Tamil Nadu Engineering Diploma Holders Association Vs The Secretary to Government Home (Transport IIA) Department and The Secretary Tamil Nadu Public Service Commission

Court: Madras High Court

Date of Decision: Sept. 2, 2009

Acts Referred: Constitution of India, 1950 â€" Article 14, 226, 320(1)

Citation: (2010) 1 MLJ 186

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: K. Rajkumar, for the Appellant; Lita Srinivasan, Government Advocate for R-1 and G. Masilamani for K. Surendranath and V. Saravanan for R-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.
The petitioner is an association of Tamil Nadu Engineering Diploma Holders which consists of Mechanical Engineering

and Automobile Engineering. A notification was issued by the second respondent on 23.05.2007 in advertisement No. 107 calling for the

applications for the post of Motor Vehicles Inspector, Grade-II, totaling 49. In pursuant to the notification, the second respondent has issued

instructions to the candidates who are eligible to be appointed as Motor Vehicles Inspector, Grade-II. The vacancies mentioned in the said

notification are notified subject to the rules of reservation.

2. The instructions given by the second respondent in Paragraph 22(b) clearly stipulate the procedure for selection. Accordingly, there shall be a

main written examination and the selected candidates will under go an oral test. By considering the marks obtained in both written examination as

well as the oral test, selection would be made. If the number of vacancies notified/reserved to be filled up for any one or more of the reservation

groups such as Scheduled Castes, Scheduled Tribes etc., is 5 and above, the number of candidates to be admitted to the oral test shall be two

times the number of vacancies for which recruitment has to be made. Similarly, if the number of vacancies in any one or more of the remaining

reservation groups are 4 and below, then the number of candidates to be admitted to the oral test shall be three times the number of vacancies for

which the recruitment has to be made. Therefore, as per the said instructions when in a reserved category, the vacancies are 5 and more, then two

times more than the vacancies would be called for from those who have written the main examination and where the vacancies are 4 and less in the

reserved categories, then the same would be three times more. Accordingly, those candidates alone would be called for the oral interview. For

example, if there is one post available in a reserved category, then three persons from the said category who have written the examination and who

have scored the first three higher marks would be called. Similarly. if there are 5 vacancies in a reserved category, 10 candidates would be called.

Therefore, the ratio of 1:2 when vacancies are more and 1:3 when vacancies are less in a reserved category has been formulated.

3. In this connection, instruction 22(b) is extracted hereunder:

22(b). Posts for which selection is made on the basis of Written Examination and Oral Test.

Where the selection is made on the basis of both, Main Written Examination/Written Examination and Oral Test, the Main Written

Examination/Written Examination will precede the Oral Test. If the number of vacancies notified/reserved to be filled up for any one or more of the

reservation groups(viz. Scheduled Castes, Scheduled Tribes, Most Backward Classes/Denotified Communities, Backward Classes or General

Turn) is five and above, the number of candidates to be admitted to the Oral Test shall be two times the number of vacancies for which recruitment

has to be made against those reservation groups based on the marks obtained by the candidates at the Main Written Examination or Written

Examination, as the case may be. Similarly, if the number of vacancies in any one or more of the remaining reservation groups for the same

recruitment is four and below, the number of candidates to be admitted to the Oral Test from those particular reservation groups(s) shall be three

times the number of vacancies for which recruitment has to be made against those reservation group(s). In respect of the posts, the total cadre

strength of which is one only and for which the rule of reservation of appointments does not apply, the number of candidates to be admitted to the

Oral Test on the basis of the marks obtained at the Written Examination will be three. The final selection will be made on the basis of the total

marks obtained by the candidates at the Main Written Examination or Written Examination, as the case may be, and Oral Test taken together

subject to the rule of reservation of appointments wherever it applies. Appearance in all the papers at the Main Written Examination/Written

Examination and for Oral Test is compulsory. The candidates who have not appeared for any of the subjects in the Main Written

Examination/Written Examination will not be considered for selection even if they secure the minimum qualifying marks for selection.

The marks obtained by the candidates appearing for the Oral Test, both in the Written Examination as well as in the Oral Test will be placed in the

Notice Board in the Office of the Tamil Nadu Public Service Commission in the evening either on the last day fixed for Oral Test or one the

succeeding working day. The same will also be made available on the Internet in the Commission''s Website www. tnpsc. org.

