

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 2617 of 2018
and
C.M.P. No. 21334 of 2018

Dr. M. Sai Vijaya Priya

... Appellant/Petitioner

-Vs-

1. The Secretary to Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The Additional Chief Secretary/
Special Commissioner,
Directorate of Indian Medicine & Homeopathy,
Arumbakkam,
Chennai - 600 106.
3. Dr. J. Clarence Davy,
Government Ayurveda Medical
College and Hospital,
Nagercoil.
Kanyakumari District. ... Respondents/Respondents

PRAYER :- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 27.09.2018 made in W.P. No. 7321 of 2016 and petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent in G.O.(D) No. 115 dated 19.01.2016 quash the same and consequently direct the 1st and 2nd respondent to appoint the petitioner as Principal Government Ayurveda Medical College, Kottar, Nagercoil.

For Appellant : Mr. S. Gunaseelan

For Respondents : Mrs. A. Srijayanthi,
Special Government Pleader
(for R1 and R2)

Mr. Issac Mohanlal,
Standing Counsel,
for Issac Chambers (for R3)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 27.09.2018 in W.P. No. 7321 of 2016 passed by the Learned Judge of this Court.

2. The Third Respondent, viz., Dr. J. Clarence Davy, who was working as Lecturer Grade-II Reader (Full additional charge), was appointed as Principal in the Government Ayurveda Medical College and Hospital, Kottar, Nagercoil on ad hoc basis by G.O. (D) No. 115, Health and Family Welfare (IMI-1) Department dated 19.01.2016 issued by the Government of Tamil Nadu, since rules had not been framed for that post, in the vacancy caused by the retirement of the previous incumbent Dr. Ch. Ramakrishnamacharya. Challenging the aforesaid appointment, the Appellant had filed W.P.No.7321 of 2016 and sought for a consequential direction to the First and Second Respondents to appoint her in his place.

3. After filing of the Writ Petition, the Government of Tamil Nadu had issued G.O. Ms. No. 125, Health and Family Welfare (IMI-1) Department dated 10.04.2018, in which ad hoc rules had been made relating to temporary posts in Government Ayurveda College and Hospital in Tamil Nadu Medical Service. In the said rules, which have been made in the exercise of the powers by the proviso to Article 209 of the Constitution of India, it has been stated that they are deemed to have come into force on and from 23.01.2006 in respect of the posts of Principal, Lecturer and Lecturer Grade-II, and on and from 20.10.2010 in respect of the posts of Professor and Reader.

4. The Learned Judge, who heard the Writ Petition after extensively discussing the rival contentions made on behalf of the parties, by order dated 27.09.2018 arrived at the factual finding that the Appellant, who did not possess the requisite

qualification and was not holding any teaching post at the time when the appointment to the post of Principal was made, could not be permitted to challenge the appointment of the Third Respondent relying on the decisions of the Hon'ble Supreme Court of India in B. Srinivasa Reddy -vs- Karnataka Urban Water Supply and Drainage Board Employees' Association [(2006) 11 SCC 731], Dr. Umakant Saran -vs- State of Bihar [(1973) 1 SCC 485] and the Calcutta High Court in Md. Ismail Hoque -vs- Imran Hossain [(2014) SCC OnLine Cal 177775]. It has been further held in para no. 7 in that order as follows:-

"7. In regard to the peculiar situation where the qualified candidates were not available, viz., five years experience as Professor for being considered for appointment to the post of Principal, as rightly contended by the learned Senior Counsel for the Third Respondent, no institution can function effectively without its Head. Therefore, the administration did not have any choice except to take a call for appointment to the post of Principal from among the most experienced, meritorious and eligible candidates. After granting personal hearing to all the eligible candidates, finally, the choice fell on the Third Respondent and rightly she was selected and appointed as Principal incharge. In fact, the other four candidates who were also called for the personal hearing on 15.10.2015, never chosen to question the appointment of the Third Respondent."

Since the Writ Petition was dismissed for the aforesaid reasons, the Appellant has preferred this appeal.

5. We have heard Mr.S.Gunaseelan, Learned Counsel appearing for the Appellant, Mrs.A.Srijayanthi, Learned Special Government Pleader appearing on behalf of the First and Second Respondents, Mr.Issac Mohanlal, Learned Standing Counsel appearing on behalf of the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

6. In view of the aforesaid binding decision of the Hon'ble Supreme Court of India in B. Srinivasa Reddy -vs- Karnataka Urban Water Supply and Drainage Board Employees' Association [(2006) 11 SCC 731], we are fully in agreement with the conclusion of the Learned Judge that the Appellant, who does not possess the requisite qualifications and was not working in any teaching post at the time when the selection to the post of Principal was made, cannot challenge the appointment of the Third Respondent and that she could not be granted any of the reliefs that was claimed by her in the Writ Petition.

