

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.No.209 of 2015

S.Oumapady

... Petitioner

Vs.

1. The Government of India,
rep. by its Under Secretary to
Government, Department of
Health, Ministry of Health and
Family Welfare,
New Delhi - 110 011.
2. The Jawaharlal Institute of Post Graduate
Medical Education and research (JIPMER),
Puducherry - 605 006.
3. S.Sendhilvel
4. The Registrar,
Central Administrative Tribunal,
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records on the file of the 4th respondent in OA No.1057 of 2011 dated 17.7.2014 and quash the same as illegal, incompetent, Unconstitutional and further direct the 2nd respondent to appoint the petitioner as Lab Technician with continuity of service and other attendant benefits.

For Petitioner

.. Mr.V.Raghavachari

For Respondent-1

.. No appearance

For Respondent-2

.. Mr.M.T.Arunan

For Respondent-3

.. Mr.Bharathachakravarthi for
M/s. Sai Bharath & Ilan

ORDER

(Order of the Court was made by Justice V.Ramasubramanian)

This writ petition arises out of an order of the Central Administrative Tribunal, Madras Bench, rejecting an application filed by the petitioner challenging his non selection and the selection of the third respondent to the post of Lab Technician in the second respondent institution.

2. We have heard Mr.V.Raghavachari, learned counsel for the petitioner, Mr.M.T.Arunan, learned counsel appearing for the second respondent and Mr.Bharathachakravathy, learned counsel appearing for the third respondent.

3. By a Notification issued on 29.10.2009, the second respondent invited applications for direct recruitment to about 32 posts in the institution. The post of Laboratory Technician is one such post. Eighteen vacancies were notified for the post of Lab Technician. Out of them, nine posts came under un-reserved categories, three posts were reserved for OBCs, five posts were reserved for Scheduled Caste and one post was reserved for Scheduled Tribes.

4. There was also an horizontal reservation, for Sports Persons, Ex-Servicemen and Physically Handicapped. One out of nine posts under the un-reserved categories, was reserved for the Sports Quota. Two out of nine under the un-reserved categories were reserved for Ex-Servicemen and one reserved for Physically Handicapped.

5. Admittedly, the petitioner as well as the third respondent applied for the post reserved for the Sports persons within the un-reserved categories. Eventually, the third respondent was selected on the basis that he had an edge over the petitioner. The selection was challenged by the petitioner before the Central Administrative Tribunal, Madras Bench, in O.A.No.1057 of 2011. The Tribunal dismissed the application by an order dated 17.07.2014, forcing the petitioner to come up with the above writ petition.

6. There is no dispute about the fact that the petitioner as well as the third respondent applied for one post which was reserved for the Sports Quota among the nine posts coming under the un-reserved categories. Both the petitioner as well as the third respondent also took a written examination. While the petitioner secured 46 out of 90 in the written examination, the third respondent secured only 22.

7. The selection of Sports Persons, was governed by an order of preference prescribed by the Government. The order of preference is as follows:-

"3. Order of preference:

The selection of sports persons who fulfil the eligibility criteria shall be considered in the following order of preference:-

- (1) First preference: Candidates who have represented the country in an International Competition with the clearance of the Department of Youth Affairs and Sports.
- (2) Second preference: The candidates who have represented and won medals or positions up to 3rd place in the senior or junior level National Championship organized by the recognized National Sports Federations or National Games organized by Indian Olympics Association. Between the senior and junior levels, candidates who have won the medal in Senior National Championship gets preference.
- (3) Third preference: Candidates who have represented a University in an Inter-University competition conducted by Association of Indian Universities/ Inter-University Sports Board and have won medals or positions up to 3rd place in finals.
- (4) Fourth preference: Candidates who have represented the State Schools in the National Sports/Games for schools conducted by the All India School Federation and have won medals or positions up to 3rd place.
- (5) Fifth preference: Candidates who have been awarded National Award in physical efficiency under National Physical Efficiency Drive.
- (6) Sixth preference: Candidates who have represented a State/ Union Territory/ University/ State School Teams

at the levels (2) to (4)
above but
could not win a medal or
position,
in the same order of
preference."

