
(2010) 06 MAD CK 0217

In the Madras High Court

Case No : Writ Appeal No. 2336 of 2005 and W.A.M.P. No. 4295 of 2005

The Registrar University of Madras

APPELLANT

Vs

M. Muthuswami

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Madras University Act, 1923 — Section 12(5)

Citation : (2010) 06 MAD CK 0217

Hon'ble Judges : T. Mathivanan, J; D. Murugesan, J

Bench : Division Bench

Advocate : Mani Sundar Gopal, for the Appellant; S. Thirumavalavan, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The Writ Appeal relates to the question as to whether the respondent-writ petitioner who was working at the relevant point of time as a Technical Assistant, could be either promoted or re-designated as an Assistant Librarian in the University of Madras.

2. There are certain earlier litigations at the instance of the respondent-writ petitioner-Technical Assistant and the appellant-University of Madras and we are not referring to those proceedings in this order as they are not necessary for the disposal of this Writ Appeal.

3. It appears that the statutes of the University of Madras relating to appointment to the post of Assistant Librarian, provided a minimum educational qualification of Master's Degree in any subject with Master's Degree in Library Science. However, in case the said post is filled up from lower cadre, the incumbents in the lower cadre post holding a Degree in any subject with Bachelor of Library Science with five years of minimum experience in the Library, will be considered, with further condition that such promotees should obtain full qualification required within a period of five years therefrom.

4. The respondent-writ petitioner was holding a Master's Degree in Library Science at the relevant point of time and he had made a representation in the year 1985 to the University of Madras seeking for promotion to the post of Assistant Librarian as well as for the re-designation of the post of Technical Assistant to one of Assistant Librarian. The said request was rejected earlier by communication of the University of Madras, dated 7.1.1994 and the same was questioned in W.P. No. 6850 of 1994 by the respondent-writ petitioner. But however, at the relevant point of time, the challenge was not finally adjudicated, in view of the subsequent official communication dated 30.5.1996, whereby, the request of the respondent-writ petitioner was negated by the University of Madras. That communication reads as under:

With reference to the order of the High Court, the authorities of the University considered the plea and directed to inform him that his plea is not feasible of compliance in view of the following reasons:

- 1) He is now occupying Technical Officer post with retirement age of 58 years. The Assistant Librarian post is a teaching post for which retirement age is 60 years. There is no provision for direct promotion from non-teaching post to teaching post. Therefore, it is not possible to consider the request for promotion.
- 2) Such promotions, if made will not only affect the 4 other persons senior to him, but also it will open flood gates to the Technical Officers to claim for the teaching posts, interfering the application of roster maintained in the feeder category.

5. The said communication of the University of Madras, dated 30.5.1996 was questioned in Writ Petition in question and the same was allowed by the order under challenge in this Writ Appeal, on two grounds:

Firstly, the learned single Judge accepted the submission made on behalf of the respondent-writ petitioner as to the Resolution of the Syndicate of the University of Madras, dated 15.3.1996, authorising the Vice Chancellor to give effect to the orders of the Syndicate for appointment, dismissal and suspension of the teachers of the University of Madras and its servants. In view of that Resolution, the upgradation ought to have been made or in any event, the respondent-writ petitioner ought to have been promoted.

Secondly, the University Grants Commission's Regulations, dated 20.2.1990 is only recommendatory and it is not binding on the University and therefore, the University cannot insist the respondent-writ petitioner to obtain the national level test for qualifying himself to be considered for promotion to the post of Assistant Librarian.

The above order of the learned single Judge is put in issue in this Writ Appeal at the instance of the University of Madras.

6. We have heard Mr. Mani Sundar Gopal, learned Standing Counsel appearing for the appellant-University of Madras and Mr. S. Thirumavalavan, learned

Counsel appearing for the respondent-writ petitioner.

