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**(2013) 09 MAD CK 0147**

**In the Madras High Court**

**Case No :** Writ Petition No. 18164 of 2013 and M.P. No's. 1 and 2 of 2013

D. Jagannathan

APPELLANT

Vs

S. Sattanathan and Others

RESPONDENT

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**Date of Decision :** 30-09-2013

**Acts Referred:**

**Citation :** (2013) 6 CTC 129 : (2013) 5 LLN 333 : (2013) 7 MLJ 385

**Hon'ble Judges :** N. Paul Vasanthakumar, J; M.M. Sundresh, J

**Bench :** Division Bench

**Advocate :** M. Ravi, for the Appellant; Giridhar for Giridhar and Sai Associates for R1, Mr. K. Sridhar for R3, Mr. A.L. Somayaji, Advocate General Assisted by Mr. P.S. Sivashamugasundram for R4 to R6, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.M. Sundresh, J.—This writ petition has been filed by the petitioner challenging the order dated 02.07.2013 passed in O.A. No. 686 of 2011 by the Central Administrative Tribunal in setting aside the notification issued by the second respondent in so far as his selection and appointment to the Indian Administrative service with a consequential direction to consider his case as that of the first respondent afresh. Facts in brief:

1.1. As per the Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulations 1997, for every vacancy five names shall be sponsored to the Union Public service Commission viz., the third respondent herein. The criteria required as per the said regulation is outstanding merit and ability of officers, who have completed not less than eight years of service in the State apart from holding a Gazetted post in a substantive capacity. Regulation 5 mandates the suitability of a person for the appointment to the service shall be determined by the scrutiny of service records and personal interview.

1.2. The procedure adopted by the State Government to recommend Non-State Civil Service Officers to Union Public Service Commission is that whenever

vacancies are determined by the Government of India, a circular will be sent to all Secretaries to Government to recommend Non-State Civil Service Officers, who possess outstanding merit and ability and their integrity is beyond doubt. The head of the Department will consider the officers under their control and recommend the names of Non State Civil service Officers to the concerned Secretary to Government. The Secretary to Government, based on the recommendation received from the heads of the Departments, will recommend the names to the Public Department. On receipt of the recommendation from the Secretaries to Government, the Public Department will scrutinize the proposals received from various Departments. If any further particulars are required, the same will be called for from the concerned Secretary to Government. Thereafter, a Screening Committee will be constituted to screen and shortlist the names. The State Government will recommend the short listed names to the Union Public Services Commission. Thereafter, the Union Public Services Commission's statutory Selection Committee will consider the proposal received from the State Government and select the suitable candidates and recommend to the Government of India for conferring the status of IAS officers.

1.3. The Chief Secretary to Government, Government of Tamil Nadu, vide his D.O.Lr. No. 23/2009-1, Public (Special-A) Department, dated 24.1.2009, requested all the Secretaries to Government to send proposals to the Public Department in respect of non-State Civil Service Officers, who fulfilled the eligibility conditions laid down in the relevant Rules for the selection to IAS for the year 2009. In the said letter detailed guidelines were issued in connection with the preparation of proposal for recommending the non-State Civil Service Officers for selection to IAS. It was instructed to send, among other things, the following details:

- (1) Certificate regarding pendency of Vigilance/Departmental enquiry and departmental/Criminal Proceedings;
- (2) Details of Penalty imposed, for the last 10 years;
- (3) Details of Adverse remarks.

Based on the above guidelines the names of the following officials were recommended for consideration for selection to IAS for the year 2009 by the Secretary to Government, Rural Development and Panchayat Raj Department, vide his D.O. Letter NO. 10/RD&PR/2009, dated 19.06.2009.

1. Thiru S. Sattanathan, Additional Director of Rural Development;
  2. Thiru T.R. Vedanayagam, Additional Director of Rural Development;
  3. Thiru D. Jaganathan, Additional Director of Rural Development;
- and
4. Thiru P. Ponnaiah, Additional Director of Rural Development.

1.4. As there are two vacancies available for the year 2009-2010, names were short listed by the State Level Scrutiny Committee consisting of Senior Officers of the State Government. These 10 names have been short listed out of 43 names recommended by various Departments of the State Government. By the orders of the Central Administrative Tribunal, two other names have been included and they have been forwarded along with other names to the Union Public Service Commission for the selection to the Indian Administrative Service by the statutory Selection Committee.

1.5. The petitioner as well as the first respondent before us were two among the 12 candidates. In an earlier proceedings initiated against the petitioner in which, the first respondent was the Enquiry Officer, two of the charges were found to be partly proved and as per which, an order of warning was issued. The final decision of the Government is produced hereunder.

