

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.28304 of 2015
and
M.P.No.1 of 2015

Dr. Deivasigamani Kuberan

... Petitioner

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.
2. The Union of India,
Rep. by the Ministry of Labour & Employment,
Shram Shakti Bhavan,
Rafi Marg, New Delhi - 110 001.
3. The Joint Director (Recruitment),
Employees State Insurance Corporation,
Panchdeep Bhavan,
CIG Marg, New Delhi - 110 002.
4. The Deputy Director (Recruitment),
Employees State Insurance Corporation,
Panchdeep Bhavan,
CIG Marg, New Delhi - 110 002.
5. The Dean
ESIC Post Graduate Institute of Medical Science
and Research and Medical College,
K.K.Nagar, Chennai - 600 078.
6. Devidoss Tandore,
Associate Professor (Community Medicine),
ESIC - PGIMSR and Medical College,
K.K.Nagar,
Chennai - 600 078.

... Respondents

Prayer: Petition is filed 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 order of the Central Administrative Tribunal, Madras Bench, made in O.A.No.664 of 2013, dated 12.08.2015, in confirming the order dated 06.02.2013, issued by the 4th respondent in so far as selection and appointment of the 6th respondent in the Post of Associate Professor (Community Medicine) in the 5th respondent Medical College is concerned and quash the same and consequently direct the respondents 3 and 4 to appoint the petitioner in the said post with due seniority with all service benefits.

For Petitioner : Mr.N.Anand Venkatesh
For R-1 : Tribunal
For R-2 : M/s. J.Madanagopal Rao,
SCGSC
For RR-3 to 5 : Mr.C.V.Ramachandramoorthy
CGC (PC)
For R-6 : Notice Served
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ORDER

(Order of the Court was made by G.CHOCKALINGAM,J.)

Writ Petition is filed challenging the order of the Central Administrative Tribunal, Madras Bench, made in O.A.No.664 of 2013, dated 12.08.2015, in confirming the order dated 06.02.2013, passed by the fourth respondent in so far as selection and appointment of the sixth respondent in the Post of Associate Professor (Community Medicine) in the fifth respondent Medical College is concerned and quash the said order dated 06.02.2013 and consequently, to direct the respondents 3 and 4 to appoint the petitioner in the said post with due seniority with all service benefits.

2. Learned counsel for the petitioner contended that the petitioner passed MBBS in Madras Medical College in the year 1996 and passed M.D. (Community Medicine) in the year 2006 in Madras Medical College. He has also passed Diploma in Industrial Hygiene and PG Diploma in Applied Population Research and worked as a Resident/Tutor in Madras Medical College from the year 2003 to 2006 and as an Assistant Professor in SRM Medical College and Research Centre, Kattankulathur from the year 2007 to 2012 and as Associate Professor in the same Centre from 24.01.2012 to 07.07.2014. The learned counsel for the petitioner further contended that the Employees State Insurance Corporation (ESI Corporation) is functioning under the control of the second respondent Ministry. The third respondent/ESI Corporation, in the Advertisement dated 05.11.2012, has called for applications to fill up the teaching faculty positions in

three ESIC Medical Colleges located at Gulbarga (Karnataka), Joka (West Bengal) and Chennai (Tamil Nadu) on regular basis by Direct Recruitment, in the category of Professor, Associate Professor and Assistant Professor. Among various posts, 16 posts were in the category of Associate Professor in the fifth respondent's Research Institute and Medical College and out of said 16 posts, one post was in the Department of Community Medicine. Among the 16 posts of Associate Professor in various Specialities, 11 posts were for unreserved (UR), 3 posts were reserved for Schedule Caste (SC), 1 post was reserved for Schedule Tribe (ST) and 1 post was reserved for Other Backward Classes (OBC). The petitioner was fully qualified for the appointment to the post of Associate Professor in the Speciality of Community Medicine and applied for the said post through online under General Category.

