



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2021
Pronounced on : 23.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY
W.P(MD) No.12639 of 2015 and
M.P(MD).No.1 of 2015

T. Marirajan :Petitioner
..vs..

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

2.The Director of Medical Services,
Teynempet, Chennai.

3.The Director of Medical Education (Administration),
Rep. By the Dean,
Tirunelveli.

4.The Thirunelveli Medical College Hospital,
rep. By the Dean,
Thirunelveli. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ in the nature of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent pertaining to its order bearing Letter No.20955/C2/2013-6, dated 06.05.2015 to quash the same and consequently direct the respondent to revoke the seniority of the petitioner from 03.03.2000.

For Petitioner : Mr. S.C. Herold Singh

For Respondents : Mr. D. Sachi Kumar
Additional Government Pleader

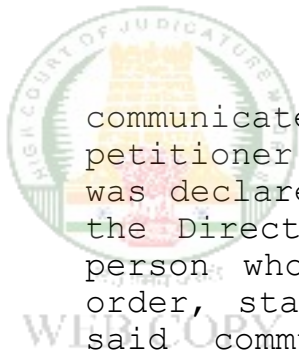
O R D E R

The present Writ Petition is filed to quash the impugned order dated 06.05.2005 and consequently, direct the respondents to revoke the seniority of the petitioner from 03.03.2000.

2. The petitioner has completed the certificate of Radiology Course during the year 1991 and registered himself in the Employment Exchange, Thirunelveli on 02.05.1991. The mode of appointment for the post of Radiographer is from Dark Room assistant or Direct recruitment or for special reasons recruitment transferred Services. At that particular point of time, the



appointments were made based on the District Level Seniority. Several appointments were made by promotion and no vacancies were filled up through employment exchange. Therefore, aggrieved by the said appointments, the petitioner submitted a representation to the Director of Medical Services with a request to appoint him in the available vacancy. Since there was no response, the petitioner filed O.A.No.1426 of 2000 with a request to the District Employment Exchange to sponsor his name and consequently, direct the respondents to consider his name. The Tribunal has granted interim injunction dated 03.03.2000 forbearing the respondents to fill up the existing vacancy of Radiographer. The grievance of the petitioner is that subsequent to the said interim order one Manoharan and one Mariappan were posted in Government Hospital, Tirunelveli as well as at Sidha Medical College on 08.02.2002. The Director of Medical Education, permitted the Dean, Tirunelveli Medical College to fill up two vacancies for the post of Radiographer. Immediately, the petitioner approached the Dean, Thirunelveli Medical College on 03.03.2002 along with the copy of the interim order passed in O.A.No.1426 of 2000 to appoint him in the vacancy post. The said plea was rejected by Dean, Thirunelveli Medical College since the petitioner was over aged. Again the petitioner approached the Tribunal and filed O.A.No.1780 of 2002 and on 04.04.2002 the Tribunal passed an order directing the District Employment Exchange to sponsor the petitioner's name, the interview shall go on, but directed to withhold the result until further orders. In the meanwhile, interview was scheduled on 23.10.2002. In spite of the interim order of the Tribunal, the petitioner was not allowed to participate in the interview. Therefore, the petitioner submitted a representation, dated 23.10.2002 with a copies of the order passed by the Tribunal and requested the respondents to permit the petitioner to participate in the interview on 05.11.2002. The Director of Medical Service forwarded the same to the Director of Medical Education. On 11.11.2002, the Director of Medical Education replied that Rule 12(d) is not applicable to the case of the petitioner. Again the petitioner challenged by way of filing O.A.No.452 of 2003 and he has also approached the first respondent on 14.01.2008 to consider the case of the petitioner which was forwarded to the Joint Secretary, in turn to the Director of Medical Education and in turn to the District Employment Officer to sponsor the petitioner's name. Based on the same, the petitioner received the call letter dated 13.03.2008 scheduling the interview on 20.03.2008, he was issued with appointment as Radiographer on the same day and he joined the post on 22.03.2008. Again the petitioner approached the respondents vide letter dated 31.03.2009, then remainders dated 25.11.2009 and 15.02.2010 and requested to regularize. Thereafter, the petitioner received the reply saying that his regularization can be considered if the original application before the Tribunal is withdrawn. Since the original applications were transferred to the High Court and renumbered as W.P.No.5794 of 2007 and 13547 of 2007 and the same were withdrawn by the respondents on 26.07.2011. The withdrawal of the petitioner was



