



W.P.No.10207 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2024

PRONOUNCED ON : 18. 04.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

**W.P.No10207 of 2016
and
W.M.P.Nos.9061 and 9062 of 2016 and
17040 of 2017**

Dr.N.Eswariah

...Petitioner

Vs.

1.Director of Collegiate Education,
Chennai-600 006.

2.Regional Joint Director of Collegiate Education,
Chennai Region, Chennai-600 015.

3.Sir Theagaraya College Committee,
Rep., by its Secretary,
Sir Theagaraya College,
Chennai-600 021.

4. Dr.M.Munirathinam

...Respondents

Prayer : This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to cancel the appointment of the fourth respondent as



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Assistant Professor (Telugu) and re-do the selection in accordance with the guidelines issued by the University Grants Commission and the order issued by the Government.

For petitioner : Mr.V.Sivalingam
for M/s.C.S.Associates.
For R1 & R2 : R.U.Dinesh Rajkumar
Additional Government Pleader
For R3 : Mr.B.Ravi
For R4 : Mr.C.Parthiban

ORDER

The Writ petition is filed seeking mandamus directing the respondents 1 to 3 to cancel the appointment of the fourth respondent as Assistant Professor (Telugu) and re-do the selection in accordance with the guidelines issued by the University Grants Commission.

2. The facts in brief as per the affidavit enclosed to this petition are under:

2.1. The petitioner belongs to Backward Community and after



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passing Plus 2, B.A., M.A., (Telugu), M.Phil. (Telugu), he has acquired Ph.D., in Telugu in 2006 class and subsequently he was appointed as Lecturer (Telugu) in the third respondent college as a management staff and he was fully qualified for the post. The third respondent college called for applications to fill up the post of Assistant Professor out of which one post of Assistant Professor (Telugu) reserved for candidates belongs to Backward Community.

2.2. The petitioner underwent recruitment process but he was not selected in the interview and the fourth respondent was selected in the process. After perusal of all the papers received through RTI, the petitioner came to know that the third respondent college violated the norms of the selection and not adhered to the norms of the University Grants Commission in respect of recruitment. As per the G.O.Ms.No.306, Higher Education Department dated 10.09.2007, maximum marks that can be awarded for the selection of the post of Assistant Professor was 39 however, the same was challenged before this Hon'ble Court. Subsequently, government vide G.O.Ms No.412, Higher Education Department dated 07.12.2009, has restricted the maximum mark to be



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awarded as 34. According to the petitioner, if the selection of the candidates were made as per the guidelines, the fourth respondent would not have been selected. It is the case of the petitioner that in the grading of marks of the selected candidates, they have not mentioned about the marks awarded for teaching experience, thereby, entire selection process is *void ab initio* and liable to be set aside by this Hon'ble Court.

2.3. The government issued guidelines for the allocation of marks wherein 15 marks were earmarked for teaching experience at 2 marks for one year experience with the maximum of 15 marks, 9 marks for Ph.D. Qualification, 10 marks for interview and in total 34 marks. For the other Qualification like M.Phil with SLET/NET – 6 Marks and for PG and SLET/NET- 5 marks are given. However, the third respondent college has awarded 15 marks to the fourth respondent, which is against the order issued by the government.

2.4. The third respondent has not furnished any details with regard to the marks allotted to the fourth respondent for teaching experience and the selection process is not transparent and that the grading of marks should



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have been basing on the higher educational qualification; experience. In violation of the Apex Court Ruling that not more than 15% of the total marks can be allocated for interview they have allotted more than 50% to fourth respondent.

3. The first and second respondents have filed their counter affidavit stating that as per G.O No.306, Higher Education Department dated 10.09.2007 the selection to the post of Assistant Professor was done by following the norms of University Grants Commission and constituted a selection committee and completed the selection processes and that the selection made by their selection committee is final.

