

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27578 of 2019

And

W.M.P.Nos.27067 and 27070 of 2019

Dr.Mimmy Sangeeth

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai 600 010.
- 3.The Director of Medical and Rural Health Service,
DMS Compound, Anna Salai,
Teynampet, Chennai - 600 006.
- 4.Mr.Lenin,
Tutor (Anatomy)
Kanyakumari Government Medical College,
Asaripallam, Kanyakumari District.
- 5.The Secretary,
Medical Council of India,
Pocket - 14, Sector - 8,
Dwarka Phase - I,
New Delhi - 110 001.

(R5 suo motu impleaded as per order
dated 22/10/2019 made in
W.P.27578/2019 by MDIJ)

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 3 to fill up the fourth post of Assistant Professor / Tutor in Anatomy in Kanyakumari Government Medical College by considering the petitioner qualified with Post Graduate Medical Degree in Anatomy in accordance with Medical Council of India Regulations

- Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2017 as per the circular issued by the second respondent in Ref.No.4053/E3/1/2019-TC dated 30.08.2019.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.R.S.Selvam for R1 and R3
Government Advocate
Mr.V.Kadhirvelu for R2
Special Government Pleader
M/s.P.Jagadeesan for R4
Mr.V.P.Raman for R5
Standing Counsel

O R D E R

The petitioner has filed this writ petition seeking issuance of a Writ of Mandamus directing the respondents 1 to 3 to fill up the fourth post of Assistant Professor / Tutor in Anatomy in Kanyakumari Government Medical College by considering the petitioner's qualification, Post Graduate Medical Degree in Anatomy in accordance with Medical Council of India Regulations - Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2017 as per the circular issued by the second respondent in Ref.No.4053/E3/1/2019-TC, dated 30.08.2019.

2.The case of the petitioner is that the petitioner was appointed as Assistant Surgeon in Tamil Nadu Medical Service on 28.09.2017 through regular Medical Recruitment Board. Since she was qualified with Post Graduate Medical Degree in Anatomy in the year 2015 itself, she was transferred and appointed as Tutor/ Assistant Professor in Kanyakumari Government Medical College on 12.10.2017.

3.It is the further case of the petitioner that the Assistant Professor/ Tutor in Anatomy is a teaching post available only in Government Medical College and Hospitals under the Directorate of Medical Education (DME) side. The first respondent issued G.O.(4D) No.2 Health and Family Welfare Department, dated 15.02.2019 in order to streamline the teaching posts sanctioned in Government Medical College and Hospitals. The Hospitals are re-organized and re-structured by sanctioning the post matrix in Government Medical College and Hospitals and attached institutions under the control of DME as per the Annexure to the Government Order.

4.It is the further case of the petitioner that originally there were six Assistant Professor/ Tutor posts available in Kanyakumari Government Medical College, however, after restructuring as per the above said Government Order, the post

of Assistant Professor/ Tutor in Anatomy has been reduced to four in Kanyakumari Government Medical College.

5.It is the further case of the petitioner that the second respondent issued Circular dated 30.08.2019 to conduct restructuring counselling for Medical Officers under the control of DME on 04.09.2019 wherein all the teaching posts in the category of Assistant Professor/ Senior Resident/ Junior Resident/ Tutor were declared as vacant and all the Medical Officers qualified with PG Degree and PG Diploma were directed to participate in the counselling for posting and the petitioner also participated in the counselling conducted on 04.09.2019.

6.It is the further case of the petitioner that though four posts of Assistant Professor/ Tutor have been sanctioned in Kanyakumari Government Medical College, only three posts were notified in the counselling hall and they were opted by the seniors to the petitioner.

The fourth vacancy for the post of Assistant Professor/ Tutor in Kanyakumari Government Medical College has been shown for M.Sc.Degree qualified candidate and the fourth respondent was allotted the fourth vacancy.

7.According to the petitioner, the counselling is sought to be conducted only for Medical Officers qualified with PG Degree/ PG Diploma in the concerned speciality and hence, the allotment of the fourth respondent in the fourth vacancy to the post of Assistant Professor/ Tutor in Anatomy is arbitrary, illegal and against law. Hence, this petition.

8.Mr.G.Sankaran, learned counsel appearing for the petitioner would submit that the post of Assistant Professor/ Tutor comes under Class-I, Category-8 of the Tamil Nadu Medical Service and the qualification prescribed under Rule 8(c) is that the Assistant Professors/ Tutors who were recruited direct must have obtained the Degree of M.B.B.S. of the University of Madras and must have done Post-Graduate work in a teaching institution for a period of not less than two years and who were recruited by transfer must have served

satisfactorily as Medical Demonstrator in the Tamil Nadu Medical Subordinate Service for a period of not less than three years.

9.The learned counsel appearing for the petitioner would further submit that as per MCI Regulations - Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulation, 2017, an Assistant Professor must possess a Post Graduate in MD/MS in the concerned subject and should have three years Teaching and Research experience as Junior Resident in a recognized Medical College in the concerned subject and one year

as Senior Resident in the concerned subject in a recognized Medical College.

10.The learned counsel appearing for the petitioner would further submit that since the fourth respondent did not satisfy the prescribed qualifications, the selection of the fourth respondent to the post of Tutor is in violation of the Service Rules and MCI Regulations - Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulation, 2017. Accordingly, he prayed for allowing the writ petition.

