

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

W.P.No.13828 of 2014 and
M.P.Nos.2 and 3 of 2014

1. P.Lakshmi Narayanan
2. B.Krishnamoorthy
3. Anil P. Jacob
4. K.Muthu Mari
5. G.Seshathiri
6. Ramesh.J
7. N.Sinouvassane
8. C.Suresh
9. C.Parameswaran
- 10.G.Nallasamy
- 11.S.Karthikeyan
- 12.V.Chandra Sekaran
- 13.S.Mani

Vs

.... Petitioners

1. The Union of India
rep. by the Secretary to Government of India,
Ministry of Health and Family Welfare Services,
Nirman Bhavan,
New Delhi 110 108.
2. The Director,
Jawaharlal Institute of Post Graduate Medical
Education and Research (JIPMER),
Pondicherry-605 006.
3. The Medical Superintendent,
Jawaharlal Institute of Post Graduate Medical
Education and Research (JIPMER),
Pondicherry-605 006.
4. The Deputy Director,
Jawaharlal Institute of Post Graduate Medical
Education and Research (JIPMER),
Pondicherry-605 006.

5. R.Ilangovane
6. Gunasekaran
7. R.Ilango

8. The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Complex,
Chennai-104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 30.04.2014 passed by the 8th respondent in O.A.No.310/00004/2014 with O.A.No.1687/2013 and quash the same and consequently, direct the respondent Nos.1 to 4 to promote the petitioners to the post of Upper Division Clerk (UDC) with retrospective effect, from the date on which vacancy arose.

For Petitioners :: Mr.R.Syed Mustafa
For Respondents :: Mr.J.Madhanagopal Rao for R1
Mr.M.T.Arunan for R2 to R4

ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.)

Challenging the correctness of the order dated 30.04.2014 passed by the 8th respondent in O.A.No.310/00004/2014 with O.A.No.1687/2013, and for setting aside the same and further, seeking a consequential direction, directing the respondent Nos.1 to 4 to promote the petitioners to the post of Upper Division Clerk (UDC) with retrospective effect, from the date on which vacancy arose, the unsuccessful applicants in O.A.Nos.1687/2013 and 310/00004/2014 have preferred the present Writ Petition.

2. The Original Application No.1687/2013 was filed seeking the following reliefs:

''(i) To call for the records pertains to Office Memorandum dated 22.10.2013 vide No.Estt.11(1)/2008 issued by the 4th respondent and quash the same as highly unlawful, malafide;

(ii) To declare that the holding of posts of LDC by the respondents Nos.5 to 7 is illegal;

(iii) To direct the respondents Nos.2 to 4 to consider promotion of the applicants to the post of UDC retrospectively, from the date on which vacancy has arisen, within a time frame as the Tribunal may deem fit

and proper in the circumstances of this case;

(iv) To award the cost of the application; and

(v) To pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.'

3. The Original Application No. 310/00004/2014 was filed seeking the following reliefs:

'(i) To call for the records pertains to Advertisement dated 15.12.2013 vide No.3/2013-14 issued by the 2nd respondent and to quash the same as far as 36 Lower Division Posts concerned as highly unlawful, malafide;

(ii) To award the cost of the application; and

(iii) To pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.'

4. The brief facts of the case of the applicants/petitioners are as follows:

(i) The applicants are at present working as Lower Division Clerk (LDC) with the 2nd respondent Institution, namely, the Jawaharlal Institute of Post Graduate Medical Education and Research (JIPMER), Pondicherry, for the past nearly 6 years. The applicants had earlier worked as LDC in Border Roads Organisation under the Ministry of Road Transport and Highways, Government of India, on regular basis before joining JIPMER and if that period of service is added with that in JIPMER, they have more than 12 to 25 years of regular service, that is more than the minimum period of 8 years for eligibility for Upper Division Clerk (UDC).

(ii) While so, the 2nd respondent published a Seniority List dated 12.05.2009 in which applicants were placed below 3 persons, namely, Respondents Nos.5 to 7, viz. 1. R.Ilango, 2. M.Gunasekaran and 3. R.Ilango who were appointed as LDC by promotion from Group 'D' Post, after completing the typewriting Examination held on 06.01.2006, but the selection process was set aside by the Tribunal vide Order in O.A.No.31/2006 and the writ petition which was filed against the same order was dismissed by this Court. Thus, the aforesaid three persons were not having any right to continue in the post of LDC.

