

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2015

CORAM

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE T.MATHIVANAN

W.P.No. 11199 of 2012
and
M.P.3 of 2012

Dr.M.Rajeseakaran Petitioner

vs.

- 1.Union of India,
rep.by its Secretary,
Department of Ayush,
Ministry of Health and Family Welfare,
Government of India,
India Red Cross Society Building,
No.1, Red Cross Road,
New Delhi-110 001
- 2.The Director,
National Institute of Siddha,
Tambaram Sanatorium,
Chennai-600 047
- 3.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104
... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order dated 30.03.2012 of the Central Administrative Tribunal in O.A.No.56 of 2012 and to quash the same and consequently direct the first respondent to appoint the petitioner in the post of Professor in Gunapadam in the National Institute of Siddha, under the Schedule Caste category in the vacancy notified in Notification No.1/2011 dated 14.12.2011 by following the rule of reservation and by relaxing the experience criteria.

For Petitioner .. Ms.Kavitha Deenadayalan
For Respondents .. Mr.V.Venkatesan,SCGSC for R1
Mr.P.V.S.Giridhar for R2

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN,J.)

The petitioner, whose application challenging a Notification for direct recruitment to the post of Professor in the Department of Gunapadam in the National Institute of Siddha was dismissed by the Central Administrative Tribunal, has come up with the above writ petition.

2. Heard Mrs.Kavitha Deenadayalan, learned counsel appearing for the petitioner and Mr.V.Venkatesan, learned Central Government Standing counsel appearing for the first respondent and Mr.P.V.S.Giridhar, learned counsel appearing for the second respondent.

3. The petitioner was originally appointed as Assistant Medical Officer on 21.1.1987. During the period from 1995 to 1998, he completed a Post Graduate degree course in the Branch of Gunapadam and upon completion of the course, he was appointed as Assistant Lecturer Selection Grade, on 10.09.1998. Upon completion of 10 years of service in the said category, the petitioner was granted Special Grade in the post of Assistant Lecturer on 19.09.2008.

4. When the National Institute of Siddha attempted to fill up the posts of Professor on contract basis, by issuing a Notification on 22.1.2011, the petitioner filed an application in O.A.No.318 of 2011, on the file of the Tribunal. On account of the said application, the appointment of Professors on contract basis was stalled.

5. Thereafter, the Department issued a Notification dated 14.12.2011, for direct recruitment. In the Notification for direct recruitment for the post of Professor, the second respondent prescribed both educational as well as experience qualifications. In so far as the experience qualification is concerned, the Notification stipulated that a candidate applying for the post of Professor should have at least five years experience in the post of Reader or eight years combined experience in Post Graduate teaching in the subject concerned.

6. Unfortunately, the petitioner had only a combined experience of less than eight years. Therefore aggrieved by such a prescription, the petitioner filed an application in O.A.No.56 of 2012 on the file of the Central Administrative Tribunal. By an order

dated 30.03.2012, the Tribunal dismissed the application. However, the Tribunal directed the respondents to consider in accordance with Rules, if the stipulation relating to experience could be relaxed in favour of the petitioner.

7. Many times, discretion is the better part of valor. But without realising this, the petitioner filed this writ petition challenging the order of the Central Administrative Tribunal. Taking advantage of the pendency of the writ petition, the second respondent chose to reject the application for relaxation made by the petitioner. Now a period of more than three years have passed, making the petitioner automatically eligible for promotion.

8. Be that as it may, the challenge of the petitioner to the Notification, dated 14.12.2011, was threefold, namely, (1) that in the recruitment Notification issued in 2006-07 persons with even less than seven years of service were promoted; (2) that posts which were reserved, were de-reserved and appointments were made and (3) that the reduction of the experience qualification from 12 years to 8 years and not to 7 years was arbitrary.

9. But all the above contentions were rejected by the Tribunal and in our opinion, rightly so. The post of Professor is governed by a set of Rules known as the National Institute of Siddha Service Rules, 2004. The Rules prescribe the following as the essential qualifications for direct recruitment to the post of Professor:

(1) P.G. qualification in Sidha in the concerned subject, recognized by Central Council of Indian Medicine;

(2) Seven years as Reader (Associate Professor) in P.G. teaching in the concerned subject or twelve years combined experience in P.G. teaching in the subject concerned.

10. There is no dispute about the above prescription contained in the statutory Rules. In other words, for direct recruitment to the post of Professor, a person should have had experience for a period of seven years as Reader or twelve years combined experience in P.G. teaching. There is no denial of the fact that the petitioner does not fulfil any of these two conditions.