11.Counter affidavit has been filed on behalf of respondents 1 and 2, wherein, paragraph nos.8, 12 and 13 reads as follows:

"8.It is submitted that Based on the orders of the Hon'ble High Court Madras, the Government have also constituted a committee Comprising the members mentioned in para 5 above. The said committee received all objection / suggestions from all the stakeholders, Doctors, Associations in regard to the postings / promotions / transfers of Doctors from 01.08.2019 to 06.08.2019 and also submitted their report to the Hon'ble High Court of Madras on 07.08.2019.

12.It is submitted that as per MCI norms in department of Anatomy non Medical Teachers may be appointed to the extent of 30% of the total number of posts in the department as Tutor. In view of the paucity of teachers in non-clinical departments during the year 2008, recruitment was made through Employment Exchange relaxation upto the Head of the department may be given to non-medical persons in case a suitable medical teacher in the particular non-clinical speciality is not available for the said appointment in said department.

13.It is submitted that total number posts in Anatomy Department is 118 and total number of Msc Anatomy qualified working under this Directorate are 8 it is not exceed 30% of total sanctioned post."

12.Inorder to resolve the issue between the petitioner and the respondents 1 to 4, this Court suo motu impleaded the Medical Council of India as the fifth respondent.

13.Mr.V.P.Raman, learned counsel appearing for the Medical

Council of India would submit that in the department of Anatomy non-medical Teachers like the fourth respondent may be appointed to the extent of 30% of total number of posts in the department. A non-medical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to higher teaching post a candidate must require Ph.D. Degree qualification or equivalent qualification.

14.The learned counsel appearing for the Medical Council of India has drawn the attention of this Court to the academic qualification and experience to be possessed by the Assistant Professor as substituted vide Gazette Notification dated 08.06.2017, as per which an Assistant Professor must possess a Post Graduate qualification in MD/MS in the concerned subject and as per the TEQ Regulations and should have three years experience as Junior Resident in a recognized Medical College in the concerned subject and one year experience as Senior Resident in the concerned subject in a recognized Medical College. He would further submit that the Medical Teachers in all Medical Colleges except the Tutors, Residents, Registrars and Demonstrators must possess the requisite recognized Post Graduate Medical qualification in their respective subject.

15.The learned counsel appearing for the fourth respondent reiterated the contents in paragraph no.14 of the counter affidavit filed on behalf of the respondents 1 and 2 and would submit that the fourth respondent was appointed as Non Medical Tutor in Anatomy Department at Kanyakumari Medical College, Kanyakumari on 22.02.2008 as there were no adequate MD/ MS Anatomy qualified Medical Officers in Anatomy and he has been teaching Anatomy for MBBS for 11 years since 2008. He would further submit that in the present post the required teaching experience is only three or four years. Hence, the appointment of the fourth respondent cannot be interfered with. Accordingly, he prayed for dismissal of the writ petition.

16.For better appreciation, the comparative statement between the petitioner and the fourth respondent is as follows:

Sl. No.		Thiru.S.Lenin, M.Sc. Anatomy	Dr.Mimmy Sangeeth, MD (Anatomy)
1.	Date of Birth	09.02.1971	25.07.1985
2.	Date of entry into Government Service	22.02.2008	28.09.2017
3.	Qualification	M.Sc. Anatomy	MD (Anatomy)
4.	Year of Passing	February, 2004	October, 2015

Sl. No.		Thiru.S.Lenin, M.Sc. Anatomy	Dr.Mimmy Sangeeth, MD (Anatomy)
5.	Date of Regularization	22.02.2008	Not yet regularized
6.	Date of Completion of Probation	Not yet declared	Not yet declared

17.On a perusal of the above chart makes it clear that the petitioner acquired MD (Anatomy) during October, 2015, whereas, the fourth respondent acquired M.Sc. Anatomy during February, 2004 and that the fourth respondent's service was regularized on 22.02.2008 and the petitioner's service has not yet been regularized. This Court also perused Schedule - II - Staff Requirements of the Minimum Standard Requirements for the Medical College, wherein, it is stated that a non-medical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to higher teaching post a candidate must require Ph.D. Degree qualification or equivalent qualification. As per Gazette Notification dated 08.06.2017, an Assistant Professor must possess a Post Graduate qualification in MD/MS in the concerned subject and should have three years experience as Junior Resident in a recognized Medical College in the concerned subject and one year experience as Senior Resident in the concerned subject in a recognized Medical College.

18.On a perusal of counter filed on behalf of the respondents 1 and 2, it is known that the fourth respondent was appointed as Non Medical Tutor in Anatomy Department at Kanyakumari Medical College, Kanyakumari on 22.02.2008 as there were no adequate MD/ MS Anatomy qualified Medical Officers in Anatomy and he has been teaching Anatomy for MBBS for 11 years since 2008. Whereas, the teaching experience of the petitioner is less than three years. Hence, I do not find any wrong in the appointment of the fourth respondent. Hence, the prayer sought for in the writ petition cannot be considered.

19.The writ petition is accordingly dismissed. No costs. However, this order will not stand on the way of the petitioner to be considered in the next counselling. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai 600 010.
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DMS Compound, Anna Salai,
Teynampet, Chennai - 600 006.
- 4.The Secretary,
Medical Council of India,
Pocket - 14, Sector - 8,
Dwarka Phase - I,
New Delhi - 110 001.

+1cc to Mr.V.P.Raman, Advocate, S.R.No. 93672
+1cc to the Government Pleader, S.R.No. 93758

W.P.No.27578 of 2019
And

W.M.P.Nos.27067 and 27070 of 2019

PPA (CO)
GN(17/12/2019)

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