

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.423 of 2012

And

M.P.Nos.1 and 2 of 2012

D.Ashraf Unnisa

... Petitioner

Vs.

- 1.The State of Tamilnadu
Rep. by its Secretary
Department of Health and Family Welfare
Fort St.George, Chennai - 600 009.
- 2.The Director of Medical Education
Kilpauk, Chennai - 600 010.
- 3.The Commissioner
Employment and Training Department
Guindy, Chennai - 600 032.
- 4.The District Employment Officer,
The District Employment Exchange,
Thenampet, Chennai.
- 5.The District Employment Officer,
The District Employment Exchange,
Ootacamund, Nilgiris District - 643 001. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 3 to give appointment to the petitioner as Pharmacist in the existing vacant post under the Backward Class Muslim (BCM) Women in Non-priority category or any other category as per 3rd respondent Commissioner's Notification dated 21.04.2010.

For Petitioner : Mrs.Mary Sowmi Rexi

For Respondents : Mr.A.Zakir Hussain
Government Advocate

O R D E R

The prayer in the writ petition is for a writ of Mandamus directing the respondents 1 to 3 to give appointment to the petitioner as Pharmacist in the existing vacant post under the Backward Class Muslim (BCM) Women in Non-priority category or any other category as per third respondent Commissioner's Notification dated 21.04.2010.

2.The case of the petitioner is that she passed Diploma in Pharmacy in July, 1991. She became fully qualified for appointment to the post of Pharmacist. She registered her qualification with the fourth respondent on 24.01.1992 and her registration number is F/2543/92 and the said registration had been periodically renewed. The petitioner belongs to Backward Class Muslim Community. In order to fill up the post of Pharmacists at the first respondent department, the Government issued G.O.No.328 Health and Family Welfare (C1) Department, dated 08.10.2009, whereby the appointment had to be done on the basis of employment seniority from among the eligible candidates. The third respondent had notified 669 vacancies for the post of Pharmacists by the notification dated 21.04.2010. Out of these vacancies seven posts were ear-marked for Backward Class Muslim Women (BCM) in non-priority category. The cut off date for sponsoring candidates was fixed as 30.12.1997.

3.Based on the said notification, the Employment Exchange had sponsored names including the name of the petitioner. The second respondent called the petitioner for certificate verification on 21.05.2010 and the petitioner also attended the same. Thereafter, the selection list was published, where seven candidates had been selected to fill up the seven vacancies earmarked for Backward Class Muslim Women and the petitioner had been placed on wait list no.1. Though seven candidates had been selected, out of the seven, one candidate by name A.H.Yasmeen did not join and therefore that vacancy was not filled up and therefore, the next available candidate in the wait list had to be given postings for the said vacancy created because of non joining of the said A.H.Yasmeen. Since the petitioner was placed at wait list no.1 naturally, the petitioner alone could be entitled to get the said postings, which was kept vacant because of non joining of the said candidate. In spite of these factors, the respondents since have not posted the petitioner in the remaining one vacancy out of the seven earmarked for Backward Class Muslim Women, she has approached this Court with this writ petition with the aforesaid prayer.

4.The learned counsel appearing for the petitioner has invited the attention of this Court on the selection list published by the respondents and a copy of the same also has

been filed in the typed set of papers. According to the learned counsel, there were eleven candidates including the petitioner had been participated for certificate verification and among the eleven, the petitioner stood as a eleventh candidate based on her employment seniority. From among the remaining ten candidates who were ahead of the petitioner three did not participate in the certificate verification. Therefore, the remaining seven had been selected after certificate verification. The said A.H.Yasmeen is one among the seven. If all the seven candidates selected had joined services then the petitioner shall not have any chance of getting postings as admittedly, she stood only as no.1 wait listed candidate. However, the learned counsel would submit that the said A.H.Yasmeen did not join. Automatically, the next person who was in the queue i.e., the petitioner who was in wait list no.1 should have been necessarily been considered for the postings.

5.In support of this claim, the learned counsel appearing for the petitioner would rely upon an information furnished by the second respondent under the RTI Act dated 23.05.2011, wherein, with regard to one query that from the Backward Class Muslims (General/ Women), priority wise who did not join duty, the answer was Mrs.A.H.Yasmeen. On the basis of this information supplied by the second respondent through the RTI query, the learned counsel for the petitioner would submit that since the said A.H.Yasmeen did not join duty, definitely, one out of the seven vacancies earmarked for Backward Class Muslims could have been vacant and therefore, since the petitioner being no.1 in the wait list candidate can very well be accommodated in the said vacancy, which the respondents have failed to do, inspite of the request being made by the petitioner and therefore, the learned counsel for the petitioner would submit that the prayer sought for herein has to be allowed.

6.On the specific stand taken by the learned counsel for the petitioner in view of the answer given by the second respondent for the RTI query, this Court has given a direction to the respondents on 20.03.2017, whereby, the following direction has been given:

"4.In this regard, the learned Counsel for the petitioner also drew the attention of this Court to the information furnished by the second respondent dated 23.05.2011, whereby the said candidate namely, A.H.Yasmeen did not join, whereas at para 8 of the counter affidavit filed by the first and second respondents, they have asserted that the said candidate, A.H.Yasmeen, also joined in service.

