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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2018

DELIVERED ON : 12.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Review Petition Nos.100 and 211 of 2017

Review Petition No.100 of 2017

Dr.P.Rathamani
W/o.GO.Poopathi

.. Review Applicant

Vs

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai - 600003.
(formerly having office at Commercial
Tax Annex Building, No.1, Greaves Road,
Chennai- 600006)

2.Dr.Olga George,
D/o.K.J.George

.. Respondents

Review Petition filed under Order 47 Rule 1 r/w 114 of Civil Procedure Code seeking review of the judgment dated 26.09.2016 passed in W.A.No.395 of 2012 by this Court reversing the order of learned Single Judge dated 15.10.2011 passed in W.P.No.14788 of 2010.

W.P.No.14788 of 2010:

This Petition has been filed under Article 226 of the Constitution of India seeking a 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.

Review Petition No.211 of 2017:

Dr.P.Rathamani
W/o.GO.Poopathi

.. Review Applicant

Vs

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Raod,
V.O.C. Nagar, Park Town,
Chennai - 600003.
(formerly having office at Commercial
Tax Annex Building, No.1, Greams Road,
Chennai- 600006)

2.The Principal Secretary/Director,
Directorate of Indian Medicine and Homoeopathy,
Arumbakkam, Chennai - 600009.

3.The Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai - 600009.

4.Dr.Olga George,
D/o.K.J.George

.. Respondents

Review Application filed under Order 47 Rule 1 r/w 114 of Civil Procedure Code seeking review of the judgment dated 26.09.2016 passed in W.A.No.338 of 2012 reversing the judgment of the learned Single Judge dated 31.01.2012 passed in W.P.No.18766 of 2011.

Prayer in W.A.No.338 of 2012:

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

W.P.No.18766/2011:

Petition 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.



Appearance:

Review Petitioners :Mr.R.Viduthalai,
Senior counsel for Mr.S.Rajendiran

Respondents

:Ms.C.N.G.Niraimathi [R1 in both petitions]
Mr.Sanjay Mohan, senior counsel for
Ms.N.Kavitha [R2 in Rev.P.No.100/2017 and
R4 in Rev.P.No.211/2017]

Mr.S.N.Parthasarathy, Government Advocate
[R2 & R3 in Rev.P.No.211/2017]

C O M M O N O R D E R

[Order of the Court was made by C.T.SELVAM, J]

Revision Petitioner seeks review of the common judgment of this Court passed in W.A.Nos.338 and 395 of 2012 on 26.09.2016. Review Petition No.100 of 2017, seeks review of the judgment in W.A.No.395 of 2012 while Review Petition No.211 of 2017 seeks review of that in W.A.No.338 of 2012.

2. Heard Mr.R.Viduthalai, learned senior counsel for review petitioner, Ms.C.N.G.Niraimathi, learned counsel for first respondent in both petitions, Mr.Sanjay Mohan, learned senior counsel for Ms.N.Kavitha for second respondent in Rev.P.No.100/2017 and fourth respondent in Rev.P.No.211/2017 and Mr.S.N.Parthasarathy, learned Government Advocate for respondents 2 and 3 in Rev.P.No.211/2017. Perused the materials placed on record.

3. First respondent Tamil Nadu Public Service Commission (TNPSC) vide Advertisement No.208 dated 29.07.2009, invited applications towards direct recruitment to five different posts in the Department of Indian Medicine and Homoeopathy falling under the Tamil Nadu Medical Service (Service Code No.048). Ten vacancies were notified for the post of Professor (Homoeopathy) (post Code No.3205). Petitioner applied for such post under OMR Application No.AF441234 on 25.08.2009. Contending that she held requisite educational qualification as well as professional and teaching experience, she had performed extremely well in the written examination held on 22.09.2009, she was surprised that her registration No.01002200 did not find a place in the list of selected candidates published by first respondent TNPSC on 25.06.2010 and that she came to understand that she had not been called for the interview/oral test scheduled for 13.07.2010 and 14.07.2010 allegedly for the reason that she had not the requisite professional experience, petitioner filed W.P.No.14788 of 2010 seeking 'Issuance of Writ of Mandamus directing the respondent to decide that the petitioner has got full and