(iii) In the meanwhile, the respondents vide their impugned Advertisement had invited applications for 36 posts of LDC though the existing vacancies was only 10. The applicants, thereafter, came to know through some reliable sources that the respondents had arbitrarily merged the existing vacant posts of UDC with LDC and thereby arrived at the number of vacancies as 36 which according to the applicants arbitrary and unjustifiable.

5. In reply to O.A.No.310/00004/2014, the respondents 2 and 3 have submitted that in terms of notified Recruitment Rules (RRs) of the Institute, the posts of Upper Division Clerk are to be filled up by promotion from LDC, Typist, Assistant, Steward, Library Clerk with 8 years regular service in grade. Further, as per the model Recruitment Rules of Department of Personnel and Training vide No.AB-14017/32/2009-Estt (RR), dated 29.12.2010 also, the posts of UDC are to be filled up by promotion from LDC with 8 years regular service in grade of Rs.1900/- only. All the applicants were transferees from Border Roads Organisation, under the Ministry of Road Transportation and Highways, Government of India. While absorbing them in JIPMER, they will be treated as fresh entrant and will not have any claim for seniority in this Institute and they will rank junior most in the cadre of Lower Division Clerk working in this Institute on the date of their joining in this Institute. Further, they are not entitled to claim any promotional posts at JIPMER, Puducherry counting his past services in the post of Lower Division Clerk in the Office of the Border Roads Organisation under the Government of India, Ministry of Shipping and Road Transport and Highways. Further, the applicants have not completed 8 years of service in JIPMER for promoting them to the post of UDC.

6. As regard the 3 persons, namely, respondents 5 to 7 in O.A.No.1687 of 2013 are concerned, the official respondents have submitted that the said 3 persons were appointed to the post of LDC by way of promotion from Group 'D' post, after successfully completing the typewriting examination held on 06.01.2006. But in this regard, some litigations are pending before the Tribunal.

7. In the additional affidavit filed by the respondents 2 and 3, it is stated that since as per the policy and austerity measures adopted by the Government of India, posts which were lying vacant for more than one year shall lapse, the Institute took a considered decision to downgrade and operate these UDC posts as LDCs for a temporary period of time until the existing senior most LDC become eligible for the post of UDC.

8. After hearing the arguments advanced by both sides, the Central Administrative Tribunal, by its Order dated 30.04.2014, without issuing any specific direction to the respondents, directed the respondents to appropriately consider the grievance of the applicants for promotion to the post of UDC by taking their eligibility based on the service put forth by them in the previous organisation together with that in JIPMER after the disposal of the OA.Nos.512 to 514/2012 and having regard to the observations of Hon'ble Supreme Court in State of Punjab and another v. Teja Singh and Others which promotion cannot be denied on unjustified grounds and the interests of both the sections of

LDCs in JIPMER ought to be kept in mind. Aggrieved over the same, the present Writ Petition has been filed.

9. Learned Counsel for the petitioners submitted that the petitioners have earlier worked as LDC in Border Roads Organisation under the Ministry of Road Transport and Highways, Government of India and now, they are working as LDC in JIPMER and if their total services will be taken into account, they are all entitled for promotion to the post of UDC in the year 2011 itself. But without considering the same, the respondents have issued an Advertisement dated 15.12.2013, calling for applications to fill up the posts of UDC. Therefore, according to the learned Counsel for the petitioners, a direction to be issued to the respondent Nos.1 to 4 to promote the petitioners to the post of Upper Division Clerk (UDC) with retrospective effect, from the date on which vacancies have arisen. The learned Counsel for the petitioners also submitted that the respondents 5 to 7 have to be placed below the petitioners in the seniority list of LDC. Hence, prays for allowing the present Writ Petition.

10. Learned Counsel appearing for the contesting respondents 2 to 4 submitted that the applicants, while joining the JIPMER, had given an undertaking that they will not claim for seniority in the post of Lower Division Clerk for the period worked at 119 RCC (GREF) and they have also given another undertaking that they will not claim any promotional posts at JIPMER Hospital, Puducherry counting their past services in the post of Lower Division Clerk at 119 RCC (GREF). Further, the learned Counsel submitted that the respondents 5 to 7 were promoted from Group 'D' post, the same was set aside by this Court and in this regard, though some litigations are still pending, their case is entirely different. Therefore, he prays for dismissal of the Writ Petition.

11. Considered the rival submissions made on either side and we have also gone through the materials available on record.

