

(2015) 11 MAD CK 0047
In the Madras High Court
Case No : W.P.(MD) No. 11596 of 2014

P. Chandramohan

APPELLANT

Vs

The Madurai Kamaraj University and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Citation : (2015) 11 MAD CK 0047

Hon'ble Judges : T. Raja, J.

Bench : Single Bench

Advocate : D. Selvam for P. Thambi Durai, for the Appellant; N. Sathish Babu, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—Dr. P. Chandramohan, who was working in Madurai Kamaraj University as Guest Lecturer in the Department of Art History, Aesthetics and Fine Arts, has challenged the impugned order of appointment of the fourth respondent Mr. K.A. Babu to the post of Assistant Professor in the Department of Arts History with the respondent university in Ref. No. V/Appt./AP/MKU/2014 dated 7.7.2014 issued by the Madurai Kamaraj University, to quash the same as illegal with a consequential direction to the Madurai Kamaraj University to consider him for appointment to the post of Assistant Professor in the Department of Art History.

2. Mr. D. Selvam, learned counsel for the petitioner submitted that the petitioner is the only candidate who has studied History right from the graduation level, B.A. in the year 1993 and again completed his post graduation, M.A. in Art History and Aesthetics from Madurai Kamaraj University in 1995 as a regular student. Subsequently he was selected to undergo M.Phil in Art History and Sculpture in Tamil University. After completion of his M.Phil in the year 1996, he was selected to carry out research in the field of History, hence, he did Ph.D., in Art History and Sculpture in the regular department of Tamil University. Finally he has completed his doctorate in 2000 itself, hence he is exempted from NET/

SLET examination for the purpose of selection to the post of Assistant Professor in the Madurai Kamaraj University. Adding further, the learned counsel submitted that the petitioner, after completing his doctorate, has also published three books namely, (a) Garuda in Medieval Art, (b) Garuda in Medieval Art & Mythology, (c) Reflection on the Art of Tamil Nadu. Besides, he has also submitted so many research papers in national and international journals and some of them are:--

- "(i) Gangadharamurthi in Chola Art published in Tamil Nadu History Congress
- (ii) Rare Stucco Image of Nayaka Art published in South Indian History Congress.
- (iii) The Lord who is half women published in South Indian History Congress.
- (iv) Garuda and his mother vinata published in Institute of Historical Studies
- (v) Problems in Reconstruction of Indian History published in the quarterly journal of the Mythic Society."

In the meanwhile, two posts of Assistant Professor in the department of Art History, Aesthetics and Fine Arts were notified in the year 2007, one reserved for general turn and another reserved for SC/ST backlog vacancies. However, the posts have not been filled up till now. In the meanwhile, in the year 2013, the department of Art History, Aesthetics and Fine Arts was divided into two departments viz., department of Art History and department of Fine Arts & Aesthetics. Hence, the first respondent notified separately one post of Assistant Professor in the department of Art History and another in the department of Fine Arts and Aesthetics reserving both the posts to general turn. In any event the petitioner, belonging to MBC category, applied for recruitment to the post of Assistant Professor in the department of Art History and he was issued with the intimation letter dated 22.5.2014 asking him to come for interview scheduled for 27.5.2014 at the Mu. Va. Arangu Annex, Madurai Kamaraj University. Accordingly, the petitioner attended the same along with three other candidates including the fourth respondent herein. Adding further, he has submitted that when the fourth respondent possessed only M.A., and M.Phil in Fine Arts with SLET, he applied for the post in both the departments. But he was given appointment vide the impugned order dated 7.7.2014 as Assistant Professor in the department of Art History in the School of Youth Empowerment. Since the petitioner is the only eligible person among the four to attend the interview on 27.5.2014, he should have been selected on merit. But wrongly the fourth respondent has been selected for the reasons best known to the respondents.