4. In pursuant to the said examination, the candidates have been selected and they have been asked to attend the oral test by following the above

said ratio. At that point of time, the writ petition has been filed by the petitioner herein seeking the relief of writ of mandamus directing the second

respondent to follow the ratio of 1:3 for the 49 posts notified pursuant to the notification dated 23.05.2007.

5. Shri. K. Rajkumar, learned Counsel for the petitioner submitted that over the years what is followed is only 1:3 ratio for all categories. By

restricting the ratio to 1:2 more members of the petitioner''s association have lost their chances. Therefore, the method adopted by the second

respondent is illegal. It is further submitted that for the post of District Educational Officer, the second respondent has called for 57 candidates for

19 vacancies in the ratio of 1:3.

6. Shri. K. Rajkumar, learned Counsel for the petitioner further contended that the Government of Tamil Nadu has issued G.O.Ms. No. 18,

Labour and Employment Department (N2) dated 25.02.2008 in which, the directions have been issued to fill up the post of Secondary Grade

Teachers which is a ratio of 1:5. Even in the previous occasions the respondents have followed only 1:3 ratio. Therefore, the second respondent

will have to be directed to call for the interview by fixing the ratio of 1:3 since by following the available 1:2 ratio the members of the petitioner are

affected. It is further submitted that the principle of desuetede will have to be applied in the present case and accordingly, a procedure which has

been followed over the years even contrary to the rule will have to be continued. The learned Counsel further submitted that the respondents

cannot follow different yardstick for different categories and hence the said action of the second respondent is violative under Article 14 of the

Constitution of India.

7. In support of his contention that the procedure as contemplated by the second respondent in the instructions shall not be followed in view of the

earlier procedure followed over the years, the learned Counsel for the petitioner relied upon the judgment reported in 1995 (3) SCC 434

[Municipal Corporation For City of Pune and Anr. v. Bharat Forge Co. Ltd. and Ors.] and submitted that the principle of desuetede will have to

be followed. In support of his contention that the action of the second respondent would amount to violation of Article 14 of the Constitution of

India inasmuch as similarly placed persons are treated unequally, the learned Counsel relied upon the judgments reported in Union of India (UOI)

Vs. Shri Mool Chand Dasumal Pardasani, , Central Railway Audit Staff Association and Others Vs. Director of Audit, Central Railway and

Others, , P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, , N.S. Balasubramanian and Others Vs. Food Corporation

of India, . Further, in support of his contention that even a policy decision can be challenged in the touchtone of Article 14 of the Constitution of

India, the learned Counsel relied upon the judgments reported in S. Pappa and Others Vs. Government of Tamil Nadu and Others, and (2004) 2

MLJ 314 [V. Krishnamurthy, Proprietor, Meena Advertisers, Chennai v. Airports Authority of India, New Delhi]. Hence, Shri. K. Rajkumar,

learned Counsel for the petitioner contended that the writ petition will have to be allowed, based upon the submissions made by him.

8. Per contra, Shri. G. Masilamani, learned senior counsel appearing for the second respondent submitted that the writ petition is not maintainable

in law and facts. The writ petition cannot be maintained by an association since the aggrieved persons are individual members. Moreover, a policy

decision of the second respondent cannot be assailed without even challenging the same by way of an appropriate prayer. It is further submitted

that the members of the petitioner are estopped from challenging the said condition mentioned in the prospectus since the prospectus and the

instructions are having the force of law.

9. Shri. G. Masilamani, learned senior counsel for the second respondent also contended that inasmuch as the procedure having formulated by the

second respondent by exercising the power under Article 320(1) of the Constitution of India, the petitioner cannot challenge the same since the

second respondent is well within his right to formulate the procedure. It is further submitted that Article 14 is positive in nature and the same cannot

be used to commit an illegality by the respondents.

10. In support of his contention that the prospectus and the instructions are having the force of law Shri. G. Masilamani has relied upon the

judgment reported in 2006 (3) CTC 449 [Dr. M. Vennila v. Tamil Nadu Public Service Commission] wherein a Division Bench of the Hon''ble

High Court of Madras has taken such a view. Shri. G. Masilamani, learned senior counsel also relied upon the judgment reported in Ashok Kumar

Yadav and Others Vs. State of Haryana and Others, to submit that the ratio of 1:2 and 1:3 has been evolved based upon the said judgment alone.

