

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.Nos.22509 of 2009 and 27438 of 2011
and

M.P.No.3 of 2010

W.P.No.22509 of 2009

The Pondicherry Scheduled Caste People's
Welfare Association rep. by
G.Inbasekaran

...Petitioner

Vs

1. Director General,
Indian Council of Medical Research (ICMR),
V, Ramalingaswami Bhawan,
P.Box No.4911, Ansari Nagar,
New Delhi - 110 029.

2. The Union Health Secretary,
Ministry of Health and Family Welfare,
Government of India,
Room No.151A,
Nirman Bhawan,
New Delhi - 110 011.

3. The Director (Reservations),
Department of Personnel and Public
Grievances (DoPT),
Ministry of Personnel and Public
Grievances and Pensions,
215-C, North Block,
Lok Nayak Bhawan,
New Delhi - 110 001.

..Respondents

W.P.No.27438 of 2011

Dr.S.Poopathi

..Petitioner

Vs

1. Director General,
Indian Council of Medical Research (ICMR),
V, Ramalingaswami Bhawan,
P.Box No.4911, Ansari Nagar,
New Delhi - 110 029.
2. The Union Health Secretary,
Ministry of Health and Family Welfare,
Government of India,
Room No.151A, Nirman Bhawan,
New Delhi - 110 011.
3. The Director (Reservations),
Department of Personnel and Public
Grievances (DoPT),
Ministry of Personnel and Public
Grievances and Pensions,
215-C, North Block, Lok Nayak Bhawan,
New Delhi - 110 001.
4. Vector Control Research Centre,
(ICMR), Indira Nagar,
Puducherry - 605 006.
5. Dr. Jambulingam,
Director,
Vector Control Research Centre,
(ICMR), Indira Nagar,
Puducherry - 605 006.
6. The Registrar,
Central Administrative Tribunal,
Chennai.

.. Respondents

W.P.No.22509 of 2009: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus to direct the first respondent to follow the order of reservation for SC/ST candidates as per applicable roster to all vacancies (existing and future) under the first respondent.

W.P.No.27438 of 2011: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records in O.A.No.849 of

2009 dated 29.04.2011 on the file of the sixth respondent and to set aside the same and consequently direct the respondents to appoint the applicant, the lone SC/ST candidate to the post of Director of VCRC, Puducherry on the basis of reservation.

For Petitioner .. Mr.J.Srinivasa Mohan
in both the W.Ps

For Respondents.. Mr.M.T.Arunan for R1
in W.P.No.22509 of 2009
Mr.G.Karthikeyan,
Asst. Solicitor General for R2
in W.P.No.22509 of 2009
for R1 & R2 in
W.P.No.27438 of 2011
Mr.J.Madanagopal Rao for R3
in both W.Ps
Mr.S.Jayaraman for R4 and R5
in W.P.No.27438 of 2011
R6 - Tribunal
in W.P.No.27438 of 2011

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

As the issue involved in both the writ petitions is one and the same, these writ petitions are taken up together and disposed of by way of this common order.

2.W.P.No.22509 of 2009 has been filed by an Association seeking reservation to the post of Director. W.P.No.27438 of 2011 has been filed, challenging the order of the Tribunal in the Original Application filed by an individual over his non-selection pursuant to the Notification issued for the aforesaid post. Here also, a challenge has been made on the ground of not following the reservation.

3.Learned counsel appearing for the petitioners has submitted that the post requires reservation. The order exempting the scientific posts from the purview of reservation dated 23.06.1975 imposes certain conditions. These conditions have not been satisfied. Therefore, notwithstanding the exemption letter dated 17.07.1986, the question for consideration is whether such a letter has been issued to comply with the conditions or not. Therefore, the writ petitions will have to be allowed. Learned counsel submits that incidentally there is no material to hold substantially the basis upon which the selection of the private respondent was made.

4.Learned counsel appearing for the respective respondents would submit that ICMR is a Scientific and Research Organisation which is an autonomous body registered under the Societies Registration Act 1860. It has got its own Memorandum of Association, Rules and Regulations and Bye-laws. It is also governed by a separate set of rules viz., Research Management Rules, 1965. These Rules are repealed and new rules governing the appointment and promotion in the scientific department/agency/institution have been framed. These Rules are called New Recruitment Rules for Health Research Scientists Cadre of ICMR, 2007. These Rules have been notified with effect from 01.01.2008. The Notification has been issued pursuant to the aforesaid Rules. Notwithstanding the same, in tune with the earlier order dated 23.06.1975, letter has been obtained on 17.07.1986 exempting the post of Director from the purview of reservation with the approval of the Union Health Minister. Therefore, on both counts, the petitioner in both the writ petitions does not have a case. The question of procedure not being followed at the time of selection has not been raised. Therefore, the Tribunal has not gone into the same. In any case, the selection has been made by a competent Committee consisting of experts. In the absence of any malafide attributing to the mode of selection, no interference is required.

5.There is no right vested in the petitioners to seek reservation. Admittedly, the institute has been declared as scientific/research institute. It is registered under the Societies Registration Act. It has got its own bye-laws, rules and regulations. The earlier Rules were substituted by New Rules and only pursuant to these Rules, the Notification has been given. The Notification does not speak about the reservation.

6.Notwithstanding the same, exemption letter has been obtained for the post of Director. Therefore, there is sufficient compliance of the order dated 23.06.1975 by getting the approval from the Union Health Minister. We cannot go into the veracity of the aforesaid letter, which has not even been relied upon by the petitioners. The aforesaid letter has not been put to challenge. Even otherwise, there was no reservation followed over the years. Therefore, the aforesaid letter was given effect to from time to time. Hence looking from any perspective, we do not find any merit in the writ petitions.

7.Coming to the procedural violation, the petitioners have not substantiated any such violation. As rightly submitted by the learned counsel for the respondents, the selection has been made by duly constituted Select Committee. It is not the case of the petitioners that the Select Committee was biased and consists of incompetent persons. When experts form a Committee and made a selection, this court cannot substitute the said

decision by its own views. Thus, both the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director General,
Indian Council of Medical Research (ICMR),
V, Ramalingaswami Bhawan,
P.Box No.4911, Ansari Nagar,
New Delhi - 110 029.
- 2.The Union Health Secretary,
Ministry of Health and Family Welfare,
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215-C, North Block, Lok Nayak Bhawan,
New Delhi - 110 001.
- 4.The Vector Control Research Centre,
(ICMR), Indira Nagar,
Puducherry - 605 006.
- 5.The Registrar,
Central Administrative Tribunal,
Chennai.

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.2479
+1cc to Mr.M.T.Arunan, Advocate, S.R.No.1850
+1cc to Mr.S.Jayaraman, Advocate, S.R.No.1811

W.P.Nos.22509 of 2009
and 27438 of 2011

SJ(CO)

rrs 15/02/2019