

In the High Court of Judicature at Madras

Dated : 05.2.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Petition No.19581 of 2013 and M.P.No.1 of 2013

Dr.M.P.Ravanan

....Petitioner

Vs

- 1.The Registrar, Central Administrative Tribunal, Madras Bench, Chennai-104.
- 2.Union of India, rep.by the Secretary, Ministry of Social Justice & Empowerment, Government of India, Shastri Bhavan, New Delhi.
- 3.The Under Secretary to Government of India, Ministry of Social Justice & Empowerment, Government of India, Shastri Bhavan, New Delhi.
- 4.Mrs.Neeradha Chandramohan, Director, National Institute of Empowerment of Persons with Multiple Disabilities, Ministry of Social Justice & Empowerment, Government of India, East Coast Road, Muttukadu, Kovalam Post, Chennai.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the orders in Original Application No.417 of 2012 dated 20.3.2013 on the files of the first respondent, quash the same and consequentially to quash the orders in the proceedings Nil dated 12.3.2012 on the files of the third respondent and to direct the second and third respondents to consider the case of the petitioner for appointment to the post of Director, National Institute for Empowerment of Persons with Multiple Disabilities, Government of India, East Coast Road, Muttukaadu, Chennai.

For Petitioner : Mr.David Thyagaraj
For Respondents 2 & 3 : Mr.S.R.Sundaram, Senior Panel
Counsel

ORDER OF THE COURT WAS MADE BY V.RAMASUBRAMANIAN, J

The writ petition arises out of an order passed by the Central Administrative Tribunal dismissing an application filed by the petitioner, challenging the appointment of the fourth respondent to the post of Director.

2. Heard Mr.David Thyagaraj, learned counsel for the petitioner and Mr.S.R.Sundaram, learned Senior Panel Counsel appearing for the respondents 2 and 3.

3. The Ministry of Social Justice and Empowerment of the Government of India issued a Notification on 6.7.2011, inviting applications for appointment to the post of Director of the National Institute for Empowerment of Persons with Multiple Disabilities. The said institute is a society incorporated at the instance of the Central Government, but wholly funded by the Government of India. The mode of recruitment indicated in the said Notification was that it would be an appointment on contract for three years, failing which, on deputation. The upper age limit prescribed in the Notification was 50 years. The terms and conditions for appointment on contract basis were also indicated in the said Notification. One of the terms and conditions was that the Director may be appointed on contractual basis for a period of three years and that on such appointment, he will be on probation for one year from the date of appointment.

4. The fourth respondent herein, who was earlier serving some other Department, was actually officiating in the post of Director from 21.6.2006 to 22.6.2008. Subsequently, she was deputed to the said post from 27.2.2008 to 11.3.2012.

5. The writ petitioner herein as well as 16 other persons applied in response to the said Notification. The Screening Committee scrutinized all the applications and the Committee shortlisted the names of five candidates including the names of the writ petitioner and the fourth respondent. Eventually, the Selection Committee constituted for appointment, conducted an interview on 20.1.2012. The petitioner was not called for interview on the ground that his application was not received through proper channel namely the State of Tamil Nadu where the writ petitioner was working as the Principal of the Government Medical College and Hospital, Tirunelveli. By the order dated 12.3.2012, the fourth respondent was appointed as the Director. Challenging the said order, the writ petitioner filed an application in O.A.No. 417 of 2012 on the file of the Central

Administrative Tribunal, Madras Bench. That application was dismissed by the Tribunal, compelling the petitioner to come up with the above writ petition.

6. Mr. David Thyagaraj, learned counsel for the petitioner submitted that the order of appointment impugned before the Tribunal was vitiated for at least two reasons. They are (i) that on the date of appointment, the fourth respondent had crossed the upper age limit of 50 years as prescribed in the Notification inviting applications dated 6.7.2011; and (ii) that the fourth respondent could not have been deputed to the post, without waiting for the cooling off period as per paragraph 8.4 of the Office Memorandum dated 17.6.2010 issued by the Government of India.

7. We have carefully considered the above submissions.

8. It is true that the Notification dated 6.7.2011 inviting applications for recruitment, prescribed the upper age limit as 50 years. But, the mode of recruitment prescribed in the Notification read as follows :

"On contract appointment for three years, failing which, on deputation."

