



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.13320 of 2011

WEB COPY

Dr.M.Sankarapandian

... Petitioner

Vs.

1.The Gandhigram Institute of Rural
Health and Family Welfare Trust by its Director,
Ambathurai R.S., Gandhigram Post,
Dindigul 624 302.

2.Dr.S.Ravichandran,
Research Officer,
Population Research Centre,
The Gandhigram Institute of Rural Health and
Family Welfare Trust,
Ambathurai R.S., Gandhigram Post,
Dindigul 624 302.

3.Dr.R.Sakilarani,
Senior Lecturer,
PSG Institute of Medical Sciences,
Coimbatore.

4.The Director General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi 110 011.

.. Respondents

(R4 suo motu impleaded vide order
dated 21.10.2019 made in
W.P.(MD).No.13320 of 2011)

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent issued in his proceedings Ref.No.GIRH/ESTT/2011-2012/0599, dated 15.09.2011 and quash the same and direct the first respondent to appoint the petitioner as Chief, Population Research Centre, with all pay protection and extra increments in the first respondent's institute.

For Petitioner

: Mr.S.Govindan for Mr.L.Prabhu

For Respondents

: Mr.M.Senthilkumar for R-1

: Mr.H.Mohammed Imran for R-2

: Mr.R.Nandakumar for RR-3 & 4



ORDER

This writ petition has been filed challenging the impugned order passed by the first respondent in his proceedings in Ref.No. GIRH/ESTT/2011-2012/0599, dated 15.09.2011 and to quash the same and consequently direct the first respondent to appoint the petitioner as Chief, Population Research Centre, with all pay protection and extra increments in the first respondent Institute.

2. The case of the petitioner is that he joined in the first respondent Gandhigram Institute as Statistician in the year 1988 and working as Statistician for the past 24 years. The petitioner's educational qualification is M.Sc., P.G.D.C.A., M.A., M.Phil., and Ph.D., and passed NET in Population Studies. In response to the Vacancy Notification dated 04.02.2010, issued by the first respondent Gandhigram Institute, the petitioner applied for the post of Chief, Population Research Centre (PRC). The prescribed qualifications for the said post is --

(i) *High second class PG Degree in Demography / Statistics / Economics / Sociology / Psychology / Anthropology / Geography / Mathematics;*

(ii) *with Post graduate degree other than Demography should have studied / training in Demography / Population studies and*

(iii) *15 years of teaching / research experience in Population studies / Demography / conducting of socio economic / demographic survey. The desirable qualification is Ph.D., degree or published work of equivalent standard and administrative experience.*

Pursuant to the abovesaid notification and the application of the petitioner, the petitioner was called for an interview and he appeared on 05.09.2011.

3. It is the further case of the petitioner that the second respondent is not having the requisite qualification of 15 years of teaching / research experience in Population studies / Demography / conducting of socio-economic / demographic surveys and, therefore, he is not qualified to be considered for the said post and his application cannot be entertained. It is the further averment of the petitioner that the second respondent joined the Department in the year 1997 as Clerk in the ministerial service and the said service cannot be taken into consideration for calculating the period of 15 years research experience. Therefore, considering the application of the 2nd respondent for the post of Chief, Population Research Centre is wholly unsustainable.

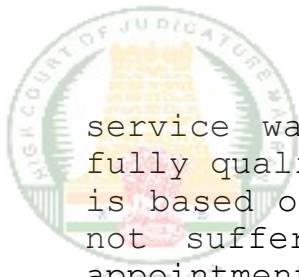
4. It is also the case of the petitioner that the Screening Committee had short listed the names of two candidates of which one was the petitioner. But the name of the second respondent was not included. However, without inclusion of the name in the shortlist and without the requisite qualification, the second respondent was



appointed in the said post, which appointment is wholly unsustainable as the 2nd respondent does not have the requisite qualification and experience. Challenging the said order of appointment, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner submits that a comparison of the qualifications and other records of the petitioner and the second respondent would reveal that the 2nd respondent lacks the requisite qualification as well as the experience. Further, in the present case, the appointing authority is the Screening Committee and the report submitted by the Screening Committee clearly reveals that recommendation was made shortlisting the names of two persons which was sent for the approval of the Ministry. However, for reasons best known, the 2nd respondent has been appointed in the said post, in the absence of the requisite qualification and experience and that the certificate issued by the 4th respondent pertains to clerical experience, which is not the mandated research experience and allowing him to participate by approving the application itself is impermissible. The petitioner has been deprived of his promotion due to lackluster selection process undertaken by the respondents and the selection of the 2nd respondent for the said post in the absence of the requisite qualification and experience over and above the petitioner, who was possessed of the requisite qualification and experience has caused grave prejudice and, therefore, the selection and appointment of the 2nd respondent deserves to be set aside.

