

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.790 of 2016

and

C.M.P.Nos.10361 and 10362 of 2016

Dr.G.Vinodh

... Appellant

versus

- 1.The Secretary to Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai.
- 2.The Director of Medical Education,
Kilpauk, Chennai.
- 3.Dr.A.Nandhini,
Assistant Professor of Dental Surgery,
Tamil Nadu Government Dental College and Hospital,
Chennai.
- 4.Dr.P.Shakunthala,
Assistant Professor of Dental Surgery,
Tamil Nadu Government Dental College and Hospital,
Chennai.
- 5.Dr.R.Krishnaveni,
Assistant Surgeon (Dental)
Government Hospital,
Kothagiri, The Nilgiris District.
- 6.D.V.Bakthavatchalam,
Assistant Surgeon (Dental)
Government Hospital,
Senthurai, Perambalur District.

... Respondents

PRAYER: Appeal filed against the order passed by this Court dated 03.06.2016 made in W.P.No.6431 of 2015.

PRAYER IN W.P.No.6431 of 2015:

Writ Petition Under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified mandamus,

Calling for the records of the 2nd respondent in its proceedings Ref. No.88967/ E1/5/ 2014 dt 4.3.2015 and quash the same and in so far as panel to the post of Associate Professor in Dental Surgery for the year 2014-2015 is concerned for non inclusion of petitioner's name in the said list and consequently direct the 1st and 2nd respondents to include the name of the petitioner in the panel for the year 2014-2015 so as to consider his case for promotion to the post of Associate Professor in Dental Surgery.

For Appellant : Mr.N.Balamuralikrishnan

For Respondents : Mr.K.Karthikeyan, Government Advocate
for R1 and R2
Mr.R.Ramachandran for R3

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this intra-Court appeal is to the judgment of the learned Single Judge dated 03.06.2016 made in W.P.No.6431 of 2015.

2. In the Writ Petition, the appellant had sought for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in its proceedings in Ref.No.88967/E1/5/2014 dated 04.03.2015 quash the same and direct inclusion of the name of the petitioner in the panel for promotion as Associate Professor for the year 2014-15.

3. According to the appellant, the inclusion of the respondents 3 and 4 in the panel for promotion for the year 2014-15 is irregular since they were not qualified for such promotion. The appellant would claim that he had joined the Tamil Nadu Medical Services on 25.08.2000 and he completed his post graduation in Conservative Dentistry during the year 2008 and joined as an Assistant Professor in Department of Conservative Dentistry of the Tamil Nadu Government Dental College and Hospital, Chennai on 27.03.2008. His next avenue for promotion is the post of Associate Professor. He would contend that the qualification necessary for promotion as Associate Professor is post graduation with five years of teaching

experience in a Dental Institution.

4. By the proceedings dated 21.08.2014, the 2nd respondent had directed the Heads of the Institutions to furnish complete service particulars of the Medical Officers to prepare a promotion panel for the post of Associate Professor of Dental Surgery for the year 2014-15. The Heads of the Institutions were specifically directed to furnish the proforma particulars of Medical Officers who have completed five years of teaching experience as on 15.03.2014. While the petitioner's name was found in Serial No.20 in the said list, the names of the respondents 3 and 4 were placed at Serial Nos.22 and 21 respectively. The petitioner has completed five years of teaching experience as on 26.03.2013.

5. The 1st respondent by a circular dated 04.03.2015 informed all concerned that the Government had approved a temporary panel for promotion to the post of Associate Professors in certain specialties and had instructed the Directorate to conduct promotion counselling for the post of Associate Professor among the Medical Officers whose names have been included in the panel for promotion for the year 2014-15. Finding that his name did not find a place in the panel for promotion as Associate Professor, Dental Surgery, the petitioner has approached this Court seeking to quash the said panel.

6. According to the petitioner, the respondents 3 and 4 had not completed five years of teaching experience as on the cutoff date viz., 15.03.2014. However, the Government had included the names of the respondents 3 and 4 on the ground that they had completed five years of teaching experience as on the date of counseling i.e., 06.03.2015. While doing so, the 1st respondent also took into account the teaching experience of the respondents 3 and 4 in Chengalpattu Medical College and Stanley Medical College in the Department of Dentistry. This according to the petitioner is against the Rules which prescribe five years of teaching experience in a Dental Institution. Therefore, according to the petitioner, he should have been preferred as against the respondents 3 and 4, in view of the fact that he has completed five years of teaching experience in a Dental Institution on the cutoff date viz., 15.03.2014.