requisite professional/practical experience as stated in the petitioner's OMR Application No.AF441234 submitted to the respondent along with copies of relevant certificates and documents as required for selection for the post of Professor (Homoeopathy) notified in the respondent's Advertisement No.208 dated 29.07.2009 and consequently select the petitioner for the post of Professor (Homoeopathy) 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.' In support of her contention of requisite professional experience, she has produced a certificate of professional experience issued by Tamil Nadu Homoeopathy Medical Council under its proceedings in Lr.No.383/TNHMC/10 dated 02.07.2010. Such certificate informed that she had more than 16 years of professional experience in Homoeopathy and that her registration was in force. Under interim orders dated 12.07.2010, this Court permitted her to attend the interview/oral test held on 14.07.2010. At the interview, she had produced the above informed certificate before the Committee. Though petitioner scored the highest aggregate marks in both written and oral test viz., 261 marks, her result was withheld due to pendency of Writ Petition. W.P.No.14788 of 2010 was allowed on 18.10.2011 holding that the petitioner had requisite professional experience and consequently, she was declared selected and appointed as Professor (Homoeopathy) in the Government (Homoeopathy) College, Thirumangalam. Fourth respondent, having applied for the post of Professor (Homoeopathy), filed W.P.No.18766 of 2011 seeking appointment. W.P.No.18766 of 2011 was dismissed on 31.01.2012, where against fourth respondent preferred W.A.No.338 of 2012. Fourth respondent challenged the order passed in favour of petitioner in W.P.No.14788 of 2010 by way of a third party appeal in W.A.No.395 of 2012. Both fourth respondent Writ Appeals were allowed under common judgment dated 26.09.2016. Contending that this Court, in holding in favour of fourth respondent in the Writ Appeals, had not considered the Certificate of Professional Experience issued by the expert/concerned body, Tamil Nadu Homoeopathy Medical Council dated 02.07.2010, petitioner preferred Special Leave Petitions before the Honourable Supreme Court in SLP (CC) Nos.23132 and 23133 of 2016. The Honourable Supreme Court passed the following order on 09.12.2016:

'Learned counsel for the petitioner seeks permission to withdraw this petition with liberty to apply for review before the High Court.

Permission sought for is granted.

The special leave petition is dismissed as withdrawn with liberty to the petitioner to file review petition along with documents purporting to establish the experience of the petitioner before the High Court within a period of four weeks.



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Status quo regarding functioning, as it exists today, for a period of four weeks shall be maintained.' Hence, the present review petitions wherealongwith petitioner has produced additional documents towards informing her private medical practice.

4. Mr.R.Viduthalai, learned senior counsel for petitioner, contended thus:

- (i) On orders of learned Single Judge in petitioner's favour, the concerned body, first respondent TNPSC had not appealed thereagainst but had complied therewith. Fourth respondent had moved W.P.No.18766 of 2011 without impleading the petitioner who, to the knowledge of fourth respondent, would be affected, were the Writ Petition to succeed.
- (ii) Learned Single Judge in holding in favour of petitioner in W.P.No.14788 of 2010 had held that the first respondent TNPSC had proceeded under the impression that petitioner did not satisfy the requirement of 10 years professional experience going merely by the 8 years and 9 months served by the petitioner as an Assistant Medical Officer of which 7 years and 11 months was in teaching capacity in Government (Homoeopathy) Medical College, Thirumangalam and not taking into account the self-certificate to the effect that she had professional experience for a total period above the requisite 10 years, which self-certificate was the requirement as per the notification calling for applications, that petitioner had also produced the Certificate of Registration with the Tamil Nadu Homoeopathy Medical Council and thus the professional experience gained by petitioner as private practitioner had not been taken into account. Learned Single Judge had held that the respondent cannot discount the professional experience gained by private practitioners if they fulfill the second limb, namely, 5 years of teaching experience in Government institutions. There was no dispute that the petitioner held the necessary teaching experience.
- (iii) Section 15 of the Tamil Nadu Homoeopathy System of Medicine and Practitioners of Homoeopathy Act, 1971, provided for registration of practitioners, Section 16 called for maintenance of a register of the names of registered practitioners and under sub-section 5 thereof, register so maintained was deemed to be a public document within the meaning of Indian Evidence Act, 1872. Once the name of a practitioner stood entered in the register of practitioners, the presumption would be that he or she indeed was one. Such was the reason why the notification calling for applications did not seek anything more than a self-certification regards practice. Petitioner had provided the necessary self-certification informing that she had more than 15 years of professional experience and the Tamil Nadu Homoeopathy Medical Council had issued a Professional Experience Certificate under Lr.No.383/TNHMC/10 dated 02.07.2010 informing that petitioner



