

(2004) 07 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 29302 of 2002, WPMP. No. 47657 of 2002 and
WVMP. No. 1463 of 2002

The Commissioner, Hindu Religious and Charitable
Endowments Department

APPELLANT

Vs

S. Krishnan and The Registrar, Tamil Nadu Administrative
Tribunal

RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Citation : (2004) 3 MLJ 599

Hon'ble Judges : P.K. Misra, J;M. Thanikachalam, J

Bench : Division Bench

Advocate : R. Sugumaran, for the Appellant; AR.L. Sundaresan, for the
Respondent

Final Decision : Allowed

Judgement

M. Thanikachalam, J.—The first respondent in O.A. No. 8983 of 2000, aggrieved by the direction issued by the Tribunal, has preferred this

writ petition.

2. The Commissioner of Hindu Religious and Charitable Endowments Department called for applications, for the appointment of six Junior

Technical Assistants on 20.2.1998. The first respondent herein and others have applied for the said post. It seems, in the written test as well as the

practical test conducted by the department, the first respondent stood in the 7th rank. The Commissioner of H.R.& C.E., considering the

vacancies, appointed six persons, as per the proceedings dated 17.6.1998 in Na. Ka. No. 98922/94 BEE-2. The first respondent, aggrieved by

his non selection, impleading the 6th candidate in the selection list, by name

Dharmaraj, had filed O.A. No. 5911/98, seeking direction to appoint him, to the post of Junior Technical Assistant, attached with the office of the Joint Commissioner, H.R & C.E., Tirunelveli, alleging that there was no proper selection and there was some manipulation or favouritism etc.

3. The original application was opposed by filing counter by the Department, justifying the appointment of six persons, assigning reasons, for not

appointing the first respondent herein to the post. When the said O.A. was pending, the first respondent herein gave a representation to the

Commissioner, H.R & C.E., Madras, on 4.2.1999 contending, that still there are two vacancies, each in the cadre of Gold-cum-Silver-cum-Gem

Specialists and in the cadre of Junior Technical Assistant in H.R. & C.E. Department, and requested to consider him to any one of the posts. In

view of the representation given by him, he withdrew the O.A. No. 5911/98 as not pressed, with liberty to file fresh application, which was

ordered, resulting the dismissal of the said O.A. on 24.2.1999. Even thereafter, the hope of the first respondent, for being selected to the post, was

not even considered by the Commissioner of H.R. & C.E. Department. Therefore, once again, the first respondent herein filed O.A.1492/99,

seeking direction to H.R. & C.E. Department, to consider the representation dated 4.2.1999, with regard to his appointment as Gold-cum-Silver-

cum-Gem specialists/Junior Technical Assistant.

4. The Tribunal by its order dated 4.3.1999, allowed the application, giving direction to the Commissioner, H.R. & C.E. Department, to consider

the representation of the first respondent herein, on merits and pass orders as per the rules, within a period of 12 weeks from the date of receipt of

copy of the order. As per the direction of the Tribunal, the Commissioner considered the application. The Commissioner taking into account, as

such there was no vacancy and no notification was made, calling for applications, for the appointment of the post, rejected the representation, since

it is not possible to give posting, when there was no notification, calling for applications for the post to be filled up, if any vacancy exists. The first

respondent/applicant, once again aggrieved by the rejection of his representation, filed O.A. No. 8983/2000 before the Tribunal, only against the

writ petitioner, challenging the order passed by the Commissioner in L.Dis. No. 11206/99/B2 dated 28.4.1999, as well as seeking a direction to

appoint the applicant, in any one of the vacancies, for the post of Junior Technical Assistant, existing in H.R. & C.E. Department.

5. The Tribunal, considering the original application, appears to have given a direction to reserve one post. Because of this direction or for some

other reasons, two vacancies that arose in the subsequent years have not been filled up, as recorded by the Tribunal. The Tribunal considering the

claim of the first respondent, calling the records for the examination conducted at the time of the selection of six persons, found fault with the

valuation and the marks awarded to the candidates, including the first respondent. The Tribunal taking onerous responsibility of scanning the marks

awarded, as well as by going through the answer paper, came to the conclusion, that the process of selection, for the appointment of six persons,

as per the proceedings dated 17.6.1998, is tainted with foul play and malpractice. Further, taking into account, the mark secured by the first

respondent, when he sat for the examination of the first selection, as well as the subsequent conduct of the Department, the Tribunal directed the

Commissioner, H.R. & C.E. Department, to appoint the first respondent in the post, that is directed to be kept vacant, as Junior Technical

Assistant, from the date on which the other persons have been given posting, even fixing the seniority of the first respondent as 7th candidate,

which is under challenge in this writ petition.

6. Heard the learned counsel for the petitioner, Mr. R. Sugumaran, Special Government Pleader (H.R. & C.E.) and the learned counsel for the

first respondent, Mr. AR.L. Sundaresan.

