

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.A.Nos.338 and 395 of 2012
and M.P.No.2 of 2012 in W.A.No.395 of 2012
M.P.No.1 of 2012 in W.A.No.338 of 2012

W.A.No.338 of 2012

Dr.Olga George Appellant

Vs.

1. The Secretary
Tamil Nadu Public Service Commission,
Greaves Road,
Chennai.
2. The Principal Secretary / Director
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai - 600 106.
3. The Principal Secretary
Health & Family Welfare Department,
Fort St. George,
Chennai - 600 009. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court, dated 31.01.2012 made in W.P.No.18766 of 2011.

Petition filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to consider the claim of the petitioner for appointment as Professor (Homeopathy) in the Department of Indian Medicine and Homeopathy in the Tamilnadu Medical Service 2007-2008 on the basis of the provisional selection for such appointment dt 27.7.2011 of the 1st respondent and to appoint the petitioner forthwith.

W.A.No.395 of 2012

Dr.Olga George

.... Appellant
Vs.

1. The Secretary
Tamil Nadu Public Service Commission,
Greams Road,
Chennai.

2. Dr.P.Rathamani Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court, dated 18.10.2011 made in W.P.No.14788 of 2010.

For the reasons stated above therefore humbly prayed that this Hon'ble Court may be pleased to issue a Writ or order or Direction in the nature of Writ of Mandamus directing the respondent to decide that the petitioner has got full and requisite professional/practical experience as stated in the petitioners OMR Application No. AF 441234 submitted to the respondent along with copies of relevant certificates and documents as required for selection for the post of Professor (Homeopathy) notified in the respondents Advertisement No.208 dt 29.7.2009 and consequently select the petitioner for the post of Professor (Homeopathy) on merit upon written examination held on 22.11.2009 and Oral test (interview) to be held by virtue of interim orders as may be granted by this Honourable court and by following the Rule of Reservation.

For Appellant : Mrs.N.Kavitha in both WAs

For Respondents : Ms.C.N.G.Niraimathi, Standing Counsel
for R1 in both WAs

No appearance for R2 and R3 in
W.A.No.338 of 2012

Mr.S.Silambannan, Senior counsel
for Mr.S.Rajendiran for R2
in W.A.No.395 of 2012

COMMON JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

These two intra court appeals have been filed by the aggrieved party against the orders of the learned single Judge,

dated 18.10.2011 passed in W.P.No.14788 of 2010 and 31.01.2012 passed in W.P.No.18766 of 2011.

2. Though the appellant in W.A.No.395 of 2012 is not a party to the first impugned order, i.e., order in W.P.No.14788 of 2010, she preferred appeal as appellant on obtaining leave of the Court. As the other impugned order, i.e., order in W.P.No.18766 of 2011, was passed against her on the basis of the order in the former writ petition in W.P.No.14788 of 2010, she preferred Writ Appeal in W.A.No.338 of 2012.

3. Brief facts of the case are as follows :

(i) Both the writ appeals pertain to selection of the posts of Professor (Homoeopathy) by Tamil Nadu Public Service Commission, pursuant to its advertisement No.208, dated 29.07.2009.

(ii) The first respondent, TNPSC invited applications by the above said advertisement for direct recruitment for the vacancies in 5 different posts in the Department of Indian Medicine and Homoeopathy, which comes under the Tamil Nadu Medical Service. One among the posts was the Post of Professor (Homoeopathy) and 10 number of vacancies were notified for that post.

(iii) The qualification for the post of Professor as contemplated in Col.4(B) (5) is as follows :

"5. Professor (Homoeopathy)

1) Any of the qualifications in Homoeopathy prescribed for the post of Assistant Medical Officer (Homoeopathy), as mentioned in para 4(B) (4) (I) above with or without M.B.B.S.; and Professional experience for a period of not less than 10 years of which 5 years should be in teaching capacity in a Homoeopathy Medical College or Institution recognised by the Central or State Government. (Note (i) under para 2(d) of the Commission's "Instructions, etc., to candidates" will not apply).

and

2) Candidates should have registered his / her name in the Tamil Nadu Homoeopathy Council."