3. Learned counsel for the petitioner further contended that as per the selection procedure specified in the Advertisement, the selection will be made on the basis of interview conducted by the selection board. The petitioner was called for an interview on 28.12.2012 and he has also successfully attended the interview on the said date. The petitioner secured 410 marks out of 600 as per the mark list provided by the third respondent and ranked as 6 in the combined merit list and in the Speciality of Community Medicine, he ranked as first. But, since there were 11 vacancies set apart under unreserved category, the mark secured by the 11th ranked person has been taken as cut-off which was 360 marks. As per the combined merit list, the petitioner ranked as 6 by securing 410 marks and stood first in the speciality of Community Medicine, whereas the sixth respondent ranked as 15 in the combined merit list by securing 370 marks and he stood second in the speciality of Community Medicine behind the petitioner. As per the appointment order dated 06.02.2013, out of 11 posts in Unreserved (UR), only two posts were filled up from General Category and remaining 9 posts were filled up from OBC and SC category, even though the candidates from reserved category have secured less marks in the combined merit list and ranked below. Even though the petitioner secured 410 marks out of 600 marks and ranked above the sixth respondent, the petitioner was not selected and he was not issued the appointment order. But the sixth respondent, who secured only 370 marks out of 600 marks, was given appointment under Unreserved category, which is erroneous and against the principles of settled law.

4. Learned counsel for the petitioner also contended that aggrieved by the selection and appointment of the sixth respondent in the post of Associate Professor in the Speciality of Community Medicine in the fifth respondent Institute, the petitioner preferred an appeal in O.A.No.664 of 2013 before the first respondent/Central Administrative Tribunal seeking to set

aside the appointment of the sixth respondent. But, the first respondent Tribunal, has not gone through the relevant facts and passed an erroneous order dismissing the original application. Hence, the present writ petition is filed by the petitioner seeking to quash the order of the Central Administrative Tribunal, Madras Bench, made in O.A.No.664 of 2013, dated 12.08.2015, and consequently, direct the respondents 3 and 4 to appoint the petitioner in the said post with due seniority with all service benefits.

5. Learned Senior Central Government Standing counsel appearing for the second respondent/Union of India and the learned Central Government panel counsel appearing for the respondents 3 to 5 contended that the Selection Authority, has properly given advertisement and finalised the list. The sixth respondent applied for the post of Associate Professor by ranking himself as OBC category and he was selected for the said post of Associate Professor (Community Medicine) and if the impugned selection is to be interfered with, then the subsequent selection is also liable to be set aside and in view of the above said position, the original application is not maintainable and O.A.No.664 of 2013 was dismissed by the Central Administrative Tribunal, Madras Bench, accepting the above points. Learned counsel further contended that the sixth respondent applied for the same post in the same procedures mentioned by the recruiting authority. There is no error in the recruitment i.e., not selecting the petitioner in respect of the advertisement/notification dated 05.11.2012. Hence, there is no infirmity or illegality in the impugned order passed by the Central Administrative Tribunal and all the allegations stated by the petitioner are not tenable and hence, the writ petition may be dismissed.

6. It is admitted by both sides that the selection authority issued notification/advertisement calling for applications to the posts of Professor, Associate Professor & Assistant Professor for (i) ESIC Medical College, Gulbarga, Karnataka, (ii) ESIC PGIMS & Medical College, Joka, Kolkata (West Bengal) and (iii) ESIC PGIMS & Medical College, K.K. Nagar, Chennai (Tamil Nadu) and in respect of ESIC PGIMS & Medical College, K.K. Nagar, Chennai (Tamil Nadu), the following are the reservation details mentioned in the said Advertisement.

POST	UNRESERVED	SC	ST	OBC	TOTAL
Professor	09	01	01	03	14
Associate Professor	11	03	01	01	16
Assistant Professor	13	03	01	05	22

POST	UNRESERVED	SC	ST	OBC	TOTAL
Note : Two vacancies are reserved for Person with Disabilities (PWD) under identified specialities.					

7. Further, it is admitted by both sides that the sixth respondent applied for the post of Associate Professor ranking himself as OBC and he attended the interview and the marks are given in page No.23 of the typed set of papers filed along with the Writ Petition and the same reads as follows:-

