



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2021

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

WP(MD)No.1874 of 2016 &
WMP(MD)No.1626 of 2016

Dr.Nandhinee Vijay

.. Petitioner

Vs.

1.The Secretary to Government,
Health Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Commissioner,
Directorate of Indian Medicine &
Homeopathy, Arumbakkam,
Chennai

3.Dr.J.Clarence Davy,
Principal,
Government Ayurveda Medical College &
Hospital, Kotta,
Nagercoil, Kanyakumari District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in GO (D)No.115, Health and Family Welfare (IM1-1) Department, dated 19.01.2016, quash the same and consequently direct the respondents 1 and 2 herein to appoint the petitioner as Principal in the Government Ayurveda Medical College & Hospital, Kottar, Nagercoil, Kanyakumari District from the date of appointment of the third respondent with all arrears of salary and other monetary benefits.

For Petitioner

: Mr.Kannan

for M/s.Veera Associates

For R1 & R2

: Mr.M.Linga Durai,

Government Advocate

For R3

: Mr.S.Bharathi Kannan

ORDER

The writ petition is filed for issuance of writ of certiorarified mandamus to quash the impugned order passed by the first respondent vide GO(D)No.115, Health and Family Welfare (IM1-1) Department, dated 19.01.2016 and consequently to direct the



respondents 1 and 2 to appoint the petitioner as Principal in the Government Ayurveda Medical College & Hospital, Kottar, Nagercoil, Kanyakumari District from the date appointment of the third respondent.

2. The order impugned in the writ petition is an order by which the first respondent appointed the third respondent as Principal in Government Ayurveda Medical College & Hospital, Kottar, Nagercoil, Kanyakumari District on ad hoc basis since rules have not been framed for the post. It is the case of the petitioner in the writ petition that the appointment of the third respondent is irregular.

3. The petitioner has challenged the impugned order mainly on the ground that the appointment of the third respondent was not on merits.

4. A few developments during the pendency of writ petition are brought to the notice of this Court. It is to be noted that some other Professor of the same college also challenged the appointment of the third respondent as Principal. It is admitted that the said writ petition was dismissed. However, during pendency of the writ petition filed by one Dr.M.Sai Vijaya Priya in WP.No.7321 of 2016, there was an interim order. Based on the interim order, the order appointing the third respondent was re-called. It is recorded in the final order in WP.No.7321 of 2016 that the order appointing the third respondent as Principal was re-called. Though the writ petition was dismissed holding that the petitioner therein was not qualified, the Court observed as follows.

"7.In regard to the peculiar situation where the qualified candidates were not available viz., five years experience as Professor for being considered for appointment to the post of Principal, as rightly contended by the learned Senior Counsel for the third respondent, no institution can function effectively without its Head. Therefore, the administration did not have any choice except to take a call for appointment to the post of Principal from among the most experienced, meritorious and eligible candidates. After granting personal hearing to all the eligible candidates, finally, the choice fell on the third respondent and rightly she was selected and appointed as Principal incharge. In fact, the other four candidates who were also called for the personal hearing on 15.10.2015, never chosen to question the appointment of the third respondent.

8. Subsequently, by G.O.Ms.No.125, Health and Family Welfare Department, dated 10.04.2018, ad hoc



rules came to be issued to the temporary post in Government Ayurveda Medical College and Hospital in Tamil Nadu Medical Service, wherein, 10 years teaching experience was prescribed and out of 10 years, not less than 5 years shall be in the post of Professor (Ayurveda). As concluded above, nobody could fulfil the qualification as prescribed and therefore, the best way to find the solution is to choose the most experienced and meritorious Lecturer for appointment to the post of Principal incharge.

9. That being the case, this Court does not appreciate as to how the petitioner could challenge the appointment of the third respondent when she herself was admittedly not qualified. Unfortunately, in this case, by virtue of the interim order, the appointment of the third respondent was recalled and some other person has been accommodated as adhoc Principal, pending disposal of the writ petition.

