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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.07.2018

Delivered on : 27.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.7321 of 2016 and
W.M.P.Nos.6504 & 6505 of 2016 and
W.M.P.No.16217 of 2018

Dr.M.Sai Vijaya Priya

Vs

... Petitioner

1.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Secretariat,
Chennai 600 009.

2.The Additional Chief Secretary/ Special Commissioner,
Directorate of Indian Medicine & Homeopathy,
Arumbakkam,
Chennai 600 106.

3.Dr.J.Clarence Davy

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the first respondent in G.O.(D).No.115, dated 19.01.2016, quash the same and consequently direct the first and second respondents to appoint the petitioner as Principal, Government Ayurveda Medical College, Kottar, Nagercoil.

For Petitioner :Mr.S.Gunaseelan

For Respondents :Mr.J.Pothiraj,
Special Government Pleader for R1 & R2

:Mr.Isaac Mohanlal, SC for
Mr.S.Prabakar for R3



O R D E R

Heard Mr.S.Gunaseelan, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the first and second respondents and Mr.Isaac Mohanlal, learned senior counsel appearing for the third respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a writ of Certiorarified Mandamus, to call for the records of the first respondent in G.O. (D).No.115, dated 19.01.2016, quash the same and consequently direct the first and second respondents to appoint the petitioner as Principal, Government Ayurveda Medical College, Kottar, Nagercoil. "

3. The facts in respect of rival claims of the petitioner and the respondents which necessitated the filing of the present writ petition, are stated hereunder:

(i) The petitioner was a qualified Ayurvedic Doctor and was appointed through Tamil Nadu Public Service Commission (TNPSC) on 14.10.2003 and posted at Government Primary Health Centre, killiyur, Kanyakumari District as Assistant Medical Officer. While she was working as Assistant Medical Officer, for a brief period, on diversion of post, she was posted as Post Graduate candidate vide proceedings of the second respondent dated 01.03.2008, in the College which was established by G.O.Ms.No.10, Department of Health and Family Welfare (IM - 1 (2)), dated 23.01.2006, viz., Government Ayurveda Medical College and Hospital, Kottar, Nagercoil. Although the college was established through G.O.Ms.No.10 dated 23.01.2006, which became functional only from the academic year 2008. The petitioner was posted to work in the college for a brief period during the period of inspection conducted by the Central Council of Indian Medicine (hereinafter referred to as CCIM) on 12.08.2009. In order to satisfy the inspection team, on diversion, she was posted at the Government Ayurveda Medical College and Hospital, Kottar, on 18.08.2009.

(ii) The post of Principal of the Government Ayurveda Medical College and Hospital fell vacant on retirement of then existing incumbent on 30.04.2015. According to the petitioner, since she was regular service candidate with Post Graduate qualification and was qualified for appointment in the vacancy created by retirement of the then existing incumbent in the post of Principal, she was expecting that she would be considered for appointment to the post of Principal of the College. However, the third respondent was given Principal incharge of the College



WEB COURT

and Hospital, Nagercoil, vide order dated 30.04.2015. The third respondent was only a 10(A)(1) appointee as Lecturer Grade II in the College. She had not been regularised even at the entry post. The grievance of the petitioner is that when the regular candidate is available viz., the petitioner, without any justification, the third respondent came to be appointed as Principal incharge as admittedly she was appointed on temporary basis, was not eligible to be appointed as Principal.

(iii) According to the petitioner, she was appointed in 2003 and had more than 10 years of experience in the field and therefore, she ought to have been their right choice for appointment as Principal of the College. Subsequent to adhoc appointment on 30.04.2015, the first respondent by subsequent G.O.(D).No.115, Health and Family Welfare (IM1-1) Department, dated 19.01.2016, appointed the third respondent (full additional charge) as Principal of the College. The said G.O. is put to challenge in the present writ petition.