6. The learned counsel appearing for the second respondent submits that the petitioner obtained M.A., degree in Distance Education Mode. However, the G.O.(Ms).No.107, dated 18.08.2009, issued by P & AR(M) Department, Government of Tamil Nadu prescribed only 10 + 2 + 3. The petitioner has completed up to UG degree in the regular pattern and thereafter, he has completed P.G. degree in the Distance Education Mode and, therefore, the P.G. Degree of the petitioner is invalid and merely because the petitioner has completed his UG degree in the regular scheme of study, that will not put him on a higher pedestal over and above the second respondent's qualification, as the PG degree obtained by the petitioner is not a valid one. It is the further submission of the learned counsel for the 2nd respondent that there is no bar for including the service rendered by the 2nd respondent as Lower Division Clerk and the notification has not prescribed that the entire service should be research oriented. The earlier appointment of the 2nd respondent in the post of Lower Division Clerk is also a research oriented one and the Screening Committee failed to take note of the same and has not properly calculated the service of the 2nd respondent, which has led to non-inclusion of his name in the short list of candidates. However, the said error was set right as per the instruction of the fourth respondent, and, thereby, the second respondent's earlier service was included and his length of



service was fixed at 19 years. Therefore, the 2nd respondent was fully qualified to be selected for the said post and his appointment is based on proper appreciation of materials and the selection does not suffer from any vice of illegality. The 2nd respondent's appointment was through a selection process and, therefore, the said selection cannot be interfered with unless it is shown that the selection was arbitrary and with mala fide intent. Accordingly, he prayed for dismissal of this writ petition.

7. The learned counsel appearing for the first respondent Gandhigram Institute submits that though the second respondent was appointed in the said post, at the relevant point of time and in the absence of any interim order, he continued in service and retired from service on 31.05.2020. However, the second respondent filed a writ petition for extension of service till the academic year and the same is pending before this Court.

8. Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel for the 2nd respondent and perused the materials available on record.

9. The facts relating to the notification, qualification and experience prescribed as also the respective qualification and the experience of the petitioner and the 2nd respondent are not in dispute. The main dispute relates to the type of service rendered by the 2nd respondent vis-a-vis the PG qualification of the petitioner. To appreciate the same, the notification, which is the crux of the case, is required to be looked into.

10. Vacancy Notification dated 04.02.2010, for the post of Chief, Population Research Centre and other three posts was issued by the 1st respondent and in the present case the issue pertains only to the post of Chief, Population Research Centre. For the said post, the qualification and experience prescribed are as under :-

"Qualification & Experience:

Essential :

(i) High Second Class Post Graduate Degree in Demography / Statistics / Economics / Sociology / Psychology / Anthropology / Geography / Mathematics;

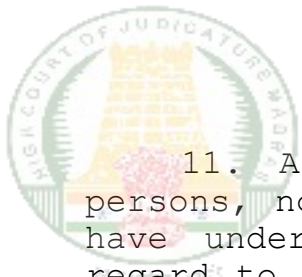
(ii) Persons with Post Graduate Degree in other than Demography should have studied / training in Demography / Population Studies;

(iii) 15 years of Teaching / Research experience in Population Studies / Demography / Conducting of Socio - Economic / Demographic Surveys;

Desirable :

(i) Ph.D. or published work of equivalent standard ;

(ii) Administrative experience."



11. A perusal of the above said notification reveals that persons, not in possession of PG qualification in Demography should have undergone training in Demography/Population Studies. With regard to experience, it is found prescribed that persons applying for the abovesaid post should have Teaching / Research experience of 15 years in Population Studies. A careful perusal of the above notification reveals that the above qualification and experience are mandatory prescription and no relaxation of any form is given nor any authority has been vested with power to relax the qualification and experience prescribed in the notification. The notification further reveals that Ph.D. has only been prescribed as a desirable qualification in addition to administrative experience.

12. Keeping the abovesaid prescription in mind, this Court proceeds to analyse the qualification and experience of the petitioner and the 2nd respondent. The qualifications possessed by the petitioner and his experience are as follows:

"M.Sc., PGDCA., M.A., M.Phil., and Ph.D., and M.Sc., in Applied Mathematics and M.A., in Population Studies are in first class and passed NET in Population Studies.

The petitioner has 24 years of experience in teaching faculty."

13. The qualifications possessed by the second respondent and experience are as follows:

"B.Sc. (Mathematics) from the University of Madras in the year 1985, M.A.(Economics) from the University of Madras in the year 1994, Post Graduate Diploma in Population and Development from the Jawaharlal Nehru University, New Delhi in the year 1997, Ph.D., in Population Sciences from the International Institute of Population Sciences, Mumbai in 2005 and M.A.(Sociology) from the Tamil Nadu Open University in the year 2008. He had secured a Certificate in Population Studies from the International Institute of Population Sciences in the year 1990.

