitioner has passed the LDCE examination, his name has to be considered for promotion to the post of Assistant, **if otherwise, he is eligible.**

iii) We make it clear that any promotion to be made by respondents, shall be subject to the outcome of the original applications before the Tribunal.

iv) Both the parties agreed for final disposal of the original application in the second week of January 2024.

v) The Tribunal is directed to dispose the original applications, preferably in the second week of January 2023, without being influencing the observations made in the orders passed in the vacate stay petitions.

iii) The petitioner is at liberty to agitate all other aspects, raised in the writ petition, before the Tribunal.



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7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.) (P.D.B.J.)

06.12.2023

Internet: Yes/No

Index : Yes/No

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To

1. The Registrar, Central Administrative Tribunal,
High Court, Madras 104.
2. The Chief Commissioner of Central Excise,
Union of India, Chennai Zone, 121,
Nungambakkam High Road,
Chennai 600 034.
3. The Commissioner of Central Excise,
No.1, Williams Road,
Contonment, Trichy -1.



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P. DHANABAL, J.

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