9. The terms and conditions for appointment also contained a clause, which reads as follows :

"(i) Director may be appointed on contractual basis for a period of 3 (three) years. On appointment, he will be on probation for 1 (one) year from the date of appointment. If his services are found satisfactory, contract may be extended for a further period of 2 (two) years. He will however render himself liable to be discharged from the service if the work is found not satisfactory."

10. A combined reading of the mode of recruitment and Clause (i) of the terms and conditions would show that for appointment on contract basis, the upper age limit of 50 years would apply. But, for deputation, upper age limit stipulated in the Notification may not apply. Deputation to institutes like the institute on hand, is governed by a separate set of rules. The prescription contained in the Notification for an appointment on contract basis cannot really circumscribe the rules relating to deputation. Therefore, the first contention of the learned counsel for the petitioner deserves to be rejected.

11. In so far as the second contention is concerned, the same is

based upon Clause 8.4, which reads as follows :

"There shall be a mandatory 'cooling off' period of three years after every period of deputation/foreign service up to Joint Secretary level posts and one year for Additional Secretary level posts."

12. But, the said stipulation has to be construed as one that deals with the posts at the Joint Secretary level and Additional Secretary level. In so far as the post of Director is concerned, it does not appear to be at the level of Joint Secretary or Additional Secretary. This is seen from another Office Memorandum bearing No.AB.14017/2/2007-Estt (RR) dated 27.4.2008. Paragraph 2 of the said Office Memorandum reads as follows :

"Para 1.1. of this Department's OM dated 29.2.08 also stand amended as below :
Central Staffing Scheme (CSS)
Posts that are to be covered :
Ministries/Departments of Government of India
Procedure to be followed for appointment :
Civil Services Board (below JS), with ACC approval for JS and above.
Tenure to be applicable :
US level - 3 years
DS level - 4 years
Dir level - 5 years
JS level - 5 years
JS/AS level - 7 years (subject to 3 years in the second post and also subject further to a minimum of 5 years in the Centre)
AS level - 4 years
Secy. level - No ceiling."

13. Therefore, we do not think that paragraph 8.4 can be relied upon by the petitioner. There is also one more reason. If the post has been filled up purely on deputation, the petitioner can rely upon the aforesaid Office Memorandum. But, what happened in this case was that a direct recruitment on contract basis, was sought to be made. But, finding that it would be useful to continue the services of the fourth respondent, who had officiated in the post from 2006 onwards, the third respondent has resorted to deputation. It should be pointed out that this post is a Group A post in the pay band of Rs.37400-67000. In cases of deputation, there is also a Grade Pay of Rs.8,700/-. Therefore, we do not think that the second contention can also be sustained.

14. The order impugned in the application before the Tribunal was dated 12.3.2012. The appointment was for three years. The term of appointment is going to come to an end in another 40 days. Moreover, the petitioner himself applied not for direct recruitment on contractual basis. He actually applied, as seen from his own application, only for deputation. This is for the reason that the institute in question is a society established at the behest of the Central Government. But, the petitioner is serving as the Principal of the Tirunelveli Medical College and Hospital in the State of Tamilnadu. If the petitioner had to apply for deputation, he had to route his application only through his employer, so that upon completion of the term of deputation, he can go back to his parent service. Therefore, when the petitioner himself did not treat it as an application on contract basis, but only as an application on deputation and when the petitioner failed to route his application through the proper channel, even for a deputation, he cannot have the locus standi to challenge the appointment of the fourth respondent.

15. Accordingly, the writ petition is dismissed. No costs. Consequently, the above MP is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Registrar, Central Administrative Tribunal, Madras Bench, Chennai-104.

2.The Secretary to Union of India, Ministry of Social Justice & Empowerment,

Government of India, Shastri Bhavan, New Delhi.

3.The Under Secretary to Government of India, Ministry of Social Justice &

Empowerment, Government of India, Shastri Bhavan, New Delhi.

4.Mrs.Neeradha Chandramohan, Director,
National Institute of Empowerment of
Persons with Multiple Disabilities,
Ministry of Social Justice & Empowerment,
Government of India, East Coast Road,
Muttukadu, Kovalam Post, Chennai.

1 cc to Mr.David Thyagaraj ,Advocate, SR.No.6049

1 cc to Mr.S.R.Sundaram, ,Advocate, SR.No.6052

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