

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM

The Honourable MR. JUSTICE M.DURAI SWAMY

W.P.No.5872 of 2017 &

W.M.P.Nos.6287 to 6289 of 2017

Dr. A. Jillus

... Petitioner

vs.

1. The Secretary,
Department of Ayush,
Ministry of Health & Family Welfare,
B Block, GPO Complex,
New Delhi - 110 023.
2. The Secretary to Government,
Department of Health & Family Welfare,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.
3. The Secretary cum Registrar,
Central Council of Homoeopathy,
Anusandhan Bhawan, 61-65, Institutional Area,
Opp. 'D' Block, Janak Puri,
New Delhi - 110 058.
4. The Registrar,
Tamil Nadu Homeopathy Medical Council,
Arignar Anna Hospital Campus,
Arumbakkam,
Chennai - 600 106.
5. Dr. N. Manavalan,
Joint Director (Yoga and Naturopathy),
Indian Medicine and Homoeopathy Department,
Department of Health & Family Welfare,
Government of Tamil Nadu,
Arumbakkam, Chennai - 600 106.

6. The Chief Secretary to the Government of Tamil Nadu,
Health & Family Welfare Department,
Secretariat, Chennai - 600 009.

(R-6 is Suo Motu impleaded as per order
dated 03.04.2017 in WP.No.5872/2017)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent notification S.O.2760 (E), dated 06.10.2015 and quash the same with respect to the appointment of the 5th respondent as Returning Officer for the purpose of Rule 2(d) of the Homoeopathy Central Council (Election) Rules, 1975 consequently directing the 1st respondent to appoint a competent person not below the rank of a Joint Secretary in the Administrative Service of the Government as Returning Officer for the conduct of election to the Central Council of Homoeopathy within a time frame that may be fixed by this Court.

For Petitioner : Mr.V. Vijay Shankar

For Respondents : Mr.Su. Srinivasan,
Addl. Solicitor General - for R1 & R3
Mr. V.S. Sethuraman,
Additional Advocate General -I
Assisted by Mr. S.V. Duraisolaimalai
Addl. Govt. Pleader - for R2 & R4

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent dated 06.10.2015 and to quash the same with respect to the appointment of 5th respondent as the Returning Officer for the purpose of Rule 2 (d) of the Homeopathy Central Council (Election) Rules, 1975, consequently, directing the 1st respondent to appoint a competent person, not below the rank of a Joint Secretary in the Administrative service of the Government, as Returning Officer for the conduct of election to the Central Council of Homoeopathy within a time frame that may be fixed by this Court.

2. By the impugned order dated 06.10.2015, the first respondent appointed the 5th respondent as Returning Officer for the purpose of Rule 2(d) of the Homeopathy Central Council

(Election) Rules, 1975. According to the petitioner, the elections to the Central Council of Homeopathy is very serious issue and the legislative has thus ensured that the conduct of such elections should be entrusted to a responsible person and that is why the Rule prescribes that the person should be an officer of the Administrative Service of the State and also not below the rank of Joint Secretary. According to the petitioner, in the instant case, the 5th respondent is not eligible to be considered inasmuch as he is neither from the Administrative Service of the State nor an Officer in the rank of Joint Secretary and above.

3. On a perusal of the Rules 2 (d) of the Homeopathy Central Council (Election) Rules 1975, Returning Officer means, any officer of the State Government or the Union Territory as the case may be, who is from the administrative services of the State Government or the Union Territory, not below the rank of Joint Secretary to the State Government or the Union Territory concerned appointed on the recommendations of the State Government or the Union Territory, as such by the Central Government for the purposes of the rules. Proviso to Rule 2 (d) says that the Registrar of the concerned Board, by whatever name called who maintains the register of practitioners in the State shall not be appointed as the Returning Officers.

4. From the available materials, it is clear that the 5th respondent is not an Officer of the Administrative service of the State and certainly, he is not an Officer of the rank of Joint Secretary or other. Therefore, appointing the 5th respondent as the Returning Officer, is against the provisions of Rule 2 (d) of the Homeopathy Central Council Rules, 1975. Therefore, the impugned order passed by the first respondent appointing the 5th respondent as the Returning Officer is liable to be set aside. Accordingly, the same is set aside.

5. When the Writ Petition came up for hearing on 03.04.2014, the learned Additional Government Pleader submitted that the Principal Secretary to the Health and Family Welfare Department, Government of Tamil Nadu, has given 5 names, who are working in the Health Department and has also given list of 5 officers. Out of the 5 names given by the Principle Secretary, he himself has stated that 2 officers in the rank of Additional Secretary to the Government and Deputy Secretary to the Government cannot be considered for appointing as Returning Officer for the reason that the 1st officer, Additional Secretary to the Government, has already been notified as Returning Officer for conducting of election for membership of Ayurveda and Unani by the Department of Ayush, Government of India and also he was appointed as Departmental Enquiry Officer for conduct of enquiry into the irregularities for allotment of

Okkiyam, Thuraipakkam Tamil Nadu Secretariat Employees Co-operative Housing Society. Further the Secretary has stated that one female officer is likely to be proceeded in Maternity leave from 01.04.2017 onwards. Apart from these 2 officers, the 3 other officers do not come within the ambit of Rule 2 (d) of the Homeopathy Central Council (Election) Rules. Hence, a representation was made by the Additional Government Pleader that the Chief Secretary to the Government will be in a position to give the names of I.A.S officers not below the rank of Joint Secretary. Therefore, the Chief Secretary to the Government was suo moto impleaded as 6th respondent in the writ petition.

