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Writ Appeal No.601 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.601 of 2020
CMP.No.8331 of 2020**

- 1.The State of Tamil Nadu
Rep., by its Principal Secretary,
Higher Education Department,
Secretariat, Chennai -9.
- 2.The Commissioner,
Directorate of Technical Education,
No.53, Sadar Patil Road,
Guindy, Chennai – 25. ... Appellants
Vs
- 1.Venkataraj
- 2.The Director,
Directorate of Sugars,
No.690 Periyar EVR Building,
Anna Salai, Nandanam,
Chennai – 35.
- 3.The Principal,
Dharmapuri District Cooperative Sugar,
Mills Polytechnic College,
Now Government Polytechnic College,
Palakode – 636 808. ... Respondents



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PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 20.08.2019 made in W.P.No.17902 of 2019.

For Appellants : Mr.D.Ravichander Spl., G.P.,

For Respondent : Mr.R.Ezhilarasan for R1

Mr.K.Suresh GA for RR2 & 3

JUDGMENT

(Judgment of the Court was made by K.KUMARESH BABU.,J.)

This Intra Court Appeal had been preferred by the State challenging the order of the learned Single Judge wherein the learned Single Judge relying upon the earlier order passed by the same learned Single Judge, had allowed the Writ petition by directing the appellant State to consider the case of the first respondent for absorption and pass orders within a period of three weeks from the date of receipt of a copy of the order.

2. Heard Mr.D.Ravichander, learned Special Government Pleader appearing for the appellants, Mr.R.Ezhilarasan, learned counsel appearing for the first respondent and Mr.K.Suresh, learned Government Advocate appearing for the second and third respondents.



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3. The main contention of the learned Special Government Pleader is that the judgment relied upon by the learned Single Judge in passing the order, has been set aside by the Division Bench of this Court in W.A.No.3926 of 2019.

4. We have perused the said judgment made by the Coordinate Bench of this Court in the said Writ Appeal. The Division Bench had not rejected the claim of the respondent therein, but had held that the learned Single Judge had exceeded in issuing a Mandamus for absorbing the said respondent after sanctioning of the post without taking into account the terms and conditions of the Government order, dated 30.01.2018. The Division Bench, while setting aside the order of the learned Single Judge had in fact disposed of the Writ Petition with a liberty to the respondent therein to get his claim assessed by the Merger Committee constituted under the Government Order and it was open to the Merger Committee to take an appropriate decision. Therefore, the main contention of the learned Special Government Pleader at the out set is rejected.

5. The further contention of the appellant is based upon the



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judgment of the Hon'ble Apex Court in the case of ***Uma Devi's*** case reported in ***AIR 2006 SC 1806***. We are of the view that the said judgment cannot be made applicable to the facts of the present case for the simple reason that the Government in the present case had taken over a Polytechnic College in to its fold from a Cooperative Sugar Mill. While issuing the order of the taking over, the Government had also directed absorption of the regular staff of the college in the sanctioned post. The Government had sanctioned three Lecturers in the subject of Maths under the Government Order and it is an admitted case that only one person had been absorbed, as the said person was regularly appointed and the first respondent herein was not absorbed, as he was not in the regular employment.

6. It is also to be noted that this Court in cases of similarly placed persons, who are not in regular employment had directed the Government to consider their case by creating the sanctioned posts, but however, in this case, there is no necessity for the Government to create a sanctioned post, since the three posts that were sanctioned in the Government order was not entirely filled up. However, a submission had been made by the learned



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Special Government Pleader that three posts have now been filled up in the sanctioned strength through the Teachers Recruitment Board and therefore, there was no vacancy for the case of the respondent to be considered.

7.We reject the said submission made by the learned Special Government Pleader for the simple reason that the order of the learned Single Judge was made in the year 2019. The respondent could have waited for the disposal of this intra court appeal atleast for one sanctioned post. Further, we had called upon the second appellant herein to furnish particulars of filling up of the said post. Pursuant to our direction, the second appellant by the written instructions, which is placed before us had categorically stated that the vacancy to the college was not notified by the TRB in the recruitment. For better appreciation, the said written instruction is extracted herein:-

As per judgment of Hon'ble Supreme Court of India, New Delhi made in SLP(C) Nos.14206-14217 of 2019, dated 08.08.2019, fresh notification is issued calling for application for the post of Lecturers in Government Polytechnic Colleges (Engineering/Non-Engineering) for the year 2017-18.



For 1058+2 (shortfall) vacancies already verified by TRB vide notification No.6/2017, dated 28.07.2017 the total number of vacancies arrived from the 46 Government Polytechnic colleges during 2017-2018 excluding the newly converted colleges that is Government polytechnic college polacode and Government Polytechnic college mohanur.

In the main term the Government issued order for conversion of dharmapuri district Co-operative sugar mills polytechnic college into Government polytechnic college vide G.O.(Ms)No.26, dated 30.01.2013, the whole process took place after the issuance of TRB Notifications No.06/2017, dated 28.07.2017.

The provisional selection list for the recruitment of Lecturers in Government Polytechnic Colleges and special institutions was received from TRB on 12.09.2022. At that time, the Sugar Mills Polytechnic Colleges were converted as Government Polytechnic Colleges and hence the Government/Commissioner of Technical Education filled up the vacancies including the converted Government Polytechnic Colleges for the welfare of the students and administrative reasons. Since, the Government/Commissioner of Technical Education are the authorities to post/transfer the staff members.

8.It is not the case of the appellant that the first respondent is not a



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qualified person for him to be appointed in the regular sanctioned post. The only claim is that the first respondent was not in regular employment and that he was not appointed through the regular process.

9.It is also not disputed that similarly placed person like that of the first respondent, who are not in regular employment have been absorbed that too by creating a sanctioned post. It is the case of the first respondent that he was recruited in the third respondent college, pursuant to an advertisement issued in the news paper and through a Selection Committee and the said fact has also not been disputed by the appellants.

10.From the recommendation of the Commissioner/Director of Sugars, Chennai dated 23.03.2018, it could be seen that that the appointment had been made by the Selection Committee as per the norms prescribed by the AICTE and that has been specifically stated. When that being so, even though the first respondent had been appointed as a daily wager in the third respondent college, he had fulfilled all the qualification, as prescribed by the AICTE, the Apex body governing the polytechnic education. Therefore, the first respondent cannot be said to be an unqualified person. The selection also seems to have been made only



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through paper publication. The third respondent had not called these applications through employment exchange, this is the only plausible explanation that could be given by the appellants to render that the appointment of the first respondent as illegal. It cannot be said to be illegal utmost it could only a irregular appointment. As we have already held in a similar circumstances, the similarly placed Daily Wagers/employees have been directed to be appointed by creating a sanctioned post, which has also been complied with by the appellants. Hence, we do not find any infirmity in the order passed by the learned Single Judge in the facts of the present case.

11. We are also of the view that the claim of the first respondent need not be adjudicated upon the Merger Committee for the simple reason, as it is an admitted fact that there is a sanctioned strength and the appointment of the first respondent had been made only after following the guidelines prescribed by the AICTE in the appointment of Lecturer to the post in the Polytechnic College.



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12.For the foregoing reasons, this Writ Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

(R.S.K.,J.)

(K.B., J.)

09.02.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

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