

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.Nos. 19591 of 2013 and 28221 of 2014

P.M.Palanisamy

..Petitioner in both WPs

Vs

1. The Government of Tamil Nadu
Rep.by Secretary to Government,
Public Health and Family Welfare Department,
Secretariat, Chennai-600009.

2.The Director of Medical Education,
Kilpauk,
Chennai - 600010.

... Respondents 1&2 in
WP.No. 19591 of 2013 &
Respondents 1 & 3 in
W.P.No.28221 of 2014

3. The Secretary to Government
Health and Family Welfare Department,
Fort St.George,
Chennai -600009.

..2nd Respondent in W.P. No.28221 of 2014

4.M.Kirubakaran
5.V.S.Buharai
6.L.Shanthi

...Respondents 4 to 6/Respondents 3 to 5 in
W.P. No.19591 of 2013

Prayer in WP.No. 28221 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to G.O.Ms.No.39, Personnel and Administrative Reforms Department Dated 30.04.2014 and the order of the 3rd respondent in Ref.No.47822/E5/3/2014, dated 08.08.2014 and quash the same insofar as it relates to the amendment to Schedule II Rule 19 is made effective only from 30.04.2014, instead of giving effect from the date of respective Universities getting approval/accreditation from the Central Government/University Grants Commission and consequently direct the respondents 2 and 3 to include the name of the petitioner in the panel and promote him to the post of Librarian Grade I before any new panel is drawn, with all seniority and attendant benefits.

Prayer in WP.No. 19591 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to Pro.Ref. No. 32351/E5/3/2012 dt 28.5.2013 and the consequential posting order vide proceeding No. ref. No. 32351/ E5/3 2012 dt 29.5.2013 in so far as the respondents 3 4 and 5 are concerned and thereby to issue consequential directions to respondents 1 and 2 to include the name of the petitioner in the said panel for the year 2012-2013 in the appropriate place and to promote him on par with his immediate junior with consequential monetary benefits.

For Petitioner : M/s.G.Arul Murugan
(For both Wps)

For Respondents: Mr.S.Thangavel, Spl.GP -R1 in
W.P.No.19591 of 2013 and R1 &R2 in
W.P.No.28221 of 2014
Mr.E.Manoharan, Spl.GP - R2 in
W.P. No.19591 of 2013 and R3 in
W.P.No.28221 of 2014
No Appearance - R3 to R5 in W.P.No.
19591 of 2013

COMMON ORDER

Since the relief sought for in both the writ petitions are similar in nature and the facts and circumstances are also same, these writ petitions are taken up and disposed of by way of common order.

2. Brief facts of the case : The writ petitioners in both the writ petitions had passed B.Sc(Bio -Chemistry) awarded by Vinayaka Mission University, Salem in July 2010 and Bachelor of Library and Information Sciences (BLIS) awarded by Annamalai University in May 2011. The particulars for preparation of panel for the post of Librarian Grade-I for the years 2010-2011, 2011-2012 and 2012-2013 and 2013-2014 were called for. The 2nd respondent has issued letter dated 23.05.2013 stating that the candidates who have studied at Vinayaka Mission University and obtained B.Sc., M.Sc (Bio-Chemistry and BLIS Degree). Therefore, the petitioner's name was not considered for the post of Librarian Grade-I, for the reason that the aforesaid University is not mentioned in Schedule II to the Tamil Nadu State and Subordinate Service Rules. Subsequently, the 1st respondent/Government has issued G.O.Ms.No. 39, dated 30.04.2014, wherein the Government has amended the Tamil Nadu State Subordinate Service Rules in Rule 19 of Schedule II, including Sree Vinayaga Missions Research Foundation. But, the petitioners' name was not included in the panel by the

respondent by taking stand that the G.O was issued after the crucial date of preparation of panel. Even after the amendment of Rules by ways of clarification by the 1st respondent by notification dated 10.11.2014, the petitioners were denied his promotion as Librarian Grade-I from the year 2010. Hence challenging the panel prepared for the year 2010-2011 & 2011-2012 the petitioners has filed W.P. No. 19591 of 2013 and challenging the panel prepared for the years 2012-2013 and 2013-2014, W.P.No. 28221 of 2014 are filed.

3. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleaders appearing for the respondents and perused the documents available on record.

4. According to the writ petitioners, the Director of Medical Education, Kilpauk, Chennai prepared a panel for the post of Librarian Grade-I in the Tamil Nadu Medical Subordinate Service for the year 2013-2014 against the amended Rules in G.O.Ms.No. 39, dated 30.04.2014, wherein the Government has amended the Tamil Nadu State Subordinate Service Rules in Rule 19 of Schedule II, including Sree Vinayaga Missions Research Foundation, Salem at Sl.No. 523 among other Universities.