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had more than 16 years of professional experience in Homoeopathy and her registration was 'in current'. Learned senior counsel would explain that the registration being in force was relevant as the same would indicate that petitioner did not attract any of the disqualifications envisaged in Section 19.

(iv) In rendering its finding in the Writ Appeals, the Honourable Division Bench had totally ignored the professional experience certificate in Lr.No.383/TNHMC/10 dated 02.07.2010 issued by Tamil Nadu Homoeopathy Medical Council, visiting petitioner with grave implications. The same was an error apparent on the face of the record and renders maintainable the present Review Applications. Referring to the information obtained by the petitioner from the Central Council of Homoeopathy under the Right to Information Act reflected in such Body's communication dated 13.09.2011, learned senior counsel informed that the professional experience for registered medical practitioner started from the date one is registered with the State Board/Council of Homoeopathy.

(v) Learned senior counsel referred to paragraph Nos.12 to 16 of the judgment in W.A.Nos.338 and 395 of 2012 dated 26.09.2016 which read as follows:

'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



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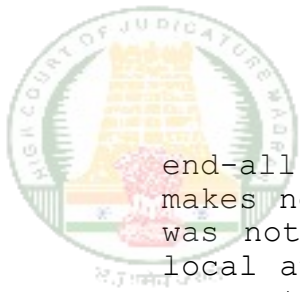
the Central government in exercise of powers conferred under clauses (i), (j) and (k) of Section 33 and sub-section (1) of Section 20 of the Homoeopathy Central Council Act, 1973, essential qualification for the post of Professor in Homoeopathic subject is as follows :

"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.'

While on the one hand, the Division Bench had gone wrong in making an adverse presumption and requiring petitioner to produce and faulting her for not producing more than which was called for in the notification calling for applications and further informing that petitioner's self-certificate which alone was the requisite called for therein, was not sufficient, on the other, it had gravely erred in referring to the Homoeopathy (Minimum Standards of Education) Regulations, 1983, which totally was inapplicable. The notification was the be-all and



end-all as far as requisite qualification was concerned and it makes no sense at all to call for a self-certificate if the same was not acceptable. Referring to various certificates issued by local authorities which informed that petitioner indeed had been an active practitioner for the requisite period, it was submitted that petitioner, so late in the day, could do no more. All others selected had only teaching experience and had not been practitioners. It was only the petitioner, who had professional experience. Both in the oral and written test, she had come out on top.

5. Mr.Sanjay Mohan, learned senior counsel for second respondent in Rev.P.No.100/2017 and fourth respondent in Rev.P.No.211/2017 contended as follows:

- (i) Review petitioner had not informed the private practice put in by her in her application. There was no proof of professional experience save her self-certification. Together with enclosures which were to be sent along with their application, candidates were also required to produce evidence for having professional experience for a period of not less than 10 years. Even in petitioner's self-certification she had not said a word on her professional experience.
- (ii) In W.P.No.14788 of 2010, petitioner had prayed for the following relief:

'Issuance of Writ of Mandamus directing the respondent to decide that the petitioner has got full and requisite professional/practical experience as stated in the petitioner's OMR Application No.AF441234 submitted to the respondent along with copies of relevant certificates and documents as required for selection for the post of Professor (Homoeopathy) notified in the respondent's Advertisement No.208 dated 29.07.2009 and consequently select the petitioner for the post of Professor (Homoeopathy) 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.'

