



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :29.06.2016
CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

W.P(MD)No.15279 of 2014

WEB COPY

R.Venkatachalam

. Petitioner

vs.

1.The State Rep. By
Secretary, Department of Health
St. George Fort, Chennai - 600009.

2.Director of Public Health and Preventive Medicine,
DMS Building, Annasalai,
Chennai - 600006.

3.Director of Medical and Rural Health
359, Annasalai, DMS Complex,
Chennai - 600006.

4.Director of Medical Education,
Kilpauk, Chennai - 600010.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus directing the first respondent to call for the records of letter No.4888/C2/2013-4, dated 08 August 2014 and quash the same as illegal and appoint the petitioner as a Radiographer as per G.O.Ms.805, dated 15.04.1964 & G.O (MS) 106, dated 11.06.199 & G.O(MS)74, dated 12.04.13 with back wages based on his representation and this Honourable Court order.

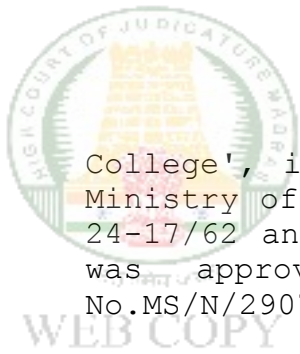
For Petitioner : Mr.L.Rajiah

For Respondents : Mr.R.Anandharaj,

Government Advocate

ORDER

The Petitioner Mr.R.Venkatachalam, retired from army service 01.11.2011 after rendering 16 years of service in Army Medical Corps. He obtained X Ray Technician certificate through INMAS Delhi and MRI, CT scan through Army Medical Corps. With these qualifications, he served as X-ray Technician with various Military Hospitals. After his retirement, as Ex-Serviceman, he applied to the State Medical College Authorities, for the post of Radiographer and thereafter, he was called for an interview on 25.03.2008 at Kanyakumari Government Hospital and Medical College, Asaripallam. Though he was qualified for the post of X-ray Technician, he was appointed as Dark Room Assistant from 03.04.2008. However, it was his claim that he should be appointed as Radiographer instead of Dark Room Assistant. For that, he has also given a representation to the Director of Medical Education, Kilpauk, Chennai-10, on 21.05.2016 and subsequent to that, he was called for <https://hrservicesrecruits.gov.in/hrservices> Post of Radiographer, but he was not selected and thereafter, once again, he has made a representation to the Director of Medical Education stating technical studies at 'Armed Forces Medical



College', is equivalent to 'Civil Diploma' in Radiographer, as per the Ministry of Health Authority No.F-28/67/61 MI dated 08 December 1961, F-24-17/62 and F-28-67/61MI/MPT, dated 30 December 1964. Since the same was approved by the Government of Madras vide their order No.MS/N/2907/76, dated 15 December 64 vide G.O.85.

2. Therefore, it was claimed by the petitioner, he is a more competent and qualified person, as he has performed the duties of Radiologists in Military Hospitals. Finally, he has come to this Court by filing W.P(MD)No. 1440 of 2013 seeking a direction to the respondents therein to appoint him as Radiographer. Eventually, this Court directed the petitioner to make a representation to the first respondent within a period of two weeks from the date of receipt of a copy of this order. Accordingly, a representation was made to the first respondent. Thereafter, the first respondent has passed the impugned order rejecting the request of the petitioner. Hence, the petitioner has come to this Court seeking the above stated relief.

3. In the meanwhile, it is the claim of the petitioner that G.O.Ms.No.74, dated 12.04.2013 approving the 'Armed Forces Medical College study of Army Medical Corps' is an equal qualification for 'Civil Diploma' in Radiographer even though G.O.Ms.No.106, dated 11.06.1999, is already in existence. Therefore, it is the further contention of the petitioner that from the date of his appointment as 'Dark Room Assistant', he should be considered for the Post of 'Radiographer'.

4. Finally, the learned counsel appearing for the petitioner submitted that the request made by the petitioner to promote him from the date of his appointment as 'Dark Room Assistant' to the Post of 'Radiographer' in the same place, was not considered on the basis of G.O. Ms.No.106, dated 11.09.1999.

5. Opposing the above prayer, stating that the petitioner is not eligible to the Post of Radiographer from the date of original appointment, as he was not having the qualification, a detailed counter has been filed stating that the contention made by the petitioner that since he was eligible for the Post of Radiographer, he was called for interview, but was not selected for the said Post, is absolutely untenable, as he was not eligible for appointment to the said Post, for he had not passed the Certified Radiological Assistant Examination, at any point of time. The candidates like the petitioner with pass in classes I, II and III of the X-Ray Technician Course Examination conducted by the Army Medical Corps or the Armed Forces Medical College, Pune, cannot be considered for appointment to the Post of Radiographer, unless and until the Rule relating to the qualification for appointment to the Post of Radiographer, is amended.

6. The petitioner's contention that G.O.Ms.No.106 Personnel and Administrative(S) Department, dated 11.06.1999, was issued for automatic acceptance of equivalence of various military trades with that of civil trades as published by the Government of India and recognize the course of trade for the purpose of employment in public services in the State,



was examined by the first respondent in the impugned order. Since the Rules framed under the proviso to Article 309 of the Constitution of India, cannot take any credential to the said G.O.Ms.No.106 as it was not a Rule framed under the proviso to Article 309 of the Constitution of India prescribing qualification for the Post of Radiographer, now, as per G.O.Ms.No.74 Health and Family Welfare Department, dated 12.04.2013, the following qualifications have been incorporated in addition to the qualification that pass in the Certified Radiological Assistant Examination; or

Pass in classes I, II and III of X-ray Technician Course Examination conducted by the Army Medical Corps or the Armed Forces Medical College, Pune;

Provided that, other things being equal, preference shall be given to a candidate who possesses a degree or a post graduate degree with Physics as the main subject.

7. It is further stated in the counter affidavit that Since 'Armed Forces Medical College, Pune' has been incorporated as qualification for appointment to the Post of Radiographer with effect from 12.04.2013, vide G.O.Ms.No.74 Health and Family Welfare Department, dated 12.04.2013, by way of amendment to the Rules under the Proviso to Article 309 of the Constitution of India, the petitioner will be considered for the Post of Radiographer only from the issuance of G.O.No.74, but not prior to that. This Court also fully agrees with the stand taken by the respondents.

8. In the result, the Writ Petition is partly allowed directing the respondents to give promotion to the petitioner from the date of issuance of G.O.Ms.No.74 Health and Family Welfare Department, dated 12.04.2013, with all monetary benefits. Further, the petitioner should be considered for such promotion in the present place or nearby place, if the vacancy exists.

No Cost.

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary,Department of Health
St. George Fort, Chennai - 600009.
 - 2.Director of Public Health and Preventive Medicine,
DMS Building, Annasalai, Chennai - 600006.
 - 3.Director of Medical and Rural Health
359, Annasalai, DMS Complex, Chennai - 600006.
 - 4.Director of Medical Education,Kilpauk, Chennai - 600010.
- +1cc to M/S.L.Rajiah,Advocate in SR.No.34043
+1cc to Special Government Pleader in SR.No.34231

W.P. (MD)No.15279 of 2014
29.06.2016