

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition No.33263 of 2018
& WMP Nos.38594 & 38596 of 2018

Dr. Mayilvahanan Natarajan

.. Petitioner

- Vs -

- 1 The Chancellor
The Tamil Nadu Dr.M.G.R.Medical University
Raj Bhavan Sardar Patel Rd Guindy
Chennai-600 022
 - 2 The Principal Secretary to Government
Health and Family Welfare
Department Secretariat Fort St.George
Chennai-600 009
 - 3 The Search cum Selection Committee
Rep. by its Nodal Officer Search Committee Office
Madras ENT Research
Foundation (P) Ltd. No.1 First Cross
Street Off II Main Road Raja Annamalaipuram,
Chennai 600 028
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents 1 and 2 to include past Vice Chancellors of Medical Universities under the qualification prescribed under Clause (ii) of Sub-section (2-A) of Section 10 of the Tamil Nadu Dr.M.G.R. Medical University Chennai Act 1987 (Tamil Nadu Act 37 of 1987).

For Petitioner : Mrs. Hema Sampath, Sr. Counsel, for,
M/s. R.Meenal

For Respondents : Mrs. Narmada Sampath, AAG, assisted by,
Mr. V.Kadhirvelu, Spl.G.P.

ORDER

This writ petition is filed seeking directions to the respondents to include the past Vice Chancellors of Medical Universities under the qualification prescribed under Clause (ii) of Sub Section (2-A) of Section 10 of the Tamil Nadu Dr.M.G.R.Medical University, Chennai Act 1987 (Tamil Nadu Act 37 of 1987).

2. The brief facts:

The petitioner is a renowned Orthopaedic Surgeon by profession. He was the Vice Chancellor of the Tamil Nadu Dr.M.G.R.Medical University from 11.12.2009 to 10.12.2012. The Tamil Nadu Dr.M.G.R.Medical University Act (Tamil Nadu Act 37 of 1987) was amended on 16.11.2012 and the age limit for Vice Chancellor was increased from 65 years to 70 years. Subsequently, on 31.01.2018, another amendment was made, inserting new Sub-Section 2A in clause (ii) of Section 10, which prescribed that the Vice Chancellor shall possess such educational qualification and experience as may be specified by the State Government in consultation with the Chancellor by an order published in the Tamil Nadu Government Gazette.

2.1. Pursuant to the same, the second respondent issued G.O.Ms.No.494, Health and Family Welfare (MCA-2) dated 23.10.2018, dealing with prescription of educational qualification and experience for the post of Vice Chancellor in the Tamil Nadu Dr. M.G.R.Medical University under the Tamil Nadu Dr. M.G.R.Medical University, Chennai, (Amendment) Act, 2018.

2.2. It is relevant to extract clause (ii) of sub-section (2-A) of Section 10 dealing with qualification and experience, which reads thus:-

“Under Clause (ii) of sub-section (2-A) of Section 10 of the Tamil nadu Dr. M.G.R.Medical University, Chennai, Act 1987 (Tamil Nadu Act 37 of 1987), the Government of Tamil nadu, in consultation with the Chancellor of the Tamil Nadu Dr. M.G.R.Medical University, hereby specifies that every person, recommended by the Committee referred to in sub-section (2) of Section 10 for appointment as Vice-Chancellor shall possess the following educational qualifications and experience, namely:-

- (i) A Post Graduate Degree in the field of Medical Science;
- (ii) Not less than 20 years of service as a Medical Practitioner, not less than ten years of teaching experience as Professor, and not less than six years of administrative experience in any one or more of the following posts, namely:-
 - (a) Dean of Medical College and Hospital.
 - (b) Secretary, Selection Committee / Additional Director of Medical Education.
 - (c) Director of King Institute, Guindy.
 - (d) Director of Upgraded Institutes in Medical College and Hospitals.
 - (e) Medical Superintendent of Medical College Hospitals.
 - (f) Principal of Medical College or Dental College.
 - (g) Vice-Principal of Medical College or Dental College.
 - (h) Registrar of the Tamil nadu Dr. M.G.R.Medical University, Chennai, or any other deemed university.
 - (i) Controller of Examinations of the Tamil nadu Dr. M.G.R.Medical University, Chennai or any other deemed University; and
 - (iii) Must have made not less than five research publications in indexed / national journals.”

