



WEB COPY

W.P.(MD)No.3754 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.3754 of 2011

and

M.P (MD) .No.3 of 2011

and

W.M.P (MD) .No.7547 of 2018

V.Selvaraj

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by the Secretary,
Department of Health,
Secretariat, Chennai.

2.The Director of Indian Medicine,
and Homoeopathy,
O/o.the Directorate of Indian Medicine,
and Homoeopathy,
Chennai-106.

3.The Assistant Director,
Professional and Executive
Employment Exchange,
Chennai-4.

4.R.V.Narasimha Ramesh

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Selection List of candidates in Ref.No.910/E1/2/2010 dated 26.02.2011 on the file of the respondent No.2 and quash the same as illegal and consequently, directing the respondents to appoint the petitioner as a consultant in the System of Siddha under National Rural Health Mission(NRHM) Scheme in accordance with communal rotation as required under Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institution and of appointments or posts in the services under the State) Act, 1993.

For Petitioner : M/s.T.Lajapathi Roy
for Mr.G.Karthick

For R1 to R3 : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader



ORDER

The relief sought for in the present writ petition is to quash the selection list of candidates published by the respondents in proceedings dated 26.02.2011 for engagement of consultants in the system of Siddha under National Rural Health Mission(NRHM) Scheme, in accordance with communal rotation, as required under Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institution and of appointments or posts in the services under the State) Act, 1993.

2.The grievances of the writ petitioner is that communal rotation was not followed, while undertaking the process of selection for engagement of consultants.

3.The counter affidavit filed by the respondents reveals that the temporary engagement of consultants are made, by following communal rotation. In Paragraph Nos.4, to 9 of the counter affidavit are extracted hereunder:

"4.It is submitted that subsequently, during the year 2010, the Government have further extended the establishment of AYUSH Clinics in 175 Primary Health Centres under NRHM Scheme vide G.O.Ms.No.330, Health and Family Welfare (EAP-II/2) Department dated 01.12.2010 with the same conditions as stipulated in G.O.Ms.No.268, Health and Family Welfare (EAP-II/2) Department dated 01.09.2009 ie., to hire one AYUSH Doctor, one AYUSH Pharmacist and one Multi Purpose Worker on contract basis for each AYUSH Clinic with hiring charges of Rs.1000/- per day to AYUSH Doctors from the employment exchange as per their employment exchange seniority and qualification, age and communal rotation; post them and place them under the control of the District Siddha Medical Officer. The terms of contract should make it clear that it is a part time work and payment is for services rendered. The break-up details of 175 Primary Health Centres sanctioned under NRHM Scheme are as follows:

Sl.No	Name of the System	No.of Posts sanctioned
1.	Siddha	75
2.	Ayurveda	27
3.	Unani	15
4.	Yoga and Naturopathy	31
5.	Homoeopathy	27
	TOTAL	175



5.It is submitted that as per the orders of the Government, the posts created under NRHM Scheme have been filled up by following the conditions (such as employment exchange seniority and qualification, age and communal rotation) stipulated in the said Government Orders stated above, during the years 2009 and 2011 without any deviation.

6.The petitioner herein has in the present writ petition, among others, prayed this Hon'ble Court to quash the impugned selection list of candidates in Ref.No.910/E1/2/2011 dated 26.02.2011 issued by the second respondent herein as illegal. In this regard, it is submitted that the posts created under NRHM Scheme have been filled up duly following 200 point communal rotation as per rules in force (ie., as per G.O.Ms.No.142, Personnel and Administrative Reforms (K) Department, dated 14.10.2009). The candidates sponsored by Employment Exchange have been engaged or hiring basis as Consultants under NRHM Scheme and designated as Consultants in the respective systems. The orders of Engagement of Consultants to those candidates sponsored by Employment Exchange according to their Employment Exchange Seniority and duly following the communal rotation in the system of Siddha have been issued vide order Ref.No.910/E1/2/2011, dated 26.02.2011.

7.With reference to the averments made in para 3 of the affidavit, it is submitted that during the year 2010, no recruitment of Consultants in the system of Siddha under NRHM Scheme have been made. The Government have issued orders for creation of posts under NRHM Scheme only during the year 2009 and accordingly, the posts of AYUSH Doctors under NRHM Scheme have been filled up during the year 2009 and subsequently, during the year 2011 by the second respondent. All the recruitments have been made in accordance with rules then and there. There was no deviation of any rule on the part of the first and second respondents.

8.With reference to the averments made in Para 4 of the affidavit, it is submitted that the Engagement of Consultants have been made in accordance with Government Orders issued by the Government then and there was no deviation of rules on the part of respondents. The 75 posts of Consultants created in the system of Siddha during the year 2010 have been filled up duly following the 200 point communal rotation as stipulated in G.O.Ms.No.142, Personnel and Administrative Reforms(K) Department, dated 14.10.2009.

Out of 75 posts sanctioned in the system of Siddha



under NRHM Scheme, 15 candidates belonging to Scheduled Caste Community have been engaged as Consultants based on the communal turns stipulated in the above Government Order.

9. With reference to the averments made in para 5 of the affidavit, it is submitted that the orders of Engagement of Consultants to those candidates engaged (Selection list) under NRHM Scheme have been issued vide this office letter Ref.No.910/E1/2/2011 dated 26.02.2011. It is also submitted that the posts have been filled up based on the Employment Exchange Seniority and duly following the communal rotation. The date of registration with Employment Exchange of the petitioner is 07.01.1993 and whereas the date of registration of the list candidate (viz. Dr.a.Selvam) in SC Community as per Seniority/Selection list of 75 candidates was 30.12.1992. From this, it is very clear that none of the candidates engaged under NRHM Scheme are junior to the petitioner herein. As the petitioner has not reached his seniority, he was not considered for selection. As such, the connection of the petitioner in the said para 5 of the affidavit is not correct."

4. In view of the fact that the selection for engagement of consultant was made in the year 2011 and the selected candidates continued in the said post for about 9 years and the post being on temporary basis, there is no scope for further interference, after this length of time. However, it is made clear that the respondents are bound to follow the recruitment rules in force as well as the communal rotation and reservation as per the rules while undertaking the process of selection and appointment. The rules for recruitment and reservation are sought to be followed strictly and any violation in this regard, is to be viewed seriously. However, the relief as such sought for cannot be granted after this length of time.

5. Thus, the writ petition is devoid of merits. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar (CS)



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To

- 1.The Secretary,
Department of Health,
Secretariat, Chennai.
- 2.The Director of Indian Medicine,
and Homoeopathy,
O/o.the Directorate of Indian Medicine,
and Homoeopathy,
Chennai-106.
- 3.The Assistant Director,
Professional and Executive
Employment Exchange,
Chennai-4.

+1 CC to SGP (SR-20525[F] dated 19/10/2020)

+1 CC to Mr.T. LAJAPATHI ROY, Advocate (SR-20598[F] dated
20/10/2020)

W.P. (MD)No.3754 of 2011

and

M.P (MD) .No.3 of 2011

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CK (CO)

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