IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31..03..2010

C O R A M

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN
AND
THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

WRIT APPEAL NO.1946 OF 2009

Tamil Nadu Agricultural University
SC/ST Employees' Welfare Association
(Regd. No.212 of 2007), rep. by its
President Dr. R. Chandrasekaran,
No.1, Chinnasamy Nagar,
P.N. Pudur, Coimbatore-41. .. Appellant/Petitioner

versus

1. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore-641 003.

2. The Vice-Chancellor,
Tamil Nadu Agricultural University,
Coimbatore-641 003.

3. The Secretary to Government,
Department of Agriculture,
Fort St. George, Chennai-9.

4. The Secretary to Government,
Adi-dravidar and Tribal Welfare Department,
Fort St. George, Chennai-9. .. Respondents/
Respondents

Prayer : Writ Appeal against the order dated 23.12.2009 passed by a learned single Judge of this Court in Writ Petition No.23373 of 2008. Petition filed under article 226 of the constitution of India, calling for the records relating to the impugned notifications R3/1/2008 and R3/2/2008 dated 10.09.2008 issued by the 1st respondent and quash the same and directing the 1st respondent to calculate the exact number of backlog vacancies from the year 1971 to till date and fill it up before filling the regular fresh vacancies based up on the representation of the Association dated 30.06.2008, 24.08.2008 and 15.09.2008 and pass such further or orders.

For Appellant : Mr. M. Radhakrishnan for
Mr. S. Sathiachandran

For Respondents-1 & 2 : Mr. N. Jothi

For Respondents-3 & 4 : Mr. K. Balasubramaniam,
Addl. Govt. Pleader.

J U D G M E N T

Prabha Sridevan, J.

An Association called the Tamil Nadu Agricultural University SC/ST Employees' Welfare Association ('Association' in short) filed the writ petition to quash the advertisements calling for applications and to direct the Tamil Nadu Agricultural University ('University' in short) to calculate the exact number of backlog vacancies. The learned single Judge disposed of the writ petition holding that the University has maintained the communal reservation and it is open to the Association to make representations before filling up of future vacancies. Aggrieved by that, the present appeal has been filed.

2. According to the Association, they made a representation on 30.6.2008 for filling up the backlog vacancies before regular recruitments are made for the post of Assistant Professors in the University, but without considering their representation, the University had issued a notification on 7.7.2008. So, the Association filed a writ petition and obtained an order of injunction restraining the University from proceeding further. When the University agreed to withdraw the notification with liberty to issue a fresh notification, the writ petition was disposed of. Then, the Association gave another representation. The crux of the representation is that the backlog vacancy alone is five and therefore, details should be given with regard to the recruitment to ascertain the exact number of backlog vacancies. It is alleged that the University had not followed the reservation policy and had not given the correct particulars. The Notification in R3/1/2008 was issued on 10.9.2008. It is the grievance of the Association that this notification has been issued without calculating the exact number of backlog vacancies and that the roster system should be followed taking each department as an individual unit and not pooling each cadre for the whole University together; no relaxation has been given for SC/ST candidates in the eligibility marks; the Univesity had not indicated in the notifications about the mark distribution for various extra qualifications and there could be manipulation of appointments during selection of Assistant Professor; and on these grounds filed Writ Petition No.23373 of 2008.

3. A counter affidavit was filed by the University raising the question of maintainability of the writ petition and the incapacity of the Association for filing the writ petition. It is also alleged that the Association is a common recognised association. It is stated that though the earlier notification was in order, to avoid controversy, they analysed the matter thoroughly and issued a fresh advertisement on 10.9.2008. A table showing the vacancy position and the number of professors recruited has been set out in the counter. It is stated that because of the total strength of students was reduced, the sanctioned strength of Assistant Professors was also reduced from 945 to 611. According to the Univesrity, as on 1.8.2004, 253 Assistant Professors were working, out of which 48 persons belonging to SC/ST should be there, but actually there were 53, which was more than the percentage of SC/ST as per the Policy. In the November 2004 recruitment, of the 222 posts, 220 posts were filled up, two posts of ST were not filled up due to non-availability of meritorious candidates and two SC candidates who had been appointed had resigned. Therefore, four vacancies are kept as backlog vacancies. After 2004, there was no recruitment till 2007. It is specifically stated that though the Association is concerned only with the vacnaices with regard to the Agricultural Graduates, it has confused this with the issue of non-Agricultural Graduates also. It is also specifically stated that the allegation that the present advertisement does not mention the exact extra qualification is not correct. The application form referred to the educational qualification, previous work experience, publications like books, research articles, journals, newspapers, seminars, leaflets, medals, awards, fellowships obtained, additional responsibilities, seminars/ conferences/trainings attended, paper presented and membership in scientific bodies.

