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W.P.Nos.32994 of 2018, 32992 of 2018 and 32996 of 2018

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.32994 of 2018, 32992 of 2018 and 32996 of 2018
and connected MPs.

B.Anbuezhayan

S.Gunasekaran

V.Shanthi

... Petitioner in WP.No.32994/2018

... Petitioner in WP.No.32992/2018

... Petitioner in WP.No.32996/2018

Vs.

Chennai Port trust,

Rep. By its Chairman

Rajaji Salai

Chennai-600 001

..Respondents in the above three

Writ Petitions.

PRAYER in WP.32994, 32992 and 32996 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a certiorarified mandamus calling for the concerned records from the respondents, quash the order of the respondent dated 06.12.2018 bearing No.A2/1199/2013/T as illegal,arbitrary and contrary to law and consequently direct the respondent to retain the petitioner in the post of Assistant Traffic Manager (Class I).



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For petitioners : Mr.Balan Haridas

For respondent : Mr.R.Sankaranarayanan ASGI

Asst. by Mr.Niranjan Rajagopal

COMMON ORDER

The above writ petitions are filed by the petitioners, challenging the order of the respondent-Port trust dated 06.12.2018 whereby, their appointment to the post of Assistant Traffic Manager Grade-I made, was set at naught on the ground that the entire selection process was tainted by malpractice. The petitioners therefore, sought to quash the impugned order dated 06.12.2018 and also seeks for a direction to the respondent-Port Trust, to grant permission to them to hold the post of Assistant Traffic Manager as they were selected on the procedure followed by Departmental Promotion Committee.

2. Mr.Balan Haridas, learned counsel for the petitioners submitted that in view of ban on recruitment, by invoking Regulation 5A of Chennai Port Trust Employees Regulations, 2005 permitting the respondent-Port Trust to fill the existing vacancy, recruitment process was carried out. After selection process, the petitioners viz., V.Shanthi, B.Muralidharan,



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B.Anbucheziyan and Gunasekaran were appointed. However on the allegations of question paper leak, manipulation, discrepancy in evaluation of answer papers, the respondent Port trust gave orders of reversion to these petitioners holding that additional 10 marks were given to the candidates from Traffic Department and there were discrepancies in the evaluation of answer papers and some corrections/alterations were noticed in the answer sheet and there was possibility of leakage of question paper and that abnormal variation of mark scored by the selected candidates when compared with the other candidates not selected.

3. According to the learned counsel for the petitioners, the allegation of discrepancies in evaluation of answer papers and some corrections, was without substance. It is stated that the respondent-port trust does not disclose the material which they had perused to come to such a conclusion.

4. Mr.Balan Haridas, learned counsel submitted that the letter of National Maritime Academy dated 29.10.208 which conducted the written examination will make it clear that examination process was done as per



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law and evaluation was done as per procedure. The allegation of possibility of leakage of question paper is purely on presumption and assumption which had no legal basis. The allegation of abnormal variation of marks scored by the selected candidates when compared with the other candidates not selected, is based on some investigation report which is not disclosed to the petitioners. Therefore, the learned counsel contended that the selection committee allots its own modality to conduct the selection process. As per the decision of the selection committee, marks in the interview was awarded.

5. The respondent-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.Anbuchejian, (3) B.Muralidharan and (4) S.Gunasekaran.



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6. 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 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.’

7. In view of the above order passed by this court, the appointment



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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.”

8. The learned Additional Solicitor General submits that after the written examination, 36 candidates attended the interview and the petitioners in the present writ petitions got selected in the selection process and were appointed as Assistant Traffic Manager Gr.I and also working in the said post from the year 2008. As against the impugned order passed by the respondent treating the appointment as invalid ab initio and restoring them to the substantive post held by them during 2008 has been stayed by this court at the time of admission of these writ petitions. Therefore, for the past fourteen years, the petitioners are working as Assistant Traffic Manager.



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9. The Chief Vigilance Officer filed the Investigation report before the Director, Central Vigilance Commission and the said report dated 02.02.2016 is filed by the learned Additional solicitor General of India before this court as confidential report before this court.

10. The report would read that based on the complaint addressed to Central Vigilance Commissioner, Central Vigilance Commission, New Delhi, pertaining to the selection of 4 candidates to the post of Assistant Traffic Manager (ATM Grade-I) (Class I) by the Traffic department, during the year 2008, investigation conducted. The allegations are that out of 4 candidates who were selected to the post of Assistant Traffic Manager, it has been stated that there were 7 candidates scored more/equal marks in the competitive written test that S.Gunasekaran (petitioner in WP.32992/2018) who was selected under OBC category. But less mark was given to those 7 candidates in the interview against the personality, aptitude and performance at interview for 15 marks.