The second respondent, as per the counter affidavit, was originally recruited as Lower Division Clerk in Ministry of Health and Family Welfare, New Delhi under the Central Secretariat Clerical Service on 09.02.1983. From 1987 to 1993, he was deputed as Evaluation Assistant under the Evaluation and Intelligence Division (now Statistics Division) of the Ministry of Health and Family Welfare, Government of India at New Delhi. Subsequently, he was reverted back to the Central Secretariat Clerical Service Cadre as Upper



Division Clerk and worked till October 1997. Thereafter, he was appointed as Research Officer in Population Research Centre, Gandhigram on 13.10.1997."

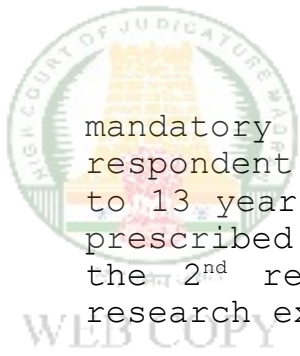
14. The whole claim of the second respondent is based on the service rendered by him in the clerical cadre in the Ministry of Health and Family Welfare, which, according to the 2nd respondent, is a research oriented post and, therefore, the said service should also be taken into account for computing the experience for the present post.

15. A careful perusal of the qualification of the petitioner and the 2nd respondent clearly reveals that the petitioner is clearly possessed of higher educational qualification than the 2nd respondent. However, it is to be pointed out that the issue is not only the possession of higher qualification, but possession of requisite qualification as prescribed in the notification. Therefore, insofar as the qualification is concerned, it is evident from the perusal of the qualification of the petitioner and the 2nd respondent that both the persons are possessed of the requisite qualification as prescribed in the notification.

16. It is the case of the 2nd respondent that consequent to the notification dated 4.2.2010, another notification was issued in the year 2011 to which the petitioner as well as respondents 2 and 3 applied and only in the said selection the 2nd respondent was declared selected and appointed. Therefore, the contention of the petitioner that the 2nd respondent was not initially shortlisted has no legs to stand.

17. The next limb of the mandatory prescription made in the notification relates to the experience of 15 years as teaching/research faculty. While the petitioner joined in the first respondent Gandhigram Institute as Statistician in the year 1988 and working as Statistician for the past 24 years and is in possession of teaching experience for the abovesaid period, the second respondent was initially appointed as clerk in the Ministry of Health & Family Welfare and only on 13.10.1997, the 2nd respondent was posted as Research Officer in Population Research Centre, Gandhigram.

18. In this regard, a perusal of the information obtained from the petitioner under the Right to Information Act about the qualification and experience of the 2nd respondent reveals that the earlier employment of the petitioner as Clerk in the Ministry of Health and Family Welfare was not taken into consideration as research experience for being counted along with the service rendered by the 2nd respondent as Research Officer. Therefore, from the material available on record, it is amply clear that the



mandatory experience of 15 years has not been fulfilled by the 2nd respondent and the total experience of the 2nd respondent only comes to 13 years and 11 months, whereas the minimum mandatory experience prescribed is 15 years. Therefore, it can safely be concluded that the 2nd respondent was not possessed of the mandatory requisite research experience.

19. Though it is the claim of the 2nd respondent that the work rendered by the 2nd respondent with his erstwhile employer, viz., the Ministry of Health and Family Welfare prior to 13.10.1997 was also research based and, therefore, the same should be calculated for the purpose of arriving at the total experience, however, as pointed out above, the employer, viz., the Gandhigram University itself has taken the total experience of the 2nd respondent only to be 13 years and 11 months, which clearly shows that only on and from 13.10.1997, the 2nd respondent could claim that he was doing research oriented work, as his initial period of service was as clerk in the Health and Family Welfare Department, which is an administrative function and the said period could not be taken into consideration for the purpose of computing his experience for research related purposes. The notification was issued 4.2.10, on which date it is evident that the 2nd respondent was not possessed of the 15 years experience as mandated in the notification. The 2nd respondent was well short of the prescribed experience and no relaxation having been granted and no authority having been vested with power to relax the mandatory conditions, it is abundantly clear that the 2nd respondent does not fall within the zone of consideration, even for applying to the abovesaid post.

20. Insofar as the contention of the 2nd respondent that his selection is based on the subsequent notification issued in the year 2011, it is basically to be pointed out that it is not the case of the 2nd respondent that the selection criteria relating to educational qualification as well as experience is different. It is the admitted case of the parties that the selection criteria relating to educational qualification and experience, which are mandatory in nature, are one and the same in both the notifications.

