

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2015

DATE OF DECISION : 16.02.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1315 of 2014
and
M.P.Nos.1 and 2 of 2015

Dr.M.Balasundaram
Assistant Professor in Gen. Surgery,
Thanjavur Medical College Hospital,
Thanjavur District. .. Appellant/Petitioner

Vs.

- 1.The State of Tamilnadu,
rep by the Principal Secretary to Government,
Health and Family Welfare,
Fort St. George, Chennai-600 009.
- 2.The Director of Medical Education,
Kilpauk,
Chennai-600 010.
- 3.The Director of Public Health,
Teynampet,
Chennai-600 018.
- 4.The Secretary,
Medical Council of India,
Pocket-14, Sector-8,
Dwaraka, New Delhi-110 077.
- 5.Dr.S.R.Rajakumar
- 6.Dr.D.Maruthupandian
- 7.Dr.G.Uthirakumar
- 8.Dr.Balamurugan
- 9.Dr.K.Jeyakumar .. Respondents /Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 10.7.2014 made in W.P.No.6430 of 2011.

to issue a writ of declaration declaring the selection of respondents 5 to 9 as Associate Professor in General surgery as null and void and thereby direct the 2nd respondent herein to select and appoint the petitioner as Associate Professor in General Surgery in anyone of the Medical Colleges in Tamil Nadu under the Control of the 2nd Respondent herein.(Prayer amended as per order dated 21.3.2011 by NPVJ in M.P.No.3/2011 in W.P.No.6430/2011]

For Appellant : Mr.K.Venkataramani, SC
for Mr.M.Muthappan

For Respondents : Mr.P.H.Arvind Pandian,
Addl. Advocate General,
asst. by Mr.P.S.Sivashanmugasundaram.
Spl.G.P for RR1 to 3

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant intra-court appeal arises from the order dated 10.7.2014 passed in W.P.No.6430 of 2011.

2. The appellant / writ petitioner, working as Assistant Professor in General Surgery at Thanjavur Medical College Hospital, Thanjavur, claiming to be fully qualified for being considered for promotion to the post of Associate Professor in General Surgery, participated in the counselling for promotion before the Promotion Committee. The writ petitioner was not considered for promotion on the post of Associate Professor in General Surgery on the ground that he had obtained M.Ch in Pediatric Surgery (Super speciality). Being aggrieved, the writ petitioner has come up with the instant writ petition in W.P.No.6430 of 2011, seeking for a direction to the second respondent, i.e., the Director of Medical Education, Chennai, to select and appoint him as Associate Professor in General Surgery in any one of the medical colleges in the State of Tamil Nadu. Two other petitioners, i.e., Dr.S.R.Kannan and Dr.D.Joseph also filed writ petitions, claiming their promotion on the post of Associate Professor in General Surgery.

3. The learned Single Judge consolidated all three petitions, heard together and dismissed the petition by a common order dated 10.7.2014. The Writ Court, accepting the contention of the official respondents, held as under :

"24.First of all, at the outset, it must be mentioned that the ground on which the present writ petitions have been filed by the petitioners show that

the next avenue of promotion being Associate Professors in General Surgery, their claim is liable to be rejected for the simple reason, that they have acquired super speciality degree M.Ch in Urology, Neurology and Paediatric Surgery respectively, as government candidate, for which the Government spends huge money to impart medical education and at the same time provides stipend to the private candidates and also valuable increments including the stipend equal to the salaries to the service candidates, therefore on completion of two years M.Ch degree along with two years teaching experience, the Government provided them the super speciality course expecting their services to be utilized in their concerned speciality branch only. Therefore, when the Government as an employer has got the right to expect the specialist Doctors to utilize their skills for the benefit of the poor and the needy people, the non-consideration of the petitioners who have completed their M.Ch in Urology, Neurology and Paediatric Surgery respectively for the post of Associate Professor in General Surgery, cannot be could fault with."

and as such, he was held disqualified for consideration for promotion on the post of Associate Professor in General Secretary.

4. The learned counsel appearing for the writ petitioner would submit that the writ petitioner had acquired minimum qualification, i.e., MS (Gen) and also requisite teaching experience for promotion to the post of Associate Professor in General Surgery. It is next contended that obtaining higher qualification, i.e., M.Ch in Pediatric Surgery cannot be taken as bar for consideration in General Surgery department on the post of Associate Professor. The learned counsel further urged that juniors to the writ petitioner in the Civil List had been promoted as Associate Professor in General Surgery when the petitioner is still continuing as Assistant Professor under them.