(iv) Both the appellant as well as Dr.P.Rathamani applied and participated in the written examination along with other candidates. On 25.06.2010, the list of selected candidates for interview was published in the official website of the first respondent. Among 22 candidates selected for the interview for the post of Professor (Homoeopathy), Registration Number of

Dr.P.Rathamani was not found in the selection list for the said interview. She gave representation to the first respondent, seeking permission to attend interview. She also went to the first respondent's office in person and came to know that due to lack of professional experience, she was not selected for interview. Dr.P.Rathamani, registered as a Homoeopathy Medical Practitioner with the Tamil Nadu Homoeopathy Medical Council on 15.09.1993 and since then, she had been practising as a Homoeopathy Doctor till she joined as Assistant Medical Officer (Homoeopathy) in the year 2000 and therefore, she had more than 15 years of standing practical professional experience including teaching experience of 7 years and 11 months.

(v) Therefore, Dr.P.Rathamani filed writ petition in W.P.No.14788 of 2010, seeking to issue a writ of mandamus, directing the TNPSC to decide that the petitioner has got full and requisite professional / practical experience as stated in the petitioner's OMR Application No.AF 441234 as required for the selection for the post of Professor (Homoeopathy) and consequently, select the petitioner for the post of Professor (Homoeopathy).

(vi) The learned single Judge, by way of interim order permitted Dr.P.Rathamani to attend the interview and she participated in the oral test. Pursuant to the final orders in the writ petition, she was also selected.

(vii) The appellant / petitioner in W.P.No.18766 of 2011 having satisfied all the eligibility criteria was subjected to written examination and having been selected, also participated in the oral test. She got total of 228 marks and she was informed that she is placed in the reserve list of the General Turn (Women) and the result in another Registration Number is said to have been with held. She having been placed at Sl.No.1 in the Reserve list category earmarked for GT (Women) has to be considered in the with held vacancy in view of one Dr.P.Rathamani, bearing Registration No.01002200, who stands disqualified for not possessing the requisite number of years of service as on the date of notification.

(viii) As per the notification, 10 posts were called for and results of 8 persons have been declared and the first respondent without filling up of all the posts called for by the selected persons, an attempt has now been made by calling for 10 more Professor posts from the employment exchange by the Directorate. This is nothing but defeating the proper selection conducted by the Tamil Nadu Public Service Commission and resorting to irregular appointment. Therefore, writ petition has been filed by Dr.Olga George, appellant herein in W.P.No.18766 of 2011,

seeking to issue a writ of mandamus directing the respondents to consider the claim of the petitioner for appointment as Professor in the Department of Indian Medicine of Homoeopathy in the Tamil Nadu Medical Service 2007-2008, on the basis of the provisional selection for such appointment, dated 27.07.2011 of the first respondent.

3. The learned single Judge allowed the former writ petition in W.P.No.14788 of 2010, holding that Dr.P.Rathamani is having required qualification and directed the first respondent to consider the case of the petitioner on merits.

4. The learned single Judge dismissed the second mentioned writ petition in W.P.No.18766 of 2011 mainly on the ground that the claim of the petitioner under General Turn vacancy had gone to the other candidate, as the other candidate succeeded in the writ petition in W.P.No.14788 of 2010 filed by her. Aggrieved by the above orders in the two writ petitions, the present writ appeals have been preferred.

5. The learned counsel appearing for the appellant contends that the writ petitioner in W.P.No.14788 of 2010, Dr.P.Rathamani does not have required qualification, as per the notification issued by the first respondent and further, she does not have 10 years of teaching experience; that the decision of the learned single Judge that professional experience starts from the date of registration is not correct. It is also contended that the learned single Judge has not considered that similarly placed candidates were not considered for appointment

6. The learned Standing counsel appearing for the first respondent per contra contends that though Dr.P.Rathamani's Registration Number was withheld without sending call letter for interview, she was permitted to attend the interview only pursuant to the interim order passed in the writ petition in W.P.No.14788 of 2010 and pursuant to the final order in the writ petition, Dr.P.Rathamani was selected to the post of Professor (Homoeopathy).

7. The learned Senior counsel appearing for the second respondent in W.A.No.395 of 2012, i.e., Dr.P.Rathamani contends that she is qualified as per the notification issued by the TNPSC; that from the date of registration with the Council, she was practising and therefore, she does possess professional experience; that the learned single Judge has rightly held that the second respondent / petitioner is qualified and directed the first respondent accordingly and the order does not warrant any

interference. It is further contended that pursuant to the order in the writ petition, the second respondent, Dr.P.Rathamani was also considered and selected by TNPSC and she was also appointed as Professor (Homoeopathy) and joined duty on 14.05.2012.