4. To this counter affidavit, a reply was filed. The learned single Judge dealt with the issues and correctly crystallised the point for considerations, which was, whether the University is following the reservation policy of the Government and the notification dated 10.9.2008 is in any manner vitiated on the alleged ground that there is violation in following the reservation policy by the University. From the facts, the learned single Judge was satisfied that the reservation policy has been correctly followed by the University.

5. Learned counsel for the appellant submitted that the notification has betrayed the Constitutional principles governing such matters. He submitted that the Association is entitled to maintain the writ petition and it is not a public interest litigation, it has been filed by the persons who were aggrieved by the notification that is contrary to the Constitution. Therefore, the notification should be quashed and any appointment made as an interim measure will also have no legal effect. He submitted that

the notification indicated that the applications can be downloaded from the website of the University. Such instructions without there being actual paper publication, especially in the cases of applicants who belong to the depressed classes of the society, will defeat the purpose of the notification. Learned counsel relied on (1990) 3 S.C.C. 655 [District Collector & Chairman, Vizianagaram S.W.R.S. Society vs. M. Tripura Sundari Devi], (1995) 2 S.C.C. 745 [R.K. Sabharwal vs. State of Punjab], (1996) 6 S.C.C. 216 [Excise Superintendent, Malkapatnam, Krishna District vs. K.B.N. Visweshwara Rao], (1998) 7 S.C.C. 273 [Dr. Duryodhan Sahu vs. Jitendra Kumar Mishra], (2003) 10 S.C.C. 276 [Suresh Kumar vs. State of Haryana] and (2006) 8 S.C.C 111 [Arun Kumar Nayak vs. Union of India].

6. Learned counsel for the University submitted that the Association is an unrecognised Association and it cannot maintain the writ petition. In any event, the Association professes that public interest is involved, and public interest litigations are not maintainable in service jurisprudence. The University has fully complied with the Constitutional requirement as the statistics would bear out. All that the Association which professes to be a champion of the cause of the depressed classes had succeeded in doing was to stall the selection process unnecessarily for one-and-a-half year, thereby depriving prompt appointment of persons belonging to depressed classes. He submitted that several interim orders have been passed thereafter pending these proceedings to declare the results and appointment of professors. When those have not been challenged, the order passed in the main writ petition cannot now be challenged. Further persons have subsequently been appointed and unless they are impleaded, no orders can be passed. The counsel for the University relied on A.I.R. 1959 S.C. 149 [Basheshar Nath vs. Commissioner of Income Tax, Delhi and Rajasthan], (1976) 2 S.C.C 310 [State of Kerala vs. N.M. Thomas], (1984) 4 S.C.C 251 [Prabodh Verma vs. State of U.P.] and A.I.R. 2005 S.C. 2755 [Gurpal Singh vs. State of Punjab].

7. At the outset, we asked the learned counsel whether, when the recruitment is for the post of Assistant Professors, he seriously wanted this Court to accept that professors who had obtained Masters Degree and who had passed the National Eligibility Test were incapable of downloading application forms from the website of the University. Of course, he had no answer for that. In these days of technological advancement, where browsing kiosks are being run at every possible nook and corner, when we read about an autorickshaw driver who had set up his own website and who had established an international reputation as a tourist friendly autorickshaw driver, when vegetable vendors carry mobile phones, such submissions cannot be accepted, and we cannot accept it, because the submission really underestimates the intelligence and capacity of educated, qualified applicants belonging to depressed classes.

