

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11-2016

(Orders reserved on 25-10-2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.29693 of 2015

and

M.P.Nos.1 and 2 of 2015 and W.M.P.No.24040 of 2016

Dr.S.Rajan

.. Petitioner

Vs.

The Director General,
Central Council for Research in Homoeopathy,
61-65, Institutional Area,
D-Bloc Opposite, Janakpuri,
New Delhi-110 058.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to Advertisement No.18/2015, dated 15.08.2015, published in the official website -- www.ccrhindia.org, by the Department and quash the same.

For Petitioner : Mr.Rajkumar Paul

For Respondent : Mr.Sunil Narala for Mr.K.Ramanamoorthy

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records pertaining to Advertisement No.18/2015, dated 15.08.2015, published in the official website -- www.ccrhindia.org, by the Department and quash the same.

2. It is the case of the petitioner that he joined in the respondent-Central Council for Research in Homoeopathy (CCRH) on 12.03.1984 as Field Assistant and holding the post of Field Botanist from 27.12.1991. The CCRH has called for application for the post of Survey Officer, vide Advertisement No.18/2015, dated 15.08.2015, by which, the essential qualification for the post of Survey Officer is prescribed as M.Sc.(Botany) from recognised University/Institution. Further, three years experience in Survey/Systematic Botany/Forest

service had also been prescribed. The age limit prescribed for the said post is not exceeding 40 years (relaxable for Government servants upto five years).

3. While so, in the other Council, namely Central Council for Research in Ayurveda and Siddha (CCRAS), for the same Survey Officer post, the required qualification and experience are same and the age relaxation is given for their employees as 'no age bar for the employees of CCRAS'. Similarly, for the Medical Scientist i.e. Assistant Director (Homoeopathy) in the CCRH, they have given the age relaxation as 'no age bar for the employees of CCRH', vide their Advertisement No.2/2013. In the case of non-medical Scientist, i.e. Survey Officer, there is no age relaxation for the Council employees. The petitioner's total service is 31 years and he is holding the post of Field Botanist for 23 years. He has ample research experience in the field of survey, collection, identification, preparation and preservation of herbarium, drug standardisation, cultivation, germplasm collection and preservation techniques. He is also a recipient of 'Young Scientist Award', 'Gold Medal', 'Talented Scientist Award' and 'International Conservation Award' in Colombo University, Sri Lanka, for outstanding contribution in the field of natural medicines and conservation of the same. His works were published as 6 books, 11 articles on edited books, 13 articles on International Scientific Journals, 60 articles on National Scientific Journals and in 96 Scientific Seminars, Conferences, Workshops, he attended as resource person and he has also guided 1 Ph.D. and 4 M.Phil. candidates.

4. It is the further case of the petitioner that he had worked as Officer-in-charge (Survey Officer) for 3 years and 10 months, in the absence of Survey Officer. In the impugned Advertisement, the essential qualification for the post of Survey Officer is three years. The petitioner has been working as the Survey Officer in-charge in the absence of the present Survey Officer and doing the same sphere of duties for four years and additionally, he is having 23 years knowledge in both technical and administration of the same institute, and hence, the petitioner claims that he is suitable for the post of Survey Officer. The present Survey Officer Dr.D.Suresh Baburaj is likely to retire on 31.07.2016, and after his retirement, the post of Survey Officer is likely to fall vacant and hence, the petitioner claims that he may be considered for the post of Survey Officer from 01.08.2016. The petitioner acquired experience having been in "The Nilgiris" and other places in search of medicinal plants for the past 31 years and doing extensive research and collecting the correct medicinal plants and is also well-acquainted with the plants available in the Government Botanical Garden, Ooty, Sim's Park, Coonoor, Tamil Nadu Horticultural Department, Central Potato Research Station, Central Soil, Water Conservation and Research Institute, Tamil Nadu Agricultural Engineering Department and Indian Council for Agricultural Research.

5. It is the further submission of the petitioner that the impugned Advertisement calling for the post of Survey Officer, is against the well-established principles of service laws. Hence, the petitioner sent his objections, vide letter dated 20.08.2015. Since there is no response, the petitioner has filed this Writ Petition for the relief stated supra.

6. When the Writ Petition was taken up for hearing on 22.09.2015, this Court passed the following order:

"Notice of motion returnable on 27.11.2015. Private notice is also permitted.

