

(1994) 09 MAD CK 0092

In the Madras High Court

Case No : Writ Petition No. 18932 of 1993

S.V. Radhakrishnan

APPELLANT

Vs

The Staff Selection Commission

RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1), 15, 15(1), 19
Constitution of India, 1950 — Article 136, 226, 227, 323A, 323A(1)

Citation : (1994) 09 MAD CK 0092

Hon'ble Judges : Thanikkachalam, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : P.K. Sivasubramaniam, for M. Chinnachamy and P.V. Sanjeev, for the Appellant; Suryanarayanan Reddy, Additional Central Government Standing Counsel for 1st Respondent and V. Subbarayan, Government Advocate for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, J.—An Honourable single judge of this Court, while hearing this writ petition on merits, felt that a Division Bench judgment of this Court in *The Chairman, Railway Recruitment Board v. S. Ruban Peter and Ors.* 1990 W.L.R. 1 was being differently interpreted by two Honourable single judges in *Padmini Bai v. State of Tamil Nadu* 1992 W.L.R. 205 "and *Vasanthi v. The Teachers' Recruitment Board and Ors.* 1992 W.L.R. 607 and, therefore, the law on the subject requires fresh interpretation and clarification by appropriate Bench of this Court. Pursuant to the aforesaid order, the Honourable the Chief Justice has marked this case for consideration of this Court.

2. The Petitioner claims to be a B.Sc. (Zoology) from Madurai-Kamaraj University and applied for selection and appointment as a Senior clerk in the Southern Railways, Madurai Division on 9.8.1989. He claimed that he belonged to Konda Reddy community, which was recognised as a Scheduled Tribe. He was provisionally selected subject to producing the community certificate in the

prescribed form. He joined the said appointment on condition that he will produce the community certificate in the near future. In the meantime he applied to the Respondent-Staff Selection Board for his selection as Inspector of Income Tax/Central Excise Department through proper channel. It is his claim that he has been selected after due interview and was directed to produce the community certificate in the prescribed format. He, therefore applied to the second Respondent for issuance of the certificate on 14.8.1992. This Respondent undertook investigation of the claim of the Petitioner and, therefore, issuance of the certificate to the Petitioner has been delayed. Since the Petitioner could not produce the community certificate the first Respondent cancelled his selection and intimated to him by memorandum dated 24.5.1993. Feeling aggrieved by the said cancellation of his selection the Petitioner has filed the present writ petition praying for a writ of certiorari and mandamus to quash the said memo and directing the first Respondent to confirm his selection. The Petitioner also claims a compensation of Rs. 5,00,000/- from the second Respondent for his laches in issuing the certificate and causing the loss to him as aforesaid. The first Respondent filed its counter and objected to the maintainability of the writ petition in this High Court. According to the Respondents, the Administrative Tribunal having been constituted, the subject matter of the writ petition is not within the jurisdiction of this Court u/s 28 of the Administrative Tribunals Act, 1985, hereinafter referred to as the "Act". The Petitioner placed reliance on the Division Bench decision in the Railway Recruitment Board's case (supra) and submitted that since he was not a person in service of the first Respondent, his grievance could not be adjudicated upon by the said Tribunal and hence the writ petition is maintainable.

3. The Railway Recruitment Board's case dealt with a situation where candidates has applied for appointment to non-technical popular categories of the Railways pursuant to an advertisement notice No. I of 1987 issued by a Railway Recruitment Board and a written examination was held in which 1,44,000 candidates appeared. It was however, alleged that the question paper of the said examination had leaked and hence the Secretary of the Railway Recruitment Board had lodged a complaint with the police, which resulted in the investigation into the said complaint. The police investigation did not yield anything substantial and hence the result of written examination was published and some candidates called for interview. It however appears that some candidates who have passed the written examination with high marks fared rather badly in the interview which led to justify the apprehension against the leakage of the question paper. Out of the candidates eligible for interview the Board selected best among them by holding a second written examination and issued the letter dated 15.4.1989 calling for the candidates to appear in the second written examination. This order of the Railway Recruitment Board to hold second written examination was challenged through various writ petitions filed in this Court. On notice being issued by the Court the Railway Recruitment Board objected to the jurisdiction of the High Court and submitted that the matter fell within the jurisdiction of the