He further submitted that the ratio followed for the other posts cannot form the basis since it depends upon the number of vacancies available

because it is always desirable to have less number of persons selected from the main written examination to be interviewed by the second

respondent in order to have proper assessment of the candidates. The said decision being one of policy decision the same cannot be questioned.

11. I have heard Mr. K. Rajkumar, learned Counsel for the petitioner, Mrs. Lita Srinivasan, learned Government Advocate for the first respondent

and Mr. G. Masilamani, learned senior counsel for the second respondent.

12. As rightly contended by Shri. G. Masilamani, learned senior counsel for the second respondent, the writ petition is misconceived. The

petitioner cannot file a writ of mandamus directing the respondents to formulate a particular policy. A formulation of a policy by the respondents is

entirely within its own jurisdiction. Hence until and unless, the said policy decision is arbitrary, illegal and irrational the same cannot be challenged.

This Hon''ble Court sitting under Article 226 of the Constitution of India cannot test such a policy decision evolved by the respondents.

13. Further, a writ of mandamus being a discretionary relief cannot be issued at the instance of the petitioner who is an association. It is for the

individual members to have recourse to law. Moreover there is no legal right for the petitioner to seek the relief sought for. Nobody has got a

vested right to seek an appointment but there can only be a right to consider the individual person for an appointment subject to the rules and

regulations. The members of the petitioner admittedly participated in the main written examination. It is not in dispute that instructions No. 22(b)

stipulates a specific mode by which selection has to be made. The petitioner and his members are aware of the said mode and they cannot

presume that the said method will not be adopted by the respondents.

14. The fact that a different procedure is adopted by the Government of Tamil Nadu in following the ratio and by the respondents in other cases

cannot be a ground to invoke Article 14 of the Constitution of India. Article 14 of the Constitution of India would be made applicable only in a

case where the persons, groups or associations are classified into one. In a case where the classification is based upon intelligible differentia having

nexus to the object sought to be achieved, the said decision made by an authority cannot be termed as violative of Article 14 of the Constitution of

India. Further, the contention of Shri. K. Rajkumar, learned Counsel for the petitioner that over the years the respondents have followed 1:3 ratio

inspite of the similar instruction and hence the same procedure has to be followed, also cannot be countenanced. It is a well settled principle of law

that Article 14 of the Constitution of India cannot be pressed into service in a case where illegality has been committed by an authority in one case.

Moreover, a writ of mandamus cannot be issued to an authority to act contrary to the rules and procedure established by law. Inasmuch as the

notification and the instruction are having the sanction of law and the said procedure having been adopted as a policy by the respondents the same

cannot be questioned, more so after the participation by the members of the petitioner. The petitioner also does not have any case on the ground of

legitimate expectation based on a fact which is said to have been done contrary to the procedure. Further the relief based on legitimate expectation

would not arise against the public interest and public policy.

15. Shri. K. Rajkumar, learned Counsel for the petitioner has relied upon the judgment reported in 1995 (3) SCC 434 [Municipal Corporation

For City of Pune and Anr. v. Bharat Forge Co. Ltd. and Ors.]. In the opinion of this Court the said judgment is not applicable to the facts and

circumstances of this case. In the said case, in pursuant to the notification dated 12.03.1881 octroi was collected sufficiently for a long period.

Thereafter, another notification was issued on 17.06.1918 which has not been implemented. Thereafter, new octroi rules came into force in 1963.

Hence, taking into consideration of the above said facts, the Hon''ble Supreme Court has held that by applying the doctrine of desuetude there

cannot be any demand based upon the notification dated 17.06.1918. In order to apply the principle of desuetude there must be a contrary

practice which must be of some duration and general application. Under the said principle an act of the parliament may lose its force without

express repeal. The said judgment cannot be applied to the present case since a reading of the counter affidavit would show that the policy of

Ratio evolved in the present case has also been applied by the second respondent to other cases as well.