COMBINED MERIT LIST FOR RECRUITMENT TO THE POST OF ASSOCIATE PROFESSOR FOR ESIC PGIMSR & MEDICAL COLLEGE, KK NAGAR, CHENNAI								
VACANCY POSITION - UR-11, SC-03, ST-01, OBC-01								
Sl . No	Roll No.	Candidate Name (Dr.)	Cate - gory	Date of Birth	Speciality	Marks	Remarks (For Determining Cut Off)	(For Cut Off)
1	162002	SANDHYA. V	GEN	9/2/1975	Hematology	460	Merit-1	
2	162047	K.BALAMURUGESAN	SC	6/17/1977	Gen. Medicine	455	Merit-2	
3	162010	RAMASWAMY. A.S.	GEN	4/23/1979	Pathology	430	Merit-3	
4	162054	ASHA.K.	OBC	7/14/1975	Anatomy	415	Merit-4	
5	162040	VINAY.M	OBC	11/12/1973	Pharmacology	410	Merit-5	
6	162027	DEIVASIGAMANI KUBERAN	GEN	12/29/1973	Community Medicine	410	Merit-6	
7	162073	K.UMAMAHESWARI	OBC	9/8/1975	Physiology	410	Merit-7	
8	162004	PANDURANGA	OBC	9/4/1976	Pathology	410	Merit-8	
9	162011	SANDHYA.V	GEN	9/2/1975	Pathology	400	Vacancy filled up	
10	162067	MANISHA SUBRAO MANE	GEN	5/15/1977	Microbiology	400	Merit-9	
11	162036	AKILA.L	OBC	1/30/1978	Pharmacology	400	Vacancy filled up	
12	162013	ILANGO GANESAN	OBC	7/17/1973	Anesthesia	398	Merit-10	
13	162072	G.SUGAPRIYA	OBC	10/8/1974	Physiology	385	Vacancy filled up	
14	162006	K.MEENAKSHISUNDARAM	SC	8/16/1975	Pathology	380	Vacancy filled up	
15	162017	DEVIDAS TONDARE	OBC	11/2/1975	Community Medicine	370	Vacancy filled up	
16	162050	SUVARNA.P	OBC	12/19/1972	Obst. & Gynae	360	Merit-11-Cut Off	
17	162026	ANUJ MITTAL	GEN	6/29/1977	Community Medicine	360		
18	162005	S.SRI GAYATHRI	OBC	1/9/1980	Pathology	360		
19	162028	KATTA AJITHA	GEN	7/30/1967	Community Medicine	355		
20	162022	RAHUL NETRAGAONKAR	SC	7/9/1968	Community Medicine	355		

8. On a reading of the above merit list, it is clear that the petitioner secured 410 marks out of 600 marks and he is in Sl.No.6 of the above merit list and remarks have been shown as "merit-6" and the sixth respondent secured 370 marks out of 600 marks and he is in Sl.No.15 of the above merit list and remarks have been shown as "vacancy filled up". It is admitted that the petitioner is in the general category and the sixth respondent is in the OBC category. It is further admitted by both sides that regarding the OBC quota, Panduranga, whose serial number is 8 and Roll Number is 162004 and who secured 410 marks, was selected. On a reading of the above document, it is very clear that one post is reserved for OBC candidate. It is not disputed by both sides that 11 vacancies were reserved for unreserved categories and for SC-03, ST-01 and OBC-01, were allotted and the unreserved category had to be filled up under open category.

9. In open competition category, merit is only one consideration and there is no other relevancy regarding the procedure made by the recruiting authority in appointing or selecting the persons from open category. When open category of 11 posts were reserved, the same has to be filled up by merits. On a reading of the entire papers, it is very clear that the petitioner has secured 410 marks out of 600 marks and his name is in "merit No.6". As per the merit list issued by the selection authority, even though the petitioner has secured 410 marks and ranked as Merit-6, he was not selected under the open competition. But the sixth respondent, who has obtained 370 marks, was selected in the open category, which is contrary to law and therefore, the same is liable to be quashed. Further, the argument of the learned counsel for the petitioner is that the recruiting authority adopted the recruiting procedure, which is illegal and they cannot select the candidates as per their whims and fancies, without following the policy matters with regard to selection. In this case, admittedly, the petitioner, who is coming under the open category and obtained 410 marks, was not selected to the post of Associate Professor. But, the selection authority selected only the sixth respondent, who has secured only 370 marks, which cannot be accepted. The selection made by the authorities by following some other procedures and methods, is not at all sustainable.

10. The learned Senior Central Government Standing counsel appearing for the second respondent and the learned Central Government Panel Counsel appearing for the respondents 3 to 5 contended that even though the petitioner was not selected in the particular notification, in the subsequent advertisement, the petitioner has applied for the post of Associate Professor and subsequently, he was selected. Even though the petitioner applied for the subsequent selection and the respondents 2 to 5 followed the procedures, the same cannot be a ground to dismiss the writ petition filed by the petitioner. It is settled law

that there shall be no estoppel against the principles of law. The petitioner has every right to question the earlier selection, even though he was selected in the subsequent selection made by the respondents 2 to 5 by following the same principles. Hence, the above argument of the learned Senior Central Government Standing counsel appearing for the second respondent and learned Central Government Panel Counsel appearing for the respondents 3 to 5, is not at all sustainable. Further, they contended that if the impugned selection is set aside, the subsequent selection made on the same procedures, is also liable to be set aside. Hence, the argument of both the learned counsel for the second respondent and the respondents 3 to 5 that the writ petition may be dismissed, is not at all sustainable, since the petitioner is an affected person and his fundamental rights are infringed. The petitioner has every right to file this writ petition and pray for the relief stated above. The impugned order of the Central Administrative Tribunal is not relevant to the points in this case and the Tribunal, without giving any valid reason, dismissed the Original Application, which is contrary to law and the impugned order of the Central Administrative Tribunal is liable to be set aside.