7. The learned counsel for the petitioner submits, that the Tribunal had exceeded the scope of the original application, that it had committed an

error, in assessing the valuation already done by the Department, thereby erroneously came to the conclusion, that the previous selection is tainted

with foul play and malpractice. It is the further submission of the learned counsel for the petitioner, that since the appointment of six persons is not

challenged under this O.A., impleading the selected candidates, the Tribunal went to the extent of saying that the selection is improper. It is further

contended, that for future vacancies, giving direction to keep a post vacant, to fill up the same, by issuing direction when applications were not

called for, for the appointment of post, is beyond the scope of the Tribunal. On

the above lines, the learned counsel for the petitioner would contend, that the order of the Tribunal is liable to be set aside, since it had exceeded its jurisdiction.

8. Opposing the above contention, the learned counsel for the first respondent submits, that though the previous order of selection, regarding six candidates have not been directly challenged in this original application, while considering the rejection order passed by the H.R. & C.E., the Tribunal had considered the illegality and the irregularity committed by the writ petitioner, while selecting the candidates and in not selecting the qualified candidates viz., the first respondent and in this view, finding fault with the previous selection, ordering direction to appoint the first respondent in the existing vacancy, cannot be found fault, since the ends of justice had been met, considering the facts and circumstances of the case, by the Tribunal.

9. As rightly submitted by the learned counsel for the petitioner, the order under challenge in the original application was the rejection order passed by the writ petitioner, on the representation made by the first respondent, in L.Dis. No. 11206/99/B2 dated 28.4.1999. Admittedly, the appointment or selection of six candidates, as per the notifications dated 22.2.1998, 30.4.1998 and 17.6.1998 is not challenged. Therefore, in our considered opinion, the Tribunal is not justified, in calling for the records, assessing the correctness of the valuation, by going through the answer papers, etc. Even assuming that the Tribunal had jurisdiction to consider the previous appointment, in view of the representation, according to the submission of the learned counsel for the petitioner, the conclusion of the Tribunal, by perusing the marks, is not justifiable, in view of the decision reported in Union of India and Another Vs. Ashutosh Kumar Srivastava and Another, .

10. In the case involved in the above decision also, the conduct of interview and awarding the marks, appears to have been questioned. The Tribunal proceeded to consider in what manner the interview should have been conducted, whether awarding three marks out of total 25 marks was justified in that case or not. In this way, the Tribunal proceeded to make its own assumption and concluded what marks should have been allotted to the candidates, thereby the Tribunal sat in judgment as to whether for

academic and technical qualification, the marks allotted by the appellants to respondent 1 in that case, were justified or not. Considering these matters, the Apex Court has held:

So long as bias of the Selection Committee could not be proved, the only aspect that the Tribunal ought to have been considered was whether there was compliance with the relevant Rules in the conduct of interview.

It is the further observation that,

The Tribunal ought to have considered the matter in the right perspective by considering the various contentions raised in the matter and not sit in

judgment over the interview and allotted marks on its own and given the directions in the manner it did.

11. Here also, though the process of previous selection was questioned, while challenging the rejection order, no bias of the selection committee

had been alleged and proved to the satisfaction. The position being so, in our considered opinion, the observation of the Tribunal in paragraph-10

of the judgment, is not acceptable. When the petitioner/Department did not call for applications, for filling up any existing vacancies, no direction

could be given to fill up that vacancy, which could be made available to all the aspirants, giving equal opportunity and not restricting to the first

respondent alone. If really the first respondent had the grievance, he ought to have impleaded the selected candidates in the previous selection and

questioned that selection itself, as he did originally, which petition was withdrawn with liberty. But unfortunately, availing that opportunity this

original application is not filed, questioning the previous selection, whereas this original application is filed, for some other purpose in which

extraneous matters are considered and in this way, in our opinion, the Tribunal had committed an error in giving direction, to appoint the first

respondent as Junior Technical Assistant, that too from the date, on which the other six persons have been appointed, which is not permissible. If

this direction is to be complied with, then the first respondent may be entitled to salary even, from the date of the appointment of six other

candidates, as per the proceedings dated 17.6.1998, which could not be permissible. If at all, the first respondent can take the job only from the

date of his appointment.

12. The contention of the learned counsel for the first respondent, that in view of

the direction given by the Tribunal, securing one seat already and appointing this petitioner in that post, has not caused any prejudice to the already selected candidates and in this view, the order does not warrant any disturbance. We are unable to agree when the Department has not called for any application from the open market or from the Employment Exchange and when the Department has not taken any steps, to fill up the vacancy, no direction could be given on the complaint of an unsuccessful candidate, in the previous selection, to give posting, ignoring the process to be followed, while appointing a person. The further fact being, in this petition, the first respondent has not challenged the previous appointment impleading necessary parties. We are also of the further opinion, when no application was called for, for future vacancy, and in that vacancy, if a person like the first respondent is appointed, denying the opportunities to other people, it will amount to denial of equal opportunities to those who are waiting in the queue for the appointment. The Tribunal has not considered all these matters in proper perspective and in this view, we are of the considered opinion that the Tribunal had committed a mistake and the order is liable to be set aside.

In the result, the writ petition is allowed, setting aside the order passed in O.A. No. 8983/2000 dated 7.5.2000 on the file of the Tamil Nadu Administrative Tribunal. No costs