(iv) The case of the third respondent is that she possess Master Degree in Ayurveda. After completion of Undergraduate Degree in 2002, on completion of Post Graduate, she was appointed as Lecturer in KVG Ayurveda Medical College, Karnataka on 14.10.2005 and continued there till 30.03.2006. Thereafter, she was appointed as Lecturer in Ayurveda College, Coimbatore on 05.04.2006 and continued there till 21.06.2008. According to her, both the colleges were approved by CCIM. On establishment of the College at Nagercoil, the third respondent along with few others, came to be appointed in regular pay of scale of Rs.8000-13500/- vide G.O.Ms.No.190, Health and Family Welfare (IM1-2) Department dated 04.03.2018. They were sponsored by employment exchange at request from the authority concerned. At the time when she was appointed, she was appointed only as Tutor and a regular selection was conducted before the appointment order was issued. She joined the duty on 23.06.2008.

(v) According to the third respondent, she was fully eligible for appointment to the post of Lecturer, since the qualification prescribed for the post of lecturer was only Post Graduation in Ayurveda. But, it was clarified at the time of appointment that the initial appointment of tutors would be converted to the post of Lecturer/Reader as and when she was qualified. Subsequently, by G.O.Ms.No.252, Health and Family Welfare Department, dated 24.10.2011, the third respondent and other tutors were re-designated as Lecturer Grade II. The eligibility criteria prescribed for appointment to the post of Principal in terms of the original adhoc rules is, one should have 10 years teaching experience in the field and from 10 years of service, one should have rendered five years of service as Professor.



(vi) According to the third respondent, the petitioner was admittedly appointed as only a Medical Officer, which was a non teaching post and was continued as such and only for a brief period, in order to satisfy the inspection team, she was posted in the College, even then, she had drawn pay only as an Assistant Medical Officer. According to the third respondent, a separate channel of promotion was provided for both Assistant Medical Officer and faculty members like Lecturers etc. According to the third respondent, the petitioner did not have any teaching experience at all. Although the petitioner had been working from 2003, whereas, the third respondent being a Lecturer from 2005, had necessary qualification viz., teaching experience for appointment to the post of Principal in charge. According to the third respondent, she could not be regularly appointed as Principal only for the reason that at the relevant time in 2015, no regular rules came to be framed governing the service conditions of teaching staff of the College and only adhoc rules were in force. Therefore, she came to be appointed as Principal incharge by considering the teaching experience.

(vii) According to the third respondent, after intervention of this Court in respect of the writ petition filed by her in W.P (MD) No.12039 of 2011, the third respondent was also posted as Reader vide proceedings dated 31.10.2011. While matter stood thus, one Dr.Nandhinee Vijay, filed W.P.(MD) No.13571 of 2015, before the Madurai Bench of this Court, seeking to promote her as Principal of College by considering her representation. This Court was pleased to dispose of the representation by order dated 31.07.2015, directing to dispose of the petitioner's representation by affording opportunity of hearing to all the eligible candidates. Accordingly, the Commissioner invited five candidates of the College for hearing on 19.10.2015 and the third respondent was one of the five candidates called for hearing along with four others. Admittedly, the petitioner's name did not find the place in the five candidates who called for personal hearing. Thereafter, on the basis of interse merit, the third respondent came to be appointed vide G.O.(D) No.115 dated 19.01.2016 as Principal (full incharge) pending finalization of regular rules. In these circumstances, the third respondent would submit that the petitioner who was not even qualified and who was not even called for personal hearing, was not entitled to challenge the appointment of her to the post of Principal incharge.

(viii) On behalf of the first and third respondents, counter affidavit has been filed and the facts as narrated above are more or less not controverted and the qualification as prescribed for appointment to the post of Principal is also admitted in the counter affidavit filed on behalf of the official respondents . The fact that the petitioner lacks



(xii) The learned Senior Counsel for the third respondent would further submit that the petitioner admittedly being an Assistant Medical Officer all through from the date of her appointment, whose separate channel of promotion to the next higher grade viz., Medical Officer, cannot be allowed to stake a claim for appointment to the post of Principal which requires atleast 10 years teaching experience which the petitioner admittedly lacked. Her brief stint with the College only to satisfy the inspection team, cannot be counted for being appointed as Principal, as the petitioner during that time had continued to draw a pay as Assistant Medical Officer and never worked as a Lecturer. In regard to the subsequent action of the authority appointing the petitioner as Lecturer Grade II vide G.O.(4D) No.12 dated 18.03.2013, the learned senior counsel would submit that by subsequent letter of the Commissioner addressed to the first respondent dated 21.05.2014, the first respondent was informed that the G.O.(4D) No.12 dated 18.03.2013 could not be implemented, since there were no vacancies in the post of Lecturer Grade II and ultimately, it was never implemented till 2017. This fact was also been admitted in the counter affidavit filed on behalf of the respondents 1 and 2.