Central Administrative Tribunal constituted under the Act. That is how" the matter was referred to the Division Bench for deciding whether the jurisdiction of this Court in the matter was taken away and lawfully vested in the Tribunal. The Division Bench of this Court on an exhaustive examination of the question held that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India was excluded only in so far as the employees already in the service of the Government, Local Authority etc., are concerned, provided they relate to matters which strictly fell within Section 14 read with Section 3(q) of the Act and not in other cases. The court further held that it is only an "aggrieved person" as contemplated by Section 19 of the Act is permitted to approach the Tribunal for adjudication and trial of such disputes and complaints etc. In all other cases, the jurisdiction of the High Court under Articles 226 and 227 of the Constitution remains intact. The Court, therefore, held that the subject matter of the writ petition was not within the jurisdiction of the Administrative Tribunal and hence this Court has jurisdiction in this matter. The following passage from the said judgment being important is quoted as under for ready reference:

The expression "recruitment" and matter concerning recruitment occurring in Clause (a) of Sub-section (1) of Section 14 of the Act on which emphasis has been laid by Learned Counsel for the Appellant to urge that High Court's jurisdiction has been excluded even in cases which are at the pre-recruitment stage and that persons who are not "in service" can also only approach the Tribunals after 1.11.1985, if the grievance of such persons has any co-relation with non-recruitment to services, has to be read in the context in which it appears in the said Section and cannot be divorced from the subsequent expressions in the clause and other provisions of the Act. The use of the expressions "recruitment and matters concerning recruitment", in our opinion would imply that "in service" candidates can raise disputes before the Tribunal even in respect of matters relating to recruitment, but no person who is not "in service" can approach the Tribunal for redressal of any grievance. Various clauses of Section 3(q) (supra) unmistakably show that the types of disputes referred therein can only to be raised by persons "in service" as they relate to none else. It is a salutary principle of construction of statutes that to arrive at the true meaning of any particular phrase in it, that phrase is not to be viewed in isolation. The statute must be read as a whole. In deed this principle cannot be called in aid to alter the meaning of what by itself is clear and explicit, but the given phrase must be so construed, as far as it is possible, that any absurdity and mischief may be avoided. The consideration of the expression "recruitment, and matters concerning recruitment" occurring in Section 14(1)(a) of the Act, divorced from the context in which it appears and without examining the provisions of other sections of the Act, can lead to absurdities. If the argument of Learned Counsel for the Appellant were to be accepted that the Tribunal can be approached even by persons who are not in service provided they have a grievance against "recruitment and matters concerning recruitment, then it

would imply that even a person who is not personally aggrieved would also be entitled to maintain an application under the Act in public interest. This is not possible. Such a person can only approach the High Court in exercise of the writ jurisdiction and not the tribunal. Of course, public interest does require administration to be maintained smoothly and efficiently, but we are afraid the jurisdiction of the tribunal cannot be extended to adjudicate upon disputes in public interest, since the jurisdiction, authority and powers conferred on the Tribunal are only to be exercised as contemplated by the provisions of the Act. Construed in this light, it is not possible to hold the jurisdiction of the High Court would be not available to persons who are not in service when they have a grievance relatable to some service. Before the Tribunal only the "in service persons can agitate in respect of matters covered under the Act.

After taking the aforesaid view this Court gave the following guideline to ascertain the correct position in any particular case and held as under:

In order to determine whether the High Court has jurisdiction to entertain a petition under Article 226/227 of the Constitution of India after 1.11.1985, what is to be examined is, firstly whether the dispute is the one raised by an "in service" candidate and is covered by the provisions of the Act; secondly, whether the application is made by an aggrieved person in respect of an order covered by Section 19, and thirdly, whether the grievance relates to a service matter as contemplated by Section 3(q). In case the answer to all the three questions is in the affirmative, then, and then alone the High Court's jurisdiction is excluded and the Tribunal shall have the jurisdiction to deal with such matters. The Tribunal, then, would be vested with the jurisdiction to deal with matters and give complete and effective relief including the relief of declaring any particular Act, Rule or action as invalid or ultra vires the constitution of the law.