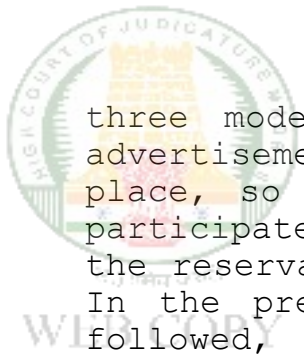
communicated to the Superintendent on 18.08.2011. Thereafter, the petitioner's service was regularized on 09.11.2011 and his probation was declared on 07.02.2012. On 14.03.2012, the petitioner approached the Director of Medical Services to place him over and above the person who was joined as Radiographer subsequent to the interim order, stating that they should not be given any appointment. The said communication was forwarded to the Director of Medical Education and to the Director of Medical Services respectively. The Director of Medical Education rejected the petitioner's request on 04.12.2012 and the petitioner preferred an appeal to the Health Secretary. Since there was no response the petitioner filed W.P.No.9823 of 2014 before this Court and this Court vide order dated 20.06.2014 directed the first respondent to consider the petitioner's representation and the respondent considered the representation and rejected on 06.05.2015. Aggrieved over the same, the petitioner has preferred this Writ Petition.

3. The respondents filed counter and narrated the method of appointment and education qualification for the post of Radiographer. The method of appointment for the post of Radiographer is promotion from Dark Room Assistant or Direct Recruitment or Special Reasons recruitment by transfer from any other service in the ratio of 3:2:1. The petitioner's name was sponsored through employment exchange and a call letter was issued and the petitioner was appointed in the post of Radiographer in the year 2008.

4. Heard the learned counsels appearing on either side and perused the materials available on record.

5. The petitioner's name was not sponsored by the employment exchange at appropriate time and therefore, the petitioner knocked the doors of the Tribunal several times and obtained an interim order. The petitioner states if the respondents have acted within reasonable time his name would have been sponsored in the year 2000 itself and he would have been appointed in the year 2000 itself. The petitioner finally was appointed on 20.03.2008 since he has lost promotion from 2000-2008, he has claimed seniority from 2000. The petitioner is eligible for seniority and other consequential reliefs can be granted only if any candidate is appointed in the service. Since the petitioner was appointed based on the interim orders passed by the Tribunal wherein the employment exchange was directed to sponsor the name of the petitioner and thereafter the call letter was issued, then the certificate verification was carried out, but all these happened in the year 2008 and finally the petitioner was appointed on 20.03.2008. Therefore, the petitioner cannot claim any seniority prior to the appointment i.e. 20.03.2008 and hence this Court rejects the prayer of the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/> appointment to any post ought to be followed by



three mode of calling for candidates 1) employment exchange 2) advertisement in the newspaper 3) affixture of notice in a prominent place, so that all the eligible candidates get an opportunity to participate in the selection process. Thereafter, after following the reservation rules meritorious candidates ought to be appointed. In the present recruitment process only Employment seniority was followed, which is absolutely against the established rules of recruitment. In the Judgment reported in **1996 (6) SCC 216 (Excise Superintendent, Malkapatnam Vs. K.B.N.Visweshwar Rao and others)** the Apex Court observed that "sponsoring of names from the Employment Exchange is one of the mode. However, the right to be considered for a particular post cannot be denied to any candidate and there should be wide publicity by publication in newspaper, electronic media and as well as on the notice board of the Employment Exchange and whoever comes should be considered along with the candidates sponsored by the Employment Exchange". In the recruitment process the employer should follow the method of calling from open market also. In the present case the respondents have not called for candidates from open market apart from the employment exchange. If the paper publication was issued the petitioner would have got an opportunity to present the application before the recruitment body. Therefore, the respondents are liable to pay some compensation to the petitioner. But this lapse cannot give a right to the petitioner to seek seniority from the year 2000 onwards when his appointment was in the year 2008. This prayer can never be allowed which will create confusion in the process of the recruitment. Hence, this Writ Petition is dismissed.

7. However, the petitioner ought to be compensated. Therefore, this Court directs the respondents to pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) as compensation to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

8. The writ petition is dismissed, but the respondents are directed to pay compensation of Rs.20,000/- for not following the recruitment rules of calling candidates from open market. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

trp



To

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

2.The Director of Medical Services,
Teynempet, Chennai.

3.The Director of Medical Education (Administration),
Rep. By the Dean,
Tirunelveli.

4.The Thirunelveli Medical College Hospital,
rep. By the Dean,
Tirunelveli.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-40416[F] dated
27/12/2021)

+1 CC to M/s.SPL GP (SR-40481[F] dated 27/12/2021)

W.P(MD) No.12639 of 2015 and
M.P(MD) .No.1 of 2015
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RD(12.01.2022) 5P 7C