16. In fact, in support of the Group-I Service Recruitment, however Government recruited candidates have been admitted to the oral test in the

ratio of 1:2 only. Therefore, this Court is of the opinion that the learned Counsel for the petitioner has relied upon the judgment which is not

applicable to the present case on hand. The other judgment relied upon by the learned Counsel for the petitioner also do not support the case of

the petitioner. In the judgment reported in Union of India (UOI) Vs. Shri Mool Chand Dasumal Pardasani, the Hon''ble Supreme Court was

dealing with the situation where the amendment of rule increasing the age of superannuation from 55 to 60 years was not followed in the case of the

petitioner therein alone as against the other identically placed persons. Therefore, in view of the fact that the petitioner therein and the other persons

who have enjoyed the benefit from the same group, the Hon''ble Supreme Court was pleased to hold that the discrimination made against the

petitioner therein is in violative of Article 14 of the Constitution of India. In the judgment reported in AIR 1973 SC 689 [Nagpur Improvement

Trust and Anr. v. Vithal Rao and Ors.]. The Hon''ble Supreme Court was observed the said judgment in paragraph 23 as follows:

23. It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the

classification in order to be reasonable must satisfy two tests (i) the classification must be founded on intelligible differentia and (ii) the differentia

must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be borne in mind that the

object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one

section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to

the object sought to be achieved.

Hence, a reading of the said judgment would show that the said judgment is infact in support of the respondents rather than the petitioner.

17. In the judgment reported in Central Railway Audit Staff Association and Others Vs. Director of Audit, Central Railway and Others, the

Hon''ble Supreme Court has held that when the posts are different, persons working in one post cannot claim the same privileges as given to the

other post and the same is not violative of Article 14 of the Constitution of India. Applying the said principle of the Apex Court, this Hon''ble Court

finds that selection process evolved by the second respondent in the present case is being different than the one formulated for the selection of the

District Educational Officer is not violative of Article 14 of the Constitution of India.

18. Similarly, the Apex Court in judgment reported in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, has held that the

classification sought to be made between persons whose lands are acquired for other public purposes has no rationale to the object sought to be

achieved. There also the Hon''ble Supreme Court was pleased to hold that Article 14 is violative when similarly placed persons are treated

differently. The same has been reiterated by the judgment reported in N.S. Balasubramanian and Others Vs. Food Corporation of India, as well.

In the judgment reported in S. Pappa and Others Vs. Government of Tamil Nadu and Others, the Hon''ble High Court has held that even a policy

decision can be challenged on the ground of violation of Article 14 of the Constitution of India. This Court is of the opinion that there is no dispute

about the said proportion of law but the question to be decided is as to whether the classification is proper or not. In the judgment reported in V.

Krishnamurthy, Proprietor, Meena Advertisers Vs. Airports Authority of India and Others, the learned single Judge of this Hon''ble Court has held

that the Court can interfere when the decision making process is vitiated by malafides, unreasonableness or arbitrariness and overwhelming public

interest. As held earlier there is no unreasonableness or arbitrariness and overwhelming public interest requiring interference by this Hon''ble Court

in the present case. Further, the petitioner has not even made a plea of malafides and therefore, this Hon''ble Court cannot go into the same, more

so when a strong proof is required to be proved by a person raising malafides.

19. Shri. G. Masilamani, learned senior counsel for the second respondent submitted that a policy decision has been evolved by the respondents

based upon the judgment reported in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, wherein the Hon''ble Supreme Court has

depricated the practice of following the ratio beyond 1:2 or 1:3. Therefore, in accordance with the said judgment a policy has been evolved and

the second respondent being a statutory body is free to evolve its own policy. This Court also feels that the said submission merits acceptance.

Further, in the judgment relied upon by the learned senior counsel for the respondents reported in 2006 (3) CTC 449 [Dr. M. Vennila v. Tamil

Nadu Public Service Commission] the Hon''ble High Court also makes it clear that after participating in the process of selection, the concerned

affected persons cannot challenge the terms of the prospectus which contained the instructions. The observation made by the Division Bench in

paragraph 24 is extracted herein.

24. We have already referred to various terms and conditions mentioned in the application form prescribed by Punjab Technical University,

Jalandhar, which are similar to Clause 17 of Instruction to Candidates, etc., and Information Brochure issued by the Tamil Nadu Public Service

Commission. It has been repeatedly affirmed by almost all the Full Benches of the Punjab and Haryana High Court that the Information Brochure

has the force of law and has to be strictly complied with. We are in respectful agreement with the said view.

20. This Court is of the opinion that the said judgment is squarely applicable to the present case on hand and hence, the petitioner cannot seek the

relief sought for.

21. The writ petition has been filed by the petitioner who is an association. The writ petitioner by itself is not the affected or the aggrieved party.

