

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.15918 of 2015

Dr.Olga George, M.D., (Hom.)
2D, Kaaviyam Apartments,
Kumarasamy Street,
Thirunagar, Madurai-06.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to
Government, Health and Family Welfare
Department, Secretariat, Fort St. George,
Chennai-600 009.

2. The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Greams Road, Chennai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to appoint the petitioner in the vacancy that has arisen in the post of Professor (Homeopathy) as the petitioner has been placed in Serial No.1 in the reserve list of candidates maintained by the 2nd respondent in the select list dated 27.07.2011 pursuant to the recruitment notification dated 29.07.2009.

For Petitioner : Mrs. N. Kavitha Rameshwar

For Respondent : Mr.S.Gunasekaran,
Government Advocate for R1

Mrs. C.N.G.Niraimathi for R2

ORDER

The petitioner applied for the post of Professor (Homeopathy) in Tamil Nadu Medical Services. Applications were called for by the second respondent to fill up 10 vacancies in the said post.

2. Though the petitioner has participated in the selection process, she was not selected. In fact, she challenged her non selection to the post of Professor (Homeopathy) by filing W.P.No.29825 of 2013. This Court, while dismissing the said writ petition, has passed an elaborate order on 05.09.2014.

3. Thereafter, the petitioner has filed this writ petition seeking a direction to appoint her in the vacancy that arose in the post of Professor (Homeopathy). Since the petitioner has been placed in rank No.1 in the reserve list, notice was ordered at the admission stage.

4. Now the learned counsel for Tamil Nadu Public Service Commission appeared and submitted that the candidate in the reserve list could seek for selection and consequent appointment only in three contingencies viz.,

(1) If the selected candidate failed to turn up to join the said post;

(2) If the selected candidates after joining, left the service and there is no drawal of select list in the subsequent recruitment; and

(3) The selection was cancelled for one reason or other.

5. It is admitted that none of the three categories have arisen in this case. Hence, I am of the view that the petitioner cannot claim selection and consequent appointment to the post of Professor (Homeopathy). But the learned counsel strenuously contended that if fresh vacancies arise, the petitioner could be appointed as a candidate as contemplated under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules.

6. I am afraid that such a course is disastrous. A non selected candidate cannot seek an appointment under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules in the vacancy that could subsequently arise till the next selection takes place. In the next selection, the petitioner can very well participate and she cannot ask for temporary appointment as a matter of right. Hence, I do not find any merit in this writ petition and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raa

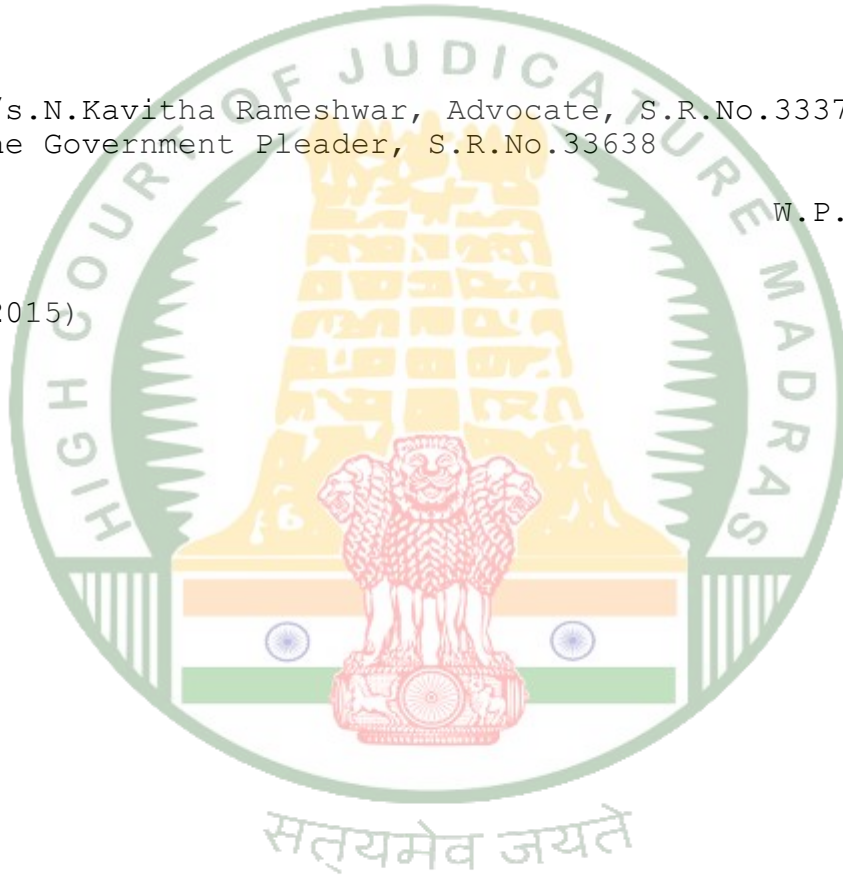
To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Greens Road, Chennai.

+1cc to M/s.N.Kavitha Rameshwar, Advocate, S.R.No.33373
+1cc to the Government Pleader, S.R.No.33638

W.P.No.15918 of 2015

SVI (CO)
CA(07/08/2015)



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