



W.P.(MD).No.23540 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23540 of 2019

and

W.M.P.(MD).Nos.20169, 20170 and 20171 of 2019

V.Muniyaraj

... Petitioner

Vs.

1.The Secretary to Government,
Health and Family Welfare (C2) Department,
Secretariat,
Chennai – 9.

2.The Director,
Directorate of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai – 600 010.

3.The Dean,
Madurai Medical College,
Madurai – 625 020.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in his proceedings in Na.Ka.No.377/ni2/2/2019 dated 01.11.2019 quash the same and



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consequently directing the second respondent to give promotion to the petitioner for the post of Lab Supervisor with effect from 18.07.2014 on his junior Shofiya promoted with pay all monetary and service benefits.

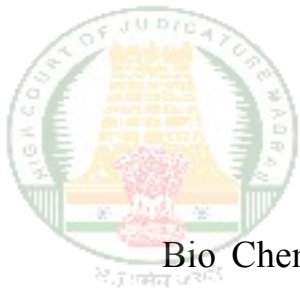
For Petitioner : Mr.D.Selvanayagam

For Respondents : Mr.D.Sadiq Raja,
Additional Government Pleader.

ORDER

This Writ Petition is filed challenging the order dated 01.11.2019 with a consequential relief to direct the second respondent to give promotion to the petitioner for the post of Lab Supervisor with effect from 18.07.2014.

2. The petitioner was appointed as Lab Technician Grade II under the physically challenged quota by an order dated 17.10.2008. The petitioner is qualified in B.Sc., (Applied Chemistry) through Distance Education Mode from Annamalai University in the year 2009 and completed M.Sc., (Chemistry) from the Madurai Kamaraj University in November, 2014. The next promotion post is Lab Supervisor in the second respondent Department. The second respondent invited applications for the post of Lab Supervisor on 31.05.2012. The qualification prescribed to the said post is B.Sc., degree in Chemistry or



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Bio Chemistry awarded by any University recognized by the Government of Tamil Nadu. The contention of the petitioner is that he is the only eligible person for the said post and had submitted representations on 25.06.2012, 19.08.2013, 21.03.2014 and the same was not considered. Hence, he filed Writ Petition in W.P.(MD).No.7519 of 2014. This Court vide order dated 29.04.2014 directed the third respondent therein to consider the representation dated 21.03.2014 and pass orders within a period of four (4) weeks. The first respondent rejected the claim vide order dated 24.02.2016. The 2nd respondent vide circular dated 05.06.2013 directed the respondents to follow G.O.Ms.No. 47 dated 08.02.2007, which prescribes the Special Rules. In the said G.O. has prescribed the qualification as under:

- A) By promotion from among the holders of the post of Lab Technicians Grade-I in category of class III.*
- B) If no suitable person is available for appointment under item No(1) above by promotion from among the holders of the post of Lab Technicians Grade – II Category 2 of Class III.*
- C) By transfer from any other category of employees holding B.Sc in Chemistry Bio-Chemistry awarded by any university recognized by University Grant Commission for the purpose of its grants.*
- D) By transfer from any other service if the suitable person is not available under the above col A to D then directed Recruitment”.*



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Despite the above rules, the second respondent promoted one Mrs.Jeyalakshmi from the post of Lab Technician Grade II to Lab Supervisor, with the very same educational qualification who was possessing B.Sc. (Applied Chemistry) in the year 2005 itself. The said Jeyalakshmi was not physically challenged person. Now her name was also included in Serial No.19 in the promotion panel for the next promotional post of Non-Medical Assistant to the Bio-Chemistry for the year 2016-2017 vide proceedings dated 29.12.2016. Since the petitioner's case was denied on the ground that B.Sc., (Applied Chemistry) is not equivalent to B.Sc., (Chemistry), which is highly arbitrary. The petitioner is a physically challenged person with 60% disability in his leg and under the disability quota also, the petitioner is entitled to. Moreover, the petitioner is entitled to under Section 47(2) and Section 59 of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation Act, 1995).

3. Since the petitioner was not considered again the petitioner filed another Writ Petition in W.P.(MD).No.8640 of 2017 and the same is withdrawn on 07.11.2019. In the meantime, the Government of Tamil Nadu issued G.O.Ms.No.65 dated 24.04.2019, whereby, it was declared that B.Sc. (Applied



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Chemistry) awarded by Annamalai University is equivalent to B.Sc., (Chemistry) for the purpose of employment in public services, it was also confirmed by the Deputy Secretary to Government, Higher Education Department Letter Dated 13.05.2019, which was addressed to the petitioner. Even though all these letters and Equivalency Report are in favour of the petitioner, the petitioner was not granted promotion. Subsequently, the respondents have granted promotion to a junior namely, S.Shobiya. The petitioner submitted an objection letter for not considering his claim. Again, the petitioner filed W.P.(MD).No.21513 of 2019 and this Court directed the respondents to consider the petitioner's objection for granting promotion to the said Shobiya and pass orders. In this background, the impugned order came to be passed.

