

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.16736 of 2015
and
W.M.P.No.22686 of 2016

N.D.Kavitha

... Petitioner

Vs

1. Corporation of Chennai,
Rep. by its Additional City Health Officer,
(Head Quarters), Health Department,
Ripon Buildings, Chennai - 600 003.

2. Government of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai - 600 009.

3. Sheik Sulthan Ahamed,
Senior Analyst,
Health Department,
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records Po.Su.Na.Ka.No.C14/1475/2015 dated 05.03.2015 on the file of the 1st respondent herein and quash the same and direct the respondents to consider and appoint the petitioner on promotion to the post of Senior Analyst in a pay scale of Rs.15,600-39,100 with grade pay of Rs.5,400/- in an existing vacancy with effect from 28.02.2014 when the 3rd respondent was promoted to the post of Senior Analyst with all service benefits.

For Petitioner : Mr.S.Sadasharam

For Respondents: Mr.C.Ravi Chandran for R1
Mr.R.Govindasamy,
Special Government Pleader for R2
R3 - No appearance

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and learned Special Government Pleader appearing for the second respondent. Though notice was served on the third respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

2. This writ petition is filed challenging the proceedings of the first respondent dated 05.03.2015, wherein and whereby, the petitioner's request for promoting her to the post of Senior Analyst in the respondent Corporation was rejected on the reason that the petitioner was not possessing the requisite educational qualification viz., Post Graduate Degree in the particular subject. Consequently, the petitioner seeks for a direction to the respondents to consider her for promotion to the post of Senior Analyst in the existing vacancy with effect from 28.02.2014, when the third respondent was promoted to the said post.

3. The case of the petitioner in short is as follows:

The petitioner is a B.Sc. Chemistry graduate and presently employed as Junior Analyst in the Health Department in Public Analytical Lab, having been appointed by the first respondent through his order dated 20.07.2000. The third respondent was also appointed for the post of Junior Analyst along with the petitioner. According to the petitioner, she is eligible to be considered for appointment to the post of Senior Analyst and though the third respondent was promoted to the said post, the petitioner was denied such benefit of promotion. Hence, the present writ petition is filed seeking for the relief as stated supra.

4. The learned counsel appearing for the petitioner after reiterating the above contention, submitted that even as per the impugned proceedings, the proposal for increasing the qualification criteria is pending before the Government and therefore, under such circumstances, the petitioner cannot be denied the benefit of promotion as the same has been given to the third respondent. The learned counsel fairly submitted that the third respondent is possessing the Post Graduate Degree in the particular subject.

5. On the other hand, the learned counsel appearing for the first respondent Corporation submitted that the service By-laws of the Chennai Corporation was suitably amended and the Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws, 2009, had come into force already in the month

of March, 2010 itself. Thus, the learned counsel contended that as per the By-Laws, minimum qualification prescribed for the post of Senior Analyst is M.Sc. Degree in Chemistry or Bio-Chemistry or Dairy Chemistry or Food Technology or Micro-Biology or Food and Drugs from recognized University established in India. As the petitioner is not possessing such qualification, the learned counsel contended that she is not entitled to seek for promotion.

6. Perusal of the above said By-Laws, which was published in Tamil Nadu Government Gazette dated 30.12.2009, would show that the same had come into force after three months from the date of Publication in the official gazette. It is seen that thus, the said By-Laws has come into force from the month of 30th March, 2010. As rightly pointed out by the learned counsel for the first respondent and perusal of the said By-Laws would show that minimum qualification prescribed for the post of Senior Analyst is Post Graduate Degree in the subject referred to supra. Admittedly, the petitioner is not possessing such qualification.

7. When such being the position and when this By-Laws has come into force as early as in the month of March 2010, the petitioner is not entitled to claim that she should have been promoted to the post of Senior Analyst on par with the third respondent who is admittedly possessing the requisite Post Graduation Degree. No doubt, the learned counsel for the petitioner pointed out that the impugned communication referred to some resolution passed by the Corporation dated 27.12.2012 said to be pending for approval from the Government. But, I find that the By-Laws framed and came into existence even before such resolution undoubtedly prevents the petitioner from getting the benefit of promotion, as admittedly she is not having such requisite qualification, the reasons stated in the impugned communication though may not be factually correct, however, the fact remains that the requisite qualification as stipulated in the By-Laws is not possessed by the petitioner for seeking such promotion.

8. Therefore, I find that the petitioner has not made out the case for granting the relief as sought for in this writ petition. Accordingly, this Writ Petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

gsi/gsk

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Additional City Health Officer,
Corporation of Chennai,
(Head Quarters), Health Department,
Ripon Buildings, Chennai - 600 003.

2.The Secretary,
Government of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St.George, Chennai - 600 009.

+1cc to Mr.S.Sadasharam, Advocate, SR.No.20725
+1cc to Dr.C.Ravichandran, Advocate, SR.No. 20590

W.P.No.16736 of 2015

Kak(03/04/2019)



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