7. At the time when the respondent-writ petitioner had made a representation for promotion to the post of Assistant Librarian in the year 1985, as has been pointed out by learned Counsel for the respondent-writ petitioner, the qualification for the said post was only a Master's Degree in any subject, with a Bachelor's Degree in Library Science or a Master's Degree in Library Science with basic Degree, which the petitioner possessed. Nevertheless, the said request was not considered. To this extent, the writ petitioner may have some grievance. Nevertheless, the request of the petitioner was negatived in the year 1992 on the ground that by the time the University Grants Commission's Regulations dated 20.2.1990, which was approved by the Syndicate on 28.7.1990, imposed a condition that the candidate with national level test eligibility, together with the other educational qualification, can alone be considered for promotion. Though the challenge was made to the said order of the University of Madras, rejecting the request of the petitioner, ultimately, it did not reach any finality of adjudication at the relevant point of time, in view of the subsequent order dated 30.5.1996 of the University of Madras, which has been impugned in the Writ Petition in question and quoted above.

8. As far as the grievance of the respondent-writ petitioner to be promoted to the post of Assistant Librarian is concerned, we cannot find fault with the impugned order dated 30.5.1996 of the University of Madras, as the UGC's Regulations were adopted by the University of Madras by its Syndicate meeting held on 28.7.1990. Of course, the Apex Court, in the judgment reported in *University of Delhi Vs. Raj Singh and others*, has observed that the UGC's Regulations are only recommendatory in nature and the University cannot be compelled to follow the same. It was also observed by the Supreme Court in that case that in the event the University fails to comply with such Regulations, the UGC may forfeit its grant to the University.

9. However, the learned Counsel appearing on both sides would submit that in view of the subsequently judgments of the Apex Court, it cannot be now said that the UGC's Regulations are not binding on the University. Nevertheless, we are not inclined to go into that question for the simple reason that the UGC's Regulations have been placed before the Syndicate of the University of Madras, which resolved to adopt the said Regulations. When once the Syndicate resolved to adopt such Regulations framed by the UGC, certainly that Resolution is binding on the Syndicate of the University of Madras for the purpose of appointment/promotion with regard to any educational qualification and other eligibility criteria. To this extent, the finding of the learned single Judge cannot be sustained.

10. As regards the finding of the learned single Judge that the University of Madras has passed a Resolution on 15.3.1996 that the Technical Officers, previously called Technical Assistants, who have completed eight years of experience as Technical Assistants, and who possesses M.L.I.S. Degree, will be

upgraded as Assistant Librarian and the power is conferred on the Vice Chancellor to give effect to the orders of the Syndicate in terms of Section 12(5) of the Madras University Act, the University ought to have upgraded the post of Technical Assistant to the post of Assistant Librarian, this finding also cannot be accepted for the simple reason that the entire Resolution of the Syndicate has not been placed before the learned single Judge.

11. We extract the Resolution of the meeting of the Establishment Committee held on 13.3.1996, as follows:

Item No. 1:

To consider the representation received from Technical Officers (Library) with regard to redesignation of all the Technical Officers in the Library as Assistant Librarians.

The Technical Officers, previously called as Technical Assistants who have completed eight years of experience as Technical Assistant (presently designated as Technical Officer) and who possess MLIS Degree will be upgraded as Assistant Librarians.

This will be only a personal upgradation and they will continue to discharge the same duties and responsibilities as they have been doing hitherto.

12. We also extract the Resolution dated 15.3.1996 of the Meeting of the Syndicate, as follows:

Extract from the Minutes of the Meeting of the Syndicate Held on 15th March 1996 Accounts

158. [Section F.1/Estt.]

A.58 Considered the minutes of the meeting of the Establishment Committee held on 13.3.1996.

Resolved that the said minutes be approved and the Sub-Items 1, 2, 3 and 4 be placed before the Finance Committee.

13. The Extract of such Resolution is placed before us. We have perused that Resolution. The Syndicate, while considering the Resolution of the Establishment Committee meeting held on 13.3.1996, directed the Subject No. I together with other subjects, be placed before the Finance Committee, as quoted above.

