

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.Nos.8683 and 9064 of 2012
and M.P.Nos.1 and 1 of 2012

W.P.No.8683 of 2012:

1. Dr.S.Elansekaran
2. Dr.G.J.Christian
3. Dr.R.Madhavan
4. Dr.P.Shanmugapriya

.... Petitioners

-vs-

1. Roseline Wilfrida
2. Dr.S.Jeya Sudha
3. Dr.P.Saravana Pandian
4. Dr.V.Valar Mathi
5. The Union of India
represented by its Secretary to Government,
Department of Ayush,
Municipality of Health & Family Welfare,
Government of India, New Delhi.
6. The Director,
National Institute of Siddha,
Tambaram Sanatorium,
Chennai-600 047.
7. The Registrar,
Central Administrative Tribunal,
Chennai-600 104.
8. Dr.H.Vetha Merlin Kumari
9. Dr.T.Lakshmi Kantham
10. Dr.S.Visweswaran
11. Dr.S.Sivakumar
12. Dr.V.Mahalakshmi
13. Dr.N.J.Muthu Kumar
14. Dr.A.M.Amala Hazel
15. Dr.K.Suresh

(Respondents 8 to 15 are given up).

..

Respondents

W.P.No.9064 of 2012:

The Director,
National Institute of Siddha,
Tambaram Sanatorium,
Chennai-600 047.

... Petitioner

-vs-

1. Roseline Wilfrida
2. Dr.S.Jeya Sudha
3. Dr.P.Saravana Pandian
4. Dr.V.Valar Mathi
5. Dr.P.Shanmuga Priya
6. Dr.H.Vetha Merlin Kumari
7. Dr.T.Lakshmi Kantham
8. Dr.S.Visweswaran
9. Dr.S.Sivakumar
10. Dr.V.Mahalakshmi
11. Dr.N.J.Muthu Kumar
12. Dr.S.Elasekaran
13. Dr.G.J.Christian
14. Dr.R.Madhavan
15. Dr.A.M.Amala Hazel
16. Dr.K.Suresh

17. Union of India,
rep.by the Secretary to Government,
Department of Ayush
Ministry of Health and Family Welfare,
Government of India, New Delhi.

18. The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai-104.

.. Respondents

W.P.No.8683 of 2012 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the seventh respondent in its order dated 05.03.2012 in T.A.No.9 of 2011 and quash the same.

W.P.No.9064 of 2012 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the order passed by the 18th respondent in T.A.No.9 of 2011 dated 05.03.2012 and to quash the same in so far as setting aside the appointments of respondents 5 and 12 to 14 and further directing the petitioner to conduct fresh selection by constituting a Selection committee in accordance with Rule 20 of the said Recruitment Rules is concerned.

W.P.No.8683 of 2012:

For Petitioners :: Mr.Vijay Narayan, Sr.Counsel
for Mr.Karthik Mukundan

For Respondents :: Mr.S.Conscious Elango for R1 to R3

Mr.J.Madana Gopal Rao,
Standing Counsel for Central Govt.for R5

Mr.P.V.S.Giridhar for
M/s.P.V.S.Giridhar & Sai Associates
for R6

W.P.No.9064 of 2012:

For Petitioner :: Mr.P.V.S.Giridhar for
M/s.P.V.S.Giridhar & Sai Associates

For Respondents :: Mr.S.Conscious Elango for R1 to R3

Mr.J.Madana Gopal Rao,
Standing Counsel for Central Govt.
for R17

COMMON ORDER

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

Both these writ petitions have been filed against the order passed by the Central Administrative Tribunal, Madras Bench, Chennai, in T.A.No.9 of 2011 dated 05.03.2012.

2.The respondents 1 to 4 in these writ petitions are Bachelor degree holders in Siddha Medicine & Surgery. They completed their post graduation (M.D.) in the Department of Forensic Medicine and Toxicology. On a notification dated 11.11.2006 issued by the National Institute of Siddha, Chennai, to fill up various posts including the 12 posts of Lecturers through direct recruitment, the respondents 2 to 4 herein had applied and participated in the written test held on 15.04.2007. Another notification was issued calling for applications for the same post fixing the last date for receipt of applications as 17.08.2009, against which the first respondent had applied for the post of Lecturer. They were called for written examination and interview letters were also issued. A selection committee was constituted under Rule 20 of the National Institute of Siddha Service Rules, 2004 and members

were nominated to the committee. After conducting written examination and interview for the candidates who had applied, the respondents 5 to 16 in W.P.No.9064 of 2012 were selected. The grievance of the respondents 1 to 4 is that the said selection committee constituted is contrary to Para 4 of Rule 20 of the National Institute of Siddha Service Rules, which came into effect from 01.04.2004 and hence the entire selection and orders of appointment issued to the selected candidates are illegal and against law. According to them, there was a mala fide intention on the part of the selection committee in recruiting the candidates. Hence, they filed an application before the Central Administrative Tribunal, Chennai in T.A.No.9 of 2011. The Tribunal, after considering the matter in detail by relying upon various judgments, quashed the selection of four candidates, and allowed the application in part.

3.Challenging the said order, the candidates, whose selections have been quashed, have filed the writ petition in W.P.No.8683 of 2012, and the National Institute of Siddha has come up with the writ petition in W.P.No.9064 of 2012.

