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W.P.(MD)No.15809 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2022

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.15809 of 2015

and

M.P.(MD)No.1 of 2015

S.Renjit Singh

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Principal Secretary
to Government,
Health and Family Welfare Department,
Chennai – 600 009.

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

3.The Dean,
Kanyakumari Government Medical
College Hospital,
Asaripallam,
Kanyakumari District.

... 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 in pursuant to



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the to the impugned order passed by the 2nd respondent in Ref. No. 95013/E5/3/14, dated 17.02.2015 and to quash the same and consequently, to direct the respondents to promote the petitioner to the post of Statistician in 3rd respondent hospital in the existing vacancy.

For Petitioner : Mr.M.Saravanakumar
For Respondents : Mr.P.Thambi Durai
Government Advocate (Civil side)

ORDER

This writ petition is filed for issuance of writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent in Ref. No. 95013/E5/3/ 14, dated 17.02.2015 and consequently to direct the respondents to promote the petitioner to the post of Statistician in 3rd respondent hospital in the existing vacancy.

2.The claim of the petitioner is that he has the qualification to be appointed as Statistician but, the respondents have not considered the claim of the petitioner. The petitioner is working as a Radiographer in Kanyakumari Government Medical College Hospital and is possessing B.Sc., degree in Mathematics and



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Statistics. Officially, he was appointed as “Dark Room Assistant” through employment exchange on consolidated pay. Subsequently, absorbed in regular time scale of pay and was regularized with effect from 16.06.2005, then probation was declared and he promoted as Radiographer. On 12.02.2014, the 2nd respondent called for particulars from among the members working in Medical Department to preparation of the panel for the post of Statistician. The petitioner submitted an application to the 3rd respondent on 14.03.2014 along with necessary documents and the same was forwarded to the 2nd respondent. The 3rd respondent again recommended the case of the petitioner, vide proceedings, dated 21.08.2014. The petitioner also submitted a report, dated 16.09.2014. Since the claim of petitioner was not considered, the petitioner filed W.P.(MD)No.19079 of 2014 and prayed to direct to consider the representation. This Court, vide order, dated 25.11.2014, directed to consider and pass orders. The respondents after considering the petitioner's representation had passed the impugned order without assigning any valid reasons. Aggrieved over the same, the petitioner has preferred this writ petition.



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3.The respondents have filed a counter affidavit stating that the petitioner has served as Radiographer, where the scale of pay is not equivalent to Statistician. Rule 15B of Tamil Nadu State and Subordinate Service Rules states that the post should carry equal scale of pay, only then, the transfer by promotion shall be considered. In the present case, the Radiographer post is with different scale of pay, the Statistician post is with different scale of pay. Therefore, the respondents submitted that the petitioner's claim cannot be considered and prayed to dismiss the writ petition.

4. The learned Counsel appearing for the petitioner relied on judgment in W.P.(MD)No.13588 of 2009, dated 22.10.2019, wherein this Court has stated that several such claims were considered by the Government, if need be, the rules prescribed there under should be relaxed wherever necessary. Therefore, the claim of the petitioner ought to be considered and orders should be passed by the first respondent.



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5.Heard Mr.M.Saravanakumar, learned Counsel appearing for the petitioner and Mr.P.Thambi Durai, learned Government Advocate appearing for the respondents and perused the records placed before this Court.

6.The respondents submitted that the post of Statistician comes under the Tamil Nadu Subordinate Service Rules and carries a scale of pay at Level 13-Rs. 35,900-1,13,500, whereas the scale of pay prescribed for Radiographer is Level 11- Rs.35,400-1,12,400 and hence the claim cannot be considered. Rule 15 (B) under Tamil Nadu Subordinate Service Rules, reads as under:

“A Member of service is said to be appointed by transfers when the appointment is made from one category to another category in the same service carrying identical scale of pay.”

Therefore, according to Rule 15, the petitioner is disqualified to the post.

Therefore, the claim of the petitioner cannot be considered.

7. However, the learned Counsel appearing for the petitioner submitted that this issue was considered by this Court in W.P.(MD)No.13588 of 2009, wherein it



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has been stated as under:

“12. When it is pointed out by learned counsel for petitioner that Government has ratified several appointments which were not made in terms of Rule 15B of Tamilnadu State and Subordinate Service Rules, it is to be seen that the ratification was on the recommendation of the second respondent accepting the proposal of the third respondent. Even though the appointment by transfer from one category to another category is made without following Rule 15 B of Tamilnadu State and Subordinate Service Rules, learned Government Pleader is unable to convince this Court as to how the petitioner's case was not even considered in the light of Government orders issued earlier for approving appointment of persons by transfer from one category to another category within the service dispensing with Rule 15 B of Tamilnadu State and Subordinate Service Rules.”

8. After considering the rival submission on the issue this Court is of the considered opinion that the Government alone has power to grant ratification in such circumstances. The impugned order is passed by the Director of Medical Department, who is 2nd respondent herein. The 1st respondent is empowered to grant relaxation. Therefore, the matter is remitted to the 1st respondent for fresh consideration. While considering the issue, the 1st respondent shall take note of the Rule 15 (B) of the Tamil Nadu State and Subordinate Service Rules and also the order passed by this Court in W.P.(MD)No.13588 of 2009, thereafter consider



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and pass orders within a period of 12 weeks from the date of receipt of a copy of this order.

9. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

18.10.2022

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To

- 1.The Principal Secretary to Government,
Health and Family Welfare Department,
Chennai – 600 009.
- 2.The Deputy Director of Medical Education,
Kilpauk, Chennai- 600 010.
- 3.The Dean,
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S.SRIMATHY, J

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