14. By virtue of the above recommendations of the Establishment Committee, which has been considered by the Syndicate Committee in its subsequent meeting, the issue was referred to the Finance Committee. In its meeting held on 3.7.1996, in Item No. 8, the Finance Committee had resolved as follows:

Item No. 8:

Considered the representation received from the Technical Officers (Library) with

regard to redesignation of all the Technical Officers in the Library as Assistant Librarians.

Resolved that the request for redesignation of Technical Officers in the Libraries as Assistant Librarians be not complied with.

15. This Resolution of the Finance Committee was again placed before the Syndicate in its meeting held on 19.7.1996 and in Item No. 276, the Syndicate resolved as follows:

"Accounts"

276. [Section F.9/Budget]

Considered the minutes of the meeting of the Finance Committee of the Syndicate held on 3.7.1996. [Appendix...Page No. 47].

Resolved that the said minutes be approved with the following modification for the Sub-Item No. 11.

Sub-Item No. 11:

Resolved to approve [a] {regarding the scale of pay of Technical Officers only in the scale of Rs. 2000-3500 in the new recruits with P.G. qualifications} but.... {regarding the present incumbents with U.G. qualification be given two increments in the scale of pay of Rs. 1640-2900 as and when they qualify themselves for P.G. degree and they are not eligible for up-gradation to the P.G. scale (2000-3500) } to be placed before the Establishment Committee for re-examination of the entire issue and submit the same to the Vice-Chancellor for consideration.

The modification relating to Sub-Item No. 11 does not relate to the issue in question.

16. As far as the Resolution in respect of Item No. 8 of the Finance Committee meeting, it relates to the case in issue and that Resolution has been approved by the Syndicate.

17. However, except the Resolution of the Establishment Committee meeting held on 13.3.1996, and the subsequent Resolution of the meeting of the Syndicate held on 15.3.1996, no further Resolution of the meeting of the Finance Committee, held on 3.7.1996 and the Resolution of the Syndicate on the minutes of the Finance Committee meeting held on 19.7.1996, were placed before the learned single Judge. Only under the said circumstances, the learned single Judge was constrained to accept the case of the respondent-writ petitioner on the basis of the Resolution of the Syndicate, dated 15.3.1996.

18. As the Syndicate had rejected the request for upgradation and those Resolutions have not been put in issue, as on date, we are not inclined to accept the contention of the respondent-writ petitioner for upgradation of the post. Moreover, the order in question, in the Writ Petition, refers to age restriction as

well and that the said order speaks that the retirement age of the Technical Officer's post is 58 years, whereas, the retirement age of the Assistant Librarians is 60 years. There is no dispute relating to the retirement age in respect of teaching and non-teaching staff of the University. In that context as well, the order impugned in the Writ Petition cannot be found fault with.

19. Mr. Thirumavalavan, learned Counsel for the respondent-writ petitioner would however submit that neither the guidelines/Regulations of the UGC nor the earlier statutes of the University, are followed uniformly in all cases. There are some cases where the Regulations of the UGC and the statutes are violated. When it comes to the consideration of the request of the respondent-writ petitioner alone, the University seeks to rely upon those Regulations of the UGC/statutes. In our opinion, though the respondent-writ petitioner may have grievance of such consideration, he cannot plead Article 14 of the Constitution of India, as it would not be applicable to an illegality even if any committed by the University, which cannot be approved of by the Court.

20. That apart, these facts are placed only at the time when the Writ Appeal is being heard and have not been placed before the learned single Judge. In view of the same, we are not inclined to accept such submission.

21. For all our discussions made above, we are of the considered view that the impugned order passed by the learned single Judge, is liable to be set aside, as the order impugned in the Writ Petition cannot be questioned either for violation of statutes of the University or for UGC Regulations.

22. With the above observations, the Writ Appeal is allowed. No costs. W.A.M.P. is closed.