(xiii) The learned Senior Counsel for the third respondent would also submit that eventually the petitioner came to be appointed as Lecturer Grade II only on 20.01.2017 i.e., after the appointment of the third respondent. According to the learned Senior Counsel, the writ itself has to be brushed aside for the simple reason that when the Commissioner invited eligible candidates for personal hearing by letter dated 15.10.2015, in the five candidates invited, the petitioner's name did not figure at all, which was an admitted fact. On the basis of the interse merit of the candidates invited, the third respondent was selected for appointment to the post of Principal incharge. When the petitioner herself was not one of the candidates invited for personal hearing on 15.10.2015, the challenge of the petitioner to the subsequent action taken by the authority, cannot be countenanced both in law and on facts.

(xiv) According to the learned Senior Counsel for the third respondent that the petitioner had no locus standi to challenge the appointment of the third respondent, since the uncontroverted facts would establish that the petitioner was not qualified in the first place for the subject appointment. Therefore, she cannot successfully challenge the appointment of the third respondent. The learned Senior Counsel would submit that as regards the experience as a Professor in Ayurveda, since the College was established only in 2006 and became functional only from 2008, no faculty member could gain experience of five years as Professor and at the same time, the College cannot afford to function without its Head and in view of the compelling circumstances, the authorities had to take a decision



to appoint the senior most and meritorious candidate as Principal incharge and on such consideration, the third respondent came to be appointed. According to him, it is needless to mention that no institution can function without their being a Head viz., Principal and therefore, a choice had to be made from among the most eligible and meritorious candidates. Ultimately, the choice fell on the third respondent and therefore, the impugned appointment did not call for any intervention from this Court.

(xv) The learned Special Government Pleader appearing for the first and second respondents has also reiterated the submissions as averred in the counter affidavit. The learned Special Government Pleader more or less has agreed with the submissions made on behalf of the third respondent and infact, the case of the third respondent stood fortified by averments contained in the counter affidavit filed on behalf of the first and second respondents. The learned Special Government Pleader would also agree with the contention made on behalf of the third respondent that the petitioner has no locus standi as she was not qualified in the first place for consideration for appointment to the post of Principal incharge of the College. Therefore, she has no right to question the appointment of the third respondent and requested this Court to dismiss the writ petition as being without merits and substance.

(xvi) When the writ petition was admitted by this Court, an interim order was passed and on the basis of the interim order, the appointment of the third respondent came to be cancelled and appointed some other Lecturer as acting Principal. The cancellation was only being due compliance of the interim order passed by this Court and not on any other ground. In support of the contention on behalf of the petitioner, the learned counsel would rely on a decision rendered in a batch of writ petitions by the learned Judge of this Court in W.P.(MD) Nos.12039, 12040 of 2011 and 181 of 2012 dated 02.01.2013, these writ petitions pertaining to the claim of the third respondent and two other Doctors regarding non-consideration of their claim for being posted as Reader. The learned Judge of this Court in consideration of the claim of the third respondent and two other Doctors, passed few directions to examine the claim of the petitioners therein on the basis of their qualification and pass appropriate orders. Although reliance has been placed on the said decision by the learned counsel appearing for the petitioner, after going through the Judgment, this Court is unable to see as to how the said order passed by the learned Judge of this Court, could help to advance the case of the petitioner.

(xvii) On the other hand, as far as the third respondent, the following decisions have been cited and relied on.