3. Though the opening statement gives an impression that the educational qualification is prescribed for applying to the post of Vice Chancellor, but sub-section 2-A clause (ii) of Section 10 of the Tamil Nadu Dr. M.G.R.Medical University, Chennai,

Act 1987 specifies qualifications with reference to every person recommended by the committee, referred to in sub-section (2) of Section 10 for appointment as Vice Chancellor and it is not about the person who is making application at the entry level.

4. The learned senior counsel appearing for the petitioner submitted that the petitioner herein is a competent, qualified and fit for consideration for the post of Vice Chancellor and when the Act provides for the same, the notification issued by the Government Order cannot take away the right of the petitioner to apply for the post of Vice Chancellor. In other words, the learned senior counsel for the petitioner contended that under the Law, the substantive provision prevails over the Rules/Regulations or Notification and as Section 10(3) provides for re-appointment of the Vice Chancellor for another three years, who has originally held the post for three years, clause (ii) shall be amended by including the post of Vice Chancellor to enable the Vice Chancellor to be reappointed for a further period of three years.

5. Section 10 (3) reproduced hereunder for convenient reference:-

“Section 10(3) : - The Vice Chancellor shall hold office for a period of three years and shall be eligible for reappointment for a further period of three years.

Provided that no person shall hold the office of Vice Chancellor for more than six years in the aggregate or after attaining the age of seventy years.”

6. Pointing out Section 10 (3), the learned senior counsel appearing for the petitioner submitted that the post of Vice Chancellor should have been included among clauses (a) to (g) under clause (ii) of Sub-section (2-A) of Section 10.

7. This Court raised a query as to how the inclusion of the post of Vice Chancellor would help the case of the petitioner, when clauses (a) to (g) deal with person who are recommended by the committee referred to in clause (ii) of sub-section (2-A) of Section 10 of the post of Vice Chancellor and not before that.

8. However, the learned Additional Advocate General appearing for the respondents submitted that under Section 10(3) of the Act 37 of 1987, the Vice Chancellor, who can hold office for a period of three years and who is also eligible for re-appointment for a further period of three years, is entitled to be considered, however subject to other eligibility conditions remaining fulfilled and it is for the Selection Committee to do the same.

9. The statement made by learned Additional Advocate General is that the application of the petitioner for the said post has already been received and it has been included in the list of applicants, in SI.No.21, which are to be scrutinized by the Selection Committee.

10. Recording the said statement, the writ petition is closed. No costs. Consequently, connected miscellaneous petitions are closed.