8. The application forms itself contained all the necessary details which are required for the purpose. It is a fact that applications from candidates belonging to SC/ST communities were received in the ratio of 1:6. Therefore, there was no dearth of persons who had applied and who knew exactly what they were applying for. It is also a fact that the notification was also published in the "Indian Express" and "Dhina Malar". The tabular column given by the University indicates the exact backlog vacancies. Two persons who had been appointed had left the service, thereby leaving a vacancy of two SC seats and there are two ST seats already vacant for want of meritorious candidates. In these circumstances, the learned single Judge was quite right in holding that in the cadre of Assistant Professor post, the University is maintaining the communal reservation.

9. None of the judgments referred to by the learned counsel for the appellant would help him. In (1998) 7 S.C.C. 273 (supra), a Committee called the Cuttack Surakhya Committee prayed for restraining the Government from appointing any candidate as lecturer without requisite qualification. The Supreme Court held that the Central Administrative Tribunal cannot entertain a public interest litigation at the instance of a total stranger. Learned counsel pointed out paragraph 7 in (1995) 2 S.C.C. 745 (supra), which according to him, would clarify the correct position of law :-

> "7. When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in Indira Sawhney v. Union of India, A.I.R. 1993 S.C. 477, observed as under :-
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> 'Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and Other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e. 270 by Other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBC in the unit/service/category is only 50, a shortfall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. It the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is

> filled up. this may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by Clause (1) is to each individual citizen of the country while Clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be'."

The principle laid down by the Supreme Court in that case is clear, but we do not see how in the present case the University has violated the law. (1990) 3 S.C.C. 655 (supra) was relied on to contend that if the advertisements were made mentioning a particular qualification, appointments cannot be made in disregard of the same. The Supreme Court in that case held that no court should be a party to the perpetuation of a fradulent practice. We do not see how this applies to the case on hand. The learned counsel submitted that in (1976) 2 S.C.C 310 (supra), the Supreme Court held that the Scheduled Caste community is not a separate caste, but a conglomeration of castes. It is not necessary for us to deal with this issue in the present case. In A.I.R. 1959 S.C. 149 (supra), the Supreme Court held that no person can waive breach of Fundamental Right conferred by Part III of the Constitution. This question is not necessary to be dealt with in this case.

10. In (2006) 8 S.C.C 111 (supra), the Supreme Court held that in addition to sponsoring of candidates by the employment exchange, issuance of public notification having wider circulation will be in consonance with the principles of fairplay, justice and equal opportunity. To the same effect is (1996) 6 S.C.C. 216 (supra). In the present case, sufficient publication has been made both in newspapers and on the website of the University and we have already dealt with the wide spread access to internet that the citizens of our country have today. It is not necessary for anyone to own a computer. On payment of Rs.10/- to Rs.15/-, a browser can submit his application form and exchange correspondence. But if he sends a hard copy of this by post, it will cost him much more. In (2003) 10 S.C.C. 276 (supra), the process of selection was held to be vitiated since there was no advertisement. Therefore, the State of Haryana was directed to have a fresh set of recruitment rules. This decision does not apply to the facts of the present case, since we are holding on facts that there was sufficient publicity.

11. In A.I.R. 2005 S.C. 2755 (supra), the Supreme Court strongly commented about the abuse of the vehicle known as Public Interest Litigation, which was a tool fashioned only to assist the poor, the ignorant, the oppressed and the needy, whose Fundamental Rights are infringed and violated. We do not think that the persons who apply to the post of Assistant Professor in a University would come under the category of poor and ignorant. Of course, they belong to the depressed class, but it is not as if they need someone else to speak for them. They are aware of their rights and they can agitate them eloquently and effectively. In (1984) 4 S.C.C 251 (supra), the Supreme Court held that any interim order causing injustice to a party must be set right by a Court while making a final order and and any final order causing injustice to a party must be set right by the appellate court. In the present case, this decision has been relied on by the learned counsel for the appellant to show that if by interim orders, persons have got selected, then because the selection itself is unjust, their selection should be set at naught. We do not think we can do that. Those who have been appointed are not before us; they belong to the same depressed class whom the appellant professes to champion.