This Court is now to decide on a decision of Government made long ago. The order under challenge rightly had said that mere self-certification was not sufficient and proof of experience ought to have been produced. All that was available for consideration in the Writ Appeals was the communication of the Central Council of Homoeopathy dated 13.09.2011. Significantly, such communication informs 'Homoeopathy Central Council Act, 1973 and Regulations made there-under do not provide for any authority to give professional experience certificate to any candidate.' The order of the Supreme Court permitting petitioner to produce proof of experience would have to be read as meaning that what has thus far been



produced by petitioner along with her application was insufficient.

(iii) Making reference again to paragraphs 12, 13 and 16 of the judgment in W.A.Nos.338 and 395 of 2012 (above reproduced), it was contended that the communication of Central Council of Homoeopathy dated 13.09.2011 had been considered. As against the contention of petitioner in the affidavit in support of the review petitions that had she been afforded an opportunity, she would have provided evidence of her professional experience, all documents presently produced by petitioner are of date subsequent to the orders in the Writ Appeal. They were self-serving and apparently generated by petitioner since all ran on similar lines and adopted the same language. Petitioner had failed to produce income-tax returns, bills, salary receipts and documents of similar nature, which would be reliable proof of her professional experience. Reference in the order sought to be reviewed to the Homoeopathy (Minimum Standards of Education) Regulations, 1983, issued by the Central Council of Homoeopathy is informed to be a mere passing reference. As fourth respondent had, in W.P.No.14788 of 2010, only sought a direction to respondent regards her appointment and such Writ Petition was not directed against anybody in particular, there was no occasion for her to implead the petitioner or anybody else as party thereto.

6. By way of reply, Mr.P.Viduthalai, learned senior counsel, submitted that the Memorandum No.5369/OTD-A2/2008 dated 31.01.2013 issued by the Tamil Nadu Public Service Commission informing marks obtained by the petitioner to be: (a) written examination - 234 (b) oral examination - 27, totalling 261. Petitioner's results had been withheld on the ground of her not having sufficient experience. The list informing the marks obtained by various candidates revealed that obtained by fourth respondent to be 228. Fourth respondent had been placed third. The highest score in such list was 258 as against petitioner's marks of 261. That the Professional Experience Certificate dated 02.07.2010 issued by Tamil Nadu Homoeopathy Medical Council has not been considered is not disputed. The affidavit in support of W.P.No.14788 of 2010 referred to the same and learned Single Judge had considered such contention in holding in favour of petitioner. That the Division Bench in passing judgement in W.A.Nos.338 and 395 of 2012 did not so much as touch upon the same reflects an error apparent on the face of the record. It was explained that the first respondent's OMR application form in column 24 only called for particulars of previous/present employment. Such particulars had been provided by petitioner. Employment was distinct and different from practice/professional experience. The requirements placed by first respondent was that of enrolment, more than 5 years of teaching experience and self-certification, all of which petitioner had satisfied. Learned