On the aforesaid view of the legal question involved, the Division Bench passed the final order as under:

In view of the aforesaid discussion, the conclusion is irresistible that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India to deal with the service matters with effect from 1.11.1985 is excluded only in so far as the employees already in service of the Government, local authority etc. are concerned, provided they relate to matters which strictly fall within Section 14 read with Section 3(q) of the Act and not in other cases and it is only an "aggrieved person" as contemplated by Section 19 of the Act who is required to approach the Tribunal only for adjudication and trial of such disputes and complaints etc. In all other cases, the jurisdiction of the High Court under Article 226/227 of the Constitution remains in tact even after. 1.11.1985. The question posed in the early part of the judgment is thus answered accordingly. The learned single Judge, under the circumstances, was right in rejecting the preliminary objection and holding that the question raised in the writ petitions, which arose at the pre-recruitment stage by persons not already in service could be gone into by the High Court in exercise of the writ jurisdiction. We accordingly

uphold the judgment under appeal and dismiss these appeals but without any order as to costs.

4. This judgment was quoted before the Honourable Mr. Justice D. Raju in Padmini Bai's case (supra) for consideration and acceptance. In this case the Petitioner had registered her name with the Employment Exchange, Nagercoil and was awaiting an order for selection and appointment. Though several persons registered after her were called, she was not. She, therefore filed an application before the Tamil Nadu Administrative Tribunal for a direction to the Employment Exchange to forward her name to the second Respondent for selection as B.T. Assistant. The Tribunal by its order dated 27.1.1989 held that it had no jurisdiction in a case like the aforesaid. The Petitioner, therefore filed the writ in this Court seeking a direction to the District Employment Officer for forwarding her application to the Chair-man, Teachers' Recruitment Board for selection. In this writ petition this Court issued an interim direction on 23.3.1989 to sponsor the name of the Petitioner in case she was otherwise eligible. Thereupon the Petitioner was interviewed by the Teachers' Recruitment Board but was not selected. It was her grievance that the interviewers did not ask her questions relevant to the post for which she had applied for but had only interviewed generally. The Petitioner, therefore, challenged the selection list and sought a direction to the said Respondent to select her as B.T. Assistant (Science). The Teachers' Recruitment Board took a preliminary objection that the relief sought for cannot be agitated or obtained in the proceedings, as the matter was within the exclusive jurisdiction of the Administrative Tribunal. The learned single Judge considered the Division Bench decision in detail and held that the observation in para 14 of the judgment regarding "in service requirement to move the Tribunal" has to be construed as meaning "pre-recruitment stage" and not laying down by general proposition of uniformal application. According to the learned Judge, the Division Bench was only concerned with and confining their consideration of the question posed from only a recruitment stage and, therefore, their conclusion that the Tribunal had no jurisdiction in the matter was fully justified. According to the learned Judge, the Petitioner before him was aggrieved by her non-selection and selection of others by the Recruitment Board. Such a claim concerns the recruitment stage and not pre-recruitment stage and hence even by following the law laid down by the Division Bench the Court would have no jurisdiction. The Court, therefore, directed the Petitioner, to take the matter to the Tamil Nadu Administrative Tribunal and pursue the stage before that Tribunal for such relief as she may be entitled to.

5. The Division Bench judgment again received consideration of an Honourable Judge of this Court in Vasanthi's case (supra). The Petitioner in the said case had registered her name in the Employment Exchange which sponsored her name for appointment to the post of B.T. Assistant (History) in Tamil Nadu Secondary Education Department. She was however not selected in the interview though given two opportunities for the purpose. The grievance of the Petitioner was that guidelines for giving marks during interview were not followed and, therefore,

that selection was bad in law. The question of jurisdiction was again raised and the judgment of the Division Bench in Railway Recruitment Board's case was submitted for consideration. The learned Judge was of the opinion that the Division Bench judgment clearly lays down that in-service candidates alone can move the Tribunal. Since the Petitioner was not an in-service candidate the writ petition was held maintainable. While taking the aforesaid view the learned Judge made the observations as under:

I have gone through the judgment of Raju, J., in Padmini Bai v. The State of Tamil Nadu 1992 W.L.R. 205, interpreting the judgment of the Division Bench of this Court in Chairman, Railway Recruitment Board, The v. S. Ruban Peter 1990 W.L.R. 1. With respect, I am unable to agree with the interpretation put forth by the learned Judge regarding the judgment of the Division Bench of this Court, mentioned above. A plain reading of the judgment of the Division Bench of this Court, mentioned above, clearly shows that "in service" candidates alone can move the Tribunal and not any person who was appointed or recruited. This is a case in which the Petitioner before me questions the awarding of marks. The Petitioner herein is not "in service". As such, since I am bound by the decision of the Division Bench of this Court in Chairman, Railway Recruitment, The v. S. Ruban Peter 1990 W.L.R. 1 and also the previous orders of this Court, the consequence should be that the writ petition is maintainable. Once it is decided that the writ petition is maintainable it has to be allowed, in view of the earlier judgment of this Court in S. Annammal v. The State of Tamil Nadu W.P. No. 1911 of 1990 etc. dated 26.3.1992. Accordingly this writ petition is allowed. No costs.

The aforesaid judgment would clarify that the Petitioner in Division Bench judgment was a person who has not been recruited to the service and was praying for appropriate writ in his favour for quashing the order for a second written examination for the purpose of selection. It was, therefore, a case of a matter concerning selection for the purpose of recruitment. Matters concerning the recruitment are specifically covered by Section 14(1)(b) of the Act which reads as under:

Jurisdiction, powers and authority of the Central Administrative Tribunal - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court under Article 136 of the Constitution) in relation to

(a) recruitment and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

Clause (b) deals with all service matters concerning a member of any All India Service. Clause (c) of this provision deals with service matters pertaining to

service in connection with the affairs of the Union concerning a person appointed to any service or post not being an All India. Service being a person whose services have been placed by the State Government or local authority or other authority or Corporation or body at the disposal of the Central Government for such appointment. Almost identical provisions are contained in Section 15 in relation to the State service. These provisions would, therefore, indicate "recruitment and matters concerning recruitment" are treated separately from "all service matters" of a member of a service. This would, therefore, indicate that adjudication of service matters has necessarily to be in relation to a person who is already a member of the Central or State service. But, adjudication of disputes regarding recruitment and matters concerning recruitment does not have any such qualification. This interpretation of the provision is without doubt contrary to the Division Bench decision in *Railway Recruitment Board's Case* (supra). The Division Bench, however, has not considered Clause (a) of Section 14(1) in the context of Clauses (b) and (c) of the said provision as would be clear from the passage quoted earlier but has given the meaning as it did in the context of Section 3(q) of the Act, which defines service matter and Article 323-A of the Constitution of India. According to the Division Bench since Section 14 and other provisions of the Act noticed above derive their strength from the Act enacted by virtue of powers contained in Article 323-A of the Constitution, the expression "recruitment and matters concerning recruitment" as occurring in Section 14 of the Act cannot travel beyond the provisions of Article 323-A of the Constitution." This construction is much narrower than given by the Supreme Court in *Union of India v. D.C. Pandey* AIR 1993 S.C. 352. This was a case where employment of a casual employee had been terminated and he had approached the High Court for relief in the matter. The High Court entertained the writ petition and granted the relief. The order of the High Court was under challenge before the Supreme Court on the ground that the matter fell within the exclusive jurisdiction of the Administrative Tribunal. The Supreme Court accepted the contention and set aside the order of the High Court. Para 5 of the aforesaid judgment being important is reproduced for ready reference.