8. In so far as the case on hand is concerned, it is admitted that the petitioner as well as the third respondent, both came under the sixth preferential category. But unfortunately for the petitioner, he did not produce a certificate for having represented the Union Territory of Pondicherry in a National Level competition. But the third respondent produced such a certificate. Therefore among those persons who were eligible to be considered in the sixth order of preference, the second respondent preferred the third respondent herein, overlooking the marks secured by both in the written examination. It is under such circumstances that the petitioner has come up with a challenge to the procedure adopted by the second respondent.

9. Rules are admittedly silent as to what criteria is to be applied, if two persons belonging to the same preferential category are eventually left in the fray. In other words, if many persons are placed in the same category of preference, the criteria to be adopted is not indicated in the Rules.

10. In such circumstances, a Division Bench of this Court took a view in N.Kamalakannan vs. Government of Puducherry (W.P.No.31955 of 2013 decided on 3.3.2014), that if the appointing authority had adopted some intelligible criteria, the same cannot be meddled with by the Court.

11. In yet another decision namely S.Solomon vs. Union of India (W.P.No.14410 of 2008 batch decided on 14.08.2008), another Division Bench of this Court had an occasion to consider the six preferential categories indicated in Office Memorandum dated May, 1995. After considering the criteria to be adopted, the Division Bench held that candidates in a particular category had to be considered to the exclusion of those in the lower category. The Division Bench held that exclusion is permissible on the basis of the extent of achievement. However, the Division Bench also observed that as per the method of selection, it had to be on the basis of merit, which meant that among the persons similarly placed, the more meritorious is to be selected.

12. However, it is to be pointed out in this case that admittedly, the petitioner did not produce the relevant certificate in form II for his participation in a National Level

Championship. The third respondent produced a certificate for his participation in a National Level event.

13. In the reply affidavit filed by the second respondent, it was specifically pleaded by them before the Central Administrative Tribunal that the petitioner did not enclose such a certificate. Paragraph 4 of the reply affidavit filed by the second respondent before the Tribunal requires reproduction and hence it is extracted as follows:-

"4. It is submitted that 30 applications were received from sports persons for the post of Lab Technician. Out of that, 21 applications were found to fulfill the conditions of eligibility as per the recruitment rules. The applications along with the documents relating to sports merit furnished by them were forwarded to the Director of School Education, Government of Puducherry for furnishing the merit in sports of these candidates. As per the merit list forwarded by the Deputy Director (Sports), Directorate of School Education, Pondicherry who is competent authority to advice sports merit, Directorate of School Education, Puducherry, the third Respondent herein was ranked No.2 and the Applicant herein was not assigned a ranking as he had not furnished National Level Participation certificate and hence has not been given any rank. Based on this ranking the applicant was not offered the post of Lab Technician. In view of the above the third respondent who was ranked 2nd has been appointed to the post of Lab Technician under sports quota since the selection has to be made based on the sports merit of the candidate and the same was upheld by the Hon'ble CAT in O.A.No.1587/10. The Copy of the order of Hon'ble CAT dated 5.6.2013 in O.A.No.1587/10 is placed as Annexure-2."

14. The petitioner filed a rejoinder before the Tribunal and it was only in the rejoinder that the petitioner enclosed two certificates as annexures 12 and 13. This establishes the fact that there was no certificate before the appointing authority to prove the participation of the petitioner in a National Level event.

15. In such circumstances, the selection authority was confronted with a position where the petitioner and the third respondent came under the very same order of preference namely sixth preference. But one person had produced a certificate of participation in a National Level event and the other had not.

16. A careful look at the expression used in the preferential order would show that a National Level participation could take precedence over the State Level participation and the State Level participation could take precedence over the University Level participation and so on and so forth, even among those placed in the same category of preference. Therefore, as a court exercising limited jurisdiction, we can only see whether some rational basis has been followed in the matter of selection or not. Once it is found that the same had been done, it is not possible for us to interfere with the selection.

17. In the result, we find no reason to interfere with the order of the Tribunal. Hence, the writ petition is dismissed. There will be no order as to costs.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

gr.

To

1. The Under Secretary to Government, Department of Health, Ministry of Health and Family Welfare, New Delhi - 110 011.
2. The Jawaharlal Institute of Post Graduate Medical Education and research (JIPMER), Puducherry - 605 006.
3. The Registrar, Central Administrative Tribunal, Chennai.

1 cc to Mr.V. Raghavachari, Advocate, sr. 8465

1 cc to Mr.M.T. Arunan, Advocate, sr. 8859

1 cc to M/s. Sai Bharath & Ilan, Advocate, sr. 8570

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