



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
14.10.2019	23.10.2019

WEB COPY

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

**W.P. (MD) No.7738 of 2012
and
W.M.P. (MD) No.16236 of 2017 & 16655 of 2018**

C.Ponnusamy

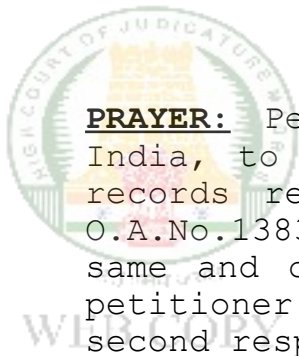
... Petitioner

-vs-

1. Union of India
Rep.by the Director General
Indian Council of Medical Research
Ministry of Health and Family Welfare
New Delhi-110 029.
2. The Director-in-Charge
Centre for Research in Medical Entomology
(Indian Council of Medical Research)
No.4, Sarojini Street, Chinna Chokkikulam
Madurai-625 002.
- 3.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai.
- 4.A.Gousia Begum Suhail
Centre for Research in Medical Entomology
(Indian Council of Medical Research)
No.4, Sarojini Street, Chinna Chokkikulam
Madurai-625 002.

... Respondents

[R4 is impleaded vide Court order dated
01.04.2014 in M.P. (MD) No.3 of 2012]



PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the impugned order dated 01.05.2012 made in O.A.No.1383 of 2011 passed by the the third respondent and quash the same and consequently direct the second respondent to promote the petitioner to the post of Section Officer in the office of the second respondent.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.S.Jeya Singh
Central Government Standing Counsel for R1
Ms.N.Mala for R2
R3 - Tribunal
Mr.R.Gandhi for R4

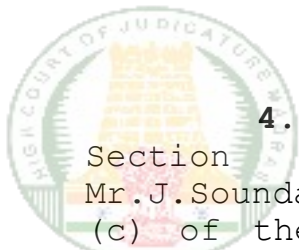
O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

The petitioner has challenged the order, dated 01.05.2012, passed in O.A.No.1383 of 2011, by the Central Administrative Tribunal, Madras Bench and also sought for a direction to the second respondent to promote him to the post of Section Officer in the office of the second respondent.

2. The original application was filed before the Tribunal challenging the order, dated 24.10.2011, passed by the second respondent. The petitioner contended before the Tribunal that as per the Recruitment Rules, for the post of Section Officer in ICMR Headquarters Office / Institutes / Centres, the method of filling up the post of Section Officer is 20% by direct recruitment, 40% by limited departmental competitive examination and 40% by promotion from among Assistants. The petitioner contended that he is the senior most Assistant and has the necessary qualification and experience to be appointed as Section Officer, since he has already been granted the scale of pay equivalent to the post of Section Officer under ACP / MACP Scheme.

3. The respondents resisted the prayer contending that as per the Recruitment Rules, direct recruitment for 20% of the post be done on the basis of the competitive test from amongst the persons, who possess the requisite qualification and in-service candidates are also eligible to participate and there will be no age restriction for such candidates. The second method of 40% be done on the basis of the departmental competitive test limited to Assistants and Personal Assistants, who have completed not less than five years approved service in their respective grades. The third method being 40% by promotion from amongst Assistants, who have rendered not less than 8 years approved service in that grade, on the basis of seniority, subject to rejection of unfit on the recommendations of Departmental Promotion Committee.



4. It is submitted that the first vacancy in the post of Section Officer was accommodated by promoting one Mr.J.Soundararajan, who was the senior most Assistant as per Rule 10 (c) of the Recruitment Rules (herein after, referred to as "the Rules"). As there was no eligible candidates to participate in the departmental competitive test, a decision was taken to fill-up the post by direct recruitment in terms of Rule 10(a) of the Rules. The Department took a stand that the petitioner is not eligible either for promotion or for participation in the departmental competitive test as he does not have the requisite number of years of service in terms of Rule 10 of the Rules.

5. Further, it is submitted that the case of the petitioner rests upon the service rendered by him on deputation in WHO/CTD Filariasis Control Project, which according to the him, by virtue of his appointment to the post of Assistant in terms of the orders dated 05.01.1995 and 29.08.2000, is to be taken into consideration and if done so, he would be eligible in accordance with Rule 10 of the Rules. The Tribunal took note of the factual position and dismissed the original application.

6. Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner, submitted that the Tribunal failed to consider that when in-house candidates are available, the vacancy should not be filled-up through direct recruitment as the number of posts in the Department are very limited. Further, the educational credentials of the petitioner were not noted and 21 years of unblemished record of service was not taken into account. It is submitted that considering the foreign service rendered by the petitioner, he should have been considered as eligible to participate in the departmental competitive test.