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a) In the case of B.Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and others, reported in (2006) 11 SCC 731 (2). The learned Senior Counsel would draw the attention of this Court to paragraph No.78 of the order of the Hon'ble Supreme Court of India, which is reproduced as under:-

"78. The High Court, in the instant case, was not exercising certiorari jurisdiction. Certiorari jurisdiction can be exercised only at the instance of a person who is qualified to the post and who is a candidate for the post. This Court in Umakant Saran (Dr.) V.State of Bihar held that the appointment cannot be challenged by one who himself is not qualified to be appointed. In Kumari Chitra Ghosh V. Union of India, a Constitution Bench of this Court held as under : (SCC p.234, para 12)

"12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded."

b) In the case of Dr.Umakant Saran Vs. State of Bihar and Others, reported in (1973) 1 SCC 485. The learned senior counsel would rely on paragraph No.10, which is extracted hereunder:-

"10. This Court has pointed out in Dr.Rai Shivendra Bahadur V. The Governing Body of the Nalanda College, that in order that mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty and the aggrieved party have a legal right under the statute to enforce its performance. It is conducted on behalf of the state that apart from the fact that Respondents 5 and 6 had been validly appointed in accordance with the practice followed by the Government, Dr. Saran, who was not eligible for consideration for appointment at the time, had no right to question the appointments since he was not aggrieved."



c) In the case of Md.Ismail Hoque Vs. Imran Hossain & others, reported in 2014 SCC Online Cal 17775, this Court's attention is drawn to the following passage of the Calcutta High Court's decision.

"This is not a public interest litigation. This is a litigation in which some relief has been claimed by a private individual. Unless the claimant of such relief can establish that he is an eligible candidate and his right has been affected as he was denied such engagement illegally, he cannot maintain the writ petition for want of locus. Again, such an ineligible candidate cannot maintain a writ petition challenging the legality of selection of another candidate."

(xviii) The learned Senior Counsel would submit that the petitioner being admittedly not qualified for the subject appointment, cannot be allowed to challenge the appointment of the third respondent who was admittedly qualified in terms of the existing regulations. Therefore, according to him, the writ petition as such is not maintainable much less granting any relief to the petitioner as against the third respondent. The above decisions of the Hon'ble Supreme Court of India and the Hon'ble Calcutta High Court, would squarely apply to the facts of this case. At the instance of unqualified candidate, no relief could be granted in the writ petition and therefore, he would pray for dismissal of the writ petition.

4. Heard the learned counsels appearing on both sides and perused the materials and pleadings placed on record. Although a detailed and lengthy averments have been raised in the affidavit and counter affidavit, the simple issue which is placed for consideration before this Court is whether the claim of the petitioner as against the third respondent is sustainable or not. From the undisputed facts as disclosed in the proceedings, it could be seen that the petitioner is not qualified in terms of the requirement for appointment to the post of Principal incharge, as admittedly, she did not have the requisite teaching experience as per the requirement. Although she was appointed regularly through Tamil Nadu Public Service Commission as Assistant Medical Officer, but, the requirement for appointment to the post of Principal was a teaching experience which the petitioner admittedly lacked.

5. As rightly contended by the learned Senior Counsel for the third respondent that though the petitioner was eventually appointed as Lecturer vide G.O. (4D) No.12 dated 18.03.2013, but, the said Government Order did not give effect by the subsequent proceedings of the Commissioner dated 21.05.2014. Ultimately, the petitioner came to be appointed as Lecturer Grade II only on 20.01.2017, that is, much after the appointment of the third respondent as Principal incharge in 2016. Therefore, this Court is unable to understand as to how the



WEB COURT

petitioner has any locus standi to question the appointment of the third respondent. The contention of the learned counsel for the petitioner is that the post of Assistant Medical Officer and lecturer Grade II was interchangeable, can be taken into consideration if only the petitioner had worked as Lecturer for a period of ten years in actual terms. From the facts as disclosed, the petitioner never worked as Lecturer even for a brief period when she was posted in the College during the time of inspection on behalf of CCIM.