Therefore, this Court is of the opinion that the association not being an aggrieved party cannot file a writ petition on behalf of its members. It is for

the individual person concerned to file a writ petition ventilating his grievances. In this connection, it is useful to refer the judgment of the Hon''ble

Division Bench reported in Tamilaga Asiriyar Koottani Vs. The Government of Tamil Nadu and Others, the Hon''ble Division Bench has observed

as follows:

5. A Division Bench of this Court in Formation of Indian Network Marketing Association, Chennai v. Apple FMCG Marketing Private Limited,

Chennai and Ors. (Writ Appeal No. 688 of 2005 dated 7.4.2005) reported in Formation of Indian Network Marketing Association Vs. Apple

FMCG Marketing Pvt. Ltd. and Others, , has held that such writ appeals are liable to be dismissed on the ground of lack of locus standi (vide

paras.6 to 13). In para.6 of the said judgment it was observed:

It is well settled that ordinarily a writ petition or writ appeal can only be filed by someone who is personally aggrieved.

6. In Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others, a Full Bench of the Allahabad High

Court held (vide paras.10 and 11):

The further argument is that any person, whether his interests are directly affected or not, can file an application challenging any Act of the

Legislature or the order of the Government on the ground that it is ultra vires. In this connection we cannot be better than quote the decision of the

learned Judges of the Supreme Court of the United States in Commonwealth of Massachusetts v. Andrew W. Mellon 262 U.S.447 : 67 Lawyers

Edn. 1078, Sutherland, J. who delivered the opinion of the Court quoted with approval the remarks of Thomson, J. with whom Story, J.

concurred, which were as follows:

It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings,

that Courts of justice can interpose relief.

Dealing with the question whether a single tax-payer can challenge the enforcement of a Federal Appropriation Act on the ground that it was

invalid and would increase the burden of his taxes, the learned Judge observed:

His interest in the moneys of the treasury-partly realised from taxation and partly from other sources-is shared with millions of others; is

comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain

that no basis is afforded for an appeal to the preventive powers of a Court of equity...If one tax-payer may champion and litigate such a cause,

then every other tax-payer may do the same, not only in respect to the statute hereunder review, but also in respect of every other appropriation

Act and Statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a

result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be

maintained.

Those remarks are with reference to a suit. They are much more applicable to proceedings under Article 226 which are of a summary and of a

coercive nature without providing for a normal trial or a right of appeal except in those cases where a substantial question of interpretation of the

constitution arises. This Court is being flooded with applications under Article 226 of the Constitution which is seriously affecting the normal work

of the Court. We feel that the time has come when we may point out that Article 226 of the Constitution was not intended to provide an alternative

method of redress to the normal process of a decision in an action brought in the usual courts established by law. The powers under this Article

should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and

specific remedy available to him"".

7. No doubt, the law has developed since the above decision was given by the Allahabad High Court in the year 1951, yet it must be reiterated

that the development in the law relating to locus standi in writ petitions only carved out some exceptions to the main rule which has been stated

correctly by the Allahabad High Court, and it is not that this main rule itself has been totally abolished. Exceptions remain exceptions, and do not

become the main rule. Hence, we must reiterate that ordinarily a writ petition can only be filed by a person who is personally aggrieved.

8. In Vinoy Kumar Vs. State of U.P. and Others, the Supreme Court observed (vide para.2):

Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his

fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired

interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in

favour of the person in invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas

corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confined the exercise of writ jurisdiction to cases where

legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or

injury at the instance of third party where there is an effective legal aid organization which can take care of such cases. Even in cases filed in public

interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal

burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically

disadvantaged position, unable to approach the Court for relief.

9. In State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, the Supreme Court observed (vide para, 8):

But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before

a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally

invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226.

10. Similarly, in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, the Supreme Court observed:

The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case

of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

11. In Sand Carrier''s Owner''s Union and others Vs. Board of Trustees for the Port of Calcutta and others, it was observed by the Calcutta High

Court that ""a Public Interest Litigation can be moved, where persons concerned for whose benefit it is moved or socially and educationally

backward and Public Interest Litigation is also maintainable incases such as environmental etc.,

However, it is also observed:

The members of such association may be affected by a common order and may have common grievance, but for the purpose of enforcing the

rights of the members, writ petition at the instance of such association is not maintainable.