11. But taking into account the non-availability of candidates for direct recruitment to the said post, the second respondent issued a Notification on 14.12.2011, reducing the number of years of experience from seven years to five years in the case of Reader and from twelve years to eight years in respect of combined experience. It is quite unfortunate that the petitioner did not fulfil even the relaxed criteria. Merely because somebody does not fulfil the relaxed criteria, it cannot be contended that the relaxation should have been to the extent of 'X' or 'Y'. Therefore, the Tribunal was right in holding that the petitioner could not make out a grievance against the Notification, dated 14.12.2011, without even a challenge to the statutory Rules. Any challenge to the prescription contained

in a Notification for direct recruitment could only be on the ground that it is in violation of the statutory Rules or in violation of Article 14. If the petitioner succeeds on the ground that the prescription contained in the Notification dated 14.12.2011 is contrary to the statutory Rules, the case of the petitioner would become still worse in the sense that no person, who has got less than twelve years of combined service, can be considered for appointment.

12. The petitioner cannot pitch his claim on the basis of Article 14. When a recruitment to a post is governed by statutory Rules, which are not under challenge, there is no question of application of Article 14.

13. Therefore, we find that the Tribunal was right in dismissing the application of the petitioner. We only wish that the second respondent had considered the case for relaxation, despite the lack of wisdom on the part of the petitioner in coming to Court.

14. Today, it is admitted that the petitioner can even get promoted to the post in the normal course. But, the impediment is that the post of Director is vacant. Without filling up the post of Director, a departmental promotional Committee cannot be convened.

15. But it appears that the process for recruitment to the post of Director itself is on. The petitioner appears to have fulfilled the qualifications for the post of Director. Therefore, while dismissing the writ petition, we only clarify that the respondents need not take into account the adventure into which the petitioner plunged and reject the case of the petitioner on that ground. No costs. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

सत्यमेव जयते

msk

To

1. The Secretary,
Union of India,
Department of Ayush,
Ministry of Health and Family Welfare,
Government of India,
India Red Cross Society Building,
No.1, Red Cross Road,
New Delhi-110 001

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2.The Director,
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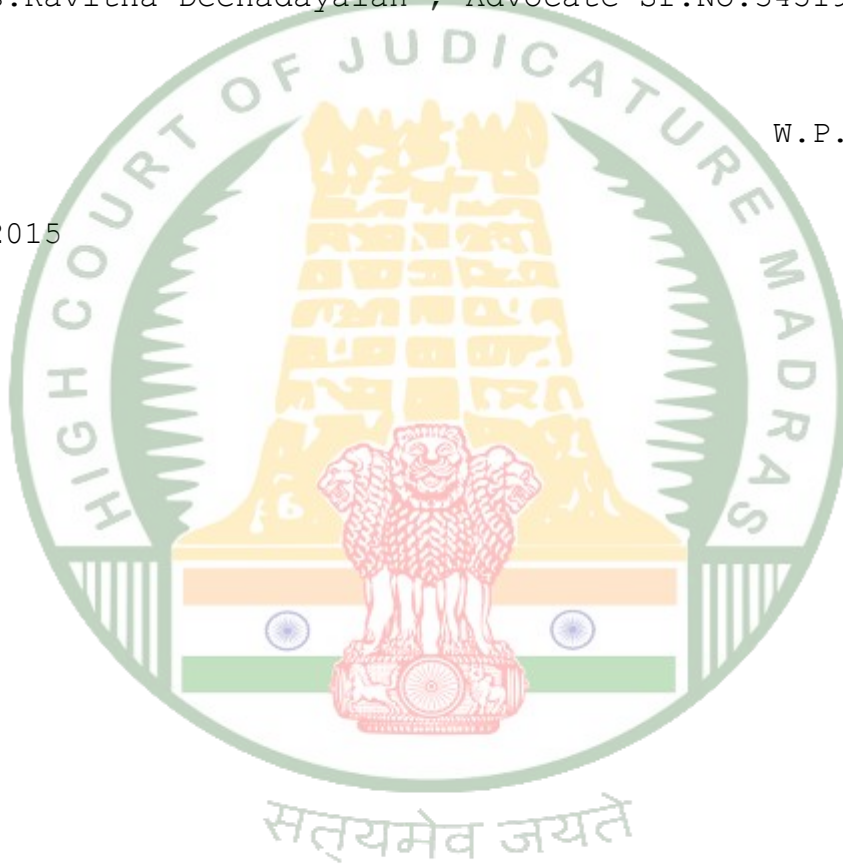
3.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 10

1 cc to Mr.V.Venkatesan , Advocate Sr.No.34745

1 cc to Ms.Kavitha Deenadayalan , Advocate Sr.No.34519

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pmk.24.7.2015



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