Single Judge in finding in favour of petitioner had been so satisfied as had been Government as reflected by first respondent not having preferred any appeal with the result that petitioner had been appointed. Fourth respondent, who was first in the waiting list had contended that the authorities were wrong. The decision of concerned authority could not be challenged in the manner done by fourth respondent. Petitioner had been in service for five years but had been uprooted and the fourth respondent had been instated on 24.07.2017. In the affidavit in support of her Writ Petition, fourth respondent had specifically referred to the petitioner, informing her to be disqualified but had not impleaded petitioner as a party. The very Writ Petition of fourth respondent was not maintainable as she had failed to implead the petitioner and while so, it would follow that her appeal also would not be maintainable. In the affidavit in support of the Writ Petition, the fourth respondent had expressed her understanding that the Writ Petition filed by petitioner had been dismissed, a totally erroneous and misleading averment, as W.P.No.14788 of 2010 moved by petitioner had been allowed. Fourth respondent had not approached the Court with clean hands and on such ground also she ought to have been non-suited. If the Review Petition is allowed, the petitioner would be reinstated in service. First respondent TNPSC had not appealed the decision of learned Single Judge but had appointed the petitioner. In holding in favour of fourth respondent, the Division Bench had substituted its decision from that of the concerned authority, an exercise not permissible of it. Learned senior counsel also pointed out that reference by learned counsel for fourth respondent to the communication of the Central Council of Homoeopathy dated 13.09.2011 to the effect that Homoeopathy Central Council Act, 1973 and regulations made therein do not provide any authority to give professional certificate to any candidate, was misplaced inasmuch as the petitioner's registration was with the State Council and under the State Act.

7. Ms.C.N.G.Niraimathi, learned counsel for first respondent, submitted that the Division Bench of this Court in the Writ Appeals had held that where 'self-certification' had been called for, the same had evidentiary value. First respondent was the authority to decide the issue on acceptability or otherwise thereof. Accepting of the self-certification was the reason why the first respondent had not preferred an appeal against the finding of a learned Single Judge. Consequently, the review petitioner had been appointed. Reference was made to decision of this Court in Dr.M.Vennila v. Tamil Nadu Public Service Commission [2006 (3) CTC 449] wherein it had been held as follows:

'25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of



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the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification/relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language. As said at the beginning of our order, since similar violations are happening in the cases relating to admission of students to various courses, we have dealt with the issue exhaustively. We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large.'

Learned counsel also referred to the decision of this Court in T.Sergia Bindu v. Secretary to the Government, Home (Courts-I) Department, Government of Tamil Nadu, Chennai and others [2013 (4) MLJ 433], wherein it had been observed as follows:

'11. At the outset it is to be stated that both the petitioner and the third respondent, who has been selected to the post of Civil Judges (Junior Division), are coming under the same category, namely, Backward Class Women (Other than Muslims Community) and the petitioner has secured 184 marks in aggregate and the third respondent has secured 183 marks in aggregate. It is pertinent to note that both the petitioner and the third respondent are coming within the zone of consideration and it is stated by the second respondent in its counter that the third respondent was found to be eligible in view of the preference given to those studied in Tamil medium. The fact remains that admittedly, the petitioner has not studied B.L.Degree course in Tamil medium, but on the other hand, the third respondent fairly and categorically stated in her affidavit that she had studied 5 years B.L.Degree course at Madurai Law College in Tamil Medium and she wrote all the examinations in Tamil language and successfully completed the course in the year 2004. It is also relevant to note that she had written the competitive examinations for the post of Civil Judges in Tamil language. As a matter of fact, we have called for the



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original answer sheets in respect of the third respondent and accordingly, the second respondent produced the same and the perusal of the same disclosed that the third respondent had written the answer sheets in Tamil language and there is no reason to make any false statement before this Court to the effect that she had studied Tamil medium course and she had written the examinations in B.L.Degree Course as well as the competitive examinations for the post of Civil Judge (Junior Division) in Tamil language.

19. The attempt made by the learned counsel for the petitioner to indirectly challenge the provisions of Act 40 of 2010, giving preference, cannot be entertained as the petitioner participated the selection in terms of the notification and taken a chance. The selection notification clearly mentioned about preference to Tamil medium candidate. Further, no prayer to that effect is made in this writ petition and the respondents could not answer the said contention in their counter affidavits as no such ground was raised in this writ petition. Apart from that even if the Act is to be held illegal the said decision would apply prospectively and the same cannot be applied to the selection already over and the third respondent is selected in the said selection.'