Accordingly, the Calcutta High Court dismissed the writ petition filed by the Owners'' Union.

12. A similar view has been taken in Government Press Employees'' Association Bangalore v. Government of Mysore AIR 1962 Mys.25.

13. In Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., , the Supreme Court observed that in service

matters PILs should not be entertained.

14. Subsequently, in Ashok Kumar Pandey Vs. The State of West Bengal and Others, the Supreme Court observed:

Though in Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., , this Court held that in service matters

PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are

entertained. The least the High Courts could do is to throw them out on the basis of the said decision.

22. The said Hon''ble Division Bench has been followed by a Single Judge of the Hon''ble High Court of Madras in the judgment reported in

Neyveli Lignite Corporation Vs. The Neyveli Lignite Corporation, . Therefore, this Court is of the opinion that the writ petitioner being an

association cannot file the writ petition seeking to substitute itself on behalf of individual persons who have infact appeared and failed in the main

written examination.

23. In the judgment reported in A.P. Public Service Commission Vs. Baloji Badhavath and Others, the Hon''ble Supreme Court has held that a

person seeking an employment has got only a right to be considered for an appointment and the power of the respondents in evolving the policy

cannot be interfered with unless the same is arbitrary, discriminatory or wholly unfair. Therefore, unless the procedure adopted by the second

respondent is held to be arbitrary or against known principles of fair play, Courts shall not interfere with the same. Similarly, the judgment reported

in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, the

Hon''ble Supreme Court was pleased to held in paragraph 14 is as follows:

14. We shall first take up for consideration the contention that Clause (3) of Regn. 104 is ultra vires the regulation making powers of the Board.

The point urged by the petitioners

@ page-SC 1550 before the High Court was that the prohibition against the inspection or disclosure of the answer papers and other documents

and the declaration made in the impugned clause that they are ''''treated by the Divisional Board as confidential documents'''' do not serve any of

the purposes of the Act and hence these provisions are ultra vires. The High Court was of the view that the said contention of the petitioners had to

be examined against the back-drop of the fact disclosed by some of the records produced before it that in the past there had been a few instances

where some students possessing inferior merits had succeeded in passing of the answer papers of other brilliant students as their own by tampering

with seat numbers or otherwise and the verification process contemplated under Regn.104 had failed to detect the mischief. In our opinion, this

approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation ''whether a

rule or regulation or other type of statutory instrument'' is in excess of the power of subordinate legislation conferred on the delegate as to be

determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule regulation, etc. and

also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to

substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the

Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a

regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and

purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred

on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not

concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate

to determine, as a matter of policy how the provisions of the Statute can best be implemented and what measures, substantive as well as

procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is

not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the

impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute. Though this legal position is

well-established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly erroneous

approach made by the High Court to the consideration of the question as to whether the impugned Clasue (3) of Regn.104 is ultra vires. In the light

of the aforesaid principles, we shall now proceed to consider the challenge levelled against the validity of the Regn. 104 (3).

24. In the present case, the petitioner has not even challenged the procedure adopted by the second respondent. Therefore, this Court is of the

opinion that such a policy decision evolved by the second respondent cannot be found fault with.

25. As observed earlier the power of the Court exercised under Article 226 of the Constitution of India to have a judicial review over a policy lies

in a narrow compass. In the absence of any legal right on the part of the petitioner to claim the relief, the writ petition is liable to be dismissed. A

similar view has been expressed by the Apex Court reported in Ram Singh Vijay Pal Singh and Others Vs. State of U.P. and Others, . In the said

judgment, the Hon''ble Supreme Court has observed as follows:

12. In Netai Bag v. State of W.B. This Court held as under in para 20 of the Reports: (SCC p.275)

20. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent

peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision

would have been fairer or wiser or more scientific or logical. In State of M.P. v. Nandlal Jaiswal it was held that the policy decision can be

interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or mala fide. In the matter of different modes,

under the rule of general application made under the M.P. Excise Act, the Court found that the four different modes, namely, tender, auction, fixed

licence fee or such other manner were alternative to one another and any one of them could be resorted to.

