



W.A(MD).No.808 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 09.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.A.(MD)No.808 of 2018

R.Pechimuthu

... Appellant/petitioner

Vs

1. The Commissioner, H.R & C.E,
119 Uttamar Gandhi Salai,
Nungambakkam,
Chennai-34.

2. Executive Officer Gr-III,
Arulmigu Venkatachalapathi Thirukovil
Sattur Taluk and Town
Virudhunagar District.



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3. The Fit Person,

Arulmigu Venkatachalapathi Thirukovil

Sattur Taluk and Town

Virudhunagar District.

4. S.Karuppasamy Pandian

... Respondents/Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent against the order passed in W.P.(MD)No.8337 of 2014, dated 19.01.2018.

For Petitioner : Mr.M.Michael Bharathi,

For Respondent : Mr.M.Senthil Ayyanar – for R1

Government Advocate

Mr.P.Mahendran – for R2

No Appearance – for R3 & R4

JUDGMENT

(Judgment of the Court was delivered by C.V.KARTHIKEYAN, J.)

The Writ Appeal has been filed challenging the order of the learned Single Judge in W.P.(MD)No.8337 of 2014 dated 19.01.2018,



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whereby the writ petition filed by the appellant herein had been dismissed.

2. The brief facts of the case are that the appellant had applied for the post of Junior Clerk/Maniyam in Arulmigu Venkatachalapathi Thirukovil, Sattur Taluk, Virudhunagar District. Records have been produced to show that he had been declared as being appointed and appointment order has also been issued to him by an order, dated 18.12.2008 and he had also joined the said post on 19.12.2008. All was at peace till an order emanated in W.P.(MD)No.11993 of 2013, dated 06.12.2013 in a writ petition filed by the fourth respondent herein, S.Karuppasamy Pandiyan. That writ petition has been filed questioning the selection of the petitioner herein to the post of Junior Clerk/Maniyam and the learned Single Judge of this Court had directed that an enquiry should be conducted consequent to the representation made by the writ petitioner therein / fourth respondent herein and orders should be passed on merits.

3. An enquiry was conducted by the first respondent, the



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Commissioner, HR & CE, Chennai, and though it is complained that the appellant herein did not participate in the said enquiry, records reveal otherwise and he had given a written statement also during the said enquiry. The enquiry revealed very startling facts.

4. The father of the petitioner, K.Ramasamy was the Chairman of the Board of Trustees of the very same temple, Arulmigu Venkatachalapathi Thirukovil, Sattur Taluk, Virudhunagar District. To that particular temple, the Joint Commissioner, Sivagangai Region, by proceedings, dated 28.06.2008 had directed filling up of the post of Junior Clerk / Maniyam and it had been stated that sufficient advertisement must be issued and procedure in accordance with law should be followed. This particular proceedings of the Joint Commissioner was further approved by the Commissioner, HR & CE, by further proceedings dated 27.09.2008. Once again, it has been reiterated that there must be good and wide advertisement issued and the rules and regulations must be followed and an interview must be conducted and thereafter, the post should be filled up.



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5. The enquiry report further revealed that thereafter, a notification was issued on 06.10.2008. This particular notification was not advertised, but rather a copy of the notification had been affixed in various temples surrounding that particular area. We may in the first instance, immediately point out that this is not what was meant by the Commissioner, HR & CE when he directed that sufficient advertisement must be given. Pasting of the notification in a few temples in that particular area would naturally come to the attention of only those who visit those temples and even all those who visit the temple may not devote attention to reading the particular notification, as it would have been pasted in some corner of the particular temple. Therefore, only three persons are applied for the said post. The petitioner was one among the said applicants. It must be again reiterated that his father was in the Board of Trustees at that particular point of time to the very same temple to which he had applied for the said post. Of the three applicants, two were rejected, one on the ground of not possessing necessary qualification, which qualification was a pass in 10th standard and the second was also rejected being underaged. The minimum age is 18 years. This left the application of the applicant alone to be considered.



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6. It must also be kept in mind that the method of selection was only an interview and therefore, the appellant appeared for the interview being the sole candidate before the interview panel which was headed by his own father, as the Chairman of the Board of Trustees. It would have been at least to a little extent appreciated, had the father recused himself from being on the interview panel. But he did not want to give up that particular privilege being the Chairman of the Board of Trustees. The marks given in the interview have also been produced. But, unfortunately, the marks given by each one of the Members of the interview panel had not been given. Only the consolidated marks have been given. The consolidated marks reveal that out of 10, the Board had given 9 marks for the appellant for general knowledge, 7 marks for skill in employment in that particular post and 10 marks for previous experience in HR & CE and thus a total of 26 marks out of the maximum of 30.

7. This particular information was pointed out by the first respondent in his proceedings which was directed consequent to



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directions in W.P.(MD)No.11993 of 2013 and an order was passed by the first respondent/Commissioner, HR & CE on 27.03.2014 by which order, the appointment was terminated. This termination has necessitated the appellant herein to file W.P.(MD)No.8337 of 2014.