5. Contesting the averments of the writ petitioner, Shri P.H.Arvind Pandian, learned Additional Advocate General, relying on the stand taken before the Writ Court, submitted that the writ petitioner is having the Super speciality course in M.Ch (Pediatric Surgery), but he was not having the requisite qualification as on the crucial date on 15.3.2011, i.e., two years teaching experience in Pediatric surgery. It was further contended that the State Government needs specialist for better services to the poor citizens of the State. The writ petitioner along with others were permitted to have M.Ch course on State's expense and also were posted accordingly at various places. After having obtained the higher super speciality

degree in M.Ch (Pediatric surgery) at the expense of the State exchequer, the writ petitioner cannot claim promotion in the General Surgery Department. The writ petitioner has not acquired requisite teaching experience in the field of Pediatric surgery. Thus, he could not be considered for promotion to the post of Associate Professor in General Surgery.

6. Heard the learned counsel appearing for the appellant and the learned Additional Advocate General for respondents 1 to 3 and perused the pleadings and documents appended thereto.

7. As far as the qualification of the writ petitioner for promotion to the post of Associate Professor in General Surgery is concerned, there is no dispute. The official respondents have not denied the fact that the writ petitioner does not possess either the requisite qualification or experience as required for consideration on the said post in General Surgery. The writ petitioner was denied promotion solely on the ground that the writ petitioner had obtained M.Ch degree in Pediatrics, i.e., super speciality course at the expenses of the State Government. Thus, considering the writ petitioner for the post of Associate Professor in General Surgery would defeat the basic purpose of sponsoring the writ petitioner for super speciality training in M.Ch (Pediatric surgery). The writ petitioner was also accordingly posted in various places, so that the writ petitioner can extend his service to the citizens of this State at no cost.

8. No material has been placed before us to indicate that when the writ petitioner was promoted to take higher super speciality course in M.Ch, the petitioner has submitted any undertaking or any condition was imposed by the State Government that after having obtained M.Ch super speciality degree, the writ petitioner would not claim promotion in any other discipline, i.e., general surgery. The fact that the writ petitioner had obtained M.Ch in super speciality on the expense of the State Government is not denied. It is also not denied that the writ petitioner was granted two advance increments on acquiring M.Ch degree, but the fact remains that whether there is some bond or undertaking which prohibits the writ petitioner from seeking promotion to any other discipline on obtaining super speciality degree in Pediatric surgery.

9. The policy of the Government to assist the service Doctors for obtaining super speciality degree to cater to the need of public at large, deserves appreciation. However, in the absence of any restriction, bond or undertaking by the officer concerned, the writ petitioners cannot be denied an opportunity for consideration to the post of Associate Professor in General Surgery, if he is otherwise eligible for consideration. We cannot give a positive finding that

the writ petitioner is eligible and as such, he may be promoted to the post of Associate Professor in General Surgery. However, in the facts as aforesaid, we leave it to the State Government to consider the case of the writ petitioner/appellant for promotion on the post of Associate Professor in General Surgery on its merit and as per law. While considering the case of the writ petitioner/ appellant, the authorities may also examine the fact of any restriction, bond or undertaking if given by the writ petitioner or put by the Government, at the time of undergoing super speciality course at the expense of the State Government. Thus, at this stage, we do not express any opinion on the merits of the case. As a sequel, we direct the State Government to consider the case of the writ petitioner/appellant and pass a reasoned order in accordance with law and on its own merit.

10. With the above observations, we modify the order passed by the Writ Court and dispose of the writ appeal accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Principal Secretary to Government,
The State of Tamilnadu,
Health and Family Welfare,
Fort St. George, Chennai-600 009.
- 2.The Director of Medical Education,
Kilpauk,
Chennai-600 010.
- 3.The Director of Public Health,
Teynampet,
Chennai-600 018.
- 4.The Secretary,
Medical Council of India,
Pocket-14, Sector-8,
Dwaraka, New Delhi-110 077.

1 cc to Government Pleader, Sr.No8411

1 cc to Mr.R.Rajaramani ,Advocate, SR.No.8119

W.A.No.1315 of 2014

kk(co)pmk.26.2.2015