3. Continuing his arguments, the learned counsel for the petitioner submitted that surprisingly the minutes of the meeting of the Syndicate dated 29.5.2014 has no approval of the Syndicate, because out of seven Syndicate members, no one has signed. In fact the Syndicate members have given in writing that in the approved minutes of the meeting of the Syndicate held on 29.5.2014, item No. 33 has been newly inserted without being listed in the agenda prior to the meeting. In view of the sudden inclusion of item No. 33, the petitioner

entertained a big suspicion in the method of appointment of the fourth respondent, hence, he has immediately challenged the same. Concluding his arguments, the learned counsel for the petitioner submitted that in comparison with the qualification possessed by the petitioner and the fourth respondent, the appointment of the fourth respondent is illegal, because the fourth respondent is not having the post graduation in the Art History and therefore the petitioner ought not to have been neglected, since he possesses M.A. in Art History and Ph.D., in Art History and Sculpture, more particularly, in the light of the eligible criteria mentioned in the notification. Again reiterating one another aspect that the petitioner being a doctorate in Art History and Sculpture and exempted from NET/SLET examination, the appointment of the fourth respondent is liable to be set aside.

4. A detailed counter affidavit has been filed by the Registrar of Madurai Kamaraj University. Mr. N. Sathish Babu, learned counsel appearing for the respondents 1 & 2 forcibly contended that when a notification dated 22.1.2014 was issued by the Madurai Kamaraj University inviting applications for the post of Assistant Professor to the department of Art History, one post was earmarked for the general turn, for which nine candidates applied. However, only four candidates turned up for interview. Among those four candidates, the petitioner scored 277 marks, whereas the fourth respondent has got 320 marks, apart from two other candidates who secured low marks. So far as the qualification aspect for the post of Assistant Professor in Art History is concerned, he contended that the fourth respondent is having the requisite qualification, therefore, he was found eligible for the said post, because the fourth respondent is the only candidate who had passed NET in Visual Art History certificate of UGC and also performed well than the other candidates including the petitioner. Inasmuch as 320 marks were secured by the fourth respondent as against the 277 marks secured by the petitioner, it clearly shows that the fourth respondent has surpassed the petitioner. Therefore the Selection Committee consisting of the Chairman/Vice Chancellor and five members, who are experts, found the fourth respondent eligible to be appointed for the said post. Accordingly, the order of appointment was issued to the fourth respondent for appointing him in the post of Assistant Professor in the department of Art History and the fourth respondent also has assumed office, since he joined duty on 15.7.2014 as Assistant Professor in the department of Art History, hence, the writ petition becomes infructuous. Adding further he submitted that the petitioner claiming to be possessing a doctorate cannot ask for exemption from passing the NET in Visual Art History in view of the latest judgment of the Apex Court in S.L.P.(C) Nos. 36023 to 36032 of 2010 dated 16.3.2015 (P. Suseela and others etc. etc. v. University Grants Commission and others etc., etc.) holding that the Central Government felt that a common uniform nationwide test should be a minimum eligibility condition for recruitment for the appointment of Lecturer/Assistant Professors in Universities/Colleges/Institutions. This is for the obvious reason that M.Phil degrees or Ph.D degrees are granted by different Universities/Institutions having differing standards of

excellence. It is quite possible to conceive of M.Phil/Ph.D degrees being granted by several Universities which did not have stringent standards of excellence. Considering as a matter of policy that the appointment of Lecturers/Assistant Professors in all institutions governed by the UGC Act (which are institutions all over the country), the need was felt to have in addition a national entrance test as a minimum eligibility condition being an additional qualification which has become necessary in view of wide disparities in the granting of M.Phil/Ph.D degrees by various Universities/Institutions.

5. A detailed counter affidavit has been filed by the fourth respondent. Mrs. Chamundi Bose, learned counsel for the fourth respondent submitted that the fourth respondent being a Gold medalist in his undergraduate B.F.A. (Sculpture and Art History), has possessed M.F.A., (Sculpture and Art History), M.Phil Sculpture (Art History) apart from completing his National Eligibility Test in Visual Art History. In addition thereto, the fourth respondent has also completed some certificate courses and received merit certificate from Pondicherry University and also got merit scholarship from the University of Hyderabad. This apart, the fourth respondent had also five years of teaching experience from 2006-2010 and worked as Fine Arts lecturer at Gandhigram Rural University at Dindigul. Barring the aforementioned academic qualifications, the fourth respondent has also published a book titled "French Heritage Sculptures in Puducherry" and also presented a paper in "South Indian History Congress-34 Annual Session". Besides he has also published Articles in Art journals namely "Thol Puthaiyal". This apart, he has organized, conducted and participated in many Art programmes creating awareness on Education, Health, Environment, Society etc., to the students and to the public. Besides he has also conducted programmes to the Tsumani affected children in the areas around Pondicherry and Tamil Nadu. Therefore, when the fourth respondent has got more qualifications than the petitioner, the selection committee, having found that the fourth respondent is the only candidate who had passed NET in Visual Art History, certificate of UGC and also performed well, selected him on merits. Admittedly, the fourth respondent has got 320 marks just higher than the 273 marks secured by the petitioner. Moreover, the petitioner has not even passed the NET, therefore, he is ineligible for the said post. Without having proper knowledge about the qualification possessed by the fourth respondent, the blind averment of the writ petitioner in his affidavit that the fourth respondent is not eligible for the said post, is absolutely far from acceptance, since he has possessed undergraduate and post graduate degrees only in Fine Arts and is also having undergraduate and postgraduate degrees in History and Art History and Aesthetics. Besides the undergraduate and postgraduate degrees in Fine Arts have the subjects including sculpture, painting and art history. Further more, in the M.Phil and Ph.D degrees, the fourth respondent had chosen specialization of sculpture (Art History) from Tamil University, Thanjavur, from where the writ petitioner also obtained his M.Phil and Ph.D in Sculpture (Art History). Hence the selection committee, finding that the fourth respondent is the only candidate