The scope of Article 323-A permitting the Parliament to legislate on the subject covered therein is, having regard to the language, very wide, and by enacting 1985 Act this power has been exercised in almost full measure. An examination of Section 14 and Section 3(q) clearly indicates that the Act covers a very wide field, and there is nothing to suggest that the provisions dealing with the jurisdiction of the Tribunal should receive a narrow interpretation. This is also supported by the clarification offered by the then Minister for Law, who was piloting the Bill, while replying to the demand for the further enumeration of the conditions of service in Sections 14 and 15. He stated that (as recorded in the proceedings for 9th to 11th November, 1976 of the Rajya Sabha Debate) he believed the "Conditions of Service" to be of such a wide expression that an attempt of enumeration would be "really so dangerous from the point of view of the employees themselves that by exclusion you say that the others are not.

On the aforesaid law, the Supreme Court held that since the writ Petitioners were claiming right to continue employment with the added claim to a temporary status it is idle to suggest that claim is not covered by the Act. If the wider view of Section 14 of the Act has to be, taken as directed by the Supreme Court, the Division Bench's decision of this Court would not be good law any longer inasmuch as the said judgment has not taken the wider view of Section 14 but has narrowed its scope covering only persons already in service. In view of this decision the authority of the Division Bench judgment must be held to have been shaken needing a fresh look of the matter. We would hasten to add that but for the aforesaid view of the Supreme Court we would not have undertaken this exercise and considered ourselves bound by the Division Bench decision in Railway Recruitment Board's Case (supra) as long as the same was not set aside. But not only the Supreme Court's judgment but different interpretation of the said judgment by two single Benches of this Court justify our undertaking this exercise.

6. Since the Act owes its origin to Article 323-A of the Constitution, it cannot go beyond the said constitutional provision. Under the circumstances, the first question requiring our consideration is whether Article 323-A justifies the conclusion that only those who are already in service are entitled to move the Tribunal for adjudication of their disputes and complaints. Article 323-A(1) which is relevant for the purpose reads as under:

Parliament may, by law, provide for the adjudication of trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

A plain reading of this provision would indicate that Parliament has been authorised to provide by law for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services etc. Since the Act has been made pursuant to this provision and provides for adjudication of disputes and complaints with regard to recruitment as also conditions of service, it deserves examination whether disputes and complaints with respect to recruitment made within the jurisdiction of the Tribunal also "of persons appointed to public services or posts". If these words have to be given plain meaning, it would justify the conclusion that disputes and complaints with respect to recruitment of persons appointed to public services or posts can be adjudicated upon by the Tribunal. There is, however, no warrant for reading this provision as meaning that only persons appointed to public services or posts are entitled to get their disputes and complaints with respect to recruitment adjudicated by the Tribunals. Under the circumstances, though the disputes with respect to recruitment should be of persons appointed to public services or posts, it need not be raised and

referred to the Tribunal by the persons in service. If this be the correct reading of the aforesaid constitutional provision and we have no doubt that it is correct, it will not support the conclusion that only "in service" employees are entitled to invoke the jurisdiction of the Tribunal. Section 14(1)(a) of the Act, which deals with the jurisdiction, power and authority of the Central Administrative Tribunal and Section 15(1)(a) dealing with the authority of a State Administrative Tribunal may now be looked into. These provisions vest jurisdiction in the Tribunals in relation to recruitment and matters concerning recruitment to service or post under the Union or the State. Reading these provisions in the context of Article 323-A, recruitment and matters concerning recruitment must relate to persons appointed to services or posts under the Central or State Government. Again Sections 14 and 15 do not justify the interpretation that the dispute about such recruitment should also be raised by persons already in service and be adjudicated upon by Tribunals only at their instance. Section 19(1) of the Act may, in this connection, be referred to which reads as under.

Applications to Tribunals: 1. Subject to the other provisions of this Act. Person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation:

For the purposes of this Sub-section order means an order made:

(a) by the Government or a local or other authority, within the territory of India or under the control of the Government of India or by any Corporation or society owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or co-operation or society referred to in Clause (a).