10. It is needless to mention that the person who challenges the appointment of someone else must be qualified in the first place to sustain the challenge. In this case, unfortunately, at the instance of unqualified person, the qualified person's appointment has been set at naught. The fact remains that the petitioner came to be ultimately appointed as Lecturer Grade II only on 19.01.2017 and this fact is evidenced by the document filed in the proceedings which cannot be denied. It also appears that by notification dated 07.11.2016, the Government has brought an amendment to Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 and the same was published in the official gazette on the said date. In any case, this Court is called upon to decide only about the appointment of the third respondent on 19.01.2016 as Principal incharge and whether the appointment of the third respondent as such can be successfully challenged at the instance of the petitioner.

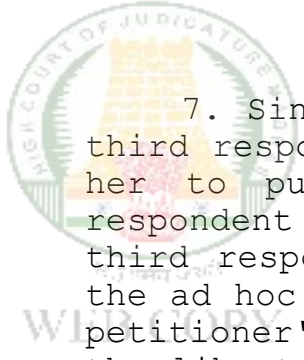
11. In the light of the above narration and findings, this Court is unable to accept the case of the petitioner as this Court does not find any iota of merit and substance in the writ petition in order to sustain the challenge, even remotely.



12. For the above said reasons, this Court finds that the writ petition thoroughly lacking any merit and substance and therefore, the same is dismissed. Since the appointment of the third respondent has been recalled only on the ground of interim order granted by this Court and in view of the dismissal of the writ petition, it is open to the authorities concerned to take appropriate steps to restore the status-quo that is prior to the order of cancelling the appointment of the third respondent on 23.04.2018."

5. The learned counsel appearing for the petitioner, referred to the fact that the petitioner was not made a party in WP.No.7321 of 2016 and wanted this Court to deal with the issue on merits. It is noted that the third respondent was appointed earlier on adhoc basis, since rules have not been framed. In the order of this Court in WP.No.7321 of 2016, there was a direction to restore the status-quo that is prior to the order of cancelling the appointment of the third respondent on 23.04.2018. It is now admitted that the third respondent is continuing only on ad hoc basis and it is stated that regular appointment as per the regulations framed by the Government is yet to be made.

6. It is noted that the same petitioner filed another writ petition in WP(MD)No.16361 of 2017 for issuance of writ of mandamus forbearing the respondents 1 and 2 therein in any way filling up the post of Principal, Government Ayurveda Medical College & Hospital, Kottar, Nagercoil, Kanyakumari District without finalizing the seniority to feeder category post of reader in the said institution. When the writ petition came up for final hearing, the counsel appearing for the petitioner made a statement before this Court to issue direction to the first respondent to fill up the post of Principal, as per ad hoc rules, within a specified period as fixed by the Court. Accordingly, the writ petition was disposed of with a direction to the first respondent to fill up the post of Principal within a period of six months from the date of order. Having allowed the other writ petition to be disposed of at his request directing the first respondent to fill up the post as per ad hoc rules framed in 2018, the submission of counsel that this Court should decide the issue on merits has no merits. The petitioner challenges an order which does not exist. The petitioner has not amended the prayer after the original order of appointment of the third respondent was re-called and a fresh order has been issued on the basis of which, the third respondent is continuing as Principal. The prayer in the present writ petition no more survives. Therefore, the writ petition is liable to be dismissed as infructuous.



7. Since the claim of the petitioner that she is senior to the third respondent is not decided in the writ petition, it is open to her to put forth her case claiming seniority above the third respondent or anyone by filing a separate petition, in case, the third respondent or anyone is again appointed as Principal as per the ad hoc rules in future. It is pertinent to point out that the petitioner's claim has to be considered as per ad hoc rules. With the liberty above reserved to the petitioner, this writ petition is dismissed as infructuous. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Health Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Commissioner,
Directorate of Indian Medicine &
Homeopathy, Arumbakkam,
Chennai

+1 CC to M/s.S.BHARATHY KANNAN, Advocate (SR-32333[F] dated 22/10/2021)

+1 CC to M/s.SPL.GP (SR-32098[F] dated 21/10/2021)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-32225[F] dated 22/10/2021)

WP (MD) No.1874 of 2016
20.10.2021

PK(CO)
KB(10.11.2021) 5P 6C