4. It is further mentioned in the counter affidavit that each of the Aided Colleges is run by a separate trust and separate college Committees were formed and that as per Section 14 of Tamil Nadu Private Colleges (Regulation) Act 1976, the committee is the appointing Authority. Hence the college committee of third Respondent College is answerable to these questions, regarding the marks awarded to the petitioner and to the fourth respondent, rule of reservation and roster system etc. In private aided



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colleges appointments are made by the selection committee only and that respondents 1 and 2 are not directly involved in this process of selection, and that the second respondent is only responsible for the release of salary grant to the selected teacher. The second Respondent has approved the appointment of the fourth respondent appointment in Proc.Mu.Mu.NO.01121/01/2015 dated 03.03.2016 by accepting the third respondents proposal, thereby, the first and the second respondents do not have any role in the selection of the fourth respondent. Henceforth the learned counsel for respondents 1 and 2 prayed that the petition may be dismissed as devoid of merits.

5. Heard both sides and perused the records.

6. The case of the petitioner is that the respondents 1 to 3 have not followed the norms of selection as issued by the Government in G.O.Ms.No.412, Higher Education Department dated 07.12.2009 indicating that the minimum marks that can be awarded under various categories is only 34 and that the respondents 1 to 3 have conducted the interview and awarded marks ignoring G.O.Ms.No.412 dated 07.12.2009,



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on account of which the petitioner could not be selected and that the fourth respondent was selected.

7. According to respondents one and two G.O.Ms.No.412, Higher Education Department dated 07.12.200 is only in respect of Government colleges whereas the petitioner has applied for the post of Assistant Professor (Telugu) as per the notification dated 03.06.2015 given by the third respondent college which is not a Government college and thereby, the third respondent college follows UGC norms only basing on which marks were allotted to the candidates. It is specifically stated that the respondents one and two have nothing to do with the selection process of the third respondent and that the third respondent alone is answerable to the questions raised by the petitioner.

8. As seen for the records, counter affidavit has not been filed by the third respondent college and also by the fourth respondent whose appointment is being challenged by the petitioner.

9. The third respondent college has issued notification dated



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03.06.2015 calling for applications for appointment to the post of Assistant Professor in various faculties including Telugu. The petitioner has applied for the post of Assistant Professor (Telugu). He has participated in the selection process and appeared for the interview. However, he was not selected. The petitioner has filed details of list of candidates who participated in the selection process and marks obtained by each of them wherein. According to the petitioner the selection committee has not followed the procedure in awarding the marks and thereby, favoured the fourth respondent. The petitioner filed a copy of G.O.Ms.No.412 Higher Education Department dated 07.12.2019, dated 07.12.2019 which is earmarked maximum 15 marks for teaching experience at the rate of two marks for each year and the maximum marks for education qualification is 9 marks and earmarked 10 marks for interview and therefore, as per the said G.O. the maximum number of marks awarded to the candidates is only 34.

10. According to the petitioner as per the information furnished by the third respondent under Right to Information Act (RTI) the marks that were awarded to the the petitioner for interview is 9 and 14 marks were



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given under the category of total scrutiny marks. Thereby, in total the petitioner was given $9+14=23$ marks. Similarly, the fourth respondent who was selected as Assistant Professor got 15 marks for the interview whereas 14 marks for total scrutiny marks thereby, he got $15+14=29$. According to the petitioner as per the Government Order the maximum marks that can be awarded for interview is only 10 marks wherein the petitioner has got 9 marks however, the fourth respondent as against the maximum marks of 10 he was awarded 15 marks. Similarly for both the petitioner and the fourth respondent there is no clarity as to how many marks were awarded towards teaching experience and for qualification. As per G.O.Ms No.412, Higher Education Department, the marks awarded under the category of teaching experience, the marks awarded for acquiring Ph.D qualification etc., have to be shown but marks were given under the category of "total scrutiny of marks". Noting is mentioned as to what "total scrutiny of marks" means.

11. If this is the only issue then it is a straight case for the petitioner. However, the defence taken by the first and second respondents in the counter affidavit and the submissions of the learned Additional Government Pleader is that the G.O.Ms, No.412, *ibid*, being quoted by the



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petitioner is not applicable to the facts of the case as G.O.Ms.No.421 applies only to the Government colleges. On careful perusal of the above stated that G.O.Ms.No.421 it is clearly mentioned that the Government Order is meant for awarding marks for selection of candidates in Government Arts and Science Colleges. The said Government Order did not speak that the said order applies to selection of candidates by private colleges. Admittedly, the third respondent is a private college and the petitioner is competing for Assistant Professor (Telugu) in the third respondent college. Therefore, G.O.Ms.No.412 does not apply to the selection of Professors in private colleges.

