



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.01.2020
CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
Writ Petition(MD)No.25626 of 2019

WEB COPY

M.R.Vinayagamurthi

... Petitioner

vs.

1.The Secretary to Government,
Health and Family Welfare (AA1) Department,
Secretariat, Chennai 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai 600 010.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent i.e., the Secretary to Government, Health and Family Welfare (AA1) Department, Chennai in impugned letter No.18008/AA1/2019-3 Health and Family Welfare (AA1) Department dated 18.10.2019 and quash the same and consequently direct the first respondent ie., the Secretary to Government, Health and Family Welfare (AA1) Department, Chennai to refix the seniority of the petitioner and order notional promotion as Associate Professor on par with directly recruited candidates on 29.08.2007 within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

The petitioner herein was appointed as an Assistant Professor in the College of Pharmacy, Madurai Medical College, Madurai, on 25.07.2001. At the time of appointment, he was holding the degree in Bachelor of Pharmacy (B.Pharm.,). Subsequently, he had qualified himself in M.Pharm., degree in the month of March 2007. The petitioner had sought for re-fixation of the seniority and notional promotion as Associate Professor on par with departmental promotees or directly recruited candidates. The first respondent herein, through the impugned order dated 18.10.2019, had observed that the crucial date for the panel year 2003-2004 for the post of Tutor and Pharmacy was 15.03.2003. Since the petitioner did not possess M.Pharm degree as on February 2007, when the appointment in Tutor was conducted and had obtained his M.Pharm degree in the month of March 2007, his request for refixation of the seniority on par with



the directly recruited candidates, came to be rejected. The said order is under challenge in the present writ petition.

2.As per the amended qualifications prescribed in the Special Rules, the qualifications prescribed for the post of Assistant Professor in Pharmacy, by promotion is that the candidate must have obtained M-Pharm degree in the appropriate branch of specialization in pharmacy with first class either in B-Pharm., or M.Pharm., or by direct recruitment. The said amendment to the Special Rules came to be incorporated through G.O.Ms.No.274, Health and Family Welfare (AA1) Department, with effect from 07.09.2015. Prior to the amendment, the prescribed qualification for Assistant Pharmacy is that the candidate must have obtained a degree of B-Pharm. In other words, the petitioner herein did possess the required qualification for consideration to the post of Assistant in Pharmacy prior to 07.09.2015. While that being so, the present impugned order now rejects the petitioner's request for re-fixation of seniority on par with the directly recruited candidates on the ground that he did not possess M.Pharm., degree in the month of February 2007, for which, appointment was being conducted. The reason given in the impugned order is apparently opposed to the qualifications prescribed at that relevant point of time. Since the petitioner possess B-Pharm., degree in the month of February 2007, which was the qualification prescribed for the said post of Assistant Professor in Pharmacy at that point of time, the impugned order rejecting the petitioner's request, cannot be sustained.

3.The learned Additional Government Pleader appearing for the respondents submits that as on the crucial date of consideration, the petitioner was required to hold M-Pharm degree along with the first class degree either in B-Pharm or M.Pharm and since the petitioner did not possess the first class degree in B-Pharm and M-Pharm on the said date, the impugned order refusing to consider re-fixation of the seniority cannot be found fault with.

4.I am unable to agree with such the submission made, for the reason that the impugned order does not cite such a reason for rejection of the petitioner's request for re-fixation of seniority, as well as for grant of notional promotion. The submission of the learned Additional Government Pleader, which is apparently based on the instructions given to him, is not on the basis of which, the impugned order has been passed. It is the settled proposition of law that such written instructions or statements made in the counter affidavit by the department cannot improve the reasons assigned in the impugned order, since it would give rise to a totally different cause of action.

5.Apart from the aforesaid reasons, no other reason has been assigned in the impugned order to reject the petitioner's request of seniority and notional promotion as Associate



Professor on par with departmental promotees or directly recruited candidates.

6.In the light of the aforesaid observations, the impugned order dated 18.10.2019 in Letter No.18008/AA1/2019-3, Health and Family Welfare (AA1) Department is set aside. Consequently, there shall be a direction to the first respondent herein to re-fix the petitioner's seniority, on par with the directly recruited candidates, who had been directly recruited on 29.08.2007 and thereby, order notional promotion to him as Associate Professor. Such an exercise shall be completed as expeditiously as possible, in any event, within a period of eight weeks from the date of receipt of a copy of this order.

7.With the above observations, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Health and Family Welfare (AA1) Department,
Secretariat, Chennai 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai 600 010.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-2671[F] dated 23/01/2020)
+1 CC to SPL GP (SR-2805[F] dated 24/01/2020)

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23.01.2020

MK (11.02.2020) 3P 5C