8. There is no dispute that the first respondent issued notification calling for applications for the 10 posts of Professor (Homoeopathy) along with other post on 29.07.2009. The appellant and the second respondent in W.A.No.395 of 2012 (Dr.P.Rathamani) along with other candidates applied for the said post. After subjecting to all process, viz., written examination, oral test, the appellant was kept in the Reserve list under the category of General Turn (Women). The second respondent in W.A.No.395 of 2012, Dr.P.Rathamani, pursuant to the interim order in W.P.No.14788 of 2010 participated in the interview and pursuant to the final order in the above writ petition, she was selected as Professor (Homoeopathy), as the Court held that Dr.P.Rathamani is qualified as per the notification.

9. The grievance of the appellant is that due to selection of Dr.P.Rathamani, she could not be accommodated and posted, though she was No.1 in the Reserve list and that Dr.P.Rathamani has been held by the learned single Judge erroneously as qualified.

10. As per the notification issued by the TNPSC for the post of Professor (Homoeopathy), the qualification stipulated under Clause 4(B) (5) is any of the qualifications in Homoeopathy prescribed for the post of Assistant Medical Officer (Homoeopathy) and professional experience for a period of not less than 10 years of which 5 years should be in teaching capacity in a Homoeopathy Medical College or Institution recognised by the Central or State Government and candidates should have registered his / her name in the Tamil Nadu Homoeopathy Council.

11. Thus, professional experience for a period of not less than 10 years of which 5 years in teaching capacity is required. The second respondent, Dr.P.Rathamani enclosed the Registration Certificate and the Certificate, dated 07.08.2009 in respect of teaching experience issued by the Principal Government Homoeopathy Medical College, Thirumangalam. The Registration Certificate shows that she got registered as a Homoeopathy Medical Practitioner with the Tamil Nadu Homoeopathy Medical Council on 15.09.1993. The Certificate issued by the Principal shows that Dr.P.Rathamani has the (i) teaching experience in Government Homoeopathy Medical College, Thirumangalam; 7 years

and 11 months and (ii) working experience in Government Sector / State Government, inclusive of teaching experience; 8 years and 9 months.

12. The required qualification, as per the notification is 10 years professional experience, of which not less than 5 years should be teaching experience. Mere registration in the Medical Council does not mean that the individual has been practising as Homoeopathy Doctor from that date. The registration with the medical council is only a license to practise as Homoeopathy Doctor. The information received under the RTI Act by Dr.P.Rathamani from the concerned Department, to show that professional experience starts from the day when one is registered with the State Board / Council of Homoeopathy is not acceptable and it is only the view of the concerned Department.

13. The individual has not produced any document that she actively practised from the date of registration till she joined duty in the Government Homoeopathy Medical College. Without any proof, the self-certificate given by the individual in her application is also not acceptable. This Court called for the entire selection file and carefully perused. It is found that the individual has not produced any document about her clinical practise, excepting the above mentioned two documents from the Principal and the TNPSC with held without issuing call letter for interview for want of required professional experience.

14. As per the Homoeopathy (Minimum Standards of Education) Regulations, 1983, issued by the Central Council of Homoeopathy with the previous sanction of the Central government in exercise of powers conferred under clauses (i), (j) and (k) of Section 33 and sub-section (1) of Section 20 of the Homoeopathy Central Council Act, 1973, essential qualification for the post of Professor in Homoeopathic subject is as follows :

"Post Graduate qualification in Homoeopathy with two years of experience as Reader or a Degree in Homoeopathy with six years of teaching experience as Reader or Diploma in Homoeopathy of not less than four years duration with ten years teaching experience in the subject concerned in a Homoeopathic college. The qualification shall be the one included in Second Schedule of Homoeopathy Central Council Act, 1973."

15. The learned counsel appearing for the appellant also brought to the notice of this Court that except Dr.P.Rathamani, no candidate having less than 10 year of teaching experience was called for to the interview. Only by virtue of the orders of the learned single Judge in the writ petition, Dr.P.Rathamani was

permitted to participate in the interview and ultimately selected.