7. It is further submitted that during the pendency of the writ petition, it came to the knowledge of the petitioner that one Mrs.A.Gousia Begum Suhail, who was selected and appointed to the said post, is not entitled to hold the post as the selection process is vitiated for several reasons.

8. The learned counsel for the petitioner referred to the Minutes of the Selection Committee, dated 09.03.2012 and submitted that the fourth respondent was awarded 4248 marks out of 6000 marks for the interview, which is far in excess than the permissible limit to be fixed for oral interview. Therefore, it is submitted that the appointment of the fourth respondent is illegal and the same is required to be set aside. On the above grounds, the learned counsel for the petitioner seeks for allowing the writ petition and granting the relief prayed for.



9. Ms.N.Mala, learned counsel appearing for the second respondent submitted that the order passed by the Tribunal calls for no interference and the plea raised by the petitioner is wholly unsustainable. It is submitted that as per the Recruitment Rules, the recruitment shall be in the percentage of 20%, 40% and 40% and the first vacancy in the post of Section Officer was filled up through the departmental competitive test by accommodating the senior most person holding the post of Assistant and rendered more than eight years of service in the grade. Further, it is submitted that as per the existing Recruitment Rules, in terms of Clause (b) of Rule 10 of the Rules, there is no eligible candidate in the cadre of Assistant and therefore, advertisement was issued for direct recruitment and as such, there is no violation of Article 14 of the Constitution of India.

10. It is further submitted that the petitioner has not fulfilled the criteria in the line of promotion for considering him for the post of Section Officer as he is holding the regular post of Upper Division Clerk only. The petitioner does not possess the regular service of eight years in the grade of Assistant nor completed five years approved regular service in the grade of Assistant to enable the second respondent to consider him for the Departmental Promotion Committee or for limited departmental competitive test. Therefore, it is submitted that there is no error in resorting to direct recruitment.

11. Further, it is submitted that there is no provision in the Rules to combine the services of the Lower Division Clerk and the Upper Division Clerk or to take the total length of service as approved service for promotion to the post of Section Officer. The service rendered by the petitioner to ICMR on foreign service is adhoc basis, which was made clear in the order of appointment. Therefore, such service cannot be reckoned to hold him eligible to be considered for promotion to the post of Section Officer. On these grounds, the learned counsel appearing for the second respondent prays for sustaining the orders passed by the Tribunal.

12. We have elaborately heard the learned counsels appearing for the parties.

13. The method of recruitment under the Recruitment Rules for the post of Section Officer, which is a Group-B post, is stipulated in Rule 10 of the Rules. For better appreciation, the said Rule is quoted herein below:



Method of recruitment whether by direct recruitment or by promotion or by deputation / transfer and percentage of the vacancies to be filled by various methods:	(a) 20% by Direct Recruitment on the basis of the result of competitive test from amongst candidates possessing University Degree; age not exceeding 35 years. Departmental candidates including those holding posts in the Stenographers Cadre and possessing the requisite qualifications will be eligible to compete and there will be no age restrictions in their case.
	(b) 40% by promotion on the result of Departmental Competitive Test limited to Assistants and Personal Assistants who have completed not less than 5 years approved service in their respective grades.
	(c) 40% by promotion free amongst Assistants who have rendered not less than 8 years approved service in that grade, on the basis of seniority, subject to rejection of unfit on the recommendations of Departmental Promotion Committee.

14. In terms of the above Rule, there are three methods of recruitment i.e. by direct or by promotion or by deputation / transfer and the percentage of the vacancy to be filled up by various modes has also been stipulated. Clause (a) of Rule 10 fixes 20% by direct recruitment, Clause (b) fixes 40% by promotion on the result of departmental competitive test limited to Assistants and Personal Assistants, who have completed not less than five years approved service in their respective grades and Clause (c) fixes 40% by promotion from amongst Assistants, who have rendered not less than eight years approved service in that grade, on the basis of seniority, subject to rejection of unfit on the recommendations of Departmental Promotion Committee.

15. The petitioner states that direct recruitment should not have been resorted to and he should have been considered under the 40% quota for being promoted as Section Officer. If the petitioner makes such a claim under Clause (b) of Rule 10 of the Rules, he should fulfil the eligibility conditions of having rendered not less than five years of approved service in the respective grades. If the petitioner seeks umbrage under Clause (c) of Rule 10 of the Rules, he should have rendered not less than eight years of approved service in that grade. If the petitioner has fulfilled this qualification, he would be eligible.

