

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.22203 of 2019

N.D.Kavitha

...Petitioner

Vs

1. Corporation of Chennai
Rep. by its Additional City Health Officer
(Headquarters), 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 - 600009.

3. Sheik Sulthan Ahamed
Senior Analyst,
Health Department,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600003.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Declaration, declaring Clauses 3 (1) of the Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009 which provides for M.Sc., Chemistry as required qualification for promotion to the post of Senior Analyst from the post of Junior Analyst as ultra vires and unconstitutional and direct the respondents 1 and 2 herein to consider the candidature of the petitioner for promotion to the post of Senior Analyst based on B.Sc., (Chemistry) qualification and service in the post of Junior Analyst.

For Petitioner : Mr.S.Sadasharam
For Respondents: Mr.R.Soundararajan for R1
Mr.E.Manoharan
Additional Government Pleader
for R2

O R D E R
[Order was delivered by S.MANIKUMAR,J]

The present writ petition has been filed to declare Clauses 3(1) of the Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009 which provides for M.Sc., Chemistry as required qualification for promotion to the post of Senior Analyst from the post of Junior Analyst, as ultra vires and unconstitutional and to direct the respondents 1 and 2 herein to consider the candidature of the petitioner for promotion to the post of Senior Analyst based on B.Sc., (Chemistry) qualification and service in the post of Junior Analyst.

2. The petitioner herein, is employed as Junior Analyst in the Health Department in Public Analytical Lab in the scale of pay of Rs.4500-125-7000, vide orders of the Additional City Health Officer, Corporation of Chennai, 1st respondent, dated 20.07.2000 and prior to that, she was a Typist in the 1st respondent-Corporation right from 11.04.1996. Along with the petitioner, one Mr.Sheik Sulthan Ahamed, the 3rd respondent herein was also appointed to the post of Junior Analyst, in the vacancy caused by the promotion of Mrs.Rajeswari. Towards the vacancy that arose on account of promotion of one Mrs.Mariamammal, the petitioner was appointed to the said vacancy as a Junior Analyst. Thereafter, her service as Junior Analyst was regularized, by the orders of the 1st respondent-Corporation, dated 31.07.2002 and thereafter, her probation in the post of Junior Analyst in the 1st respondent establishment was also declared, by the orders of the 1st respondent, dated 30.09.2003.

3. The petitioner has further submitted that on account of completion of 10 years of continuous service, she was granted selection grade in the post of Junior Analyst, in the 1st respondent Corporation. According to her, she is a B.Sc., Chemistry graduate and since, she has put in more than 19 years of service in the post of Junior Analyst, she is eligible to be considered and appointed on promotion, to the post of Senior Analyst, in a scale of pay of Rs.15600-39100, with grade pay of Rs.5,400/-. She further submitted that the 3rd respondent is also equally qualified for being considered and appointed to the post of Senior Analyst in the 1st respondent establishment in the department of Public Health, as she had also acquired necessary qualification of B.Sc., chemistry and as she had put in more than 10 years of unblemished service along with him in the post of Junior Analyst, as both had been promoted to the post of Junior Analyst, by order dated 20.07.2000.

4. The petitioner has further submitted that the Public Analytical Lab in the 1st respondent Corporation in the Health

Department is one of the seven Public Analytical Labs in Tamilnadu functioning under the control of the 2nd respondent, but one under the direct control of the 1st respondent and for appointment, either on promotion or on direct recruitment basis, rules and regulations have already been framed by the Chennai Corporation Public Health and Medical Subordinate Service bye-law by the 1st respondent Corporation and the Government of Tamil Nadu have also framed rules and regulations under Section 24 of the Public Health Act providing for the method of recruitment, qualification and for selection. He further submitted that the 2nd respondent has also issued a G.O.Ms.No.28 Rural Health and Local Administration Department dated 06.01.1969 as amended in G.O.Ms.91, dated 28.05.1998, whereby rules have been framed namely Madras Corporation Public Health and Medical Services Rules wherein the post of Public Analyst has been categorized under Clause 2.

