

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6530 of 2019
and WMP No.7339 of 2019

S. Sivaramane

.. Petitioner

Versus

- 1.Union of India,
rep by Ministry of Health,
and Family Welfare Department,
Nirman Bhavan,
New Delhi - 1.
 - 2.Director General of Health Services,
New Delhi - 2.
 - 3.Jawaharlal Institute of Post Graduate
Medical Education and Research (JIPMER),
represented by the Director,
Dhanwantari Nagar,
Puducherry - 605 006
 4. The Registrar,
Central Administrative Tribunal,
Chennai - 104
- सत्यमेव जयते .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records relating to the judgment in O.A.No.65 of 2019 dated 04.02.2019 on the file of the Fourth Respondent herein and quash the same and to allow the Original Application and to grant the relief sought for therein to the Petitioner.

For Petitioner

: Mr.M. Ravi

ORDER

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

Heard the Learned Counsel for the Petitioner.

2. According to the Petitioner, he joined in the Third Respondent/Institute on 27.03.2000 as 'Dark Room Assistant' on regular basis in the Department of Radio Diagnosis. He completed his period of probation on 26.03.2002 and his service was confirmed on 27.03.2002. The pre-requisite qualification for the promotion to the post of X-Ray Technician, which is the one and only avenue of promotion from the post of 'Dark Room Assistant' is completion of X-Ray Technician Course.

3. The stand of the Petitioner is that in order to qualify himself for promotion to the post of X-Ray Technician, he sought permission through the Head of Department to undergo study in CRA (X-Ray Technician) Course right from the year 2005 onwards. His Head of the Department had not recommended his claim and further that, the Third Respondent had not granted him to undergo X-Ray Technician Course, citing acute shortage of 'Dark Room Assistant'.

4. At this stage, the Learned Counsel for the Petitioner emphatically submits that no employee could be deprived of his right to be considered for promotion to the next higher post for want of service qualification, if the same is not attributable to him. In the instant case, the Petitioner consistently representing to the appropriate authorities to permit him to undergo studies in CRA (X-Ray Technician) Course, so as to enable himself to be qualified and eligible for promotion to the post of X-Ray Technician, which is the one and only promotional post from that of the 'Dark Room Assistant'.

5. The grievance of the Petitioner is that while denying promotion to the 'In-service Candidates' belonging to the Feeder Post of 'Dark Room Assistant' to undergo X-Ray Technician course and thereby deprive their right to be considered for promotion to the said post of X-Ray Technician, the said posts were being filled up by Direct Recruitment.

6. The plea of the Petitioner is that one S. Thamaraiselvan, his Senior had approached the Central Administrative Tribunal in O.A.No.914/2008, seeking a direction to the Third Respondent to permit him to study X-Ray Technician Course. Defeating his claim, the Third Respondent introduced 'New Draft X-Ray Technician Recruitment Rules' and in view of the same, the said S. Thamaraiselvan was unable to get his

grievance redressed. Hence, he filed a Writ Petition in W.P.No.9489/2010 before this Court and this Court was pleased to hold that the 'New Draft X-Ray Technician Recruitment Rules' is legally invalid, being violative of Art.309 of the Constitution of India.

7. Since the 'New Draft X-Ray Technician Recruitment Rules' was not notified by the First Respondent, the same was held to be legally invalid. In this connection, the Learned Counsel for the Petitioner brings it to the notice of this Court that the then Director Dr.K.S.V.K. Subbarao instructed the Petitioner to study Nuclear Medicine Technical Course, as at that point of time, the Third Respondent /Institute was inclined to open a new Department viz., Nuclear Medicine Department and accordingly, the Petitioner submitted his representation through the Head of the Department to permit him to study Diploma in Medical Radio Isotope Techniques (DMRIT) course in the year 2008, but, the Head of the Department did not recommend his claim by citing that his case is nowhere connected to the nature of the Radio Diagnosis Department duties. Also that, the Head of the Department had stated that the patient care will suffer, as there is shortage of 'Dark Room Assistant'. However, the Third Respondent's Administration had forwarded the Petitioner's Application to Bhabha Atomic Research Centre, Mumbai and because of the delayed communication of their decision, the Petitioner could not secure seat even during 2008.

8. Again the Petitioner made a request to the Director for permission to study X-Ray Technician Course, with a view to render himself qualified and eligible for promotion to the post of X-Ray Technician. Again, the Director Dr.K.S.V.K. Subbarao instructed the Petitioner to undergo Technical Course in Nuclear Medicine and hence he was constrained to approach for the said Course. In 2009, the Nuclear Medicine Department had commenced in the Third Respondent/Institute without any recruitment of Technician nor any Recruitment Rules were framed for appointment of Technicians.

9. In the year 2011, based on the directions of the then Director Dr.K.S.V.K. Subbarao, the Petitioner applied for admission in Post Graduate Diploma in Nuclear Medicine Technology Course in CMC, Vellore. It was at the instance of the then Director of the Third Respondent/Institute, he secured seat for the said Course in the above College. However, the Head of the Department of Radio Diagnosis Department declared that the Petitioner would be relieved from service only after suitable substitute is posted in his place. Finally, on 04.08.2011, the Third Respondent's Administration relieved the Petitioner and permitted him to undergo the Course and also sanctioned two years study leave in CMC, Vellore.