16. The petitioner's case rests upon the Memorandum dated 05.01.1995, by which, he was offered the appointment of Assistant in the project entitled "Control of bancroftian filariasis in villages



of South Arcot district by integration of vector control with chemotherapy". The petitioner's case is that he was offered the appointment of Assistant and such service rendered by him as Assistant should be reckoned for computing the total qualifying service required under Rule 10 of the Rules. The question is can that be done. The Memorandum dated 05.01.1995 states that the appointment is purely temporary for the work of the project. The petitioner is permitted to retain his lien on his present post of UDC till 31.10.1995. The period of his service in the project will be treated under the rules governing foreign service in ex-cadre posts. If the petitioner is willing for appointment, he has to report for duty before the Authority concerned. The Memorandum, dated 19.03.1999, issued to the petitioner after he expressed his willingness to accept the appointment, states that the appointment as Assistant is with the lien on his substantive post of Upper Division Clerk and the appointment in the project is purely temporary for a maximum period of one year and the services in the new project may be terminated even before one year without notice. After completion of the project work, his temporary appointment as Assistant was terminated with effect from 31.08.2000, as per the conditions of service of his appointment in the Project and he was directed to be continued in his original post of Upper Division clerk and his pay was re-fixed with effect from 01.09.2000 in accordance with rules. Subsequently, by Memorandum dated 07.01.2003, the pay scale of the petitioner working as Upper Division Clerk was upgraded under ACP Scheme with effect from 10.01.2003. By Memorandum, dated 31.03.2008, the pay scale of the petitioner working as Upper Division Clerk (ACP) was upgraded to Rs.6500-200-10500 from Rs.5500-175-9000, with effect from 15.09.2006 / 01.09.2007. The above details would clearly show that the foreign service rendered by the petitioner under a Project was purely temporary and the same cannot be reckoned for computing the length of service in the post of Assistant.

17. The appointment of the petitioner as Assistant under the project was purely temporary and it was made clear that the petitioner will continue to retain his lien in the post where he was working, which is the post of Upper Division Clerk. On completion of the project, his temporary appointment as Assistant was terminated and he was posted as Upper Division Clerk. Therefore, by no stretch of imagination, the foreign service can be reckoned for the purpose of computing the total length of service under Rule 10 of the Rules. Therefore, there is absolutely no error in the order passed by the Tribunal.

18. During the pendency of the writ petition, the petitioner appears to have filed an additional affidavit before this Court on 24.10.2017 contending that the Selection Committee, by strange



logic, had awarded 4248 marks out of 6000 marks to the fourth respondent, whereas the petitioner was given 3130 marks out of 6000 marks and the pattern is very clear that those, who obtained high marks in the written test, were given very low marks in the interview.

WEB COPY

19. It is further stated that the Minutes of the Selection Committee would show that the entire selection of the fourth respondent is not only farcical, but also fraudulent. It is further submitted that awarding more than 15% marks in the interview in any selection process is illegal and arbitrary and would amount to contempt of direction issued by the Honourable Supreme Court. It is submitted that the fourth respondent's appointment should be set aside by taking note of these facts.

20. At the first instance, we need to point out the adventure, which the petitioner has resorted to during the pendency of the writ petition by impleading the fourth respondent, is wholly untenable and without jurisdiction. The writ petition is not a public interest litigation. The petitioner has not challenged the appointment of the fourth respondent, but what has been questioned is the order passed by the Tribunal, which dismissed the petitioner's original application. Therefore, the petitioner cannot expand the jurisdiction of this Court, while testing the correctness of the order passed by the Tribunal. We are yet to believe that the object of the petitioner is to harass the fourth respondent and harass the officials of the fourth respondent. What the petitioner has resorted to is a clear case of misadventure and we would have been well justified in imposing costs. In the light of the above discussions, we hold that the petitioner has not made out any case to interfere with the order passed by the Tribunal.

21. Accordingly, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

krk



To:

1. The Director General,
Indian Council of Medical Research,
Ministry of Health and Family Welfare,
Union of India,
New Delhi-110 029.
2. The Director-in-Charge
Centre for Research in Medical Entomology
(Indian Council of Medical Research)
No.4, Sarojini Street, Chinna Chokkikulam
Madurai-625 002.
3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

+1 CC to M/s.N.MALA, Advocate SR-93887.
+1 CC to M/s.S.JEYASINGH, Advocate SR-94438.
+1 CC to M/s.G.PRABHU RAJADURAI, Advocate SR-94169.

ORDER
IN
W.P. (MD) No.7738 of 2012
and
W.M.P. (MD) No.16236 of 2017 & 16655 of
2018
23.10.2019

CS(01.11.2019) 8P 7C