13. In the well-known case of BALCO Employees'' Union (Regd.) v. Union of India a three-Judge Bench summarised the law on the point as

under: (SCC p.335c-f)

In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in

focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in

the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the

court. It is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public

policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner

merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is

contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic

policies and consider whether a wiser or better one can be evolved. In matters relating to economic issues, the Government has, while taking a

decision, right to ''trial and error'' as long as both trial and error are bonafide and within limits of authority. For testing the correctness of a policy,

the appropriate forum is Parliament and not the courts.

14. In Federation of Rly. Officers Assn. v. Union of India it was held as under in para 12 of the Reports: (SCC p. 299)

12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to

which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On

matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the

issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not

interfere with such matters.

26. The petitioner cannot file a writ petition on the ground that on earlier occasions a different procedure has been followed. The principle of

legitimate expectation cannot be put against the public policy or any public interest unless the action amounts to an abuse of power. In the judgment

reported in Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, the Hon''ble Supreme Court has observed as

follows:

33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest

unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take

the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice

which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority

without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a

person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds

which may give rise to judicial review but the granting of relief is very much limited.

Therefore, on the ground of legitimate expectation also the petitioner cannot seek the relief sought for.

27. As discussed above, Article 14 of the Constitution of India is positive in nature. The mere fact that the procedure has been followed in some

other case cannot be a ground for seeking the relief in the present writ petition. Even assuming that some irregularity or illegality has been

committed by an authority there cannot be acquired right or claim on the basis of such an irregularity or illegality as the case may be. In the

judgment reported in (2008) 9 SCC 396 [Kerala State Electricity Board v. Saratchandran P. and Anr.] the Apex Court has observed as follows:

15. The learned Counsel for the respondent State, on the other hand, supported the judgment and order of the Division Bench of the High Court.

He submitted that the Division Bench was right in setting aside the judgment and order passed by the Single Judge as according to the Bench, there

was no reason to grant benefit to the writ petitioners by appointing them as PSIs by relaxing Regulation 174. It was stated that so far as

Hamidullah Dar is concerned, he was having post graduate degree and his case was totally different and that is how his name was recommended

by the Director General of Police and accordingly, he was appointed as PSI. Other Constables did not possess such qualification and hence the

Director General did not think it proper to recommend their cases for appointment as PSIs and there was no illegality in taking such action.

16. It was admitted by the learned Counsel for the respondent state that the writ petitions filed by the appellant-writ petitioners came to be allowed

and direction was issued to the authorities to consider their cases. But it was stated that the cases of the writ petitioners were considered by the

authorities and it was not found fit to recommend their appointments as PSIs and accordingly the prayer was rejected.

17. It was also admitted that writ petition of Abdul Rashid Rather was allowed and he was granted benefit but it was stated that it was done

because of the issuance of writ by the learned Single Judge which was confirmed by the Division Bench as well as by this Court. Since the writ

petition was allowed and the said decision was approved by the Division Bench as also by this Court, the authorities had no alternative but to

implement the said order. The said fact, therefore, cannot be construed in favour of the appellants. When a similar order was passed by a Single

Judge in favour of the appellants and directions were issued by the Single Judge to give benefit similar to one which had been granted to Abdul

Rashid Rather, the State Government approached the Division Bench and the Division Bench allowed the intra-court appeal. In the circumstances,

the action of the state authority cannot be termed as illegal. It was, therefore, submitted that the appeals deserve to be dismissed.

28. Considering the above said judgments, this Court is of the opinion that even assume the second respondent has committed wrong not followed

the procedure earlier, the same cannot be a ground for interference by granting the relief to the petitioner by invoking Article 14 of the Constitution

of India. Moreover, in a recent judgment rendered by the Hon''ble High Court reported in Dr. A.R. Balamurugan Vs. The Secretary to

Government Health and Family Welfare Department and Others, the Hon''ble High Court was pleased to observe that in a case where the policy

decision has been evolved and in pursuant to the said policy decision, the candidate has participated in the selected process knowing fully about

the prospectus then he cannot claim thereafter that the said clause in the prospectus is arbitrary and violative of Article 14 of the Constitution of

India. The Hon''ble High Court has observed as follows:

9.5 The Division Bench of this Court in Writ Appeal Nos. 89 to 91 of 2008, by an order dated 5.2.2008 had held that a person accepting the

Prospectus on the terms and conditions found thereon and applied for the selection to the Post-Graduate Course at the time of submitting the

application would not be permitted to raise the question that the terms and conditions in the Prospectus are bad in law or non-selection.