5. The petitioner has further submitted that the petitioner and the 3rd respondent made representation to the Health Officer of the 1st respondent on 30.06.2011 for providing B.Sc. Chemistry as a basic qualification and experience in the post of Junior Analyst for promotion to the post of Senior Analyst as the 1st respondent has framed bye-law in the year 2009 providing to the post of Junior Analyst provided the Junior Analyst is having M.Sc. Degree in chemistry. During the pendency of the representation by the petitioner and the 3rd respondent, the 1st respondent prepared a panel of Senior Analyst for making appointment on promotion to the post of Senior Analyst from the feeder category, viz., Junior Analyst, and the petitioner and the 3rd respondent were eligible to be considered for promotion to the post of Senior Analyst. In the panel prepared by the 1st respondent under Resolution No.403 of 2014, the name of the 3rd respondent and the petitioner have been shown as eligible persons for promotion to the post of Senior Analyst in the 1st respondent establishment. However, the 3rd respondent has been appointed as a Senior Analyst on promotion as against the vacancy caused in the post of Senior Analyst on account of retirement of one Mrs.Mariamammal who was holding the post of Senior Analyst. The petitioner was not selected and appointed to the post of Senior Analyst in spite of the fact that there was more vacancies in the post of Senior Analyst in the scale of pay of Rs.15,600-39,100 with grade pay of Rs.5,400/-.

6. Aggrieved by the same, she preferred a representation on 24.04.2012 to the 1st respondent, referring to the special rules for Tamil Nadu Public Health Service for the post of Senior Analyst and also referring to G.O.Ms.41 dated 28.05.1998 and claimed promotion to the post of Senior Analyst. However, the 1st respondent by the order dated 05.03.2015 rejected her claim for promotion to the post of Senior Analyst on the ground

that she had obtained only B.Sc., degree in Chemistry and the 1st respondent has also referred to the resolution dated 27.12.2012 in Resolution No.577/12 which provides for M.Sc., degree after graduation for appointment on promotion to the post of Senior Analyst and it was also stated by the 1st respondent that the Council Resolution has been forwarded to the 2nd respondent for approval.

7. Aggrieved against the order passed by the 1st respondent denying promotion, she filed a case in W.P.No.16736 of 2015, wherein she sought for a relief of quashing the proceedings, dated 05.03.2015, on the file of the 1st respondent and to direct the respondents 1 and 2 herein to consider and appoint her, 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 of seniority and arrears of pay. The above said writ petition was contested by the respondents 1 and 2, by filing counter affidavit, stated that she is not eligible to be considered to the post of Senior Analyst, as she is lacking qualification, namely M.Sc., Chemistry and this Court has dismissed the said writ petition, referring to Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009 notified in S.R.O.C.10/2009 with effect from 30.12.2009.

8. As a matter of fact, when promotion was denied to the petitioner, by the 1st respondent, referring to the Resolution No.577/12, dated 27.12.2012, in the impugned order, there was no reference to the Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-Laws 2009. However, the above said by-laws has been referred to, by this Court and also relied upon by the first respondent in their counter affidavit and thereby, the petitioner was denied promotion. Against the order, dated 05.03.2019, the petitioner has already preferred writ appeal before this Court. Since the by-laws of the year 2009, viz., Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009, has been referred to and the writ petition was dismissed. The provision of M.Sc., Chemistry as a required qualification for promotion to the post of Senior Analyst is arbitrary and because of lack of the said Master degree, the petitioner prevented from getting promotion to the post of Senior Analyst is arbitrary and therefore it has become necessary for the petitioner to challenge the vires or the validity of Clause 3(1) of the By-laws of the year 2009 on the following grounds:

(i) Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009 provides for M.Sc. Chemistry as a necessary

qualification for promotion to the post of Senior Analyst is arbitrary and illegal besides being discriminatory and violative of Article 14 and 16 of the Constitution of India.

(ii) Provision of M.Sc Chemistry in Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-Laws 2009 as a required qualification for promotion from the post of Junior Analyst is contrary to the provisions of G.O.Ms.No.28 Rural Health and Local Administration Department dated 06.01.1969 as amended by G.O.Ms.No.91 dated 28.05.1998 whereby the rules have been framed viz Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009 wherein the post of Public Analyst has been categorized under clause 2 for the said post, the necessary qualification is only graduation viz., B.Sc Chemistry.

