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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

Review Application .No.158 of 2019

The Director of Medical Education
Kilpauk
Chennai 600 010

..Review Applicant

-vs-

D.Elangovan

..Respondent

Memorandum of Grounds of Review Application filed under Order XLVII, Rule 1 read with Section 114 of the Code of Civil Procedure, to review the order dated 27.6.2014 passed in Writ Petition No.7675 of 2011.

WP No.7675 of 2011.

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the entire records in pursuant to the rejection order issued by the respondent vide No.48704/E5/2/2010 dated 04.11.2010 and quash the same and consequently direct the respondent to refit the petitioner in the post of Artist Grade-I with retrospective effect from 30.08.1987 the date of which the junior was appointed as Artist Grade-I with all consequential benefits.

For Review Applicant	::	Mr.S.Karthigai Balan
		Government Advocate
For Respondent	::	Mrs.M.R.Sakunthala

ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

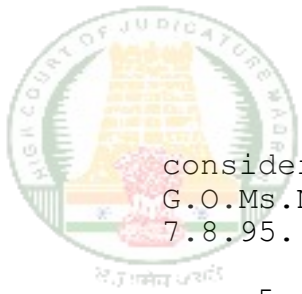
2. The Director of Medical Education, Chennai has filed this review application to review the order dated 27.6.2014 passed in Writ Petition No.7675 of 2011.

3. Mr.S.Karthigai Balan, learned Government Advocate appearing for the review applicant, namely, Director of Medical Education, strenuously argued that when the respondent/writ



petitioner, who was appointed on 22.7.85 as Artist Draughtsman Grade- III in the scale of pay of Rs.555-15-615-20-795-25-970 vide the appointment order bearing Ref.No.2677/E3/85 by the Dean of Stanley Government Medical College, Chennai, approached this Court by filing the Writ Petition No.7675 of 2011 challenging the rejection order dated 4.11.2010 bearing No.48704/E5/2/2010 passed by the Director of Medical Education, he has suppressed the two other rejection orders dated 24.2.98 and 29.4.99.

4. But this argument is not going to help the review applicant any further, for the reason that when the writ petitioner sought for a direction to refit him in the post of Artist Grade-I with retrospective effect from 30.8.87, the date on which his junior was appointed as Artist Grade-I with all consequential benefits, the review applicant herein has not even placed before this Court in the counter affidavit the brief facts for rejecting the case of the petitioner by the order dated 24.2.98 or by the order dated 29.4.99. Secondly, the orders dated 24.2.98 and 29.4.99 were not even enclosed. Thirdly, when this Court, considering the counter affidavit filed by the Department, found no satisfactory reply for appointing the petitioner's junior Mr.K.Balasubramanian to the post of Artist Grade-I, as against the rule explaining the qualification for appointment to the post of Artist Grade-I, not only the appointment of the petitioner's first junior Mr.K.Balasubramanian on 30.8.87 and the refitment order issued to one Mr.P.Ramachandran on 29.9.89 in the post of Artist Grade-I, but also the other juniors, namely, Mr.N.Muralidharan and Mr.K.Pughazendi were appointed vide reference bearing No.43132/E5/2/89 on 16.4.93 by direct recruitment after five years, when the petitioner was all along available even after completion of probation on 14.11.87. Therefore, the outcry of the writ petitioner that when he was all along available from 22.7.85 and when the rules are very clear that the method of appointment for the post of Artist Draughtsman Grade-I is by way of promotion from the post of Artist Draughtsman Grade-II or if no candidate with the prescribed qualification is available in the Grade-II post, promotion from Grade-III or direct recruitment or for special reasons recruitment by transfer from any other service could be resorted to, blindly, overlooking this provision, the Department, without even considering the petitioner when he already became eligible, started appointing left and right Mr.N.Muralidharan and again Mr.K.Pughazendi as Artist Draughtsman Grade-I by direct recruitment on 16.4.93 ignoring the Rules. Therefore, these facts would clearly show that the case of the writ petitioner was every time unreasonably and unjustly crushed. Hence he gave the representation dated 15.2.2002 and since there was no action taken, he again sent another reminder on 8.4.2002, for which a reply was sent to the writ petitioner stating that he was not eligible to be



considered for the post of Artist Draughtsman Grade-I, as per G.O.Ms.No.531, Health and Family Welfare Department dated 7.8.95.