12. According to the first and second respondents private colleges like third respondent will have to follow selection procedure as per UGC norms and according to which the selection committee of the colleges is final and after finalising the selection process, the list will be sent to the university and also to the Regional Joint Direction of Collegiate Education for approval. Consequently, the concerned Regional Joint Directorate of Education, releases the salary grant to the selected candidates.



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13. It is also the submission of the first and second respondents that the aided colleges run by a separate trust and separate college committee, are being regulated by Tamil Nadu private colleges (Regulations) Act, 1976. As per Section 14 of the *ibid*, a committee will be constituted to complete the recruitment process and that the selection committee shall submit the list of candidates to the college committee and after the college committee approves then Secretary of the college will issue appointment order.

14. The third respondent has filed copy of the list of selection committee nominated by the University of Madras for selecting Assistant Professor in various subjects. Insofar as Assistant Professor (Telugu) is concerned 2 persons and 8 member of selection committee along with a panel of subject experts were approved by the Vice Chancellor. The third respondent has also filed copy of the letter dated 22.09.2015 stating that the details of selection committee for recruitment of Assistant Professor. The third respondent has also filed minutes of the information dated 29.09.2015 to show that the committee has interviewed candidates and finally selected the fourth respondent, according to which Dr.M.Manirathinam was



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selected and Dr.M.Ravindra Babu and Mudhuluru Suresh were wait listed candidates. Similarly, letter dated 16.12.2015 of the Registrar, University of Madras go to show that a letter was addressed to the third respondent stating that the fourth respondent is eligible to hold the post of Assistant Professor (Telugu).

15. The learned counsel for the petitioner has filed by laws of third respondent educational institution. Chapter 3 of the said by laws speaks about the appointment and service conditions. According to which, in respect of appointment and service conditions of teaching and non-teaching staff of day college, UGC norms shall be followed.

16. The third respondent has also filed proceedings of the special meeting called by the President of the Sir Thegaraya College, Chennai, the selection committee, regarding allocation of marks for teaching experience, educational qualification. According to minutes of the meeting one mark shall be awarded for every completed service and that the maximum marks can be is 5. For acquiring Ph.D. in relevant subject, 9 marks were allotted. Insofar as personal interview is concerned maximum marks that can be



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awarded are 20 marks. Thereby, even under these rules and also as in the case of G.O.Ms.No.412, Higher Education Department dated 07.12.2009, the maximum marks that can be awarded by the selection committee is 34 marks only. However, the Government Order stated *supra*, the maximum marks that can be awarded teaching experience is 15 whereas as per the resolution passed by the college committee it is 5 marks. The maximum marks that can be awarded for Ph.D. Qualification in both the Government Orders and resolution of selection committee it is 9 marks. As per the Government Order the maximum marks that can be awarded for personal interview is 10 marks whereas selection committee has earmarked 20 marks.

17. According to Section 18 of Tamil Nadu Private Colleges Act, the rules runs as below:

“18. Functions of the school committee and responsibility of educational agency under the Act:-

“ (1) Subject to the provisions of this act and the rules made thereunder the school committee shall have the following functions, namely:- (a) to carry on the general administration of the private school excluding the



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properties and funds of the private school. (b) To appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions of their service; which shall not contravene any of the provisions made in the Rules or directions issued under this Act, and (c) to take disciplinary action against teachers and other employees of the private school following the prescribed procedure. (2) The educational agency shall be bound by anything done by the school committee in the discharge of the functions of that committee under this Act. (3) For the purposes of this Act, any decision or action taken by the school committee in respect of any matter over which the school committee has jurisdiction shall be deemed to be the decision or action taken by the educational agency. (4) The Secretary of the school committee shall send a quarterly Return showing the decisions taken at the meetings of the school committee held during the Quarter under report and enclose it to that monthly staff grant Statement ending with that quarter.”