Paragraph Nos. 4 and 5 of the said order is usefully extracted hereunder:

4. Admittedly, all the appellants had applied for selection by accepting the said conditions. Even though the appellants were not selected for Post-

Graduate Course at the time of submitting applications and on the date of selection, they were put on notice that on their selection, they will not be

permitted to undergo Post-Graduate course within a period of two years, excluding the leave. Having applied for selection by accepting the said

conditions, it is not open for the appellants now to seek for further extension to join the post on the ground that they are pursuing their Post-

Graduate Diploma. It is not permissible for the appellants to attack the conditions of the advertisement after participating in the selection process.

(See Union of India and Anr. v. N. Chandrasekharan and Ors. AIR 1996 SC 795), I.L. Honnegounda v. State of Karnataka and Ors. AIR 1978

SC 28 and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, .

5. Moreover, there is no power in the Authorities to grant relaxation of the condition to join duty. The binding nature of the instructions to the

candidate is well settled. The Supreme Court in Punjab Engineering College, Chandigarh v. Sanjay Gulati. AIR 1983 SC 560 has clearly laid

down that the Prospectus is binding on all persons concerned and following the same, a Division Bench of this Court has also observed in

Rathnaswamy, Dr. A. v. Director of Medical Education (1986) ELR 207 that the rules and norms of the Prospectus are to be strictly and solemnly

adhered to. The same principle is reiterated in the case of Dr. M. Ashiq Nihamathullah v. Government of Tamil Nadu and Ors. (2005) WLR 697.

It is not permissible for the Court to make any modification and/or relaxation in the conditions stipulated by the Prospectus. Further, granting of any

relief in this petition would mean that the post in question will have to be kept vacant for another six months or one year causing serious prejudice

to the general public.

Thus, the decision cited above would indicate that the petitioners who have participated in the selection process for the post-graduate courses fully

knowing about the fact that 16 courses have been ear marked to in service candidates alone, cannot be heard to say later on non-selection, that

ear-marking the 16 courses only for in service candidates alone is bad in law.

10. Secondly, the policy decision has been taken by the Government to ear-mark 16 Courses for the in-service candidates on the ground that the

Government wishes to ensure that there is no scarcity of the Doctors and the services of the Doctors after completion of Post-Graduate Courses

be utilized to serve the poor and needy of the country at large in particular. Considering the fact that there are number of vacancies in the

Government Medical Colleges and the Hospital in the scarce specialities, in order to fill up these vacancies with Medical Officer qualified in these

specialities, the Government have taken a decision to refer this Post-Graduate courses exclusively for the service candidates. When such a policy

decision had been taken by the Government, it is not for this Court to direct or advise the Executives in matters of Policies.

10.1. Such a view had been taken by the Honourable Apex Court and the same is in Ekta Shakti Foundation v. Government of NCT of Delhi

(2007) 7 MLJ 730. Paragraph Nos. 10 to 12 of the said judgment are usefully extracted hereunder at p.734 of MLJ:

While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit

the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the

Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. See Asif Hameed and others

Vs. State of Jammu and Kashmir and Others, , M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, . The scope of

judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the

fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the

Government does not appear to be agreeable to the Court it cannot be interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter

of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all the points from

different angles. In matter of policy decisions or exercise of discretion by the Government, so long as the infringement of fundamental right is not

shown, Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the

executive in such matters. In assessing the propriety of a decision of the Government, the Court cannot interfere even if a second view is possible

from that of the Government.

10.2. In yet another decision in S. Karthikeyan Vs. Teachers'' Recruitment Board, E.V.K. Sampath Maligai, , the learned single Judge of this

Court has held that

The policy decision of Government in selection for posts cannot be interfered with in a writ jurisdiction, except if it is violative of the provisions of

the Constitution of India or contrary to public policy or laws in force or, if it is violative principle of natural justice. Further, it has been held in the

said order that the petitioner thereof having participated in the process of selection, it may not be open to him to challenge the same later.

The said judgment squarely applicable to the facts of the present case.

29. Therefore, on a consideration of the entire facts and law as well as the arguments made by the learned Counsels appearing for both sides, this

Court is of the considered opinion that the writ petition deserves to be dismissed. Accordingly, the same is dismissed. No costs. Consequently,

connected miscellaneous petitions are closed.