11. On a reading of the selection list issued by the fourth respondent, it is seen that the following persons are selected under unreserved categories.

Sl. No.	Roll No.	Candidate (Dr.)	Name	Category	Speciality	Category against which selected	Marks
1	162054	Asha. K		OBC	Anatomy	Select UR	415
2	162013	Ilango Ganesan		OBC	Anesthesia	Select UR	398
3	162017	Devidas Tondare		OBC	Community Medicine	Select UR	370
4	162047	K. Balamurugesan		SC	Gen. Medicine	Select UR	455
5	162001	Panduranga		OBC	Hematology	Select OBC	320
6	162067	Manisha Subrao Mane		GEN	Microbiology	Select UR	400
7	162050	Suvarna.P		OBC	Obst. & Gynae	Select UR	360
8	162052	Maya Menon		GEN	Obst. & Gynae	Select UR	310
9	162004	Panduranga		OBC	Pathology	Select UR	410
10	162006	K.Meenakshisundaram		SC	Pathology	Select UR	380
11	162040	Vinay.M		OBC	Pharmacology	Select UR	410
12	162073	K.Umamaheswari		OBC	Physiology	Select UR	410

12. On a reading of the above extracted selection list issued by the fourth respondent, it is clear that for the same subject i.e., 'Community Medicine', even though the petitioner secured 410 marks out of 600 marks, he was not selected. But for the same subject, the person, who obtained 370 marks out of 600 marks alone is selected by the respondents 2 to 5. For that, there is no explanation or reason put forth on the side of the respondents 2 to 5. Even the argument of the learned counsel for the respondents 2 to 5 that they have adopted different procedures for selection in the same unreserved category, cannot hold good, because for the subject 'Community Medicine', the petitioner secured 410 marks out of 600 marks. But, at the same time, the person, i.e., the sixth respondent secured 370 marks out of 600 marks. The respondents 2 to 5, instead of selecting the petitioner, who obtained 410 marks out of 600 marks in the subject 'Community Medicine', selected the sixth respondent, who obtained 370 marks out of 600 marks in the unreserved quota, which is baseless and not maintainable and the same is liable to be set aside. Hence, the selection of the sixth respondent, who belonged to OBC category and who secured 370 marks out of 600 marks in the subject 'Community Medicine' in the unreserved quota, cannot hold good, because in the unreserved quota, the merit alone is the main criteria. The respondents 2 to 5, in unreserved quota, selected OBC candidate, who obtained least marks than the petitioner, and the same is liable to be set aside. Hence, the argument of the learned counsel for the petitioner that the petitioner has to be appointed from the date of selection and he may be paid all service benefits etc., has to be accepted.

13. Hence, we are of the considered view that the selection and appointment of the sixth respondent in the post of Associate Professor (Community Medicine) in the fifth respondent Medical College is liable to be set aside and the petitioner, who has secured 410 marks under "General category" has to be appointed in that place. Hence, we are of the considered view that the impugned order of the Central Administrative Tribunal made in O.A.No.664 of 2013, dated 12.08.2015 is liable to be quashed.

14. In the result, this Writ Petition is allowed and the impugned order of the Central Administrative Tribunal made in O.A.No.664 of 2013, dated 12.08.2015 is quashed and the appointment of the sixth respondent is set aside. The respondents 3 and 4 are directed to appoint the petitioner in the post of Associate Professor (Community Medicine) and give him due seniority with all service benefits from the date of

appointment of the sixth respondent. No costs. The Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrl
To

1. The Union of India,
Rep. by the Ministry of Labour & Employment,
Shram Shakti Bhavan,
Rafi Marg, New Delhi - 110 001.
 2. The Joint Director (Recruitment),
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Chennai - 600 078.
 6. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai-104
- +1 cc to Mr.C.V.Ramachandramurthy Advocate sr.5046
+1 cc to Mr.N.Anand Venkatesh Advocate sr.5336
+1 cc to Mr.J.Madanagopal Advocate sr.3062

W.P.No.28304 of 2015

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