10. It is represented on behalf of the Petitioner that normally a Bond can be executed only for a period of three years and strangely the Petitioner executed it for ten years. While the Petitioner was studying Post Graduate Diploma in CMC Vellore, three posts of Technical Assistant (Nuclear Medicine) were sanctioned in the Third Respondent/Institute and one Technical Supervisor posts in the Department of Nuclear Medicine was sanctioned. However, even for the appointment to the said posts of Technical Assistant in Department of Nuclear Medicine, the Third Respondent Administration framed only Draft Recruitment Rules for the said post of Technical Assistant (Nuclear Medicine), Technical Supervisor (Nuclear Medicine), even while, the High Court was pleaded to hold that the New Draft Recruitment Rules for recruitment to the post of X-Ray Technician was bad in law, as the same was not notified by the Government of India.

11. The Learned Counsel for the Petitioner contends that the Third Respondent once again framed Draft Recruitment Rule even for the post of Technical Assistant (Nuclear Medicine) and Technical Supervisor (Nuclear Medicine) in the Department of Nuclear Medicine in the Third Respondent/Institute without getting the said Rules notified by the Government of India.

12. It comes to be known that the Petitioner had addressed numerous Representations to the Third Respondent and that he was transferred to Nuclear Medicine Department with effect from 19.09.2017 and without re-designation, he remained in the stagnated post of 'Dark Room Assistant' even though his service was fully utilised in the post of Technical Assistant (Nuclear Medicine) Department. In short, the plea of the Petitioner is that he was paid only the salary granted for the lower post of 'Dark Room Assistant, although he was constrained to serve the scope of duties prescribed for the post of Technical Assistant (Nuclear Medicine).

13. The Learned Counsel for the Petitioner comes out with a stand that the Petitioner was finally given permission only to undergo Nuclear Medicine Course, that too, by executing a Bond for a period of 10 long and languishing years, but prevented him from undergoing X-Ray Technician Course. As a matter of fact the Petitioner was kept in stagnation in the lower post of 'Dark Room Assistant' without granting any promotion avenue for him.

14. The Learned Counsel for the Petitioner draws the attention of this Court that the Petitioner filed O.A No.1528/2018 on the file of the Fourth Respondent/Central Administrative Tribunal and the Tribunal on 12.11.2018 was pleaded to direct the Respondents to consider his Representation dated 14.11.2017 in accordance with Law.

15. The Learned Counsel for the Petitioner strenuously contends that the Fourth Respondent/Central Administrative Tribunal, Chennai Bench in O.A.No.310/00065/2019 dated 04.02.2019 had dismissed the Original Application, making inter-alia observations to the effect that '.....question of directing the Respondents to frame Recruitment Rules in a particular manner does not arise. No directions could be issued by this Tribunal on policy matters either' and ultimately opined that 'in the absence of Recruitment Rules or Policy directions that contain an enabling provision to consider the applicant's claim, no right of the applicant is violated.

16. The Learned Counsel for the Petitioner projects an argument that the Fourth Respondent/Central Administrative Tribunal should have taken into consideration of the Petitioner's service which was utilised in the post of Technical Assistant since 19.09.2017 and in such circumstances, the Petitioner ought to have been allowed to serve in the post of Technical Assistant from the lower post of 'Dark Rook Assistant' all the years together.

17. It transpires that the Petitioner in O.A.No.310/00065/2019 before the Fourth Respondent/Central Administrative Tribunal has sought a relief of calling for records issued by the Third Respondent/Institute in Advt No.Admn-1/DR/1(2)/2018 dated 28.12.2018 and quash the same with the limited extent of inclusion of the post of Technical Assistant (Nuclear Medicine) therein and to issue appropriate directions to the Respondents herein to include Appointment by Promotion as one of the mode of Recruitment along with Direct Recruitment for appointment to the post of Technical Assistant (Nuclear Medicine) in the Recruitment Rules and to consider the candidature of the Applicant for regular appointment to the said post.

18. A mere glance of the impugned order of the Tribunal in O.A.No.310/00065/2019 dated 04.02.2019, it is quite evident that the Tribunal had categorically observed that 'it could not dictate how Recruitment Rules would be framed and what should be the mode of Recruitment'. That apart, the Tribunal had also proceeded to observe in the Impugned Order that 'even there are no Recruitment Rules as on date, it was not possible to dismiss lightly the statement contained in the Office Order dated 30.01.2019 that the post of Technical Assistant (Nuclear Medicine) is a 'Direct Recruit Post' and could only be filled through 'Direct Recruitment' by following the 'Constitutional scheme of selection', as it is possible that a policy decision or executive orders may exist therefor'.

19. In view of the upshot and also taking note of the fact that the post of 'Technical Assistant' (Nuclear Medicine) is a 'Direct Recruit Post' and the same can be filled through 'Direct Recruitment' by following the 'Constitutional Scheme of Selection', this Court comes to an irresistible conclusion that the views expressed by the Fourth Respondent/Central Administrative Tribunal, Chennai in dismissing the Original Application O.A.No.310/00065/2019 dated 04.02.2019 is free from any 'Legal Flaw'. Viewed in that perspective, the Writ Petition fails.

20. In fine, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. Union of India,
rep by Ministry of Health,
and Family Welfare Department,
Nirman Bhavan,
New Delhi - 1.
2. Director General of Health Services,
New Delhi - 2.
3. The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research (JIPMER),
Dhanwantari Nagar,
Puducherry - 605 006
4. The Registrar,
Central Administrative Tribunal,
Chennai - 104

+1 cc to Mr.M.Ravi, Advocate, S.R.No.22753

W.P.No.6530 of 2019

AD(CO)
SSM(28/03/2019).