5. The Learned counsel for the petitioners further submitted that, the petitioners has completed B.Sc(Bio Chemistry) in the year 2010 therefore, he is qualified from the date of establishment of University and not from the date of issuance of amended G.O. The learned counsel further submitted that the writ petitioners had also obtained information through RTI, wherein it has been clarified by the respondent vide letter dated 25.06.2014 that even though the date of amendment have been notified as 30.04.2014, the date of approval by the UGC for the respective Universities will be the effective date for inclusion in Schedule II. Therefore, the respondent ought to have include the petitioners' name for year 2013-2014.

6. The learned Special Government Pleader, on the other hand, by reiterating the statements made in the counter affidavit, has submitted that the writ petitioners has passed B.Sc(Bio -Chemistry) awarded by Vinayaka Mission University, Salem in July 2010 and Bachelor of Library and Information Sciences (BLIS) awarded by Annamalai University in May 2011. The particulars for preparation of panel for the post of Librarian Grade-I for the years 2010-2011, 2011-2012 and 2012-2013 were called for. By virtue of the letter dated 23.05.2013 issued by the 2nd respondent, the candidates who have studied at Vinayaka Mission University and obtained B.Sc., M.Sc (Bio-Chemistry and BLIS Degree cannot be considered for the post of Librarian Grade-I, for the reason that the aforesaid University is not mentioned in Schedule II to the Tamil Nadu State and Subordinate

Service Rules and cannot be treated on par with the courses offered under regular stream. Hence the petitioners are not eligible for 2010-2011, 2011-2012, 2012-2013 and 2013-2014 panels.

7. The learned Special Government Pleader further submitted that the Government has also issued G.O.Ms.No. 39 P & AR Department, dated 30.04.2014 and included a total list of 655 University all over India. Out of which, 50 Universities are from Tamil Nadu including the said Vinayaga Mission Research Foundation, Salem in the Schedule II of Rule 19 by making an amendment, which came into force only w.e.f. 30.04.2014. Since the crucial dates for preparation of panel was on 15.03.2013 and 15.03.2014, the petitioners name was not included for year 2003-2004 and 2004-2005. The learned Special Government Pleader has also submitted that the subsequent to the amendment, the first respondent issued clarification notification dated 10.11.2014, wherein it has been clarified that the aforesaid University was recognised from the date of establishment of the institution as deemed University.

8. Considering the submissions made by the learned counsels appearing for the parties concerned and on perusal of records, it clearly reveals that the Government has issued orders in G.O (Ms) No. 39, P & AR Department, dated 30.04.2014, has included a total list of 655 University all over India. Out of which 50 Universities are from Tamil Nadu including the Vinayaga Mission Research Foundation, Salem, where the petitioners has completed the requisite qualification of Bachelor Degree, in Schedule II of Rule 19 by making amendment. Subsequently, a general clarification was issued by the first respondent in letter No. 37149/S/2014, Personnel and Administrative Reforms (S) Department, dated 10.11.2014, clarifying that the Universities mentioned in Schedule II were recognised from the date of establishment of the institution as deemed University under Section 3 of the University Grants Commission Act 1956. The relevant portion is extracted below;

"3. Now, it is clarified that the degree or diploma granted the University/Institution mentioned in the said Schedule-II in Part -II General Rules of Tamil Nadu State and Subordinate Services Rules shall be recognised as the qualification from the date of establishment/ incorporation/ recognition of the University / Institution or from the date of declaration of the Institution as deemed to be a University under Section 3 of the University Grants Commission Act, 1956 (Central Act 3 of 1956), as the case may be.

9. In view of the fact that the rules have been amended in the Tamil Nadu State and Subordinate Service Rules as per the clarification issued by the first respondent by its notification

dated 10.11.2014 and taking into consideration the interim order passed by this Court to the effect that any promotion made by the respondents will be subject to the outcome of this writ petition, this Court is of the view that it would be appropriate to direct the 1st respondent to promote the writ petitioners to the post of Librarian Grade-I.

10. Accordingly, these writ petitions are disposed of with the following directions;

(i). The 1st respondent is directed to revise the seniority list and the panel prepared for the year 2010-2011, 2012-2013 and 2013-2014 as per the amended Rule 19 of the Tamil Nadu State and Subordinate Service Rules and to place the writ petitioners in the appropriate seniority list and promote the writ petitioners to the post of Librarian Grade I in accordance with Rules, if they are otherwise eligible.

(ii) The said exercise shall be completed as expeditiously as possible, within a period of 12 weeks from the date of receipt of a copy of this Order.

(iii). No order as to the costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Public Health and Family Welfare Department,
Secretariat, Chennai-600009.

2. The Director of Medical Education,
Kilpauk,
Chennai - 600010.

+2 Ccs to Mr.G. Arulmurugan, Advocate sr 10447
+1 CC to The Govt. Pleader sr 11371 & 11400.

W.P.Nos. 19591 of 2013
and 28221 of 2014

MP (CO)
SP (31/08/2020)