5.In view of the contradictions, as set out above, this Court wants to peruse the relevant record. Hence, the learned

Government Pleader for the respondents is directed to produce the relevant records, for perusal of the Court."

7. In response to the said direction issued by this Court, the learned Government Advocate has produced written instructions given by the second respondent in his Reference no.6416/E2/3/2012, dated 22.03.2017, wherein the following has been given.

"I invite your kind attention to the letters cited and I am to state that the Draft Counter Affidavit in respect of W.P.No.423 of 2012 filed by D.Ashraf Unnisa has been filed on 10.04.2014 in the Hon'ble High Court at Madras and the FCA No. is 785.

In this connection, I am to state that the petitioner Tmt.A.H.Yasmeen, joined duty as Pharmacist at Primary Health Centre, S.Gudalur, Tiruvannamalai Health Unit District on 28.12.2010 F.N and her services has been regularized and probation has been declared by the Deputy Director of Health Services, Thiruvannamalai as requested in your letter fifth cited. A copy of letter received from the DPH, Chennai is enclosed for your ready reference."

8. The learned Government Advocate on the basis of the said written instructions as well as the averments made in the counter affidavit would contend that even though a counter affidavit made on 18.07.2013 containing six paragraphs, yet another counter affidavit dated 10th April, 2014 was filed where two more paragraphs have been added and at paragraph no.8 of the said counter affidavit, the following has been mentioned:

"One candidate belongs to Backward Class Muslim has been selected against the Physically Handicapped (General) Turn with cut off dated 29.09.1995 and other 2 candidates belong to Backward Class Muslim have been selected against the General Turn Non-Priority (General) category, with cut off date:23.06.1989 (Total of 26 candidates in Backward Class Muslim category). The date of registration of the petitioner is 24.01.1992 and hence she has not reached her turn for appointment against BCM (Non-Priority) and General Turn (Non-Priority). All the 23 candidates belong to Backward Class Muslim (Non-Priority) have joined duty including A.H.Yasmeen. Hence, there is no possibility to consider the request of the petitioner."

9. Therefore, the learned Government Advocate would say that the said Yasmeen had joined service and her services had been regularized and her probation also had been declared and she has been continuously working and therefore, there is no vacancy as has been alleged by the petitioner based on the RTI query information which was mistakenly given and there is no iota of truth in such information furnished to the petitioner. Therefore, the learned Government Advocate would submit that the petitioner's request for accommodating her in the post of Pharmacist reserved for Backward Class Muslim Women cannot be complied with as all the seven candidates selected for the seven vacancies in that category had joined and are working.

10. This Court has considered the said rival submissions made by the parties as well as the recent written instructions obtained by the learned Government Advocate from the second respondent.

11. Since there are contradiction in the stand taken by the second respondent in the counter affidavit as well as the information furnished under the RTI query vide proceedings dated 20.03.2017 which was infact specifically pointed out by the learned counsel for the petitioner, this Court wanted to know whether the said candidate namely Mrs.A.H.Yasmeen joined duty pursuant to the selection or not. If at all the said candidate had not joined duty, definitely, the said vacancy that is one out of the seven earmarked for Backward Class Muslim Women could have been vacant and in that vacancy certainly, the petitioner alone would be entitled to be accommodated. Only in that context the aforesaid information were specifically sought for.

12. Today, the learned Government Advocate has not only produced the written instructions given by the second respondent and also produced a proceedings dated 09.08.2016 in R.No.62055/PHC-7/A2/2016 from the Department of Public Health and Preventive Medicine to the second respondent and the content of the said proceedings reads thus:

"In response to your letter 1st cited, I am to state that one Tmt.A.H.Yasmeen has join duty as Pharmacist at Primary Health Centre, S.Gudalur, Tiruvannamalai Health Unit District on 28.12.2010 F.N. Her services has been regularized and probation has been declared by the Deputy Director of Health Services, Tiruvannamalai."

13. In view of the said categorical proceedings, where the information, which are required to decide the plea raised by the petitioner, has been furnished and on perusal of the same it become known to everyone that the said candidate namely,

Tmt.A.H.Yasmeen pursuant to the selection had joined duty on 28.12.2010 FN and her services also having been regularized her probation also had been declared by the Deputy Director of Health Services, Tiruvannamalai, the plea now raised by the petitioner cannot have any substance.

14.Since the petitioner admittedly was only in the wait list, unless the actual selected candidates not joined duty and by this if any vacancy is created, the petitioner's turn would not come and therefore, on that basis, the petitioner cannot claim any relief to consider herself for the appointment to the post of Pharmacist by taking the candidate from the wait list.

15.In view of the said factual position, this Court finds that there is no merit in the claim made by the petitioner and therefore, the prayer sought for herein cannot be granted. Hence the writ petition fails. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

- 1.The State of Tamilnadu
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- 5.The District Employment Officer,
The District Employment Exchange,
Ootacamund, Nilgiris District - 643 001.

+1cc to Government Pleader sr.18706

+1cc to M/s.P.Godson swaminath,Advocate sr.18005

W.P.No.423 of 2012

And M.P.Nos.1 and 2 of 2012

gm1 (CO)
SS(11/4/2017)