5. Mr.S.Karthigai Balan, learned Government Advocate appearing for the review applicant also argued that when the case of the writ petitioner was already rejected on 24.2.98 and 29.4.99, without challenging the correctness of these orders, the writ petitioner cannot maintain the writ petition for considering his representation dated 12.1.2005.

6. But this Court again is unable to find any merit in his contention. The reason being that when this Court by order dated 29.6.2010 in Writ Petition No.4071 of 2006 directed the official respondent to consider the representation of the petitioner dated 12.1.2005, they should have satisfied the Court on 29.6.2010 when the order was passed that the case of the writ petitioner was already considered and rejected and that the rejection orders were not challenged. But no such explanation or argument or submission was placed before this Court. Moreover, no such order dated 24.2.98 or 29.4.99 were placed before this Court. Secondly, when a chance was given to the official respondent to consider the representation dated 12.1.2005, atleast thereafter, while considering the correctness of the representation dated 12.1.2005, they could have passed a speaking order mentioning the reasons given in the rejection order dated 24.2.98 and also another order dated 29.4.99. Therefore, when the respondent at no point of time had considered the case of the writ petitioner, it is not open to them to say that the writ petitioner cannot maintain the writ petition, when his case was rejected in the letters dated 24.2.98 and 29.4.99. Thirdly, after this Court allowed the Writ Petition No.7675 of 2011 in its order dated 27.6.2014, finding it difficult to implement the order, this review application has been filed stating that the writ petitioner has given his unwillingness, that was also not placed before this Court at the time of hearing of the writ petition. A perusal of the two-line handwritten remark of the writ petitioner does not clearly show that he has relinquished his right to the post of Artist Draughtsman Grade-I. In fact, a repeated reading of the two-line remark also shows that the writ petitioner has already requested the Artist Grade-I post with effect from 1.6.88. Therefore, it appears that he was not willing to take the Grade-I post after 1.6.88. This has been misunderstood by the official respondent as though the writ petitioner has given his unwillingness, that may not be correct.

7. Now coming to the merits of the case, I must restate herein that when the writ petitioner was appointed as Artist Draughtsman Grade-III in the Stanley Government Medical College by direct recruitment in the scale of pay of Rs.555-15-615-20-



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795-25-970 vide appointment order dated 22.7.85 issued by the Dean of Stanley Government Medical College, Chennai, he reported for duty on the forenoon of 24.7.85. While so, the method of appointment for the post of Artist Draughtsman Grade-I shows as follows:-

"Promotion from the post of Artist Draughtsman Grade-II or if no candidate with the prescribed qualification is available in the Grade-II, promotion from III Grade or direct recruitment or for special reasons recruitment by transfer from any other service."

8. A perusal of the above provision clearly shows that the official respondent can go for appointing the Artist Draughtsman Grade-I by way of direct recruitment, provided there is no eligible candidate available in the Grade-II post, as at the relevant point of time Grade-III and Grade-II posts got merged. Therefore, the writ petitioner was available, however, he has completed his probation only on 14.11.87. In the meanwhile, the name of Mr.K.Balasubramanian was sponsored by the District Employment Office by letter dated 21.2.87. Again when the vacancy for the post of Artist Draughtsman Grade-I arose in the year 1993, once again, overlooking the petitioner who is already working from 22.7.85, violating their own rule, had appointed Mr.N.Muralidharan and Mr.K.Pugalendhi by reference No.43132/E5/2/1989 on 16.4.93. However, the writ petitioner being well qualified should have been considered, which was not done. But in the counter affidavit filed before this Court dated 'Nil' of July, 2013, in an effort to conceal these facts, they simply mentioned that the official files relating to Mr.K.Balasubramanian, Mr.N.Muralidharan and Mr.K.Pughazendi were misplaced and not traceable. This is the usual lame excuse generally taken by the Department. But a careful reading of the counter affidavit also clearly shows the stand of the respondents that Mr.N.Muralidharan and Mr.K.Pughazendi were all appointed overlooking the case of the writ petitioner. Therefore, this Court neither finds any justification on the part of the official respondent to come to this Court nor finds any merit to review the order. Accordingly, finding no merits whatsoever, the review application stands dismissed. No costs.

Sd/-

Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Medical Education
Kilpauk
Chennai 600 010

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+1cc to Government Pleader, SR.No.35622

Rev.Apln.No.158 of 2019

GP(CO)
KKV/19/11/2020