12. There is a communication from the Registrar of the University dated 26.12.2009 which shows that out of 338 Assistant Professor vacancies (including four backlog vacancies), posting orders have been issued to 305 candidates and one candidate for the post of Assistant Professor (backlog vacancy of SC) was kept vacant pursuant to the direction of the Court. It is stated that all the selected candidates possessed Ph.D. Degree and have passed the National Eligibility Test. 32 Assistant Professor vacancies in certain disciplines were not filled up for want of meritorious candidates. We will not set at naught their appointments which, as the letter dated 26.12.2009 shows, have been made from among meritorious candidates who possess all the necessary qualifications.

13. Of course, it is true that in State Agriculture and Horticulture Diploma Holders Association vs. State of Tamil Nadu [MANU/TN/0126/2010 - Writ Petition (MD) No. 5655 of 2009 and batch of cases] decided on 11.02.2010, a Division Bench of the Madurai Bench of this Court, to which one of us (Prabha Sridevan, J.) was party, has held that this Court can interfere even in service jurisprudence, but only in extreme cases. The Court had observed as follows :-

> "22. The decisions referred to or relied on repeat the legal position that interference by Court in the recruitment process is limited only to cases where the oblique motives and the injustices proven are apparent. In this regard, of course allegations are made regarding lack of transparency and recruitment for extraneous considerations. But, without specific allegations being made, it is difficult for us to entertain these

allegations. Had the alleged wide scale corruption or lack of fair-play in selection been obvious, we would not have hesitated to interfere and the decisions where it is laid down that in service jurisprudence, writ petitions in the guise of public interest litigation cannot be entertained would not have restrained us. But, in this case it appears to be only a grievance of the disappointed candidates, and nothing more else and in those circumstances, we cannot permit it as a public interest litigation. It is more in the nature of an ordinary writ petition. The facts placed before us only indicate that the Rules and the procedures have been followed when recruitment was made to as many as 1707 posts and when there are so many unemployed persons have been waiting for more than 17 years, there is bound to be some heart burning and frustration. But on that ground we cannot quash the entire selection process."

The case on hand cannot be termed to be an extreme case for us to interfere. Therefore, this decision will not apply to the facts of this case. However, the following extracts from the above judgment are useful in the context of the present case :-

"13.(f). The Full Bench decision in 2007 (5) CTC 561 - Sivakumar, vs. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam is relied by the petitioner as supporting their case. But, according to the State that decision does not squarely apply to the present case. We will therefore deal with this case in some detail. In the said decision, the question whether a person already employed in a private aided school can be deprived of the opportunity of seeking employment to an office under the State was framed by the Full Bench. It is seen that the core issue raised in the writ petition is as to whether a candidate who gets appointment in a private aided school loses his right to be sponsored by the employment exchange to a Government post or not. The Division Bench concluded that a person employed in a private aided school had no right to have his name retained in the live register of Employment Exchange. The Full Bench, therefore, examined the statutory provisions governing the functions and role of the Employment Exchange. The Full Bench observed that the question would not have arisen if the respondents had taken note of the law laid down by the Supreme Court that employment exchanges cannot act as the only source of recruitment. In 1987(3) SCC 308 - Union of India and Ors. vs. N. Hargobal, the Supreme Court held "there is no provision in the Act which obliges an employer to make appointments through the agency of Employment Exchanges" and that "in the absence of a better method of recruitment, the restriction that employment in Government Departments should

be through the medium of Employment Exchanges does not offend Articles 14 and 16 of the Constitution". Thereafter, in 1996(6) SCC 216 - Excise Superintendent, Malkapuram, Krishna District v. K.B.N. Visweshwara Rao and Ors., the Supreme court held that,

> '6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the Employment Exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the Employment Exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange, and Employment Exchanges should sponsor the names of the candidates to the requisitioning departments for selection strictly according to the seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates." Therefore, in that context, the Full Bench said that if these procedures had been followed, namely –
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> (i) Notify the Employment Exchanges,
>
> (ii) Issue publications in newspapers having wide circulation, inviting Applications; and
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> (iii) Display the notification in the notice boards of the respective offices or make announcements in the media, then this problem would not have arisen." At paragraph 35, the Full Bench referred to the submission made by the Additional Advocate General who said that as per Rule 10A of the Tamil Nadu State and Subordinate Service Rules, which is a statutory rules, under Article 309 of the Constitution, recruitment to posts falling

outside the purview of Tamil Nadu Public Service Commission will have to be done by notifying the list of candidates from the Employment Exchange and the Additional Advocate General had relied on Hargopal's case to support his contention. The Full Bench categorically observed at paragraph 36:

"However, we are not now concerned with the question. The question before this Bench is as to whether a person who is employed in a Private Aided School can be deprived of his right to continue in the live register of the Employment Exchange and to be sponsored for a post in Government service."