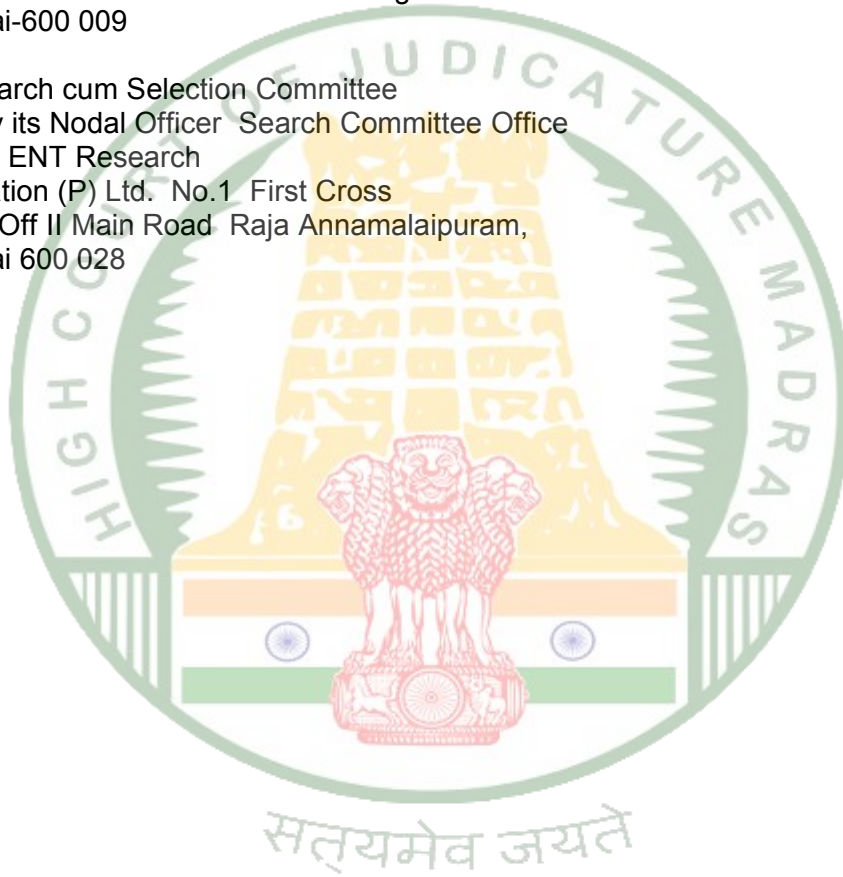
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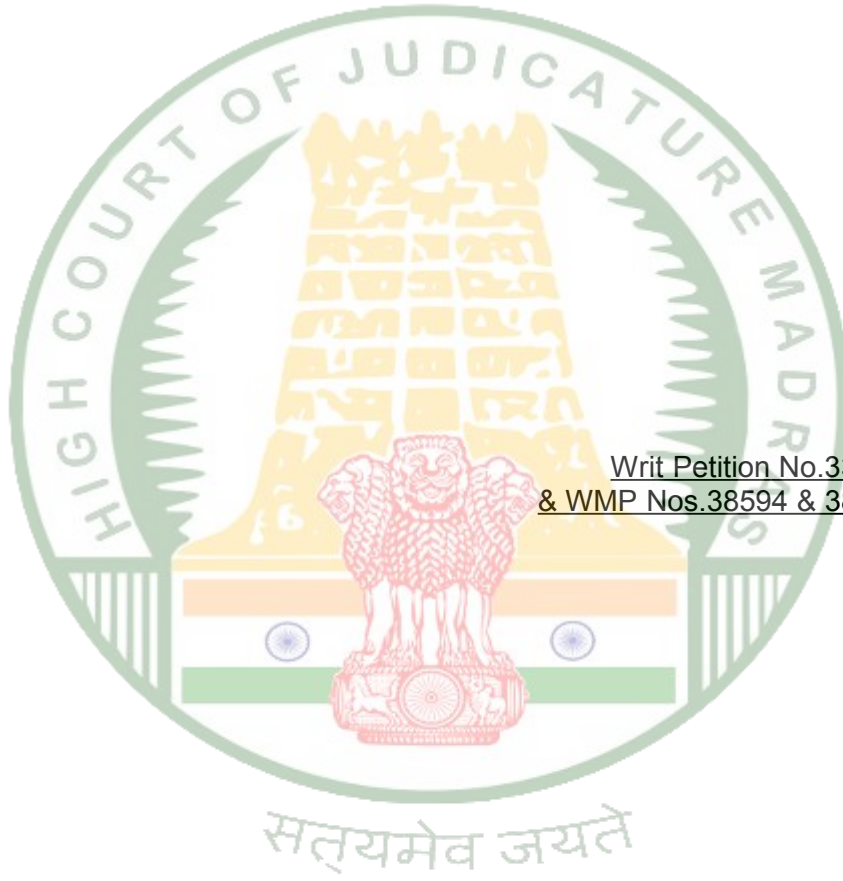
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