6. When the matter was taken up for hearing today, Mr. Sethuraman, learned Additional Advocate General, appearing for the respondents 2 and 4, has given a list of 8 I.A.S officers in the rank Additional Secretary to the Government and Joint Secretary to the Government. The learned Additional Advocate General submitted that any one out of the 8 officers can be appointed as Returning Officer. Learned counsel appearing for the petitioner has no objection for the same.

7. In view of the submissions made by the learned counsel on either side, I am inclined to appoint Mr.M.S. Shanmugam, I.A.S., Additional Secretary to the Government, Industries Department as Returning Officer for the purpose of Rule 2 (d) of the Homoeopathy Central Council (Election) Rules, 1975 for conducting election to the Central Council of Homoeopathy. Accordingly, I appoint Mr.M.S. Shanmugam, I.A.S., Additional Secretary to the Government, Industries Department as Returning Officer as per Rule 2(d) of the Homoeopathy Central Council (Election) Rules, 1975 for conducting election to the Central Council of Homoeopathy. The Returning Officer appointed by this court shall complete the election process, in accordance with law, following the procedures laid down by the Central Government, as expeditiously as possible.

With these observations the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Secretary,
Department of Ayush,
Ministry of Health & Family Welfare,
B Block, GPO Complex,
New Delhi - 110 023.
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Joint Director (Yoga and Naturopathy),
Indian Medicine and Homoeopathy Department,
Department of Health & Family Welfare,
Government of Tamil Nadu,
Arumbakkam, Chennai - 600 106.
6. The Chief Secretary to the Government of Tamil Nadu,
Health & Family Welfare Department,
Secretariat, Chennai - 600 009.

7. Mr.M.S.Shanmugam, I.A.S,
Additional Secretary to the Government,
Industries Department,
Fort St.George, Chennai - 9.

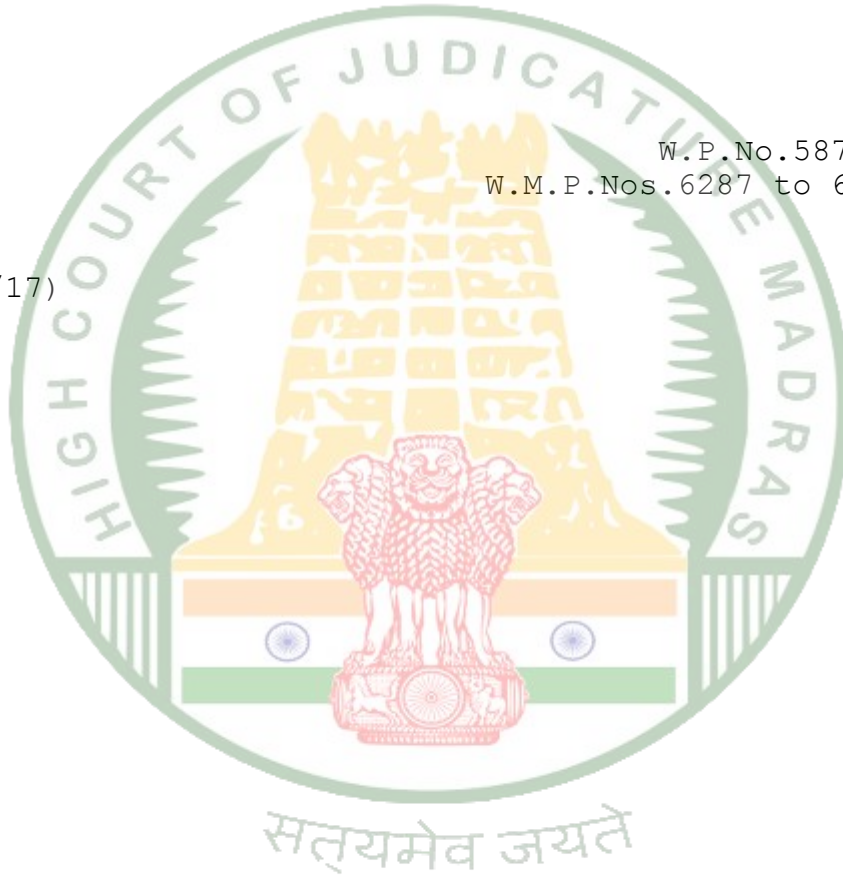
+1cc to Mr.SU.Srinivasan, Advocate, S.R.No.21789

+1cc to Mr. V.Vijaya shankar, Advocate, S.R.No.21792

+1cc to the Government Pleader, S.R.No.22101

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