(iii) B.Sc., Chemistry is only a required qualification prescribed uniformly thoroughly India and more particularly in Government services in Government of Tamil Nadu for promotion to the post of Senior Analyst in other six public Analyst Laboratory whereas M.Sc Chemistry is provided as required qualification in the Corporation of Chennai as arbitrary and discriminatory.

(iv) The qualification of M.Sc Chemistry for appointment to the post of Senior Analyst can be prescribed only in case of direct recruitment to the post of Senior Analyst but not in the case of promotion as a promotee has already put in more number of years of service in the feeder category and therefore the provision of M.Sc Chemistry as a required qualification for promotion is most discriminatory and arbitrary.

(v) Respondents 1 and 2 have failed to find that for a promotion from the post of Junior Analyst to the post of Senior Analyst what is required is only unblemished service and also minimum qualification of B.Sc Chemistry and by providing M.Sc., Chemistry as a required qualification to in-service candidates who have put in more number of years of service in the feeder category is most unjustified and inappropriate.

(vi) By-Laws providing for M.Sc Chemistry as a necessary qualification for promotion is liable to be struck down as violative of Article 14 and 16 of the Constitution of India as the same is working against the interest of the petitioner and more particularly against the prospective promotees and such a Master graduation in Chemistry can be prescribed as a required qualification only for direct recruits.

9. Heard Mr.S.Sadasharam, learned counsel for petitioner and perused the materials on record.

10. As per Class II of the Chennai Corporation Public Health and Medical Subordinate services By-laws (Draft 1998) post of Senior analyst falls in category 1. The said post is filled up by promotion from the holder of the Junior analyst or by direct recruitment. Qualifications for the post in Chennai Corporation Public Health and Medical Sub-ordinate services is governed by Clause 4 of the By-law and for the post of senior analyst. The qualification prescribed is B.Sc. Degree with chemistry as the main subject.

11. Section 24 of the Tamil Nadu Public Health Service has different categories of posts. Post of Senior Analyst falls in category-2. Qualification prescribed for the said post i.e

(a) must have obtained the degree of B.A.(Hons) or B.sc (Hons) in chemistry of a University or institution recognised by the University Grants Commission for the purpose of its grants

(b) must have acquired practical experience in a food analysis laboratory for a period of not less than three years; or

iii. (a) must have obtained the degree of M.A. Or M.Sc., in Chemistry of a University or Institution recognised by the University Grants commission for the purpose of the grant.

(b) must have acquired practical experience in a food analysis laboratory for a period of not less than two years.

iv) (a) must have obtained the degree of B.A., or B.Sc., in Chemistry of B.Pharmacy of a University or Institution recognised by the University Grants Commission for the purpose of its grant; and

method of recruitment is recruitment by transfer from the category of junior Analyst or direct recruitment.

12. Material on record discloses that petitioner and other Junior Analyst working in Corporation of Chennai are aware that for the post of Senior Analyst has been amended and therefore, Junior Analysts, seemed to have given a letter dated 30.08.2011 to the Rural Health Officer, Public Health Department, Corporation of Chennai to consider the Junior Analysts possessing B.Sc degree for promotion as Senior analyst.

13. Letter dated 30.08.2011 of the Junior Analysts of Public Analyst Lab, Corporation of Chennai, addressed to the Rural Health Officer, Public Health Department, Corporation of Chennai, is reproduced hereunder:

Date : 30.08.2011

From
Junior Analysts,
Public Analyst Lab,
Corporation of Chennai,
Chennai - 600 003.

To
The Rural Health Officer,
Public Health Department,
Corporation of Chennai,
Chennai - 600 003.

Sir,

Sub: Service - Promotion for Senior Analyst -
Amending the Educational qualification in Draft
Sub Rules - Requisition for promotion - Order -
Reg.

We, the Junior Analysts in the Public Analyst Lab of Corporation of Chennai, submit the following for your kind perusal and order:

Our next promoting post is Senior Analyst. At present, as per the amended draft Sub Rules of Health Department, Corporation of Chennai, the M.Sc., (Chemistry) is educational qualification for the promotion to the post of Senior Analyst. It is also mentioned that the Feeder post for this post is Junior Analyst.