A bare reading of this provision indicates that a person aggrieved by any order pertaining to any matter within the jurisdiction to the Tribunal is entitled to make an application to the Tribunal for redressal of his grievance. In other words, any person aggrieved by the recruitment of a person to services of the Union or the State can raise the dispute and refer the same for redressal to the Tribunal by filing an application in that behalf. This provision cannot justify the inference that only a person in service should raise such a dispute, indeed a person already recruited would hardly have any complaint against his recruitment. Under the circumstance, a combined reading of Sections 14, 15 and 19 in the background of Article 323-A of the Constitution would justify the conclusion that though the dispute or complaint in relation to recruitment and matters concerning recruitment may be about a person appointed to public service and post the said dispute need not be raised by a person so appointed. It can legitimately be raised by a person aggrieved by the said recruitment. Under the circumstances, a person not in service can legitimately file an application to the Tribunal for redressal of his complaint. The word "appointed" used under Article 323-A(1) of

the Constitution when read in the context of Supreme Court's decision in *S.P.S.K. v. Union of India* AIR 1987 S.C. 386 and *Union of India and others Vs. Deep Chand Pandey and another*, may justify including persons claiming to be so appointed or likely to be appointed and would permit unsuccessful competitors to raise dispute about the recruitment and matters concerning recruitment. If the facts of the case of the Railway Recruitment Board (*supra*) are considered in the context of aforesaid principles of law, it would be clear that the matter dealt therein was not within the jurisdiction of the Tribunal as it was a matter not relates to recruitment or matters concerning recruitment of persons appointed or likely to be appointed to public services or posts, we have already noticed that the manner in which the Recruitment Board has directed holding a second written test for the purpose of recruitment was the subject matter of challenge. The grievance was not against any particular person already selected for appointment. Under the circumstances, even according to the interpretation aforesaid, the grievance of the Petitioner therein would have been considered and decided only by the High Court. The interpretation of the Division Bench therein is however not in line with the conclusion reached by us. The conclusion that only in-service candidates can file application to the Tribunal cannot, therefore, be accepted as good law. Similarly the decision of Bhakthavatsalam, J, in *Vasanthi's case* (*supra*) dealt with a factual situation where questions asked during the interview were subject matter of challenge but selection for appointments of others was not challenged. The fact that the Petitioner was not challenging the selection of selected candidates was specifically mentioned in the affidavit. The law in the said case, therefore, did not relate to recruitment of any person appointed to the post and for that reason could only be decided by this Court. The decision would be legal in view of the aforesaid law. In *Padmini Bai's* case also selection of any one was not under challenge. The effort on the part of the Petitioner was to get herself selected. This matter was also clearly within the jurisdiction of the High Court and could not have been sent to the Administrative Tribunal for adjudication. Para 2 of the said judgment clearly mentions that the matter has first been referred to the Tribunal which has taken the view that it had no jurisdiction. The view of the Tribunal, in our opinion, was correct. We would, however, hope that the Petitioner therein had been able to get the final verdict on her application and would not be affected in any manner by this decision.

7. The facts of the present case may now be examined in the context of law aforesaid. It is the Petitioner's own case that he was selected for appointment as Inspector of income tax Central Excise in the selection test held by the first Respondent but was not actually appointed because of the community certificate. In other words, the matter relates to his own recruitment and his claim is that he has already been recruited to the post or service but was not being permitted to work as such. His grievance, therefore, related to a matter concerning his own recruitment, to the service of the Union and is fully covered by Section 14(1)(a) of the Act. Under the circumstances, the Central Administrative Tribunal has

exclusive jurisdiction in the matter. The grievance of the Petitioner, however, is that the Tribunal will not be able to grant any compensation against the second Respondent. If the aforesaid claim is incidental to the main claim of obtaining appointment as per selection, then the Tribunal will have the same jurisdiction as this Court. But, if the said claim be independent of his recruitment the Tribunal's jurisdiction would be wanting. In such a situation it will be a case of misjoinder of causes of action. We would not like to decide whether the claim is incidental or independent and leave the same to be decided by the Petitioner. In case he thinks that the claim is independent he would be free to move this Court in accordance with law. For the time being, since the claim is filed together with the claim over which this Court has no jurisdiction, it cannot be adjudicated upon.

8. For reasons aforesaid, the petition fails and is dismissed. No costs.