16. The above argument of the learned counsel appearing for the appellant that not giving opportunity to similarly placed candidates amounts to discrimination cannot be brushed aside, in the light of the above said regulations of the Central Council for Homoeopathy. However, as already pointed out, in the absence of any proof, second respondent / petitioner cannot be said to have professional experience for 10 years. As per the Certificate produced by her along with the application, she is having professional experience including teaching experience only for 8 years and 9 months. Therefore, the decision of the learned single Judge in W.P.No.14788 of 2010 holding that the petitioner is qualified as per the notification of the first respondent is not correct.

17. The learned single Judge dismissed the writ petition in W.P.No.18766 of 2011, mainly on the ground that Dr.P.Rathamani succeeded in her writ petition in W.P.No.14788 of 2010 and got selected for the vacancy under the category of General Turn (Women) and therefore, the appellant cannot be selected under the category General Turn (Women). In the light of the aforesaid findings in these writ appeals, the writ petition filed in W.P.No.18766 of 2011 deserves to be allowed.

In fine, both the writ appeals are allowed, by setting aside the orders of the learned single Judge, dated 18.10.2011 made in W.P.No.14788 of 2010 and 31.01.2012 made in W.P.No.18766 of 2011. Accordingly, W.P.No.14788 of 2010 is dismissed and W.P.No.18766 of 2011 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

The first respondent is directed to consider the claim of the appellant for appointment to the post of Professor (Homoeopathy) in the Department of Indian Medicine and Homoeopathy in the Tamil Nadu Medical Service 2007-2008, on the basis of the provisional selection for such appointment, dated 27.07.2011 and to appoint the appellant for the post of Professor (Homoeopathy).

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

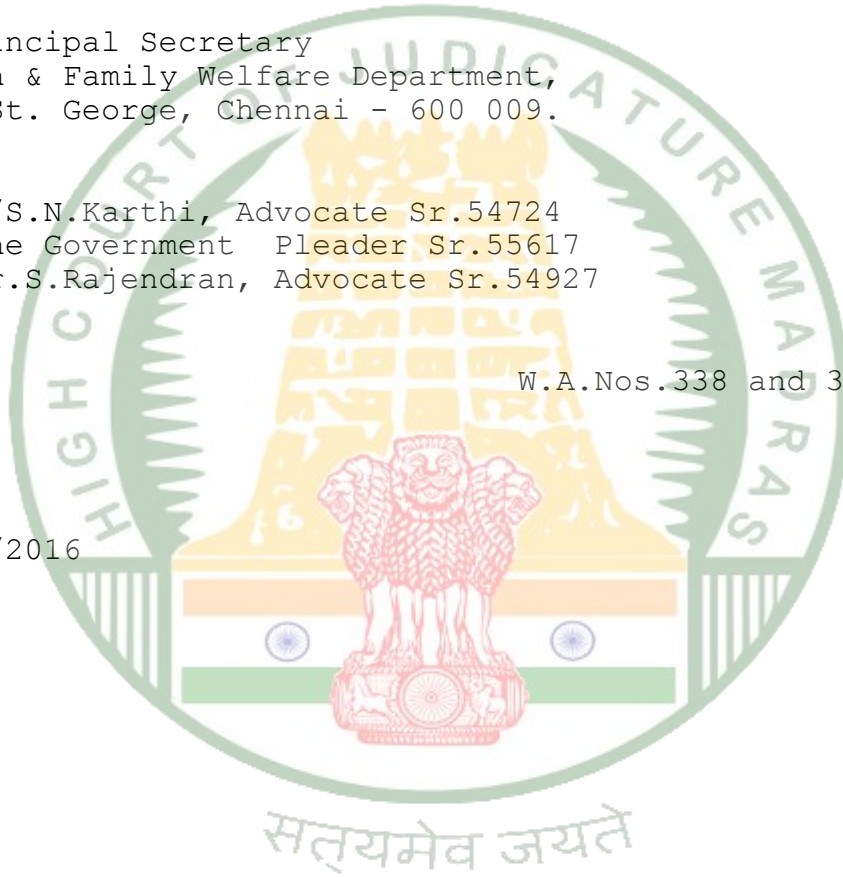
To

1. The Secretary
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+1cc to M/S.N.Karthi, Advocate Sr.54724
+1cc to the Government Pleader Sr.55617
+2cc to Mr.S.Rajendran, Advocate Sr.54927

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