



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.02.2022

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.4583 of 2014

and

M.P.Nos.1 and 2 of 2014

Dr.K.Palani

... Petitioner

Vs.

1. State of Tamilnadu,
rep. by the Secretary to Government,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai - 600 009.

2. Tamilnadu Public Service Commission,
represented by the Under Secretary,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003.

3. Directorate of Medical and Rural Health Services,
Rep. by its Director,
No.258, DMS Complex 3rd Floor,
Near Fire Service, Anna Salai,
Teynampet West,
Chennai - 600 006.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent Memo No.6803/APD-E/2013 dated 08.01.2014 and quash the same and consequently, direct the 2nd respondent to regularise the services of the petitioner in the post of Assistant Surgeon.

For Petitioner : Mr.K.M.Aasim Shahzad
for M/s.BFS Legal

For Respondents : Mr.V.Veluchamy,
Addl.Govt.Pleader for R1 & R3
Mr.V.Vaithilingam for R2



ORDER

The facts and circumstances which gave rise to the filing of the writ petition are briefly stated hereunder.

The petitioner had graduated with M.B.B.S. degree in 2003 and thereafter, completed his M.D.(Paed) in 2009. The 1st respondent issued G.O.Ms.No.02, Health and Family Welfare (B2) Department dated 02.01.2012 seeking to fill up 835 vacancies i.e., 723 vacancies with MBBS candidates and 112 vacancies with Post graduate qualified candidates in specialist posts temporarily. The petitioner being fully qualified had attended the counseling and was eventually selected for appointment to the post of Assistant Surgeon.

2. On completion of the selection, the petitioner was also issued with an appointment order dated 16.11.2012. Subsequently, the petitioner was issued with the posting order dated 30.11.2012 posting him at Government Headquarters Hospital Krishnagiri, and was directed to join duty within 15 days from the date of receipt of the order.

3. The order dated 30.11.2012, posting the petitioner at Government Headquarters Hospital at Krishnagiri was in fact, made ready only on 11.12.2012 and the same was posted and received by the petitioner on 14.12.2012. On receipt of the posting order on 14.12.2012, being a Friday, the petitioner immediately joined duty on 17.12.2012, the following Monday and has been working ever since. In the meanwhile, the Government issued G.O.(D)No.1292 dated 12.12.2012, wherein the 2nd respondent Tamilnadu Public Service Commission was directed to conduct Special Qualifying Exams for regularisation of Assistant Surgeons appointed in Tamilnadu Medical Services on temporary basis. One of the appointments that came under the purview of the Special Qualifying Examination was relating to G.O.Ms.No.02 dated 02.01.2012. The petitioner, being an appointee in pursuance of the said G.O., was eligible for regularisation on passing of the Special Qualifying Exam.

4. Subsequently, the 2nd respondent issued Notification dated 21.06.2013 seeking to conduct Special Qualifying examination scheduled on 22.09.2013. The petitioner participated in the examination and was successful. Thereafter, he was called for interview and certificate verification on 08.01.2014. When the petitioner attended the interview and certificate verification, to his shock and dismay, he was informed that he was not eligible for regularisation though was successful in the examination, in view of the fact that he was not in service as on 12.12.2012 in terms of the Commission's Notification dated 21.06.2013. At this, the petitioner had informed the Commission that he received the posting order only on 14.12.2012 and



immediately, he joined duty on 17.12.2012. The posting order was issued belatedly to him for administrative reason, for which, the petitioner cannot be deprived of the regularisation of his service, in the face of his passing of the department qualifying examination. The petitioner also pointed out that the competent authority, namely, the 3rd respondent had addressed a letter to the Chairman of the 2nd respondent Commission that there was no delay on the part of the individual in joining duty and the delay was due to administrative reasons, vide its letter dated 08.01.2014. However, unfortunately, despite the clarification by the competent authority, the Commission has rejected the candidature of the petitioner.

5. The petitioner, however, subsequently had qualified in the examination in 2016 and his service was regularised thereafter and he has been working as such, as on date. The grievance of the petitioner herein is that when admittedly, he was not at fault and prevented from joining duty on 12.12.2012, he cannot be deprived of due benefits that were otherwise admissible to him along with his batchmates who joined the medical services in 2012. Despite the clarification by the competent authority, the rejection to regularise the service pursuant of the special qualifying exam conducted on 22.09.2013 cannot be countenanced in law or on facts. Being aggrieved by the rejection, the petitioner is before this Court.

6. The learned counsel appearing for the petitioner would submit that the crucial Government Order in pursuance of which notification was issued by the Commission namely G.O.(D) No.1292, Health and Family Welfare Department dated 12.12.2012 did not specify any cut off date at all. In the absence of prescription of any specific cut off date in the G.O, the date fixed by the Commission would have no legal sanctity. Even otherwise, when the fact of the matter was that the petitioner had received the posting letter only on 14.12.2012 and joined duty immediately on the next working day on 17.12.2012. It is unfair, inequitable and unreasonable that the petitioner could be deprived of his regularisation from the date of regularisation of his batchmates.

7. After notice Mr.V.Veluchamy, learned Additional Government Pleader appeared on behalf of the 1st and 3rd respondents. A detailed counter affidavit has been filed.

8. In the counter affidavit, the facts have been admitted and particularly, the fact that the delay in petitioner joining the service was not his fault and it was due to administrative reasons. When this fact was disclosed to the 2nd respondent Commission, on reconsideration, the petitioner's



claim was rejected on 25.01.2014 repeating the same reason that he was not in service as on 12.12.2012. In fact, in the counter affidavit filed on behalf of the 1st respondent, it is stated that the office copy was approved by the 3rd respondent on 30.11.2012 and after observing the official procedures, the order was despatched on 11.12.2012. The time taken for the above procedure was purely due to administrative reasons.