4.The learned senior counsel appearing for the petitioners in W.P.No.8683 of 2012 has submitted that the discipline of Noi Nadal and Nanju Nool (Forensic Medicine and Toxicology) were introduced only in the academic years 1998-1999 and 1999-2000. He further submitted that the Tribunal has erred in not considering the fact that the respondents 1 to 4 even after knowing the constitution of the selection committee, participated without any protest or demur and only upon coming out unsuccessful, they challenged the selection. It is also his submission that no protest was made by the respondents 1 to 4 from the date of interview till the date of declaration of results. He further submitted that the Tribunal ought not to have interfered with the selection of candidates in the absence of a finding of mala fide on the part of the members of the selection committee or in the action of the respondents 5 and 6 in W.P.No.8683 of 2012, constituting the committee.

5.The learned counsel for the respondents 1 to 3 in these writ petitions has submitted that the entire selection process is a systematic fraud and the selection itself was not made by the selection committee to be constituted in accordance with the National Institute of Siddha Service Rules, 2004 and the selection was made in utter violation of the Rules and only to the choice of the Director of National Institute of Siddha with the connivance of one Dr.A.Kumaravel. It is further submitted that 75% weightage marks had been given to the written examination conducted by the Director, National Institute of Siddha itself, restricting the role of selection committee to 15% in respect of interview. He also submitted that the decision

that the application of the experienced candidates need to be considered to attract the best available talent for the institute to impact quality teaching as it is a newly created institute, is not a reason for issuing fresh notification; in fact, the sole reason for issuing fresh notification was only to nullify the results of the earlier written examination and to conduct a fresh examination so as to enable their men to succeed in the process of selection. Stating so, the learned counsel prayed for sustaining the order passed by the Tribunal.

6.The learned counsel for M/s.National Institute of Siddha/ petitioner in W.P.No.9064 of 2012 / 6th respondent in W.P.No.8683 of 2012, has submitted that Clauses 4 and 5 of the bye-laws of the National Institute of Siddha, stipulates that two Professors (either serving or retired) of the concerned subject from reputed institutions should be nominated as members of the Selection Committee; due to non-availability of Professors in the existing and newly formed disciplines, Dr.A.Kumaravel, who is specialised in Maruthuvam discipline has been nominated as a member of the selection committee. Stating so, he submitted that there is no illegality in his appointment, particularly considering his alround experience. Finally, he submitted that the Tribunal, although rightly observed that the respondents 1 to 4 do not have locus standi to challenge the selection for the post of Lecturers other than the Departments to which they applied, viz. Noi Nadal and Nanju Nool, erred in setting aside the appointments of the petitioners in W.P.No.8683 of 2012 with a direction to conduct fresh selection.

7.The learned Standing Counsel appearing for the Union of India, has submitted that as per the Memorandum of Association, Bye-laws and Service Rules of the National Institute of Siddha, the institute may create administrative, technical and other posts under the institute and make appointments thereto in accordance with the Rules and Regulations of the institute regulated by the Governing Council.

8.Heard the learned counsel on either side and perused the materials available on record.

9.It is seen from the records that the discipline of Noi Nadal and Nanju Nool (Forensic Medicine and Toxicology) were introduced only in the academic years 1998-1999 and 1999-2000. The respondents 1 to 4, even after knowing the constitution of the selection committee, participated without any protest or demur and only upon coming out unsuccessful, they challenged the selection. Had their allegation regarding the constitution of the committee been true, either they would not have participated in the selection process or they would have participated with protest. But no protest was made by the respondents 1 to 4 from

the date of interview till the date of declaration of results. Hence, this Court is of the considered view that it is not correct on the part of the respondents 1 to 4 to challenge the selection, after it has been concluded.

10.As rightly stated by the learned senior counsel appearing for the petitioners in W.P.No.8683 of 2012, there was no mala fide intention on the part of the selection committee in recruiting the candidates. Clauses 4 and 5 of the bye-laws of the National Institute of Siddha, stipulates that two Professors (either serving or retired) of the concerned subject from reputed institutions should be nominated as members of the Selection Committee. It is seen that due to non-availability of Professors in the existing and newly formed disciplines, Dr.A.Kumaravel, who is specialised in Maruthuvam discipline has been nominated as a member of the selection committee. The decision regarding selection of candidates for appointment, was taken only by the selection committee as a whole and not by one person. The selection committee has been constituted in accordance with law and hence the recruitment made by the committee, cannot be termed as one of bias or has been done with mala fide intention. Thus, in this view of the matter, it cannot also be stated that more marks have been awarded to the selected candidates. As rightly pointed out by the learned senior counsel appearing for the petitioners in W.P.No.8683 of 2012, having participated in the selection process, after completion of the entire selection process, the unsuccessful candidates have come out with a plea that the selection process is bad. Without looking into this aspect, the Tribunal has passed the impugned order setting aside the selection of the candidates / petitioners in W.P.No.8683 of 2012. The other reasons put forth on the side of the respondents 1 to 4 to sustain the order passed by the Tribunal also appears to be not sound.

11.In the above stated circumstances, the impugned order passed by the Tribunal is not sustainable in law and accordingly the same is set aside and the writ petitions are allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of India,
Department of Ayush,
Municipality of Health & Family Welfare,
Government of India, New Delhi.
2. The Director,
National Institute of Siddha,
Tambaram Sanatorium,
Chennai-600 047.
3. The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

+2cc Mr.S.Conscious Ilango, Advocate in sr.no.77155
+1cc Mr.Karthik Mukundan, Advocate in sr.no.77123
+1cc Mr.J.Madana Gopal Rao, Advocate in sr.no.76842

W.P.Nos.8683 and 9064 of 2012
and M.P.Nos.1 and 1 of 2012

gmr(co)
cs/05/12/17



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