



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)No.977 of 2019

and

C.M.P(MD)No.8778 of 2019

Dr.S.Ravi

... Appellant/Petitioner

Vs.

1. The State of Tamil Nadu,
represented by its
Secretary,
Department of Hindu Religious and Charitable Endowments,
Fort St. George,
Chennai - 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Road,
Chennai - 600 034.

3. The Joint Commissioner/Executive Officer,
Arulmigu Subramaniya Swami Thirukovil,
Thiruchendur,
Tuticorin District.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 01.08.2019 made in W.P(MD)No.2017 of 2015.

Prayer in WP(MD) . 2017/ 2015 :

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus after calling for the records pertaining to impugned Employment Notification of the 3rd respondent dated 30.01.2015 in Na.Ka.No.627/2014/A3-2 published in Daily Thanthi newspaper dated 05.02.2015 in its Tirunelveli edition, quash the same in so far as filling up the vacancy in the post of Siddha Doctor by direct the recruitment and consequently direct the respondents to regularize the services of the petitioner in the post of Siddha Doctor on his completion of 5 years of daily rated/consolidated wage service and to pay him all consequential benefits.



For Appellant : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader for R.1 & R.2
Mr.M.Muthugeethayan for R.3

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JUDGMENT

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**)

Heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the appellant, Mr.VR.Shanmuganathan, learned Special Government Pleader accepting notice on behalf of the respondents 1 and 2 and Mr.M.Muthugeethayan, learned Counsel accepting notice on behalf of the third respondent.

2. With the consent of the parties, this appeal is taken up for final disposal.

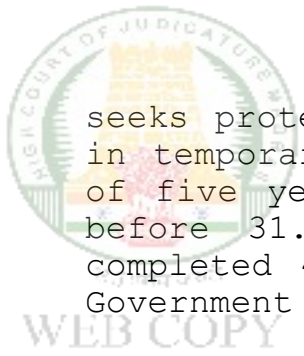
3. This appeal is directed against the order dated 01.08.2019 made in W.P(MD)No.2017 of 2015. The said writ petition was filed by the appellant praying for issuance of a writ of Certiorarified Mandamus to quash the Employment Notification issued by the third respondent dated 30.01.2015 and quash the same insofar as it seeks to fill up the post of Siddha Doctor by direct recruitment and consequently, direct the respondents to regularise the services of the appellant in the post of Siddha Doctor on completion of five years as consolidated wage employee.

4. The learned Single Bench, by impugned order, dismissed the writ petition stating that initial appointment of the appellant being irregular and not in accordance with recruitment rules, the benefit of regularisation or permanent absorption cannot be granted to him nor the High Court can issue any such direction to the authority concerned. The view taken by the learned Single Bench is perfectly in order and in consonance with various decisions of the Honourable Supreme Court, some of which have been referred to by the learned Single Bench.

5. The learned Senior Counsel appearing for the appellant seeks to draw a distinction between the cases referred to by the learned Single Bench in the impugned order and the ultimate conclusion of the learned Writ Court by referring to a Government Order which permits regularisation of an employee on completion of five years of continuous service as a temporary employee on consolidated wages.

6. On a perusal of the relevant Government Order, we find that the Government Order fixed a cut-off date for a candidate who

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seeks protection under the said Government Order that he should be in temporary service on consolidated basis for a continuous period of five years and the five year period should be completed on or before 31.07.2014. Admittedly, the appellant, as on that date, completed 4 years 4 months and therefore, the benefit of the said Government Order cannot be extended to the appellant.

7. Considering these facts, we cannot call upon to set aside the Notification issued by the third respondent for filling up the vacancy in the post of Siddha Doctor by direct recruitment. Therefore, the only conclusion that can be arrived at, is to reject this appeal.

8. We have taken note of the submissions of the learned Senior Counsel appearing for the appellant that as on date, the appellant has crossed 45 years which is the upper age limit to be eligible to participate in the direct recruitment for selection to the post of Siddha Doctor, however, considering the peculiar facts and circumstances of the case, we are of the considered view that the appellant should be permitted to participate in the direct recruitment which should be conducted pursuant to the Notification dated 30.01.2015 and the appellant's age shall not be a bar for the appellant to participate in the selection process. Further, we note that the appellant has also applied for the said post and the learned Counsel for the third respondent - temple submitted that 75 applications have been received for the said post and the appellant has also submitted an application which is now pending before the third respondent.

9. In the light of the above, this writ appeal is dismissed and the order passed by the learned Writ Court is confirmed and we direct the third respondent to revive the Notification dated 30.01.2015 and issue a corrigendum and proceed with the direct recruitment. We make it clear that the appellant should be permitted to participate in the direct recruitment to the post of Siddha Doctor as the candidature of the appellant shall be considered and a decision be taken on merits and in accordance with law. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

10. After we dictated the order, the learned Senior Counsel appearing for the appellant submitted that till date the appellant is working as Siddha Doctor in the third respondent temple on consolidated wages. This position is not disputed by the third respondent - temple. In the light of the same, till the conclusion of the recruitment process for filling up the vacancy in the post of Siddha Doctor by direct recruitment, the services of the appellant



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on consolidated wages, shall not be disturbed and the appellant shall abide the result of the selection process.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Secretary,
State of Tamil Nadu,
Department of Hindu Religious and Charitable Endowments,
Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Road,
Chennai - 600 034.

3.The Joint Commissioner/Executive Officer,
Arulmigu Subramaniya Swami Thirukovil,
Thiruchendur,
Tuticorin District.

+1 CC to Mr.M.MUTHUGEETHAYAN, Advocate (SR-89656[F] dated 26/09/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-90129[F] dated 27/09/2019)

+1 CC to Spl.GP (SR-90216[F] dated 27/09/2019)

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and

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rsb

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