9. On behalf of the 2nd respondent Commission, a counter has been filed. In the counter, it is admitted that the Commission was informed of the administrative delay in despatching the posting order to the petitioner. However, the case was reconsidered and rejected by the Commission on 25.01.2014. The rejection was again on the only ground that the petitioner was not in service as on 12.12.2012 in terms of its Commission's notification No.10/ 2013 dated 21.06.2013.

10. The learned counsel who appeared for the Government as well as the Commission have reiterated the facts as stated in their respective counter affidavits.

11. In the conspectus of the above factual narrative, this Court is unable to countenance the wooden stand adopted by the 2nd respondent Commission in rejecting the candidature of the petitioner as stated above. Admittedly, the petitioner was in receipt of the posting order after the cut off date on 14.12.2012 and without any delay, the petitioner had joined duty on 17.12.2012, the next working day after its receipt. The competent authority namely, the 3rd respondent herein has also fairly admitted that it was not the fault of the individual but it was the fault of the administration in unmistakable terms. When the fact was clarified to the Commission, unfortunately, the Commission stuck to its stand that it can only go by its notification dated 21.06.2013, regardless of any acceptable explanation in the matter.

12. The cut off date fixed by the Commission in its notification dated 21.06.2013 can be pressed into service only if a candidate for his own reason had not chosen to join duty after his or her appointment on or before 12.12.2012. But certainly, not in a case like the present one where the petitioner was prevented from joining duty on 12.12.2012 for the reason that the posting order was issued to him belatedly and received by him only on 14.12.2012. Further, the petitioner without wasting any time immediately joined duty on the next working day on 17.12.2012. In such view of the matter, rigidly sticking to the cut off date by the Commission, unmindful of its irreversible adverse effect on the service benefits to be enjoyed by the petitioner is opposed to fair play, good conscience and justice.



13. In a matter like the present one, where the official respondents have owned responsibility for the delay in despatching the posting order, the Commission cannot go beyond the position adopted by the competent authority and would still hold that the petitioner was not eligible to be admitted to the oral test. The Commission, on the other hand, ought to have treated the petitioner as deemed to have joined on 12.12.2012 when the petitioner had admittedly chosen to join immediately on the next working day on receipt of the posting order.

14. In any event, this Court is of the view that in the absence of any prescription of cut off date in G.O.No.1292 dated 12.12.2012, the prescription of the date in the Government notification cannot said to enjoy a sacrosanct legal status which needed to be enforced even in the face of the fact that the petitioner was the unfortunate victim of the administrative delay. This however does not mean that the Commission ought not to have insisted on any cut off date for consideration of the candidates as that would lead to arbitrariness in the selection method. But at the same time, there cannot be a situation that no discretion or latitude is enjoined upon the authority even in a extreme case like the present one, wherein clinging to the so called cut off date, resulting in manifest injustice, causing irreparable injury on the candidate. Such defiant and pedantic approach in a situation like the present one lead to the destitution of the constitutional principles enshrined in Article 14 namely reasonableness and fairness in action by the State authority.

15. As rightly contended by the learned counsel for the petitioner it is not in dispute that the petitioner is qualified in the selection but his rejection came only when he appeared for certificate verification and interview and the petitioner was therefore, practically qualified himself to be regularly appointed from 2012 or the date on which his batchmates were regularised as Assistant Surgeon. However, due to imprudent and intransigent stand of the Commission, the petitioner has been deprived of his considerable and valuable service benefits, particularly, his seniority position in the Civil Medical List (CML). Once the seniority was to be affected for no fault of the petitioner, as not being regularised from the year 2012, the petitioner's career progress is also consequently affected and the deprivation will continue to impact in his service career adversely till his retirement.

16. Therefore, it is to be held that the petitioner herein is entitled to be regularly appointed in 2012 as Assistant Surgeon along with his batchmates in 2012 selection with all attendant benefits. At no cost, the petitioner could be denied the benefits of regular appointment treating him as having been



appointed in 2012 selection, since the fault of the official respondent needed to be salvaged towards rendering justice.

17. For the aforesaid reasons, the Writ petition is allowed. The rejection letter of the 2nd respondent in Memo No.6803/APD-E/2013 dated 08.01.2014 is hereby set aside.

18. The 2nd respondent Commission is hereby directed to process the petitioner's candidature and clear his name for his regular appointment in the post of Assistant Surgeon, on the basis of the participation of the petitioner in the qualifying examination held on 22.09.2013.

19. The 1st and 3rd respondents are directed to pass appropriate orders on such clearance by the 2nd respondent Commission, treating the petitioner having been regularly appointed on the basis of the special qualifying examination held on 22.09.2013 in pursuance of the notification No.10/2013 dated 21.06.2012.

20. The 2nd respondent Commission is directed to pass order in this regard within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the 1st and 2nd respondents are directed to pass appropriate order as stated above within a period of eight weeks from the date of receipt of the order from the 2nd respondent Commission.

21. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary to Government,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai - 600 009.



WEB COPY

2. The Under Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003.

3. The Director,
Directorate of Medical and Rural Health Services,
No.258, DMS Complex 3rd Floor,
Near Fire Service, Anna Salai,
Teynampet West,
Chennai - 600 006.

+1cc to M/s.B.F.S.Legal, Advocate, S.R.No.12617

+1cc to Mr.V.Vaithiyalingam, Advocate, S.R.No.12744

+1cc to the Government Pleader, S.R.No.13048

W.P.No.4583 of 2014

BR(CO)
SU(06/04/2022)