2. Learned counsel for the petitioner has drawn the attention of this Court to the affidavit filed in support of this writ petition and would submit that the petitioner has rendered 31 years of service at the Central Council for Research in Homoeopathy and presently, holding the post of Field Botanist for nearly 23 years and is also a recipient of very many awards and has published 6 Books, 11 articles on edited books, 13 articles on International Scientific Journals, 60 articles on National Scientific Journals and 96 Scientific Seminars, Conferences, Workshop as resource persons and also guided 1 Ph.D., and 4 M.Phil candidates and on account of age restriction to 40 years, he is unable to apply to the Survey Officer, though it is relaxable for the Government servants upto 5 years and hence, prays for appropriate orders.

3. This Court also perused the materials placed on record.

4. Though the petitioner has prayed for a larger relief for appointment to the post of Survey Officer, this Court, in the facts and circumstances, directs the respondents to entertain the application to be submitted by the petitioner for the post of Survey Officer by permitting him to participate in the selection process. However, the result of his participation shall not be published; but it should be put in a sealed cover and to be produced before this Court on the next date of hearing. This interim order is passed without prejudice to the rights of the respondents. Further, the petitioner shall not claim any equity on the basis of this interim order.

5. Post on 27.11.2015."

7. Therefore, as per the above said interim order passed by this Court, the respondent was directed to entertain the application for the post of Survey Officer by permitting the petitioner to participate in the selection process. Thereafter, no selection process was conducted and hence, the respondent filed W.M.P.No.24040 of 2016 to vacate the above said interim order, dated 22.09.2015.

8. When the Writ Petition is taken up for consideration, learned counsel for the petitioner made detailed arguments advertintg to the averments made in the affidavit and prayed for quashing the impugned Advertisement.

9. Learned counsel for the respondent, by referring to the affidavit filed in support of W.M.P.No.24040 of 2016, praying for vacating the above interim order, dated 22.09.2015, submitted that the respondent-CCRH is an autonomous organisation under the Ministry of Ayush, Government of India and the employees of CCRH are governed by the rules, regulations and bye-laws as incorporated under the Memorandum of Association of CCRH. The other Council, namely CCRAS, has its own recruitment rules as per its own requirements, while the respondent-CCRH has its own recruitment rules and hence, no parity can be sought for between the two Councils as claimed by the writ petitioner.

10. Learned counsel for the respondent further contended that the method of recruitment for the post of Survey Officer is stated to be 100% by direct recruitment, by specifically prescribing the age limit as not exceeding 40 years, but relaxable for Government servants upto 5 years in accordance with the instructions or orders issued by the Central Government. Under Rule 54 of the Rules and Regulations of CCRH, Government of India, the CCRH has the power to issue any directive as it deems fit and in furtherance of the objects laid down and to initiate the selection process for appointment of Survey Officer of CCRH. Accordingly, the impugned advertisement has been issued by the respondent-CCRH. Learned counsel for the respondent further submitted that under the recruitment Rules of the CCRH, the persons exceeding the age of 40 years are not eligible to apply for the post of Survey Officer. There is no provision for further age relaxation beyond what has been stipulated in the Rules and as such, the writ petitioner does not fulfill the eligibility criteria for the post of Survey Officer by direct recruitment. The date of birth of the petitioner is 01.01.1960, according to which, his age is 56 years and 7 months and hence, he is over-aged and not eligible for the post of Survey Officer in the CCRH.

11. In support of his submissions, learned counsel for the respondent relied on a Division Bench decision of this Court in the case of N.Balaraman Vs. Union of India and others, in W.P.No.28740 of 2015, dated 11.09.2015 and submitted that relaxation of age cannot be done contrary to Recruitment Rules, in which, maximum age is prescribed. For the above reasons, he prayed for dismissal of the Writ Petition.

12. Keeping in mind the above submissions made by the learned counsel for both parties, I have considered the same and perused the materials available on record.

13. It is seen that the respondent-CCRH, by the impugned Advertisement, has called for applications for the post of Survey Officer. It is a solitary post and the method of recruitment is as prescribed in the relevant Rules of CCRH. It is to be noted that the said post is not a promotional post. Learned counsel for the petitioner submitted that the other Councils like CCRAS, the age relaxation is given for their employees as 'no age bar for the employees of CCRAS'. When that being so, the respondent ought not to have fixed the age bar. This submission of the learned counsel for the petitioner cannot be countenanced, since one Council has given age relaxation for their employees, the respondent-Council cannot be compelled to follow the Rules of the other Council, especially when the Recruitment Rules of the respondent-CCRH prescribes the age limit of 40 years and the relaxation of age is provided as five years for the Government employees. Hence, this Court cannot give any direction as sought for by the petitioner.

