

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 30762 of 2015
and
M.P. No. 1 of 2015

M. Narayanasamy .. Petitioner
Versus

1. State of Tamil Nadu
represented by its Secretary to Government
Health and Family Welfare Department
Secretariat, Chennai - 600 006
2. Directorate of Public Health and Preventive Medicine
Chennai - 600 006 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in R.No.74241/ PHC7/A1 2011 dated 08.03.2012 and quash the same and consequently direct the respondents to appoint the petitioner to the post of Ophthalmic Assistant in the light of the order in W.A. No. 139 of 2008.

For Petitioner : Mr. Arulmathi
For Respondents : Mr. S. Gunasekaran
Additional Government Pleader

ORDER

The petitioner challenges the order dated 08.03.2012 of the second respondent by which the second respondent rejected the claim of the petitioner for appointing him to the post of Ophthalmic Assistant.

2. The petitioner has completed Diploma in Optometry, a para-medical course, during January 1991 from the Regional Institute of Ophthalmology, Government Ophthalmic Hospital, Egmore, Chennai - 600 008. The petitioner also underwent three months condensed training course in Government Rajaji Hospital, Madurai. According to the petitioner, the Government has issued G.O. Ms. No.622, Health and Family Welfare Department dated 09.12.1998 whereby the Government ordered that additional training required shall be given for discharging the duties of

Ophthalmic Assistants to qualified Refractionist before appointing them as Ophthalmic Assistants in Government Medical Institutions. According to the petitioner, the said G.O. Ms. No.662 dated 09.12.1998 has not been given effect to in the proper perspective with the result, eligible persons like him have not been sponsored for additional training. It is further contended that similarly placed persons like the petitioners have filed W.A. No. 139 of 2008 before this Court seeking to appoint them to the post of Ophthalmic Assistant and on the basis of order passed by this Court, they were appointed to the post of Ophthalmic Assistant. By citing the Judgment rendered in W.A. No. 139 of 2008, the petitioner has repeatedly submitted representation to the respondents, but without considering the same, the second respondent has passed the impugned order refusing to appoint him to the post of Ophthalmic Assistant.

3. The respondents resisted the writ petition by filing a counter affidavit. According to the respondents, the order dated 30.04.2008 in W.A. No. 139 of 2008 cannot be extended in favour of the petitioner. The Judgment in W.A. No. 139 of 2008 has been confined only in so far as those who approached this Court. Further, the Division Bench of this Court has taken note of the fact that the parties to the writ appeal have been appointed during the pendency of the case by virtue of an interim order and therefore they need not be disturbed. As regards appointment to the post of Ophthalmic Assistant, as per the Adhoc Rules, the method of recruitment is by way of direct recruitment or by transfer from any other class or category or by recruitment by transfer from any other service. The petitioner's name has not been sponsored through employment exchange and he is not eligible for appointment by direct recruitment. Further, as per the impugned order dated 08.03.2012, the second respondent has only stated that as per the existing rule, there is no provision to appoint the petitioner without his name being sponsored by employment exchange. In such view of the matter, the respondents prayed for dismissal of the writ petition.

4. I heard the learned counsel for both sides and perused the records placed. It is seen from the records that W.A. No. 139 of 2009 was filed before the Division Bench of this Court against the order dated 12.12.2007 passed in WP No. 8256 of 2007 by the respondents 3, 4, 6 and 8 to 19 in the said writ petition. In the said Judgment of the Division Bench, reference was also made to the order dated 03.04.2002 of the Tamil Nadu State Administrative Tribunal wherein it was held that the persons who have successfully completed the refresher course and who have long ago completed two year course in Government run colleges are seniors to the applicants from private institution. Thus, the Division Bench of this Court has considered the validity of G.O. Ms. No.1127 dated 30.10.2006 and the seniority

of the persons who have been appointed to the post of Ophthalmic Assistants directly and by virtue of the order passed by the Tribunal. Thus, as rightly pointed out by the respondents, the Judgment rendered by the Division Bench of this Court on 30.04.2008 in W.A. No. 139 of 2008 has nothing to do with the claim of the petitioner herein who is yet to be appointed to the post of Ophthalmic Assistant. Therefore, the claim of the petitioner to appoint him on par with those who have filed W.A. No. 139 of 2008 cannot be considered. Further, as pointed out in the counter affidavit of the respondents, appointment to the post of Ophthalmic Assistant can be made only if the name of the petitioner is sponsored through employment exchange as and when direct recruitment is resorted to by the respondents. In such view of the matter, this Court cannot interfere with the order impugned in this writ petition and issue a direction to the respondents to appoint the petitioner as Ophthalmic Assistant when the petitioner has not fulfilled the conditions stipulated in the Adhoc Rules.

5. For all the above reasons, I do not find any reason to interfere with the order passed by the second respondent, which is impugned in this writ petition. The writ petition is therefore dismissed. No costs. Connected MP No. 1 of 2015 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
State of Tamil Nadu
Health and Family Welfare Department
Secretariat, Chennai - 600 006

2. Directorate of Public Health and Preventive Medicine
Chennai - 600 006

+1cc to Mr.P.Arulmathi, Advocate Sr.45235
+1cc to the Government Pleader Sr.45209

WP No. 30762 of 2015

kk[co]
srg 22/09/2016