12. The petitioners are working as Lower Division Clerks (LDC) with the 2nd respondent Institution, namely, the Jawaharlal Institute of Post Graduate Medical Education and Research (JIPMER), Pondicherry for the past nearly 6 years. The petitioners had earlier worked as LDC in Border Roads Organisation under the Ministry of Road Transport and Highways, Government of India, on regular basis before joining JIPMER and if that period of service is added with that in JIPMER service, they have got more than 12 to 25 years of regular service, that is more than the minimum period of 8 years for eligibility for Upper Division Clerk (UDC) is the main grievance of the petitioners. According to them, they are eligible for promotion

to the post of UDC in the year 2011 itself, when the vacancies have arisen, but they were given promotion only during the year 2016. Further, the petitioners have also disputed the seniority of the respondents 5 to 7 placing above them in the UDC category and the merging of the existing vacant posts of UDC with LDC and thereby arrived at the number of vacancies to be filled up as the 36 posts of LDC.

13. Taking into account the factual position with regard to the grievance of the petitioners that the respondent Nos.1 to 4 to promote the petitioners to the post of Upper Division Clerk (UDC) with retrospective effect, from the date on which vacancies have arisen i.e. in the year 2011 itself, we are of the view that, may be, due to administrative difficulties and reasons, the respondents 2 to 4 have not given promotion to the petitioners during the year 2011 and for that, the petitioners cannot claim that their seniority should be counted in the post of UDC from the year 2011 onwards considering their past services rendered in the earlier institution, when the vacancy arose in the cadre of UDC and when no eligible hands are available in the cadre of LDC at JIPMER and such a bad precedent cannot be done.

14. With the above observation, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government of India,
Ministry of Health and Family Welfare Services,
Nirman Bhavan,
New Delhi 110 108.
2. The Director,
Jawaharlal Institute of Post Graduate Medical
Education and Research (JIPMER),
Pondicherry-605 006.
3. The Medical Superintendent,
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4. The Deputy Director,
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Education and Research (JIPMER),
Pondicherry-605 006.

5. The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Buildings,
Chennai-104.

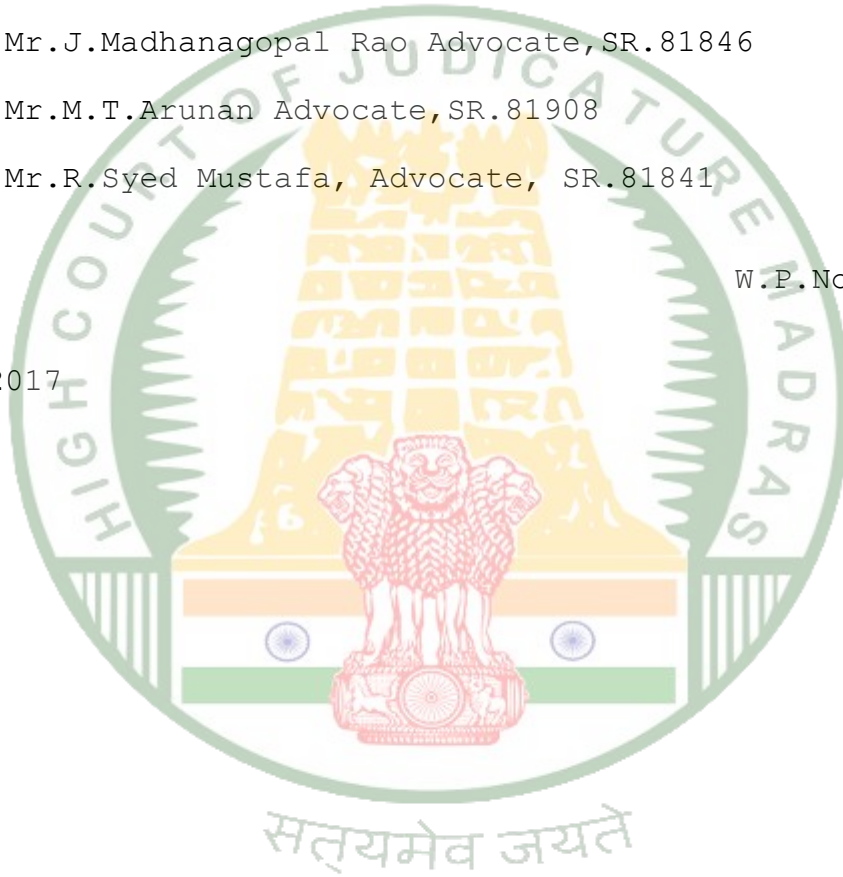
+ 1 cc to Mr.J.Madhanagopal Rao Advocate, SR.81846

+ 1 cc to Mr.M.T.Arunan Advocate, SR.81908

+ 1 cc to Mr.R.Syed Mustafa, Advocate, SR.81841

W.P.No.13828/2014

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