7. However, it requires to be noticed here that the appointment of the Third Respondent to the post of Principal by order dated 19.01.2016 was on ad hoc basis as the rules had not be framed for that post and that ad hoc rules had been subsequently made by G.O. Ms. No. 125, Health and Family Welfare (IMI-1) Department dated 10.04.2018 with retrospective effect. It was pursuant to the interim order passed by this Court on 29.02.2016 in W.M.P. No. 6505 of 2016 that the Third Respondent was relieved from the post of Principal on the forenoon of 24.04.2018 and she was directed to hand over the charge of that post to Dr. P. Narayanan, M.D., (Ayurveda), Medical Officer of that College by proceedings Ref. No. 3178/E1/1/2016 dated 24.04.2018, which fact has been recorded by this Court in the order dated 24.04.2018 in Contempt Petition No. 1382 of 2018. The Learned Judge while dismissing the Writ Petition on 27.09.2018 has observed in para no. 12 of the order that since the appointment of the Third Respondent was re-called only on the ground of interim order granted by this Court, and in view of the dismissal of the Writ Petition, it is open to the authorities concerned to take appropriate steps to restore the status quo that is prior to the order of cancelling the appointment of the Third Respondent on 23.04.2018.

8. Having regard to the fact that the ad hoc rules have been framed in G.O. Ms. No. 125, Health and Family Welfare (IMI-1) Department dated 10.04.2018 and the Second Respondent had been relieved from service by proceedings Ref. No. 3178/E1/1/2016 dated 24.04.2018, we are of the considered view that it is incumbent upon the authorities concerned to consider the filling up of the post of Principal in accordance with the ad hoc rules expeditiously by considering all the eligible candidates as on date.

9. In the upshot, the Writ Appeal is dismissed with the aforesaid modification in the observations made in para no. 12 of the order dated 27.09.2018 in W.P. No. 7321 of 2016. No costs. Consequently, the connected Miscellaneous Petition is closed.

vjt

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

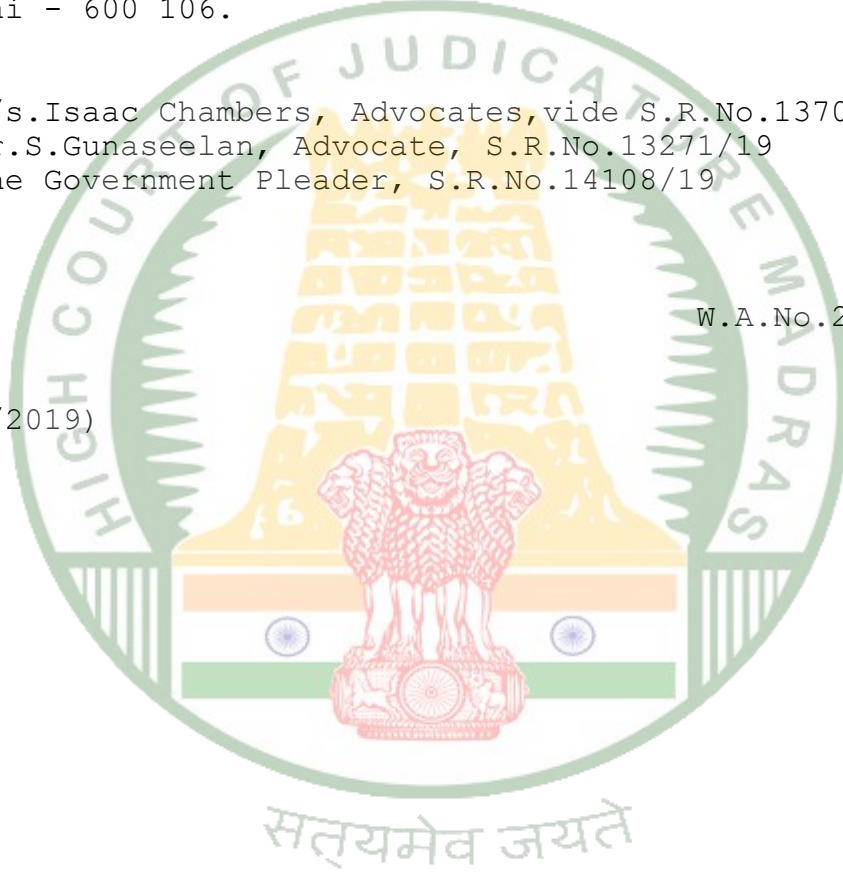
To

1. The Secretary to Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The Additional Chief Secretary/Special Commissioner,
Directorate of Indian Medicine & Homeopathy,
Arumbakkam,
Chennai - 600 106.

+1cc to M/s.Isaac Chambers, Advocates, vide S.R.No.13702/19
+1cc to Mr.S.Gunaseelan, Advocate, S.R.No.13271/19
+1cc to the Government Pleader, S.R.No.14108/19

W.A.No.2617 of 2018

Nrjk(CO)
kak(08/03/2019)



WEB COPY