



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2018

Pronounced on : 04.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P (MD) No. 11014 of 2016
and
WMP (MD) Nos. 8493 & 8494 of 2016

M. Karthikeyan

... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare (AA1)
Department, Secretariat, Fort,
Chennai - 600 009.

2. The Director,
The Director of Medical Education,
Kilpauk, Chennai - 600 010.

... Respondents.

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the respondent in the impugned order in Ref.No.87484/E2/1/2015, dated 04.04.2016 and quash the same and consequently direct the second respondent to promote the petitioner to the post of Assistant Professor in Pharmacy.

For Petitioner : Mr.R.V.Rajkumar

For Respondents : Mr.J.Gunaseelan Muthaiah,
Addl., Govt., Pleader

ORDER

Heard the learned counsel on either side.

2. The case of the petitioner is that he was originally appointed as a Pharmacist. He acquired B.Pharm degree in May 2001. He was working at Government Hospital, Kanchipuram. He is a physically challenged individual and his disability is 60%. He filed WP(MD)No.12314 of 2008 for directing the authorities to prepare a panel among eligible Pharmacists to be transferred and appointed to the post of Tutor in Pharmacy as per the Tamil Nadu Medical Service Special Rules based on state wise seniority. The said writ petition was taken up along with similar writ petitions and disposed of on 15.12.2014. The Directorate of Medical Education



was directed to prepare a panel and forward the same to the first respondent for approval within a period of four weeks and the Government was directed to approve the said panel within four weeks thereafter.

3. Since the said direction was not complied with, the petitioner filed Contempt Petition No.1037 of 2015. After the institution of the contempt proceedings, amendments were made to the special rules for the Tamil Nadu Medical Services vide G.O.Ms.No.274, Health and Family Welfare (AA1) Department dated 07.09.2015. The post of Tutor in Pharmacy stood re-designated as Assistant Professor in Pharmacy. The petitioner was not considered for the post of Assistant Professor. Instead, he was made as a Lecturer in Pharmacy vide G.O(3D) No.109, Health and Family Welfare (AA1) Department dated 07.10.2015. Aggrieved by the same, the petitioner submitted a representation seeking promotion to the post of Assistant Professor. He followed it up by filing WP(MD)No.2175 of 2016. This Court by order dated 01.02.2016 directed the Directorate of Medical Education to consider the petitioner's representation dated 18.11.2015 and pass appropriate orders on merits and in accordance with law. Pursuant to the direction given by this Court, the impugned order dated 04.04.2016 came to be passed. The second respondent informed the petitioner that his request could not be complied with. Questioning the same, this writ petition has been filed.

4. The reason set out in the impugned order for not including the petitioner's name in the list of Assistant Professors' of Pharmacy was that the petitioner does not fulfil the eligibility norms set out in the relevant recruitment rules framed under Article 309 of the Constitution of India. In G.O.Ms.No.274 dated 07.09.2015, it has been mentioned that the post in question can be filled up by promotion or by direct recruitment. For being promoted to the said post, the candidates must have obtained M.Pharm degree in the appropriate branch of specialization in Pharmacy with first class either in B.Pharm or in M.Pharm. Since the petitioner is not having the first class either in B.Pharm or M.Pharm, he could not be considered.

5. The learned counsel appearing for the petitioner contends that the stand of the authorities is liable to be rejected. He would point out that the vacancies in this case arose in the year 2008-09. In fact, the selection process started in the year 2009 itself. The petitioner had earlier moved this Court by filing WP (MD)No.12314 of 2008 and a direction had also been issued on 15.12.2014 to prepare a panel. Therefore, the petitioner's eligibility will have to be tested only with reference to the pre-amendment position. He would submit that the amended rules in G.O.Ms.No.274 dated 07.09.2015 would not be applicable to him.

6. In this regard, the learned counsel appearing for the



petitioner placed reliance on the decisions of the this Court reported in 2008 (8) MLJ 328 (DB), 2008 WLR 905 (DB) and 2015(4) MLJ 575 (KRBJ). He drew the attention of this Court to the regulations issued by the Pharmacy Council of India vide notification dated 11.11.2014. In the said notification, it has been mentioned that if a class or division is not awarded at Master level, a minimum of 60% marks in aggregate or equivalent cumulative grade point average shall be considered equivalent to first class or division, as the case may be.

7. In this case, the petitioner had secured 75% marks. He therefore should be considered as having secured first class. Since the petitioner acquired M.Pharm degree in 2011 itself, it would be improper and unfair to retrospectively apply the Master of Pharmacy (M.Pharm) Course Regulations 2014, to hold that only if the student had secured 60% marks or above in aggregate in all subjects in a single attempt at the M.Pharm examination he shall be declared to have passed in first class. He also drew the attention of this Court to the provisions of the The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and contended that the respondents committed a serious breach of the said statute by not following 3% reservation.