The Government therefore, decide that out of the three charges, Charge 1 and 3 are held as "partly proved" and charge 2 is held as "not proved". The delinquent is otherwise a good officer both in terms of competence and integrity. The present Commissioner of Rural Development and Panchayat Raj has also certified that the delinquent is a hard working and efficient officer whose case deserves to be considered sympathetically. Considering all the circumstances of the case and in particular, the role played by the then Director of Rural Development and Panchayat Raj and the "then Collector", Thiruchirapalli who were the "active" players in this episode with the delinquent player playing a "passive" role and keeping in mind the delinquent officer's excellent track record in the past, the Government take a sympathetic view and order that Thiru D. Jagannathan, Project Officer, District Rule Development Agency, Salem be let off with a warning. The said order against the petitioner has become final.

1.6. The Government Order passed in G.O. Ms. No. 11, Personnel and Administration Reforms (Per-R) Department, dated 05.01.1984, stipulates that warnings are not to be placed in the personal files as they are only a caution to be more careful or to avoid a particular line of conduct in future. The state Government did not place the records pertaining to the order of warning before the Selection Committee.

1.7. All the 12 candidates were considered by the selection Committee. Two persons viz., the petitioner and one Mr. L. Sitherasenan were selected on merit. Out of 12 persons, only three persons were found to be qualified. In other words, other nine persons were found to be not qualified. Therefore, out of the three persons, the petitioner and Mr. L. Sitherasenan were selected. Challenging the selection of the petitioner, the first respondent has approached the Central Administrative Tribunal. The selection of the petitioner was set aside and consequently, a direction was issued to make a reassessment afresh in so far as the petitioner and the first respondent are concerned. Being aggrieved against the same, this writ petition has been filed.

## 2. Reasoning of the Tribunal:-

The Central Administrative Tribunal was pleased to hold that what is required is an outstanding merit and ability as per Regulation 4.1 of the Indian Administrative Service (Appointment by Selection) Regulations 1997. The State Government ought to have placed all the materials before the Committee. The non furnishing of the records pertaining to the order of warning passed against the petitioner in the Government Order passed in G.O. (D). No. 837 Rural Development and Panchayat Raj (E1) Department, dated 14.11.2008, would vitiate the selection process. The petitioner lacks merit in view of the order of warning issued against him. Accordingly, the Central Administrative Tribunal was pleased to set aside the selection of the petitioner with consequential direction to the Selection Committee to consider the case of the petitioner vis-a-vis the first respondent. For coming to this conclusion, the Central Administrative Tribunal was pleased to made reliance upon the following judgments:

- (i) Centre for PIL and Another Vs. Union of India (UOI) and Another, ;
- (ii) Union of India and others Vs. Bakshi Ram, ; and
- (iii) Guman Singh and Others Vs. State of Rajasthan and Others, .

The Central Administrative Tribunal has also extensively relied upon a decision of a Division Bench of the Honourable High Court of Karnataka in State of Karnataka V.A.R. Infant (W.P. No. 8788 of 2012) for coming to this conclusion.

## 3. Submissions of the petitioner:-

Mr. V. Prakash, learned Senior Counsel appearing for the petitioner and Mr. M. Ravi, learned counsel have submitted that the very application made before the Central Administrative Tribunal is not maintainable in law and facts. The first respondent does not have the locus standi to maintain the application. The scrutiny has to be done by the concerned Committee. The decision of the said Committee has not been put into challenge by the first respondent. The Regulation that covers the case does not require the placement of the records pertaining to warning. As per the relevant rules governing to the State service, a warning being not a punishment not suppose to form part of the private file of a concerned officer. The first respondent has deliberately relied upon a decision which has been quoted extensively by the Central Administrative Tribunal. The petitioner has been selected on merit. As the Government Order passed against the petitioner is one of warning, he did not have an occasion to challenge it. The Central Administrative Tribunal has committed an error in holding that the petitioner lacks merit. On the contrary, there is no merit to hold that the first respondent has merit. The judgment relied upon by the Central Administrative Tribunal has no applicability to the case on hand as in those cases are concerned, there was a legal requirement for the production of certain records. The petitioner has been in service for three years. The first respondent was also not selected in the subsequent year. The word "moral turpitude" would only mean

"lack of integrity", which the petitioner does not suffer. In support of his contention, the learned counsel appearing for the petitioner has made reliance upon the following judgments:

(i) U.P.S.C. Vs. K. Rajaiah and Others, ;

(ii) Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others, ; and

(iii) Division Bench Judgment of this Court in W.A. Nos. 2077, 2112 & 2113 of 2005 dated 22.02.2007.