7. The Writ Petition was resisted by the respondents. The 2nd respondent viz., the Director of Medical Education had filed a counter affidavit, wherein, it is claimed that the petitioner had joined the Medical Services on 25.08.2000 while 3rd respondent had joined on 17.02.1998 and 4th respondent had joined on 20.10.1997. The respondents 3 and 4 had completed post graduation viz., M.D.S in Conservative Dentistry in the year 2006-09 batch. On completion of the post graduation, the 3rd

respondent was posted as Senior Resident in Dental Surgery, Chengalpattu Medical College and subsequently she was transferred and posted as Assistant Professor of Conservative Dentistry in the Tamil Nadu Government Dental College and Hospital, Chennai with effect from 03.05.2010. Insofar as the 4th respondent is concerned on completion of post graduation she was appointed as Senior Resident/ Assistant Professor of Dental Surgeon in the Government Arigna Anna Memorial Cancer Institute, Kancheepuram and subsequently posted as Assistant Professor of Conservative Dentistry and Endodontics at the Tamil Nadu Government Dental College Hospital, Chennai with effect from the forenoon of 01.05.2010. The petitioner who had completed his post graduation in 2008 was posted as Assistant Professor of Conservative Dentistry at Tamil Nadu Government Dental College and Hospital, Chennai on 27.03.2008.

8. The 2nd respondent would further state that the existing vacant post in Associate Professor, Dental Surgery were filled up by drawing a panel every year based on CML (Civil Medical List) Seniority and as per Special Rules Clause 9 Branch 1 of the Tamil Nadu Medical Services the qualification prescribed for the post of Associate Professor in Dental Surgery is post graduate degree in the speciality concerned awarded by the Tamil Nadu Dr.MGR Medical University, Chennai with a teaching experience of not less than five years in Dental Surgery in a Dental Institution in India or abroad. It is further submitted that though there is a specific Rule for the post of Reader of Dental Surgery, there is no Rule or provision in the Special Rules or Adhoc Rules for the speciality posts which were recently created by the Government vide G.O.Ms.No.307, Health and Family Welfare (E1) Department, dated 31.10.2012.

9. Since the speciality posts were created to comply with the requirements of the Dental Council of India, New Delhi, the Government had decided to fill up these posts by giving temporary promotion to eligible Medical Officers who have completed five years of teaching experience on the date of promotion counseling i.e., on 06.03.2015 according to their CML Seniority pending framing of special or Adhoc Rules. Therefore, considering the fact that the respondents 3 and 4 have acquired the essential qualification of teaching experience at the time of promotion counseling i.e., 06.03.2015, the Government had decided to include their names in the panel for the year 2014-15. The respondents 3 and 4 have also filed separate counter affidavits substantially adopting the stand taken by the 2nd respondent.

10. The learned Single Judge who heard the Writ Petition dismissed the same accepting the contentions of the respondents. The learned Single Judge found that the respondents 3 and 4 are

seniors to the petitioner in the CML Seniority and they have also obtained the post graduate qualification and five years of teaching experience as on the date of counseling. No doubt true, the petitioner had completed his post graduation in 2008 and he has worked as Assistant Professor of Conservative Dentistry and Endodontics in the Tamil Nadu Government Dental College and Hospital, Chennai from the year 2008 and he is fully qualified for promotion as an Associate Professor, the learned Single Judge discountenanced the claim of the petitioner on the ground that, the respondents 3 and 4 who also possessed the required qualification for promotion as Associate Professors as on the date of the counseling viz., 06.03.2015 being senior as per the CML seniority, the respondents 1 and 2 were justified in including the name of the respondent 3 and 4 in the promotion panel for the year 2014-15. Aggrieved the appellant is before us by way of this intra-Court appeal.

11. We have heard Mr.N.Balamuralikrishnan, learned counsel for the appellant, Mr.K.Karthikeyan, learned Government Advocate for the respondents 1 and 2 and Mr.R.Ramachandran, learned counsel for the respondents 3 and 4.