6. That being the case, this Court does not understand the foundation of the petitioner's claim for being considered for appointment to the post of Principal incharge. Admittedly, the petitioner was not qualified for such consideration and in the absence of due qualification, how the petitioner could assail the order of the third respondent who was found to be relatively meritorious than the other candidates, considered by the authority concerned on 15.10.2015, during personal hearing. Pursuant to the order of this Court dated 31.07.2015 in W.P.(MD) No.13571 of 2015, when the petitioner was not even called for personal hearing along with other five candidates, the consequential order passed by the authority on 19.01.2016 in G.O.(D) No.115, appointing the third respondent as Principal incharge, cannot be successfully challenged at the instance of the petitioner. As rightly held by the Hon'ble Supreme Court of India and the Hon'ble Calcutta High Court that the person who challenges any order of appointment must be qualified to be appointed to the said post, only then, the challenge could be maintained. In this case, the petitioner is admittedly not qualified and therefore, the substratum of challenge in the writ petition stood removed and therefore, such writ petition, according to this Court, is not maintainable.

7. In regard to the peculiar situation where the qualified candidates were not available viz., five years experience as Professor for being considered for appointment to the post of Principal, as rightly contended by the learned Senior Counsel for the third respondent, no institution can function effectively without its Head. Therefore, the administration did not have any choice except to take a call for appointment to the post of Principal from among the most experienced, meritorious and eligible candidates. After granting personal hearing to all the eligible candidates, finally, the choice fell on the third respondent and rightly she was selected and appointed as Principal incharge. In fact, the other four candidates who were also called for the personal hearing on 15.10.2015, never chosen to question the appointment of the third respondent.

8. Subsequently, by G.O.Ms.No.125, Health and Family Welfare Department, dated 10.04.2018, adhoc rules came to be issued to the temporary post in Government Ayurveda Medical College and



Hospital in Tamil Nadu Medical Service, wherein, 10 years teaching experience was prescribed and out of 10 years, not less than 5 years shall be in the post of professor(Ayurveda). As concluded above, nobody could fulfil the qualification as prescribed and therefore, the best way to find the solution is to choose the most experienced and meritorious Lecturer for appointment to the post of Principal incharge.

9. That being the case, this Court does not appreciate as to how the petitioner could challenge the appointment of the third respondent when she herself was admittedly not qualified. Unfortunately, in this case, by virtue of the interim order, the appointment of the third respondent was recalled and some other person has been accommodated as adhoc Principal, pending disposal of the writ petition.

10. It is needless to mention that the person who challenges the appointment of someone else must be qualified in the first place to sustain the challenge. In this case, unfortunately, at the instance of unqualified person, the qualified person's appointment has been set at naught. The fact remains that the petitioner came to be ultimately appointed as Lecturer Grade II only on 19.01.2017 and this fact is evidenced by the document filed in the proceedings which cannot be denied. It also appears that by notification dated 07.11.2016, the Government has brought an amendment to Indian medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 and the same was published in the official gazette on the said date. In any case, this Court is called upon to decide only about the appointment of the third respondent on 19.01.2016 as Principal incharge and whether the appointment of the third respondent as such can be successfully challenged at the instance of the petitioner.

11. In the light of the about narration and findings, this Court is unable to accept the case of the petitioner as this Court does not find any iota of merit and substance in the writ petition in order to sustain the challenge, even remotely.

12. For the above said reasons, this Court finds that the writ petition thoroughly lacking any merit and substance and therefore, the same is dismissed. Since the appointment of the third respondent has been recalled only on the ground of interim order granted by this Court and in view of the dismissal of the writ petition, it is open to the authorities concerned to take appropriate steps to restore the status-quo that is prior to the order of cancelling the appointment of the third respondent on 23.04.2018.



13. With the above observation, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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-s/d-
Assistant Registrar (CS-IX)

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Sub-Assistant Registrar

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To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Secretariat,
Chennai 600 009.
2. The Additional Chief Secretary/ Special Commissioner,
Directorate of Indian Medicine & Homeopathy,
Arumbakkam,
Chennai 600 106.

+1 CC to Mr. S. Gunaseelan, Advocate sr 67122.

W.P.No.7321 of 2016

SP(08/10/2018)