8. Though Shri.R.V.Rajkumar, the learned counsel for the petitioner argued with great persuasion and ability, this Court is unable to concur with him. It is true that vacancies arose in the year 2008-09 in the post of Tutor in Pharmacy. No doubt, certain rights accrued in favour of the petitioner in view of the order dated 15.12.2014 passed in a batch of writ petitions including WP (MD)No.12314 of 2008 filed by the petitioner herein. But then, certain subsequent developments had taken place which had rendered the entire earlier exercise infructuous. The petitioner is obviously conscious of it. That is why, instead of pursuing Cont.P (MD)No.1037 of 2015 to its logical conclusion, he chose to give a fresh representation dated 18.11.2015 and sought its disposal by filing WP(MD)No.2175 of 2016. The authorities no doubt have stated that the post of Tutor in Pharmacy was re-designated as Assistant Professor in Pharmacy. But, it was not a mere re-designation alone. The qualifications got changed. Thus, an altogether, new hierarchy of posts came into existence in view of the amendments to the special rule issued vide G.O.Ms.No.274 dated 07.09.2015.

9. Therefore, the case of the petitioner will have to be necessarily considered only with reference to the stipulations laid down in the amended rules. There is simply no point in contending that the petitioner will have to be considered on the basis of the un-amended rules. As per the un-amended rules, the petitioner staked claim to the post of Tutor in Pharmacy. But then, the very post is no longer available. The post of Assistant Professor in Pharmacy is not an equivalent of Tutor in Pharmacy. It is not a case of mere renaming of an existing post. There has been a re-designation and enhancement of educational qualifications.



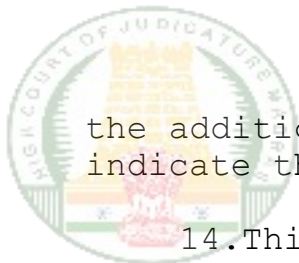
10. In this view of the matter, this Court is of the view that the cases cited by the learned counsel for the petitioner are not applicable to the facts and circumstances of the case. Likewise, the petitioner's contention that he should be considered as having secured first class or division under the "Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014, cannot be accepted. It is too well settled a principle of law that the special will prevail over the general. The Pharmacy Council of India vide its notification dated 10.12.2014 has issued the Master of Pharmacy (M.Pharm) Regulations, 2014). Clause 15 (ii) of the said notification reads as follows :

The students securing 60% marks or above in aggregate in all subjects in a single attempt at the M.Pharm examination shall be declared to have passed in first class.

11. Therefore, the question as to whether the petitioner has secured first class in M.Pharm or not has to be determined not with reference to the regulations set out vide notification dated 11.11.2014, but only with reference to the special regulations issued vide notification dated 10.12.2014. The petitioner's contention would have sounded different and better if he had taken the stand that the issue as to whether he secured first class or division in M.Pharm will have to be tested with reference to the rule position that prevailed when he acquired M.Pharm degree. Both notifications dated 11.11.2014 as well as dated 10.12.2014 were issued subsequently. But, the petitioner acquired M.Pharm degree in November 2011.

12. This Court went through the B.Pharm certificate as well as the M.Pharm certificate issued in favour of the petitioner. B.Pharm certificate dated 28.03.2001 states that the petitioner has been placed in the second class at the examination held in April 2000. But the M.Pharm certificate issued by the Tamil Nadu Dr.M.G.R Medical University merely states that the petitioner has been conferred the degree of M.Pharm (Pharmacology). If the petitioner is able to obtain a certificate from Tamil Nadu Dr.M.G.R Medical University indicating that he has been placed first class in M.Pharm, then definitely he will be entitled to be considered for the post of Assistant Professor.

13. The petitioner has not placed any material before this Court to show that he has secured first class in M.Pharm degree. It is true that the petitioner has got 75% marks. But then, it was obtained in his second attempt. If according to the petitioner, notification dated 10.12.2014 is not applicable to him, then, applying the same logic and yardstick notification dated 11.11.2014 can also not be made applicable. The petitioner has not produced any material that he has been placed in the first class. The petitioner has enclosed M.Pharm degree certificate at Page No.4 of



the additional typed set of papers No.1, filed by him. It does not indicate that the petitioner was placed in first class.

14. This Court has already held that the petitioner's case for promotion to the post of Assistant Professor will be governed only by the amended rules issued vide G.O.Ms.No.274 dated 07.09.2015. Applying the said G.O, the petitioner cannot be said to be eligible. The petitioner's contention that in view of his physical disability, he should be considered against 3% reservation quota for physically challenged candidates is also liable to be rejected. This is because, as rightly pointed out by the respondents, there is no quota for physically challenged candidates in the matter of promotion. The 3% quota is meant only in the case of direct recruitment. In any event, this point need not even be considered. This is because, this Court has already come to the conclusion that the petitioner is not eligible to be considered as a candidate for the post of Assistant Professor in Pharmacy. There is no merit in this writ petition. It stands dismissed. Consequently, connected miscellaneous petitions are also dismissed. No order as to costs.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Health and Family Welfare (AA1)
Department, Secretariat, Fort,
Chennai - 600 009.
2. The Director,
The Director of Medical Education,
Kilpauk, Chennai - 600 010.

SKM

DS/KKR/SAR-2 :18.06.2018: 5P/3C

Order in

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