12. Mr.N.Balamuralikrishnan, learned counsel appearing for the appellant would contend that the cutoff date as per the proceedings of the Deputy Director of Medical Education dated 21.08.2014 being 15.03.2014, the respondents were not justified in extending the cutoff date upto the date of counseling and the same was done only to accommodate the respondents 3 and 4. It is also the further contention of the learned counsel for the appellant that the respondents 3 and 4 had not completed five years of teaching experience in a Dental Institution on 15.03.2014 which is the cutoff date. He would also invite us to the requirements of the Dental Council of India. According to him, the qualification prescribed for the post of a Reader by the Dental Council of India are as follows:

"A BDS degree of an Indian University or equivalent qualification with post-graduate qualification/ Diplomat of National Board in the subject and with 4 years of teaching experience after post graduation, shall have published atleast one paper as first author in his speciality in any National/ International journal."

13. According to Mr.N.Balamuralikrishnan, if the qualifications prescribed by the Dental Council of India are to be taken into account, the respondents 3 and 4 will not qualify, because they had not published any paper as required by the qualifications prescribed by the Dental Council of India. He would further point out that even according to the counter

affidavit filed by the 2nd respondent the qualifications prescribed is a post graduate degree in the speciality concerned awarded by Tamil Nadu Dr.MGR Medical University along with a teaching experience for a period of five years in Dental Surgery in a Dental Institution of India or abroad.

14. Therefore, according to Mr.N.Balamuralikrishnan, the teaching experience in a Dental Institution alone should be taken into account and teaching experience in Dentistry Department of any other Government Medical College is wholly irrelevant for the purposes of determining whether the respondents 3 and 4 have completed five years of teaching experience. He would also invite our attention to the Government Order in G.O.Ms.No.1088 dated 23.10.2014, which made certain arrangements to enable all Assistant Professors to have an opportunity of teaching experience in the Tamil Nadu Government Dental College. This Government Order was issued to address the specific issue of promotion to the post of Associate Professor in Government Dental College due to the fact that several of the Assistant Professors are unable to acquire the minimum requirement of four years of teaching experience as required by the Dental Council of India. The qualification prescribed by the Dental Council of India which have been extracted above do not require four years of teaching experience in the Dental Institute. It is only the Tamil Nadu Rules which requires five years of teaching experience in a Dental Institution.

15. Even the Tamil Nadu Rules are meant for the post of Readers, in general, the 2nd respondent has specifically pointed out, in the counter affidavit filed by her, that the Government had decided to accord temporary promotions to Assistant Professors who had completed five years of teaching experience as on the date of promotion counseling, according to their CML Seniority pending framing of Special or Adhoc Rules. The 2nd respondent would further state in the counter affidavit that the panel for the post of Associate Professors for 2014-15 was prepared based on the Civil Medical list seniority and since the respondents 3 and 4 who are admittedly seniors to the petitioner had acquired the necessary qualification on the date of counseling they were included in the promotion panel.

16. The petitioner had obtained post graduate degree in 2008 and he was appointed as an Assistant Professor in the Tamil Nadu Government Dental College Hospital, Chennai immediately after obtaining his post graduate degree. While so, the respondents 3 and 4, though had acquired their post graduation in 2009 were posted at different locations and they were transferred to the Tamil Nadu Government Dental College and Hospital during the year 2010. It is only because of their posting after completion of the post graduation they were unable

to acquire the qualification of five years of teaching experience in a Dental Institute in India or abroad. The inability of the respondents 3 and 4 to complete five years of teaching experience is only due to their posting as Assistant professors in a non-Dental Institution. The respondents 3 and 4 cannot be made to suffer because they were posted in a non-Dental Institution after completing their post graduation.

17. In the counter affidavit of the 2nd respondent it is very clearly stated that as on the date of the counseling, the respondents 3 and 4 had the minimum qualification required. Though the petitioner had six years of teaching experience, the respondents 3 and 4 being seniors to the petitioner according to the Civil Medical List seniority they were chosen ahead of the petitioner.

18. We do not see any illegality or irregularity in the process adopted by the respondents 1 and 2 in promoting the respondents 3 and 4 ahead of the petitioner. The learned Single Judge had rightly dismissed the Writ Petition. We do not see any reason to interfere with the order of the learned Single Judge.

19. In fine, the Writ Appeal fails and is accordingly dismissed. However, in the circumstances there will be no order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Secretary to Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai.

2.The Director of Medical Education,
Kilpauk, Chennai.

+2cc to Mr.R.RAMACHANDRAN, Advocate, S.R.No. 47276
+1cc to the Government Pleader, S.R.No.48051
+1cc to Mr.V.VIJAY SHANKAR, Advocate, S.R.No. 48152

W.A.No.790 of 2016

NA (CO)
TR(03/08/2018)