14. In the above context, it is appropriate to extract the relevant portion of the above said Division Bench judgment of this Court in W.P.No.28740 of 2015, dated 11.09.2015, wherein, the Division Bench, after relying upon various decisions of the Supreme Court, observed as follows:

"6. Needless to state that it is the prerogative of the Government to fix a cut-off date for any recruitment and merely because some would be affected, fixing a cut-off date, cannot be held to be arbitrary.

8. Courts cannot issue any directions to the Appointing Authority, to grant any relaxation of age, contrary to Recruitment Rules, in which maximum age is prescribed."

15. The principles laid down in the above decision of the Division Bench of this Court, are squarely applicable to the facts of the case on hand, and therefore, this Court cannot quash the impugned advertisement or issue any direction to the authority as prayed for by the petitioner with regard to the age relaxation, more particularly, when the relevant Rules of the respondent-CCRH prescribes necessary qualification, eligibility criteria, age,

experience, etc., for appointment to the post of Survey Officer.

16. The Writ Petition is devoid of merits, and the same is accordingly dismissed. No costs. The Miscellaneous Petitions are closed.

CS

Sd/-

Assistant Registrar (CS VI)

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Sub-Assistant Registrar

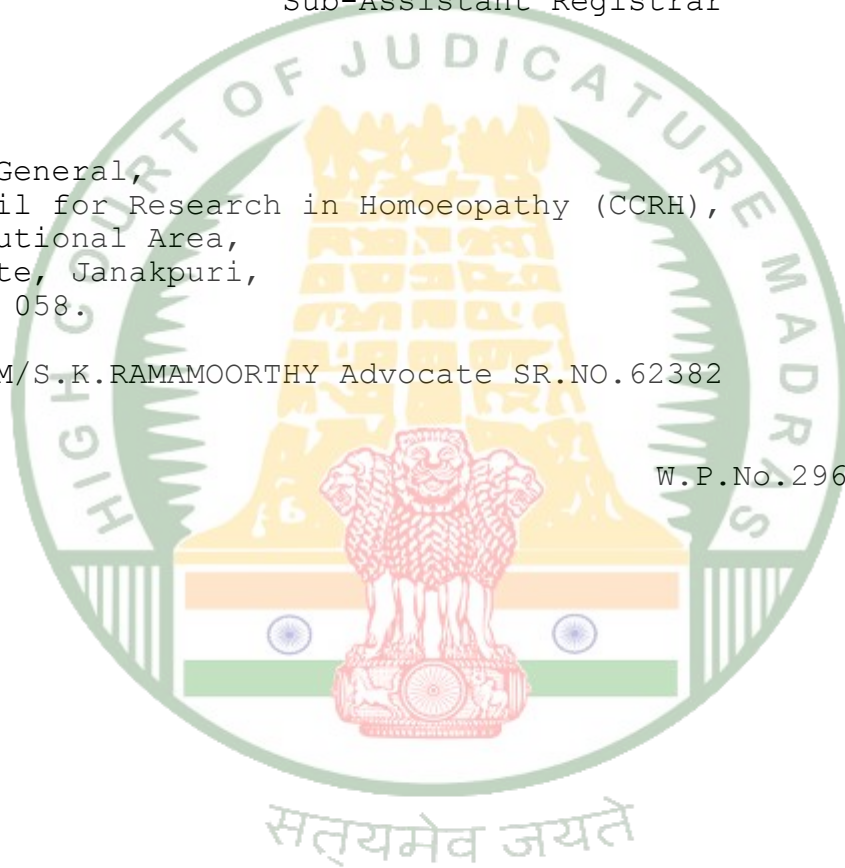
Copy to

The Director General,
Central Council for Research in Homoeopathy (CCRH),
61-65, Institutional Area,
D-Bloc Opposite, Janakpuri,
New Delhi-110 058.

+1CC to M/S.K.RAMAMOORTHY Advocate SR.NO.62382

W.P.No.29693 of 2015

RP[CO]
MK:14/12/2016



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