

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.27823 of 2014
and W.M.P. 23815/2016
in M.P. 1/2014.

Dr.Jude.J

... Petitioner

Vs.

1.The Secretary to Government,
Department of Health and Family Welfare,
Fort St.George,
Chennai - 600 009.

2.The Medical Services Recruitment Board,
Rep. by its Member Secretary,
7th Floor, No.359, Anna Salai,
Teynampet, Chennai - 600 006.

3.The Principal,
Tamil Nadu Government Dental College and
Hospital, Chennai - 3.

4.Dr.N.Jayalakshmi
(R4 - Impleaded as per order dated
31.10.2014 by MMSJ in M.P.No.2/2014
in W.P.No.27823 of 2014)

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned order passed in G.O.4(D) No.9, dated 26.09.2014 and consequent letter dated 10.10.2014 made in Ref.No.1504/E/2014 passed by the Principal Tamil Nadu Government Dental College and Hospital, Chennai - 3 and quash the same as illegal and direct the respondents to permit the petitioner to work as Tutor/Assistant Professor (Oral Pathology) at Tamil Nadu Government Dental College and Hospital, Chennai continuously.

For Petitioner	:	Mr.G.Sankaran
For R1 & R3	:	Mr.M.Karthikeyan Additional Government Pleader
For R2	:	Mr.A.Vivek
For R4	:	Mr.K.Thilageswaran

O R D E R

By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal.

2. This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned order passed in G.O.4(D) No.9, dated 26.09.2014 and consequent letter dated 10.10.2014 made in Ref.No.1504/E/2014 passed by the Principal Tamil Nadu Government Dental College and Hospital, Chennai - 3 and quash the same as illegal and direct the respondents to permit the petitioner to work as Tutor/Assistant Professor (Oral Pathology) at Tamil Nadu Government Dental College and Hospital, Chennai continuously.

3. Heard the learned counsel on either side and also perused the materials placed on record.

4. According to the petitioner, he has completed M.D.S. Degree and registered his name in Tamil Nadu Dental Council on 28.06.2012. The respondents, through an advertisement, called for applications to fill up the post of Tutor/Assistant Professor (Oral Pathology). The petitioner had participated and stood selected. Thereafter, the petitioner was appointed as Tutor/Assistant Professor (Oral Pathology) in Tamil Nadu Government Dental College and Hospital, Chennai. While so, the petitioner was directed to appear before the second respondent on 27.08.2014 for enquiry and he also appeared before the second respondent on the same day without any mistake on the part of the petitioner. In the enquiry, the second respondent insisted the petitioner to resign the aforesaid post. Earlier, the petitioner filed W.P.No.25394 of 2014 on 18.09.2014, in which notice was ordered to the first respondent, while so, the impugned order of cancellation came to be passed on 26.09.2014. Challenging the impugned cancellation order passed by the first respondent, the petitioner has filed Writ Petition before this Court.

5. According to the learned counsel for the petitioner when the earlier Writ Petition is pending, the impugned cancellation order passed on the ground that the petitioner was appointed in the said post wrongly and subsequently, the petitioner's name was cancelled from the aforesaid post is illegal.

6. The respondent by filing counter affidavit would contend that due to mistake, the petitioner was selected and was appointed for the post of Tutor/Assistant Professor (Oral

Pathology). The said appointment made to the petitioner is only due to mistake and the respondents had cancelled it and appointed the fourth respondent on the basis of merit list.

7. In the counter affidavit, the second respondent has stated that

" Many of the aggrieved candidates who have secured higher marks in the Medical Services Recruitment Board (MRB) Examination for Assistant Surgeon (including Dental) 2013 could not be selected as they had registered in the Medical Council/Dental Council belatedly (with reference to the stipulation in the original notification of the MRB- the notification of MRB stipulated a condition that applicants must have permanently registered with the Tamil Nadu Medical Council or Tamil Nadu Dental Council on or before the last date of filing of online application. However, many applicants who had registered with their council after the last date for application-but before the date of the written examination), approached the Hon'ble High Court of Madras and obtained interim orders relaxing the same (subject to the final orders in W.P.No.23948 of 2013 and related batch cases). Though Dr.N.Jayalakshmi did not file and obtain specific orders of the Hon'ble High Court regarding extension of date of registration of her MDS with Tamil Nadu Dental Council, as the directions of the Hon'ble High Court was adopted to all the similarly placed candidates (in order to overcome numerous litigations on the same grounds), she ought to have been considered for selection for Assistant Surgeon (Dental-Speciality) (MDS qualification) as well . However, because of the reasons explained above, her file was clubbed with the Assistant Surgeon (Dental) posts and her name was inadvertently omitted to be included in the speciality selection under MDS (Oral Pathology), or MDS (in any speciality) posts."

