

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

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HON' BLE DR JUSTICE SHAMEEM AKTHER

W.P. Nos. 7371, 7730, 7422 and 10736 of 2016

COMMON ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Inasmuch as common question of fact and law is involved in the four writ petitions, these matters are taken up together for disposal by this Common Order.

These writ petitions are filed against the Common Order dated 12.11.2015 passed by the Tribunal in O.A.Nos.6164, 6165, 6169 and 6171 of 2015. All the petitioners filed applications under Section 19 of the Administrative Tribunals Act, 1985 (for brevity "the Act") praying the Tribunal for the following relief:

"to declare the action of the respondents therein in not considering their just claims for appointment as Medical Officers (Ayurveda) in the existing available vacancies under Phases I and II while appointing the other similarly situated person, as illegal, arbitrary, discriminatory and subversive of Articles 14 and 16 of the Constitution of India, and consequently, declare that the petitioners are entitled to appointment in Zone V in the existing available vacancies in Phases-I and II by duly extending the orders issued in G.O.Rt.No. 385, Revenue, dated 13.03.2012 to the case of selections made under Phases-I and II under NRHM with all consequential benefits."

As averred in their applications, the number of candidates, who were selected and appointed in Phase-I in pursuance of the Notification dated 02.04.2008, again applied

for Phase-II in pursuance of the Notification dated 07.01.2009 and got selected. No competitive examination was conducted while making selection and the entire selection was made according to academic merit and unemployment weightage i.e. 90% academic merit and 10% unemployment weightage, and therefore, the candidates who got selection in the Phase-I can get selection in other phases inasmuch as they are having academic merit as well as unemployment weightage. But, the authorities again considered the cases of the candidates who already got appointment in the Phase-I inasmuch as while giving appointment, the authorities obtained agreement of undertaking from the candidates, who were appointed, to the effect that they should not leave the Department or resign, and similarly, if such candidates applied for Phase-II, even though they are entitled to get academic merit, they are not entitled to get unemployment weightage as they already got appointment in the Phase-I. But, very strangely, the authorities selected some of the candidates, who were already appointed in Phase-I by not only taking into consideration, the academic merit but also giving unemployment weightage which is absolutely irregular and illegal and depriving the rights of the other unemployees like the petitioners.

We note, the Tribunal, after considering the rival contentions, recorded that the selection process relating to Phases-I and II was over in the year 2009 itself. The claim of the petitioners for unfilled posts in Phases-I and II is hopelessly barred by limitation. It is further recorded that mere representations of the petitioners are not going to extend the period of limitation for filing the Original Applications under Section 21 of the Act. Initially, correspondence between the Commissioner and the Government in this regard also has no bearing on the limitation for filing the Original Applications.

To strengthen the view taken by the Tribunal, it relied on the judgment of this Court in K.G.V.Krishnaiah v. C. Venkata Reddy, whereby a Division Bench of this Court held that there is no bearing on the point of limitation. In case the Government intends to consider claims of the petitioners even after the point of limitation, the Tribunal will not come in the way of the Government in doing so.

It is an admitted fact that some candidates, who could not secure selection under Phases-I and II, filed O.A.No. 4752 of 2012, and the Tribunal, vide order dated 29.06.2012, directed the official respondents therein to consider their representations dated 07.03.2012 and pass appropriate orders thereon as per rules, within a period of eight weeks from the

date of receipt of a copy of the order. Accordingly, the Government issued Memo No. 5082/R2/2012, dated 16.02.2013 to the effect that the candidates, who have applied for appointment as Medical Officer in terms of Phase-III, cannot be considered for the vacancies that had arisen in Phases-I and II of NRHM and that the applicants of Phase-III are free to apply for the posts to be filled up in the vacancies arisen in Phase-I and Phase-II of NRHM as and when applications are invited for filling up such vacancies in terms of the Notification that may be issued.

The grievance of the petitioners is that in spite of issuance of the notification after notification, the Government has not taken final decision whereas the number of vacancies are still lying vacant.

It is pertinent to mention here that it is averred in the counter affidavit filed by the respondents that after bifurcation of the State, the Government, in their orders issued in G.O.Rt.No.762, dated 26.11.2015, have accorded permission to fill up 391 vacant posts of Medical Officers, Compounders and Sweeper-cum-Nursing on contract basis in Phases-I and II due to various reasons in the State of Telangana. This includes 105 posts of Medical Officers (Ayurveda). The Government further issued the procedure and guidelines to be followed for the recruitment as per the

orders in G.O.Rt.No. 88, dated 13.02.2016. As per these guidelines, the recruitment is to be done by the District Selection Committee of the District Health Society. Accordingly, the process of recruitment has been initiated at District level.

As stated by the learned counsel for the petitioners, till date, no process of recruitment has been initiated by any of the Departments.

In view of the facts recorded above, we hereby dispose of the writ petitions directing all the District Heads of the State of Telangana to start the process of recruitment of 150 posts of Medical Officers (Ayurvedic) lying vacant.

It is made clear that this process shall be initiated within a period of six weeks from the date of receipt of a copy of this order.

It is further made clear that since the petitioners already participated on two occasions in Phases-I and II, their candidature shall also be considered in the selection process subject to their eligibility criteria.

No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

20.06.2017

DR. SHAMEEM AKTHER, J

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