having NET in Visual Art, has rightly appointed him vide the order of appointment dated 7.7.2014 directing him to report for duty on or before 28.7.2014. Accordingly, the fourth respondent had joined duty on 15.7.2014. Since then he has been working, therefore, it is too late to question the merits of the fourth respondent.

6. This Court finds merits in the submissions made by the learned counsel for the fourth respondent. At the outset, it may be mentioned that the petitioner has not passed the NET, which is the essential qualification for the post of Assistant Professor. No doubt the petitioner has pleaded for exemption from passing the NET. But after the judgment of the Apex Court in S.L.P.(C) Nos. 36023-36032 of 2010 dated 16.3.2015 (P. Susheela and others etc., v. University Grants Commission and others etc., etc.) holding that merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right is affected, more particularly, as it would apply only at the stage of appointment, the contentions raised by the learned counsel for the petitioner that the petitioner should be considered for the post of Assistant Professor in the department of Art History, since he has got better qualification of Ph.D., cannot be accepted. As rightly contended by the learned counsel for the fourth respondent, the fourth respondent is a Gold medalist in B.F.A.(Sculpture and Art History) and also possessed M.F.A.(Sculpture and Art History), M.Phil Sculpture (Art History) apart from completing his National Eligibility Test in Visual Art History. In addition thereto, he has also completed some certificate courses and received merit certificate from Pondicherry University and also got merit scholarship from the University of Hyderabad. This apart, he had five years of teaching experience from 2006-2010 and worked as Fine Arts lecturer at Gandhigram Rural University at Dindigul. Barring the aforementioned academic qualifications, the fourth respondent has also published a book titled "French Heritage Sculptures in Puducherry" and also presented a paper in "South Indian History Congress-34 Annual Session". Besides he has also published Articles in Art journals namely "Thol Puthaiyal". This apart, he has organized, conducted and participated in many Art programmes creating awareness on Education, Health, Environment, Society etc., to the students and to the public. Further he has also conducted programmes to the Tsumani affected children in the areas around Pondicherry and Tamil Nadu. Considering all these credentials of the fourth respondent, the merit list prepared by the selection committee in respect of both the petitioner and the fourth respondent shows that the petitioner had secured only 277 marks, whereas the fourth respondent had secured 320 marks, therefore, the selection committee which consisted of the Chairman/Vice Chancellor and five members who are all experts having conducted the above said interview and rightly finding the fourth respondent is eligible for the post of Assistant Professor, as he has got higher marks of 320 in total, which cannot be compared with the petitioner who secured only 277 marks, selected the fourth respondent, hence, the impugned order of appointment dated 7.7.2014 issued by the first respondent appointing the fourth respondent to join duty on or before

28.7.2014 cannot be found fault with. As a matter of fact, the fourth respondent had also joined duty on 15.7.2014 and now has been working as Assistant Professor in the department of Art History in Madurai Kamaraj University. Hence this Court finds no illegality or infirmity in the impugned order of appointment, appointing the fourth respondent to the post of Assistant Professor in Madurai Kamaraj University. For the aforementioned reasons, the writ petition fails and the same is dismissed. Consequently, interim order stands vacated and the M.P. (MD) Nos. 2 & 3 of 2014 are also dismissed. No costs.