Learned counsel submitted that the decisions under review may be set aside and the matter may be remanded for decision of the authority concerned viz., the first respondent.

8. On consideration of rival submissions, we are of the view that this review petition is to be allowed for the following reasons:

- (i) The failure of the Division Bench in passing judgment in the Writ Appeals on 26.09.2016 to consider the Professional Experience Certificate under Lr.No.383/TNHMC/10 dated 02.07.2010 is an error apparent on the face of the record. Petitioner is a registered practitioner with the State Council and under the State Act. It is not so much as canvassed before us that the Tamil Nadu Homoeopathy Medical Council had not the authority to issue such certificate.
- (ii) Reference and reliance on the Central Act totally is inapplicable to the case on hand and again present an error apparent on the face of record. The submission of learned counsel for fourth respondent that reference thereto merely is a passing one does not appeal to us.
- (iii) Applicants were required only to furnish a self-certification regards their experience. While so, requiring them to do more and provide proof of their experience is unjustified. As held in decision of this Court in Dr.M.Vennila's case, the terms and conditions of instructions,



etc. to candidates have the force of law and once the same stands complied with nothing more can be called for.

- (iv) The decision of the Supreme Court in SLP (CC) Nos.23132 and 23133 of 2016 having permitted the review petitioner to produce proof of her experience, petitioner, at this distant point of time i.e. 15 years from the date of her appointment, cannot be expected to do more than to obtain certificates from persons/authorities in the know. This, she has done.
- (v) Fourth respondent, having stated in her affidavit in support of W.P.No.18766 of 2011 that the review petitioner was ineligible must be found to have approached the Court with unclean hands in not having impleaded the review petitioner as party respondent in such Writ Petition.

9. We find much force in the submission of learned counsel for first respondent that matters which lie in the decision of authorities concerned cannot be substituted by orders of Court.

The Review Petitions are allowed and the common judgment in W.A.Nos.338 and 395 of 2012 on 26.09.2016 is set aside with the consequence that the service of fourth respondent shall stand terminated and the review petitioner shall be reinstated in service. She will be treated as in continuous service from the date of her initial appointment for purposes of seniority and all consequential benefits. Petitioner, however, would not be entitled to salary for the period when the post came to be held by fourth respondent. No costs.

gm

12.12.2018

For Being Mentioned

This Petition having been posted on this day 'FOR BEING MENTIONED'. In Pursuance to the order of this Court dated 12.12.2018 and made herein in the presence of the abovesaid Advocate, this court made the following order:

Learned counsel for respondents 2 and 4 mentioned the matter at 10.30 a.m in chambers seeking stay of operatino of the order for a period of 3 weeks. She submitted that as the 4th respondent was in service and the Hon'ble Supreme Court would not be functioning during Christmas holidays, this Court would consider her request. She has been required to cause the presence of other side by 1.30 p.m.

Learned counsel is present and submits that she has informed the learned counsel on other side. Such counsel has expressed his difficulty in appearing today and stated that his objections may be recorded.



Considering reasonable the request made by the counsel for respondents 2 to 4, this Court would direct stay of the operation of the order dated 12.12.2018 towards enabling the respondents to approach the Hon'ble Supreme Court. This Court would stay operation of its order dated 12.12.2018 passed in Rev.Pet.Nos.100 and 211 of 2017 upto 05.01.2019.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

- 1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai - 600003.
(formerly having office at Commercial
Tax Annex Building, No.1, Greaves Road,
Chennai- 600006)
- 2.The Principal Secretary/Director,
Directorate of Indian Medicine and Homoeopathy,
Arumbakkam, Chennai - 600009.
- 3.The Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai - 600009.

+2 Ccs to Mr.N. Kavitha Rameshuwar, Advocate sr 86810, 86052.
+1 CC to Mr.S. Rajendiran, Advocate sr 85949.

Review Petition Nos.100 and 211 of 2017

SS(CO)
SP(20/12/2018)