

(2012) 11 MAD CK 0276

Madras High Court (Madurai Bench)**Case No:** Writ Petition (MD) No. 10996 of 2007 and M.P. (MD) No. 1 of 2007

A. Maharajan

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision: Nov. 16, 2012**Citation:** (2013) 1 MLJ 462**Hon'ble Judges:** K. Ravichandra Baabu, J**Bench:** Single Bench**Advocate:** T. Lajapathi Roy, for the Appellant; S. Kumar, A.G.P., for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandra Baabu, J.

The petitioner seeks for a Mandamus directing the 2nd respondent to award marks as per the criteria given in the prospectus and consequently, to recruit the petitioner as "Lecturer" in Zoology Department, in any of the Government Arts and Science Colleges and College of Education. The case of the petitioner is that the Government of Tamil Nadu, invited applications for direct recruitment to the post of "Lecturer" at Government Arts and Science Colleges and College of Education for the academic year 2006-2007. A prospectus for such recruitment was also issued by the 2nd respondent Board. According to the prospectus, marks have to be awarded to the candidates under 5 categories, thus, for a total 50 marks. The petitioner had applied to the said post and subsequently, was called for an interview on 14.9.2007 with his roll No. F07010046. The results of the candidates provisionally selected for appointment were published and the petitioner roll number did not find a place in that list. It is seen that the petitioner was awarded only 20 marks out of 39 marks. When the prospectus issued by the second respondent contemplated awarding of marks out of total 50 marks, the petitioner was awarded only 20 marks, out of total 39 marks, which according to the petitioner, is in violation of the prospectus issued and therefore, he had filed the present writ petition.

2. Notice of motion was ordered by this Court on 3.1.2008. No counter affidavit is filed by the respondents so far.

3. The learned counsel appearing for the petitioner submitted that had the respondents strictly followed the terms of the prospectus in awarding the marks, the petitioner would have been selected. On the other hand, instead of awarding marks to the total marks of 50, the respondents have deviated from the terms of the prospectus and awarded only 20 marks to the petitioner, out of total 39 marks. Therefore, there is a clear cut violation of the terms of the prospectus and consequently, the petitioner is entitled to get the marks as per the prospectus.

4. In support of his contention, the learned counsel appearing for the petitioner placed reliance on a decision of the Hon"ble Division Bench of this Court in the case of Chairman, Teachers Recruitment Board, E.V.K. Sampath Malaigai, Chennai-6 and others v. P.V. Brilla Betsy (2010) 2 MLJ 311, to contend that the respondents are not entitled to deviate from the terms of the prospectus, while awarding marks.

5. The learned Additional Government Pleader appearing for the respondents fairly submitted that the marks awarded by the 2nd respondent to the petitioner is not in accordance with the terms of the prospectus. He has also fairly conceded that the order made by this Court in the decision cited supra clearly covers the issue involved in this case.

6. I have considered the submission made by the learned counsel appearing for the respective parties.

7. It is an admitted fact that the petitioner was called for an interview on 14.9.2007 and he was awarded 20 marks, out of total 39 marks under the following categories:-

Teaching Experience = marks out of 15 marks

Educational Qualification=9 marks out of 9 marks

Books/Articles = 4 marks out of 5 marks

Interview = 7 marks out of 10 marks

Total = 20 marks out of 39 marks

8. The prospectus issued by the 2nd respondent, on the other hand, contemplates the scheme of selection and awarding of marks to the candidates as follows:-

11. Scheme of Selection:

Marks will be awarded to all candidates based on the information given by them in their Application forms, as per the criteria given below:-

Thus, from the combined reading of the marks awarded to the petitioner as well as the scheme of selection contemplated under the prospectus discloses that the

respondents have undoubtedly deviated from the terms of the prospectus, while awarding marks to the petitioner. While the prospectus contemplates total 18 marks for educational qualification, the petitioner was awarded only 9 marks out of total 9 marks. That means, he has been given 100% marks for the educational qualification. When, it has to be given for total 18 marks as contemplated under the prospectus, what follows is that the petitioner is entitled to get 18 marks out of 18 marks. Insofar the marks under the head "Books/Articles" published is concerned, the petitioner was awarded 4 marks out of 5 marks, whereas the prospectus contemplates granting of total 10 marks for the same. Thus, the petitioner is entitled to get 8 marks, out of 10 marks under the head "Books/Articles". Likewise, under the head "Interview", the petitioner was awarded 7 marks out of 10 marks, whereas the prospectus contemplates only 7 marks as total marks for the interview. Therefore, the petitioner is entitled to get 4.9 marks out of 7 marks. Thus, the petitioner is entitled to get a total 30.9 marks, out of 50 marks.

9. The Hon'ble Division Bench of this Court in the decision cited supra, while considering similar issue as to whether the Board can deviate from the terms of the prospectus has held that the Board is not within its power to deviate from the prospectus, while awarding marks. The relevant paragraph 8 of the said decision is extracted hereunder:-

Having issued the prospectus based on the said Government Orders prescribing weightage marks for the academic excellence, the Board as well as the candidates are bound by the terms and conditions of the prospectus. When yet another query was made to the learned Additional advocate General as to how the first respondent can overlook the Government Order by doing away with the weightage marks for academic excellence, she has got no explanation to offer. In our considered opinion, when the prospectus provides for weightage marks for academic excellence on the basis of said examination marks, it is not within the power of the Board to deviate from the same and to do away with the weightage marks. This exercise made by the first respondent is wholly without jurisdiction. It is needless to point out, as we have already stated, the prospectus binds not only the candidates, but also the first respondent. It is settled law that rules of the game cannot be changed after the game has started. Thus, it is on this ground alone, in our considered opinion, the entire selection list is liable to be quashed. But, we do not propose to do it, at this stage for more than one reason, firstly, the respondent has not come up with any appeal, when her prayer for quashing the entire list has not been allowed by the learned single Judge. Secondly, the appointments were made in the year 2005 and at this length of time, setting aside the selection list would only result in unnecessary chaos. Above all, as rightly pointed out by the learned single Judge, the beneficiaries of the selection list, who have already been appointed, were not before the Court as parties in the writ petition.

10. Considering the facts and circumstances of the case as well as by following the decision of the Hon"ble Division Bench of this Court referred to supra, I am of the view that the petitioner is entitled to get 30.9 out of 50 marks as discussed above and consequently, he is entitled to be considered for selection to the post of lecturer in Zoology Department at any of the Government Arts and Science College and College of Education, provided the mark so recalculated as stated supra, makes him eligible for selection. It is needless to say that while considering so, the communal rotation also should be taken note of.

11. Accordingly, the respondent are directed to rework the marks as stated supra and consequently, pass suitable orders within a period of four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.