8. At this Stage, the fourth respondent has filed a Writ Petition before this Court and the same has been disposed of. According to the respondent, because of the reasons explained above, the 4th respondent file was clubbed with the Assistant Surgeon (Dental) posts and her name was also specifically omitted to be included in the speciality selection under MDS (Oral Pathology), or MDS (in any speciality) posts. On receipt of the RTI petition from the fourth respondent stating that she has secured 70 marks and requested the reason for non-inclusion in the selected list, the Board has decided to call both the candidates to appear before the Board for hearing

on 27.08.2014 at 11 a.m. and on scrutiny of records and based on the hearing and it was found that the fourth respondent was eligible for selection to the post of Assistant Surgeon (Dental) (Speciality) in MDS (Oral Pathology) in the communal rotation of Backward Class-(other than Muslim) in place of Dr.J.Jude in view of her higher marks as detailed below.

Sl. No	Turn ID	Turn	Name	Register. No	Exam No	Mark out of 100	Overall Rank
1	1	General Turn	Dhanalakshmi	1005124	22738	75	68
2	2	Scheduled Caste Arunthathiyar-Women	Shanthi	1005493	22596	59.5	665
3.	3	Most Backward Class & Denotified Community	Pamalai	1001226	22679	70	196
4	4	Backward Class (Other than Muslim)	N.Jayalakshmi*	1003037	22714	70	201

(* The selection and appointment is subject to the outcome of the W.P.No.23948/2013 and related batch cases)

9. Therefore, the appointment of the petitioner was rightly cancelled by the respondent. Pending Writ Petition, the fourth respondent has resigned and thereafter, she appeared for counselling. In the counselling, the petitioner has appeared and on verifying the records, the Government passed G.O (3D) No.106 dated: 06.10.2015, wherein, the following candidates were appointed temporarily as Assistant Surgeon (Dental Speciality):-

- 1.Dr.V.Brindaalakshmi
- 2.Dr.N.Praveen
- 3.Dr.J.Jude

10. Further, it is stated that the Director of Medical and Rural Health Services was directed to conduct counseling and issue posting orders in the available vacancies in the Directorate of Medical and Rural Health Services and subsequently, they can move to Directorate of Medical Education as and when vacancies arises. The said copy of the order was refused. Subsequently the petitioner has now filed a petition

before this Court.

11. At the time of final hearing, the learned Government Pleader, on instructions, would submit that the temporary appointment order dated 06.10.2015 was issued by the Government in G.O.(3D) No.106 to provide appointment to the petitioner as Oral Pathology for providing the posting to the petitioner at Government Hospital, Natham, Dindugal. The respondent immediately issued the posting order to the petitioner to join the duty and the petitioner was informed that whenever the vacancy arises in the Directorate of Medical and Rural Health Services, the petitioner name will be considered. Subsequently, the petitioner has not responded and when the said posting order copy was communicated to the petitioner, it was refused with an endorsement as "no such addressee". Thereafter, the petitioner has not taken any efforts to approach the authority seeking for the said posting order. The Petitioner may join Oral Pathology, Government Hospital, Natham, Dindugal, thereafter his reequst, will be considered at the time of counselling for post of Assistant Professor (Oral Pathology) to fill up the vacancy.

12. The petitioner has not raised any objection for the said posting order in G.O.(3D) No.106 dated 06.10.2015 issued to the petitioner.

13. In view of the above said facts, the learned counsel for the petitioner would submit that the petitioner shall join the aforesaid post at Government Hospital, Natham, Dindugal, and thereafter, requested this Court that as per the undertaking, the petitioner may be called for the counselling, if any vacancies arises for the post of Assistant Professor (Oral Pathology). Further, he requested this Court that the petitioner's name may be given preference since the dispute is pending for more than four years.

14. Recording, the said submissions made by both counsels, this Court directs the respondents to issue posting order to the petitioner at Government Hospital, Natham, Dindugal for the post of Assistant Professor Dental Speciality. It is further directed that if any vacancies are available in the cadre of Assistant Professor Oral Pathology, the respondents shall send a communication to the petitioner to appear for the counselling on the preferential basis. It is open to the petitioner to claim seniority from the date of appointment, if it is permissible under the law. The petitioner undertakes to join duty in the Government Hospital, Natham, Dindugal within a period of two weeks from the date of receipt of a copy of this Order.

15. With the above direction, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

lpp/mpa
To

1.The Secretary to Government,
Department of Health and Family Welfare,
Fort St.George,
Chennai - 600 009.

2.The Medical Services Recruitment Board,
Rep. by its Member Secretary,
7th Floor, No.359, Anna Salai,
Teynampet, Chennai - 600 006.

3.The Principal,
Tamil Nadu Government Dental College and
Hospital, Chennai - 3.

+1 CC to Mr.G.Sankaran, Advocate sr 22973.

W.P.No.27823 of 2014

SKV(CO)
SP(06/06/2019)

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