8. The learned counsel for the appellant took the Court through the order in the said W.P(MD)No.11993 of 2013 and pointed out that the writ petition was not satisfactorily represented before the learned Single Judge. The learned Single Judge had, however, thought that necessary representation was not required since the records spoke for themselves. The records as pointed out reveal that the petitioner was the sole interviewee. He was interviewed by the panel in which his father, as a Chairman of the Board of Trustees headed the interview panel and substantial marks were given to him in the interview, namely, a total of 26 out of 30 marks and the petitioner had been appointed.

9. The learned Single Judge was of the very firm view that bias was evident in the selection procedure and therefore, had dismissed the writ petition. Even before this Court, though we had the opportunity



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of examining the entire records as stated above, we also find that it is quite very unfortunate that the father of the appellant herein, did not take any decision to recuse himself but rather was very much present in the interview panel as the Chairman of the interview panel and had granted marks to the appellant herein.

10. It could also be argued that even if he had recused from the interview panel still there would be indirect bias exercised on the other Members since the father of the petitioner was Chairman of the Board of Trustees and the other members of the interview would only be the Members of the Board of Trustee and they would be, in some manner, obliged to the Chairman and particularly, when the son of the Chairman was the person who was being interviewed. That factor would always sway in their minds and at any rate, they had no other option but to select the petitioner since he was the only candidate who presented himself for the interview. This was a case where even before the race could commence, the winner was declared and there was no necessity for the person to run the whole course and as a matter of fact, he was given a helping hand and led across with all comfort across the winning line.



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11. The arguments advanced by the learned counsel for the appellant, though persuasive, could not be countenanced by this Court. It is very unfortunate that the petitioner had been a victim of the selection process which on the face of it is biased right from the beginning till end. The actual root cause for the entire issue is that proper advertisement as directed by the Commissioner, HR & CE was not adhered to and the notification was pasted only in a few temples in that particular surrounding area which limited the number of participants or applicants to just three. Had there been a wider publication, then the petitioner could be one among several candidates who were called for the interview and could have competed with others. Then his merit could have been judged in comparison with others candidates.

12. The learned counsel appearing on behalf of the second respondent, placed reliance on the judgment of the Hon'ble Supreme Court in *AIR 1970 SC 150, A.K.Kraipak and Others Vs. Union of India and others*. The appellants therein who filed the appeal were Gazetted Officers in the Forest Department of the State of Jammu and Kashmir.



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They had been serving as Conservator of Forest and some as Divisional Forest Officers and others as Assistant Conservator of Forest. They were aggrieved by a particular selection made among them for the post of Chief Conservator of Forest. During the selection process one Naqishbund had been promoted as Chief Conservator of Forest. It has been observed by the Hon'ble Supreme Court that he was one of the members of the Selection Board. It was also observed that he was also one of the persons to be considered for selection. Therefore, the Hon'ble Supreme Court had stated as follows :

“15..... At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.”

13. Further, reliance was also placed on the judgment of the Division Bench of Allahabad High Court in **Dr.Virendra Kumar**



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Sharma Vs. The State of U.P., reported in 2006(6) AWC 6263, wherein, the aforementioned judgment of the Supreme Court had been followed and the Division Bench held in paragraph No.11 as follows:

“11. In view of settled legal position enunciated hereinbefore by Hon'ble Apex Court it is clear that it is one of the fundamental principle of our jurisprudence that no man can be judge of his own cause and if there is a reasonable likelihood of bias it is in accordance with the natural justice and common sense that justice likely to be so biased should be incapacitated from sitting. The question is not whether the judge is actually biased or in fact decided partially but whether there is real likelihood of bias what is objectionable in such cases is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is likelihood of bias affecting the decision. The test is not whether in fact a bias has affected the judgment, the test always is and must be, whether a litigant, fully apprised of all the circumstances would feel a serious apprehension of bias and whether a litigant could reasonably apprehend that



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a bias attributable to a member of the tribunal might have operated against him in final decision of the tribunal.”

14. In view of the facts of this particular case, wherein bias is evident on the face of the records and in view of the binding precedent as laid down by the Hon’ble Supreme Court relating to the issue of bias, we are not convinced with the argument advanced and therefore, the writ appeal stands dismissed.

15. We would, however, like to observe that when an advertisement is issued once again for the post of Junior Clerk/Maniyam which necessarily has to be issued since the post has been filled up only on temporary basis, the respondent should ensure that there is publication in vernacular newspaper in that particular area, in a newspaper, preferably, in Thinathanthi newspaper, which is viewed by a large section of people and not in any newspaper, which has only limited circulation. Let that step be taken. That would avoid litigation of this nature and expenses also for not only the respondent, but also for the temple. The second respondent may follow the instructions of the

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Commissioner, HR & CE who may direct the necessary procedure to be followed for filling up the said post. No costs.

(C.V.K., J.)

(J.S.N.P, J.)

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Index : Yes / No

Internet : Yes / No

NCC : Yes / No

RM

To

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**C.V.KARTHIKEYAN, J.
and
J.SATHYA NARAYANA PRASAD, J.**

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