

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.6209 of 2017 and WMP.No.6694 of 2017

Dr.V.Sridevi

...Petitioner

Versus

The Dean and Director (Admn)
College of Oncological Sciences
Cancer Institute, Chennai-20.

...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in its letter dated 18.02.2017 and quash the same in so far as it proposes to hold selection / interview for the post of HOD of Surgical Oncology and consequently direct the respondent to nominate the petitioner herein as HOD in the Department of Surgical Oncology based on seniority as has been the custom and practice for the past 33 years.(amended as per order dated 08.11.2017 in WMP.No.7956/2017).

For Petitioner : Mr.A.L.Somayaji, Senior counsel
for Mr.V.Perumal

For Respondent : Mr.N.L.Rajah, Senior counsel for
Mr.E.Jayasamkar

ORDER

The relief sought for in this writ petition is for a direction to direct the respondent to appoint / nominate the petitioner as Head of the Department in the Department of Surgical Oncology based on seniority as has been custom for the past 33 years.

2. Mr.A.L.Somayaji, the learned senior counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner had completed her MBBS degree in the year 1993 and thereafter, completed her Master degree in General Surgery in Madras Medical College in the year 1999. The petitioner was appointed as Assistant Professor in the Department of Surgical Oncology in March 2002 and thereafter promoted as Associate Professor in March 2004, and on completion of two years of

service as Assistant Professor. The petitioner was further promoted to the post of Professor in the Department of Surgical Oncology with effect from 01.03.2008. The learned senior counsel states that the petitioner is the senior most teaching faculty in the Department of Surgical Oncology. The petitioner states that the Cancer Institute (WIA) is voluntary Charitable Institution founded in the year 1954. The full fledged cancer centre and hospital with 535 beds is being maintained by the respondent / management. This apart, there is a College of Oncological Sciences started by the respondent during the year 1984 with the Research Division and the Department of Preventive Oncology is also providing state of art treatment to all the citizens of this great Nation. The Cancer Institution was founded in the year 1954 by the Women India Association (WIA) and by Dr.Muthulakshmi Reddy-India's first lady Medical Graduate. It is a Voluntary Charitable Institution governed by a Governing body consisting of members from the Institution and distinguished members of Society and representatives from the Government (State Health Secretary, ICMR representative and Ministry of Health, Government of India). The Institution has been receiving Grants from the State and Central Government consistently, and recently, the grant of Rs.120 Crores on a shared basis from the Central and State Governments were provided by the respondent Institution. The Government of India approved the Cancer Institute for inclusion in the Tertiary Cancer Centre of National Programme for prevention and control of cancer, Diabetes, Cardiovascular diseases and Stroke (NPCDCS) and designated as State Apex Centre and hence the first instalment of the grant was released on 31.10.2015.

3. The learned Senior counsel contended that the writ petitioner is the senior most person in the Department of Oncology and for the past about 33 years, the respondents are following the practice of appointing the senior most person as Head of the Department of Oncology. When there is a customary practice prevailing in the respondent / Institution, now they are making attempt to fill up the post by inviting applications from eligible Professors for attending interview in the Department of Oncology. Thus, the very initiation of the process of interview itself is untenable in view of the fact that there is a customary practice for the past 33 years being followed by the respondent / Institution.

4. It is an admitted fact that the writ petitioner is the senior most person working in the Department of Oncology and therefore, she should automatically be appointed as Head of the Department, is the claim mooted out in this writ petition.

5. Mr.N.L.Rajah, the learned Senior counsel appearing on behalf of the respondent opposed the contentions of the writ petitioner by stating that no doubt the writ petitioner is the

senior most person working in the Department of Oncology. However, the right of the Management to conduct an interview to evaluate the merits and demerits of the respective eligible candidates cannot be taken away by filing this writ petition. An Employer has got every right to select the candidate on assessment of merits. The employee cannot file a writ petition with a prayer challenging the interview proposed to be conducted by the respondent Management. Further, the learned Senior counsel states that the writ petitioner is not prevented from participating in the process of interview and she can also participate and submit her profile and all other documents, so as to assess the relative merits of the respective candidates participating in the process of interview. This apart, the suitability to hold the post of the Head of Department is also necessarily to be assessed by the Employer with all means. The learned senior counsel is of the opinion that it is the right of an employer to conduct a personal interview or otherwise in respect of the merits and suitability to hold the particular post, more specifically, the Head of the Department of such a prestigious institution.