Therefore, the Full Bench decision is not one which can be relied on by the petitioners to hold that since the guidelines laid down therein had not been followed, the entire selection process must be quashed. Further, when a specific submission was made by the learned Additional Advocate General that the State had to follow the statutory rules under Article 309, the Full Bench categorically said that they are not concerned with that question."

14. Allegations of non-compliance of reservation policy have been made without any basis. Though the learned single Judge had rejected this, he had protected the right of the aggrieved persons to make representations in the case of future vacancies. The learned Judge had found that the University is correctly maintaining the communal reservation. The University has also explained how the backlog is being filled. The learned single Judge had also protected the right of the appellant-University to make representation in the event of there being any dissatisfaction.

15. The Supreme Court in (1999) 7 S.C.C. 120 [Dr. Preeti Srivastava vs. State of M.P.], in the context of selection of the right calibre of students at the level of specialised post graduate education, held as follows :

"In view of this supervening public interest which has to be balanced against the social equity of providing some opportunities to the backward who are not able to qualify on the basis of marks obtained by them for post-graduate learning, it is for an expert body such as the Medical Council of India, to lay down the extent of reservations, if any, and the lowering of qualifying marks, if any, consistent with the broader public interest, in having the most competent people for specialised training, and the competing public interest in securing social justice and equality."

The Court also held that if the expert body permits a disparity in qualifying marks, it should be minimal. In (1995) 6 S.C.C. 684 [Union of India vs. Virpal Singh Chauhan], the Supreme Court held that the extent and nature of reservation under Article 164 of the Constitution provides "no uniform or prescribed method" and that the majority in (1992) Supp. (3) S.C.C. 217 [Indra Sawhney vs. Union of India] held that, "the larger concept of reservations takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions like exemptions, concessions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration – the admonition of Article 335". We are referring to the above cases only to show that the Supreme Court has held that the extent and nature of reservation is a matter for the State to decide having regard to the facts and requirements of each case.

16. In the present case, we find that that the constitutional requirement has been satisfied. To repeat, the applicants were in the ratio of 6 : 1 for SC/ST category; they had all passed the National Eligibility Test; they all possessed Ph.D. Degrees; and they were all meritorious. It is nobody's case that wrong or undeserving persons had been selected. What that is so, we think we would be causing great injustice if we quash the notification. This is so, especially in view of the fact that the persons who have been appointed are not before us. We cannot quash such appointments in their absence. We do not see how the appellant-Association can claim that constitutional justice would be upheld only if the notifications are quashed. We have given our reasons, in the aforesaid paragraphs, as to why we do not agree. We reiterate them as follows :-

(a) We confirm the finding of the learned single Judge as regards the University following the roster.

(b) There has been no irregularity in the notification; sufficient publicity has been given and it has also been published in papers.

(c) Considering the category of persons who are applying, instructions on the website given in addition to the publications cannot be said to be irregular.

(d) The allegations that the constitutional requirement has not been fulfilled are very vague and no concrete instances are cited.

(e) In the absence of the appointed persons, we cannot pass orders adverse to their interest.

(f) The writ petition itself is without any merit. It is unfortunate that because of the interim orders, deserving and meritorious persons had to be kept on waiting.

16. For all the reasons stated above, the writ appeal fails and is accordingly dismissed. Consequently, M.P. Nos.1 and 2 of 2009 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore-641 003.

2. The Vice-Chancellor,
Tamil Nadu Agricultural University,
Coimbatore-641 003.

3. The Secretary to Government,
Department of Agriculture,
Fort St. George, Chennai-9.

4. The Secretary to Government,
Adi-dravidar and Tribal Welfare Department,
Fort St. George, Chennai-9.

Order in
Writ Appeal No.1946 of 2009

GS (CO)
RH (8.4.10)