11. The report opined procedural violations in the selection process,



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lapses on the part of the officials in the selection/screening committee and that recruitment through redeployment basis is not contemplated one.

12. On the other hand, the learned counsel for the petitioners submitted that these petitioners 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 these petitioners 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 allegations are concerned, it is against the members of the Standing Committee.

13. Mr.Balan Haridas, learned counsel for the petitioners argued that the petitioners have no role to play in the selection process and this fact is admitted by the respondent-Port Trust. The respondent-Port Trust, after approval from the Ministry proceeded with the selection process and



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the petitioners are in no way aided the interpretation of Rule 5A or its misinterpretation. The allegations of irregularity in setting up of the question paper is without substance. Selection process was taken by the Departmental promotion committee and in that the petitioners have no role to play. Even though there are allegations that irregularity in the conduct of examination, there is no material placed to show that question paper got leaked or anybody manipulated with the selection process.

14. Mr.Balan Haridas, learned counsel also pointed out that the decision to award 10 marks for the candidates from the Traffic Department was the decision of the selection committee. The decision was taken on 20.08.2008 and given to all the candidates from the Traffic Department. He would further submit that there is no discrepancy in the evaluation of the answer papers and no details are given in this regard except for making wild allegations.

15. The learned counsel would also submit that the respondent-Port Trust initiated action against the officials who were part of the selection committee and involved in the lapses. Mr.Balan Haridas strenuously



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contended that the allegations that there was no fair and equal opportunity given to all the candidates in the selection process is without substance.

The entire recruitment process was conducted by the Departmental Promotional Committee, constituted by the respondent-Port trust. The constitution of the committee was not questioned and the integrity of the members was not questioned in any manner. Therefore, the false complaint preferred by the staff who did not get selected, cannot be justified.

16. It is further pointed out by the learned counsel that the answer sheets were valued by the National Maritime Academy and the letter of the said academy dated 29.10.2008 will show that the entire examination process was done as per law and procedure. The learned counsel would argue that the allegation and contention that there is possibility of leakage of question paper is purely based on presumption and assumption and there is no iota of material to show that there was a leak of question paper. In such a situation, the question of reverting the petitioners to a lower post does not arise.

17. Arguing on the principle of selection, the learned Additional



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Solicitor General submitted that minimum educational qualification was prescribed in the manner of appointment and applications were invited from the eligible employees. The selection committee as per its own modality prescribed the process of selection and based on the marks, interview conducted and the selected candidates were given the order of appointment which was signed by the Chairman on 04.11.2008 and issued to the candidates on 05.11.2008. The petitioners herein also joined the said post.

18. It is also pointed out by the learned Additional Solicitor General that while reviewing the appointments made to the post of Assistant Traffic Manager under the erstwhile MPT Employees' Regulations, the services of the 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.



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19. It is the submission of the learned counsel for the petitioners that the petitioners 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.

20. Mr.Balan Haridas, learned counsel submitted that it is nearly 14 years since the petitioners were promoted and at this distance of time, there cannot be reversion when there is no fault on the part of selected candidates.

21. Heard and perused the records carefully including the report filed by the respondent which was the investigation report of the Chief Vigilance Officer, Vigilance department, V.O.Chidambaranar Port trust, Tuticorin.

22. The facts of the case would reveal that some amongst the



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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 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, the petitioners were selected based on the marks, experience and performance both in the written examination and interview.

23. 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



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justification for treating the appointment as invalid ab initio and therefore, the impugned order which does not provide any substantive material to hold that the petitioners are responsible for the lapses, cannot be justified.

24. So far as petitioners in the instance cases are concerned, it would be unfair to impose the burden of the lapses found on the part of some members of selection committee, on the petitioners, 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.

25. The petitioners participated in the selection process and came out successful and got appointed to the post of Assistant Traffic Manager (Grade.I). Actually there is no allegation levelled against the petitioners. 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. Further there is no sustainable



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material showed in the report as to whether the flaws found at what stage of the selection process.

26. 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 in the selection process viz., the petitioners. Cancelling the entirety of selection or the impugned order holding that the appointment of the petitioners 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.

27. In the result, the Writ Petitions are allowed. The impugned order dated 06.12.2018 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

08.03.2023

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

The Chairman, Chennai Port trust,



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Rajaji Salai

Chennai-600 001



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J.NISHA BANU, J.

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Common order made in
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