6. The learned senior counsel further contended that the writ petition is not maintainable on the ground that it is a private Institution not holding any Government Shares and the Institution is being run by a Society registered under the Society Registration Act and therefore, it is not amenable to writ jurisdiction under Article 226 of the Constitution of India. The respondent Institution is not a State within the meaning of Article 12 of the Constitution of India. A writ cannot be entertained in respect of the grievances of the employees of the Institution and the remedy lies to them under the common law.

7. Considering the arguments advanced both by the learned senior counsel for petitioner as well as the respondent, this Court is of the opinion that in respect of the relief sought for in this writ petition, the same has to be considered at first instance. The relief sought for is to direct the respondent to appoint / nominate the petitioner as Head of the Department in the Department of Surgical Oncology.

8. This Court is of the opinion that appointment can never be claimed as a matter of right. All appointments should be made only by following the recruitment rules in force. Merely on the ground that the writ petitioner is the senior most person, the prayer for a direction to issue an order of appointment/promotion cannot be considered. Seniority is one aspect of the matter and in order to fill up the post of Head of the Department, the Employer has to consider all other relative merits and suitability in respect of the eligible candidates, who are aspiring to hold the post of Head of the Department.

Thus, a mere direction to seek appointment / promotion to the post of Head of the Department cannot be entertained by way of writ petition.

9. The learned senior counsel at this juncture urged this Court by stating that the petition has been filed to amend the prayer and the amendment sought for is to call for the records of the respondent in letter dated 18.02.2017 and quash the same in so far as it proposes to hold selection / interview for the post of Head of the Department of Surgical Oncology and consequently direct the respondent to nominate the petitioner herein as Head of the Department in the Department of Surgical Oncology based on seniority as has been custom for the past 33 years.

10. In respect of the amended prayer, this Court is of the view that it does not make a lot of difference and again the writ petitioner has challenged the process of interview conducted by the respondent Institution. Conducting an interview and the selection process is an prerogative power of an employer, which cannot be taken away or cancelled by the Courts. Power of conducting the process of selection is the vital one and selection to the post are to be done only under the Constitutional Scheme and by following established principles of service jurisprudence. Fairness and Transparency are the factors to be adopted in the process of selection more specifically, when they are performing public duty. In the case on hand, the selection is proposed to be conducted for appointment/promotion to the post of Head of the Department of Oncology in the respondent Institution. Thus, the learned senior counsel appearing on behalf of the petitioner urged this Court by stating that the respondent Institution is performing public duty by admitting the students to undergo a specialized medical course, more specifically in the Department of Oncology. Such being the nature of the Institution, the respondent Institution to be construed as a public Institution. For all purpose, this writ petition is to be maintained.

11. This Court however left open the ground regarding the maintainability of this writ petition, since there are some doubts in respect of the character of the institution and the nature of the public duty being performed by the respondent in this regard. Though a reference has been cited in respect of the judgment of the Honourable Supreme Court of India in SRM University case, this Court is of the view that at this point of time, it is not necessary to consider this point, in view of the fact that the relief sought for in this writ petition is premature and, it is challenging the very process of selection. At the outset, this Court is of the opinion that the writ petitioner cannot question the power of conducting an interview or process of selection by the respondent Institution. It is

for the respondent Management to conduct the process of selection / interview by providing reasonable opportunity to all the eligible candidates to submit their profile documents etc., and thereafter take a decision in this regard. Thus the relief sought for in this writ petition is premature and it is left open to the writ petitioner to submit her profile, documents etc., to the respondent Management and transparent in the process of selection and the respondent are also bound to conduct the process of selection by adopting a fair and reasonable procedures so as to provide opportunity to all the eligible candidates and take a decision in this regard and thereafter fill up the post of Head of the Department for the Department of Oncology. This Court is of the view that the process of selection cannot be challenged in a writ petition in a routine manner. No writ can be entertained against the process of selection, unless the process of selection has been conducted in violation of any statutory rules or if there is any malafides or corrupt activities. Then the High Court can interfere. In all other circumstances, the authorities competent shall be allowed to continue the process of selection and only after the finalisation of the process of selection, the Court can examine the reasonableness, fairness, transparency adopted by the competent authority while conducting the process of selection, in the event of challenging the same. Thus, the writ petition on hand is filed prematurely and it is for the petitioner to participate in the process of selection proposed to be conducted by the respondent Institution.

12. Accordingly no further adjudication on merits and on the grounds raised in this writ petition needs to be undertaken.

13. In the result, the writ petition stands dismissed. No costs. Consequently, Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

The Dean and Director (Admn)
College of Oncological Sciences
Cancer Institute, Chennai-20.

+1 cc to Mr.V.Perumal Advocate sr 79465
+1 cc to Mr.R.Jayasankar Advocate sr 79489

WP.No.6209 of 2017

mr(co)
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