#### 4. Submissions of the first respondent:-

The learned counsel appearing for the first respondent would submit that the order of the Tribunal does not warrant any interference. The word "merit" will have to be given a wider connotation. Regulation 4(1) speaks about outstanding merit and ability. It is not only the good record but also adverse remarks that are required to be placed before the Selection Committee. The Rules pertaining to State Service are not applicable to the selection to a post governed by All India Regulation Indian Administrative service (Appointment by Selection) Regulations, 1997. Taking note of the fact, the nature of the service coupled with duties and responsibilities, this Court will have to be decided the case. The State Government ought to have placed all the records before the Selection Committee. It is for the said Committee to appreciate the relevant records. Even though the judgment of the Honourable Karnataka High Court was set aside, it was only an order of remand. Thereafter, the very same documents have been relied upon. In support of his contention, the learned counsel has made reliance upon the above cited decisions, based upon which, the Central Administrative Tribunal came to its conclusion.

5. Mr. A.L. Somaiyaji, learned Advocate General appearing on behalf of respondents 4 to 6, would submit that the Government has acted fairly as per law. It does not propose to take any stand in favour of either of the parties. A fair submission has been made by the learned Advocate General that this Court can pass appropriate orders by looking into the relevant records. Accordingly, the records pertaining to the selection covering the petitioner as well as the first respondent were placed before this Court.

6. Mr. K. Sridhar, learned counsel appearing for the third respondent would submit that the selection was made based upon merit and ability. It was also based upon the records placed before it. Therefore, this Court may pass appropriate orders based upon the records.

#### 7. DISCUSSION:-

7.1 As the question of maintainability has been raised, we would like to address the said issue first. The Administrative Tribunal Act, 1985 has been introduced in exercise of the power under Article 323A of the Constitution of India. Section 14

deals with the jurisdiction, powers and authority of the Central Administrative Tribunal. Section 19 of the Act deals with the procedure for making an application to the Central Administrative Tribunal. Such an application has to be made only by a person aggrieved. A perusal of the objects and reasons governing the enactment would show that the jurisdictions of the Courts except that of the Honourable Apex Court under Article 136 of the Constitution of India regarding the service matters is excluded.

7.2. A combined reading of the above said provisions would show that the powers of the Central Administrative Tribunal are governed and controlled by the enactment. It cannot be a substitute to the powers of the High Court in its exercise under Article 226 of the Constitution of India. That is the reason why this writ petition is filed before us seeking to invoke the said power under the Constitution. Therefore, the Tribunal constituted under the Act has to exercise its statutory functions and powers accordingly. In other words, such a power, which is circumscribed by the enactment, cannot be allowed to be exercised beyond it.

7.3. As discussed earlier, an application can be made before the Central Administrative Tribunal u/s 19 of the Act only by a "person aggrieved". For that purpose, the Tribunal has to satisfy itself whether such an application is a fit case for adjudication or trial. This is the first and foremost duty of the Tribunal. A person knocking the doors of the Tribunal has to satisfy that he has a statutory or a legal right. Thereafter, the Tribunal has to be satisfied that there has been a breach of such a legal right. The said breach should be capable of being enforced before the Tribunal. The respondents must have the corresponding legal duty to remedy the breach of a legal right of an aggrieved person. Hence, the existence of a legal right is a condition precedent before the Tribunal decides to invoke its jurisdiction. When it is found that a person is not a person aggrieved, then resultantly, he would lose the locus standi to maintain the application. A mere imaginary injury cannot give a right to sue. Such a person has to establish his legal right first leading to a legal injury and thereafter, seek a remedy. The onus is strictly on the applicant to clear the first hurdle before requesting the Tribunal to go into the merits. Similarly, a wrong selection or a decision made by a third party in favour of another by itself would not give a right to an applicant unless he proves that he has got a right to be considered and the same is violated. In other words, in a case of selection, an applicant has to prove that but for a wrong consideration he would have been selected. Therefore, even assuming a wrong was committed, it alone would not create a right in favour of an applicant in the absence of a legal right followed by a legal injury. Hence, it can safely be concluded that a wrong decision cannot make good another wrong one. Considering the said issue, it has been held in *K.H. Siraj Vs. High Court of Kerala and Others*, , as follows:

68. Contention No. 2 relates to correctness of the application of the Rule of reservation. This point, in our opinion, will arise for consideration only if the first contention of the appellants/petitioners is accepted. If that contention is

rejected, the question of considering this point will not arise. In fact, in that event, the appellants/petitioners are not even entitled to question the correctness of the list, as laid down by this Court in *Dr. Umakant Saran Vs. State of Bihar and Others*, and only those who are eligible or in the zone of consideration can question the legality or otherwise of a select list.....

71.....In the circumstances, the second contentions raised by Mr. L.N. Rao is also incorrect and untenable, apart from the fact that the appellants/petitioners who are not eligible candidates are not entitled to contest the validity of the select list on this ground. Since they are ineligible for appointment, no relief, in any case, be afforded to them in any event.