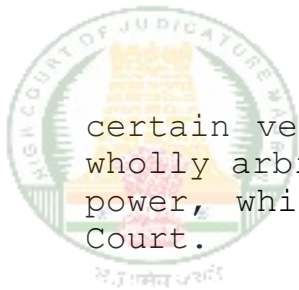
21. It is further borne out by record that even according to the counter of the 2nd respondent, the initial notification resulted in the application of the petitioner and the 3rd respondent being considered and shortlisted by the Committee constituted for this purpose. However, curiously, the said notification was followed up with another notification wherein not only the application of the 2nd respondent was taken on board, but curiously, the committee was reconstituted at the behest of the Ministry of Health and Family Welfare to include the Addl. Director General (Statistics) as the Chairman of the Committee. More curious is the fact that while the initial scrutiny committee, vide its minutes dated 2.12.2010, had recommended only the names of the petitioner and the 3rd respondent



as persons who had fulfilled the requisite qualification and experience, the letter of the Ministry of Health and Family Welfare through its letter dated 23.8.2011 had found the 2nd respondent also as a person, who was eligible to be considered for the post.

22. In the backdrop of the above facts, the reply received by the petitioner for his query under the Right to Information Act assumes significance. In S.No.17 of the said information, the list of candidates with their requisite experience is found place which reveals that the petitioner is possessed of 24 years of experience, while the 2nd respondent is possessed of 19 years and the 3rd respondent is possessed of 20 years of experience. It is to be pointed out that the 19 years experience, which the 2nd respondent is said to have possessed, also includes the experience as Evaluation Assistant in the Ministry of Health and Family Welfare, which as already noted above, was not taken as research experience for being added along with the experience of Research Officer.

23. Be that as it may. As already stated supra, the materials available on record reveal that the Screening Committee had not recommended the name of the 2nd respondent for being considered for the post of Chief. However, curiously, the 1st respondent, under whom the petitioner has been working, has, after a period of 9 months, has thought it fit to include the name of the 2nd respondent as a candidate who is eligible to be considered for the said post and the Addl. Director General (Statistics) was nominated as the Chairman of the Committee, which has recommended the name of the 2nd respondent pursuant to which the 2nd respondent has been appointed to the said post. This Court is at a loss to understand as to how the 1st respondent had appointed the 2nd respondent to the abovesaid post, when the Screening Committee had not even recommended his name for being considered for the said post. The materials clearly show that only after inclusion of the name of the Addl. Director General (Statistics) as Chairman of the Committee and including the name of the 2nd respondent, the 2nd respondent has been selected and appointed to the said post. To put it in a nutshell, it could be safely concluded that all is not well with the appointment of the 2nd respondent to the said post. The petitioner being a person in possession of higher qualification than the 2nd respondent and also fulfilling the requisite experience as mandated in the notification, and the 2nd respondent falling well short of the mandatory experience prescribed under the notification, the application of the 2nd respondent itself is impermissible for being considered for the post. Further, the Screening Committee having not recommended the name of the 2nd respondent for the abovesaid post, it clearly reveals that the Screening Committee has gone into all the requisite details and rejected the name of the 2nd respondent from the zone of consideration and such being the case, the act of the 1st respondent in appointing the 2nd respondent for the post of Chief, Population Research Centre (PRC), could only be said to be at the instance of



certain vested interests and the said selection and appointment is wholly arbitrary, illegal and capricious and a mala fide exercise of power, which definitely warrants interference at the hands of this Court.

24. For the reasons aforesaid, this Court is of the considered view that the appointment of the 2nd respondent is contrary to the vacancy notification and, accordingly, the impugned order passed by the first respondent, dated 15.09.2011 is set aside and this writ petition is allowed. It is brought to the notice of this Court by the learned counsel for the 1st respondent that in the absence of any interim order, the 2nd respondent had continued in service and has demitted office on attaining the age of superannuation on 31.5.2020, though he has filed a writ petition before this Court for continuation of his service till the end of the academic year, which is pending consideration before this Court. However, this Court is not inclined to go into the said matter for the simple reason that the appointment of the 2nd respondent itself has been set aside by this Court as arbitrary and unreasonable and in such view of the matter, the 1st respondent is directed to proceed in accordance with law. There shall be no order as to costs.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To

1.The Director

Gandhigram Institute of Rural
Health and Family Welfare Trust
Ambathurai R.S.,
Gandhigram Post,
Dindigul 624 302.

2.The Director General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi 110 011.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-14688[F] dated
31/03/2021)

+1 CC to M/s.M.SENTHIL KUMAR, Advocate (SR-15136[F] dated
01/04/2021)

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.M.SENTHIL KUMAR, Advocate (SR-103638[F] dated
05/12/2019)

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KB(24.06.2021) 10P 6C