18. The above provision would clearly demonstrate that as per Section 18 1 (b) the Tamil Nadu Private School Regulation Act, the school committee is vested with the powers to appoint teachers and other employees of the private school fixing their salary etc. If Section 18(1) (b), *ibid*, applies to the facts of this case, then appointment of teaching and non-teaching staff can only be made by the school committee and that no other



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person or agency can decide it. In the case on hand, the selection committee has decided, the norms of allocation of marks all the categories, viz., experience, educational qualification and personal interview, and accordingly, selections were done. Therefore, once the committee has approved the selection as per Section 18 1 (b) *ibid*, the said decision of the committee is final and it cannot be interfered with.

19. The learned counsel for the third respondent has submitted that the petitioner having participated in the selection process cannot be permitted to challenge the same after he was unsuccessful for the said preposition, the learned counsel for the third respondent has relied upon the decisions of the Hon'ble Supreme Court of India in ***D.Sarojakumari vs. R.Helen Thilakom and others***, reported in **2017 (8) SCJ 312**, the relevant portion of which is extracted hereunder:

“4. The main ground urged on behalf of the appellant is that Respondent No.1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment,



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the said person is estopped from challenging the process of selection.

5.In Dr. G. Sarna vs. University of Lucknow & Ors.,¹ the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows :-

“15.We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection (1976) 3 SCC 585 Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.....”

6. In Madan Lal & Ors. vs. State of J&K & Ors. 2 , the petitioner laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows :-

“9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now



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well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.....”

7.In Manish Kumar Shahi vs. State of Bihar,3, this Court held as follows :-

“23.....Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name (1995) 3 SCC 486 (2010) 12 SCC 576 does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

8. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others 4 the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows :-

“24.In view of the propositions laid down in the above noted judgements, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being



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made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

*9. Same view has been taken in Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramaniyan and others 5.
(2013) 11 SCC 309 (2016) 1 SCC 454*

10. The Kerala High Court did not note the above mentioned judgments and ignored the well settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment.

11. As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The

reasoning of the learned Single Judge in rejecting



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the objection is not in consonance with the law laid down by this Court. In view of this we need not go into the other issues raised.”

20. The learned counsel for the third respondent has cited the judgement in ***Ramesh Chndra Shah and others vs. Anil Joshi and others***, reported in

“24.In view of the propositions laid down in the above noted judgements, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.

21. In the case on hand, the petitioner who has participated in the selection process and not agitated about the method of selection.

22. As per the notification, selection is based on the academic merits, years of experience in the relevant field, performance of the candidate in the interview, etc. As per the minutes of members of special



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meeting dated 30.04.2015 of the third respondent college it was decided to award 1 mark for every completed of service subject to the maximum of 5 marks, for educational qualifications 5 marks and for personal interview 9 marks and 20 marks for personal interview in toto 34 marks. Basing on the said resolution of the committee the petitioner was interviewed wherein he got 9 marks for Ph.D qualification (maximum marks), 5 marks for experience (maximum marks) and 9 marks for personal interview and thereby, he has obtained 23 marks. Similarly, the fourth respondent who was selected has got 9 marks for qualification, 5 marks for service and 15 marks in personal interview and thereby, in toto 29 marks. Since the fourth respondent has got more marks than the petitioner he was selected.

23. The question is whether the fourth respondent was deliberately given more marks in the interview and the petitioner was given less marks in the interview is not the subject matter of this writ petition. The petitioner has basically questioned the selection process on the ground that G.O.Ms.No.412, *ibid*, has not been followed by the third respondent college while recruiting faculties for the post of Associate Professor. As discussed above, the said Government Order is not applicable to the third



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respondent college as it is a private college.

24. Accordingly, this writ petition is dismissed. Connected
W.M.Ps are closed. No costs.

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vca
Index : Yes / No
Neutral Citation : Yes/No
Internet : Yes/No

To

1. Director of Collegiate Education,
Chennai-600 006.

2. Regional Joint Director of Collegiate Education,
Chennai Region, Chennai-600 015.



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Dr.D.NAGARJUN, J.
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Pre. Delivery order

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