However, we are U.G. degree holders in Chemistry subject and working as Junior Analysts for several years. Since the educational qualification for promotion to the post of Senior Analyst is amended as Post Grade degree in Chemistry subject, our promotion is affected. In this regard, we hereby submitting some instructions for your kind perusal:

1. As per the Rules of Food Amalgamation Preventing Act 1954, the B.Sc. degree holders as on 31.09.1999 will be appointed as Public Analyst. - Rule No.6(i).

2. As per G.O.Ms. No. 28, Rural Dev. Local Admn.

Dated 06.01.1989 Dept. & 28.05.1998 of Public Health and Medical Service Rules, Corporation of Chennai, the completion of B.Sc. (Chemistry) is recommended for Public Analyst post. (copy enclosed)

So, we request your goodself to make amendment in the new amended draft sub Rule to consider the Junior Analysts who are possessing B.Sc. degree for the promotion cadre of Senior Analyst according to the explanation referred above.

Hence, order is prayed as follows:

1. The Junior Analysts who are possessing B.Sc. degree may be promoted as Senior Analyst,

2. The Draft Sub Rules to be sent to the Government may be amended in such a case of admission of this proposal.

We humbly request for orders.

Yours,

Sd/- Nasurudin

Sd/-Shaik Sultan Ahmed

Sd/-N.D.Kavitha

14. The Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009 has come into force, after three months from the date of publication of Official Gazette. Service By-laws having published in Corporation of Chennai G.D.C.No.E4/26579/2009 - G.D.C.No.E5/14088/2009 G.D.C.No.E7/37345/2009, December 2 2009- Published in Part III Section 2 of the Tamil Nadu Government Gazette, dated 30th December 2009. Thus, Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009 has come into effect after 3 months from the date of publication.

15. Senior Analyst falls in Category I clause (3) and the method of appointment is by promotion from the post Junior Analyst,

(ii) by deputation from the State Government and

(iii) by direct recruitment

Minimum qualification fixed 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 recognised University established in India.

For the post of Junior Analyst (i) by promotion of approved probationers from the lower categories who have acquired the qualification prescribed for direct recruitment

(ii) By deputation from the State Government

(iii) By direct recruitment

Minimum qualification fixed for the post of Junior Analyst is M.Sc Degree with Chemistry or Bio-Chemistry or Dairy Chemistry or Food Technology or Micro-Biology or Food and Drugs

from recognised University established in India.

16. Though the learned counsel for the petitioner submitted that amendment for prescribing the qualification for the post of Senior Analyst, was pending with the Government, vide Resolution No.577/12, dated 27.12.2012 and further contended that the first respondent ought to have promoted the petitioner, this Court is not inclined to accept the said submission for the reason that M.Sc Degree in Chemistry or Bio-Chemistry or Dairy Chemistry or Food Technology or Micro-Biology or Food and Drugs from recognised University, established in India, has been prescribed as the minimum qualification for the post of Senior Analyst in Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-Laws, 2009 as per G.D.C.No.E4/26579/2009 - G.D.C.No.E5/14088/2009 G.D.C.No.E7/37345/2009, December 2 2009- Published in Part III Section 2 of the Tamil Nadu Government Gazette, dated 30th December 2009.

17. Needless to say that it is the prerogative of the employer to prescribe the age, educational qualifications etc., for appointment to a post. Reference can be made to a decision of the Hon'ble Supreme Court in P.U.Joshi v. Accountant General reported in 2003 (2) SCC 632, where the Hon'ble Supreme Court, at Paragraph 10, held as follows:

"10. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and

cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

18. In the light of the decision and discussions, we are of the view that, Clauses 3 (1) of the Chennai Corporation Health, Malaria and Family Welfare Subordinate Services By-laws 2009, cannot be struck down, as ultra vires of the Constitution of India.

19. In the result, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kpr/dpq

To

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

2. The Secretary,
Government of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St.George, Chennai - 600009.

+1cc to Mr.S.Sadasharam, Advocate, S.R.No. 64511

Writ Petition No.22203 of 2019

NMI (CO)
GN(01/11/2019)