7.4. In a recent pronouncement, the Honourable Apex Court in *Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others*, , has considered in extenso the scope and ambit of a "person interested" and "locus standi". The following passages are apposite. Person aggrieved:

9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: *The State of Orissa Vs. Madan Gopal Rungta*, ; *Saghir Ahmad Vs. The State of U.P. and Others*, ; *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, ; *Rajendra Singh Vs. State of Madhya Pradesh and others*, ; and *Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar and Others*, ).

10. A legal right, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, person aggrieved does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New*

York, ; and State of Rajasthan and Others Vs. Union of India and Others, ).

11. In Anand Sharadchandra Oka Vs. University of Mumbai and Others, , a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In A. Subash Babu Vs. State of A.P. and Another, , this Court held:

25....The expression aggrieved person denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.

16. In Ghulam Qadir Vs. Special Tribunal and Others, , this Court considered a similar issue and observed as under:

38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds.-----In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

(Emphasis added)

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others. Locus standi of respondent No. 5:

18. As respondent No. 5 does not belong to the Scheduled Tribes category, the garb adopted by him, of serving the cause of Scheduled Tribes candidates who might have been deprived of their legitimate right to be considered for the post, must be considered by this Court in order to determine whether respondent no. 5, is in fact, in a legitimate position to lay any claim before any forum, whatsoever.



19. This Court in Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, , held as under:

58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*. 59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a *locus standi* to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons.

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party.

20. A similar view has been re-iterated by this Court in K. Manjusree Vs. State of A.P. and Another, , wherein it was held that, the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court, on the grounds of delay and non-maintainability, alone.

7.5. In so far as suitability of candidates for selection to a post is concerned, the same has to be the choice of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/Rules. The said position is made clear by the Supreme Court in the decisions reported in State of Mysore and Another Vs. Syed Mahmood and Others, ; Statesman (Private) Ltd. Vs. H.R. Deb and Others, ; State Bank of India and others Vs. Mohd. Mynuddin, and the same is reiterated in the decision reported in Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, .

CONCLUSION:-

7.6. Now, let us apply the said principles to the facts on hand. The records

produced by the learned Advocate General would show that totally 12 persons have been considered by the Selection Committee. The Selection Committee consists of various persons of eminence. Out of all the 12 persons, only three were found to be qualified. Of the three persons, the petitioner and another person by name Mr. L. Sitherasenan got the highest marks. Accordingly, they have been selected.

8.2. Now coming to the first respondent, he was found to be not qualified along with nine other persons, meaning thereby, he did not get into the zone of consideration at all. It is not the case of the first respondent that the third respondent has not done its role properly in so far as he is concerned. In other words, the assessment of the Selection Committee, in so far as the first respondent is concerned, is not doubted and the same has not been put into challenge. The decision made by the competent Committee in relation to the first respondent is overruled, based upon the decision made on the petitioner. Such an order cannot be sustained in the eye of law. There is no basis to hold that the first respondent is eligible to be considered for the selection pertaining to the year 2009. In fact, he was also not selected for the next year as well. The Tribunal has also left the case of the third person, who were found to be eligible for consideration. The Tribunal has committed an error by holding that as a consequence of the State Government in not producing the relevant records, the first respondent is entitled to consider once over again in notwithstanding his performance. In other words, a candidate who has failed to qualify to be considered on merit cannot be given a right to reconsider on the footing that one of the candidates, who was considered was selected by following the due process of law. The order of the Tribunal however proceeds to place the first respondent even above the candidate who was found fit to be considered, but not selected. To put it differently, neither of the other candidates, who are similarly placed like the first respondent nor the one, who came into the zone of consideration, were directed to be considered. The application before the Tribunal was considered as a Public Interest Litigation and a decision was rendered.

8.3. For the reasons stated above, we do not propose to go into the merits of the case, as we feel that we are concerned with the decision making process of the Central Administrative Tribunal rather than the decision by itself. We also find that the Tribunal has committed a wrong in giving a factual finding about the merits of the petitioner, even assuming that the order passed for reconsideration is correct. Therefore, we are of the view that the entire exercise done by the Central Administrative Tribunal is one that jurisdiction, power or an authority as it is beyond the scope of the enactment. In such view of the matter, we hold that the order passed by the Central Administrative Tribunal cannot be sustained in the eye of law. We are also at a loss to understand as to how the person, who was not qualified in the subsequent selection conducted by the Selection Committee can be directed to be considered for the earlier year notwithstanding his performance. Therefore, on a consideration of the above said legal principles as enunciated in clear terms by the judgments rendered by the Honourable Apex

Court referred to supra and in the light of the discussions above, we hold that the writ petition is liable to be allowed as the first respondent is neither a "person interested" nor has any "locus standi" to maintain the application. Accordingly, we are constrained to hold that the order passed by the Central Administrative Tribunal in O.A. No. 686 of 2011 dated 02.07.2013 cannot be sustained in the eye of law.

In the result, the order passed in O.A. No. 686 of 2011 is hereby set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.