4. The respondents have filed a counter stating that the Equivalency Committee had submitted a report but subsequently, the Government has not amended the Special Rules. Therefore, the Equivalency Committee report cannot be implemented as on date. The petitioner has completed B.Sc., (Applied Chemistry) only. Since the B.Sc., Applied Chemistry was not notified in the Special Rules, the petitioner cannot be considered for promotion. The



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earlier incumbent namely, G.Padmavathy and S.Balakrishnan were promoted from the said post and it would be considered as vacancy post as on the date of relieving the said two persons. Therefore, the allegations that the said posts were not shown as vacancies and the respondents have concealed the said post is incorrect. Further, the counter also states the Equivalency Committee Report is placed before the Government, the Government as on date has not passed any amendments to the existing adhoc rules. Therefore, for all these reasons, the petitioner's claim was rejected and is legally sustainable. Hence, prayed to dismiss this Writ Petition.

5. Heard Mr.D.Selvanayagam, learned counsel for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents and perused the records.

6. The first contention that was raised by the learned Additional Government Pleader is that the Adhoc Rules ought to have been amended, if it is not amended, the petitioner's claim cannot be considered. Only the Equivalency Committee had submitted the report and the report ought to be given effect to. This plea cannot be entertained. Since the report has come in,



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the Government ought to have taken adequate and urgent steps to modify the Adhoc Rules. Since the adhoc rules are not been modified, the plea of the petitioner cannot be declined. The Director rather than passing such elaborating order, ought to have placed before the Secretary to Government, Higher Education, who is the first respondent herein for issuing clarification. The second respondent has not taken any steps to obtain clarification from the first respondent. Therefore, the plea of the learned Additional Government Pleader that the adhoc rules have not been amended is rejected.

7. The next contention that was raised by the learned Additional Government Pleader is that the Equivalency Committee Report was passed subsequently, the petitioner has completed B.Sc., (Applied Chemistry) prior to the Equivalency Committee's Report and hence the petitioner cannot be considered. This plea cannot be entertained, since the retrospective effect of Equivalency Committee Report was considered by the Hon'ble Full Bench in W.P.(MD)No.16181 of 2013 dated 29.11.2013 in *Nadar Thanga Shubha Lakshman.A Vs The State of Tamil Nadu* reported in *2014 3 CTC 433*, wherein it has been held that once equivalency is granted by the Equivalence Committee, it cannot be stated it has been granted only prospectively and it is



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applicable from the date of acquisition of the degree. Based on this judgment, this Court has also considered a case in W.P.(MD)No.17903 of 2017, vide order, dated 31.03.2022, in W.P.(MD)No.3639 of 2014 vide order dated 19.10.2022 and in W.P.(MD)No.19457 of 2017 vide order dated 09.01.2023 and has held if once equivalency is declared, the petitioner's candidature ought to be considered with retrospective effect i.e. from the date of completion of the qualification. Therefore, this plea of the second respondent is also rejected.

8. The next plea that was raised by the learned Additional Government Pleader is that the petitioner is not entitled to promotion based on the disability quota. Since the disability quota is applicable only at the time of recruitment and it is not applicable for promotion. However, the learned counsel appearing for the petitioner submitted that the issue was considered by the Hon'ble Supreme Court in the case of *the State of Kerala and others Vs. Leesamma Joseph* reported in 2021 (9) SCC 208. The relevant portion is extracted hereunder:

14. A broad aspect sought to be submitted before us is that Sections 32 and 33 of the 1995 Act had to be interpreted in juxtaposition and consonance with Section 47 of that Act which reads as under:

“47. Non-discrimination in Government employment. —



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(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

The Hon'ble Supreme Court has held that the government ought to identify the posts for reservation for persons with disability including for reservation in promotion ought to be carried out by framing rules, such identification mandated unless exemption under proviso to section 33. In the present case no such rules are framed. Hence the claim of the petitioner to consider for promotion under disability quota at this stage does not arise.

9. The next plea that was raised by the learned Additional Government Pleader is that the junior Shobiya was granted promotion, but the petitioner has not impleaded the said Shobiya as one of the respondents and hence, the Writ



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Petition is not maintainable. The said plea cannot be entertained, since the petitioner is seeking to consider the qualification of B.Sc., Applied Chemistry and he is seeking to place him in the appropriate seniority list by fixing the seniority. The granting of promotion will be a consequential relief, once the petitioner is fixed in the appropriate seniority in the year 2014, the respondents are duty bound to consider the petitioner's case right from the year 2014 onwards. If any person would be affected, like that of the Shobiya then the respondent is bound to issue notice to the affecting persons, then consider the claim of the stake holders and pass orders.

10. Therefore, for the reasons stated above this Court is passing the following orders:

- (a) The impugned order is quashed.*
- (b) The respondents are directed to issue notice to the said Shobiya as well as the petitioner and conducted an enquiry and thereafter the petitioner shall be placed in the appropriate seniority.*
- (c) In case, if the petitioner is senior than the Shobiya, then the petitioner should be considered. In other words, if the petitioner is found senior in all qualifications, then he is entitled to be considered for promotion and it is left open to the respondents to demote Shobiya. But the petitioner cannot be denied promotion.*
- (d) The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.*



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11. In view of the above reasons, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

23.12.2022

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Secretary to Government,
Health and Family Welfare (C2) Department,
Secretariat,
Chennai – 9.

2.The Director,
Directorate of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai – 600 010.

3.The Dean,
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Madurai – 625 020.



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S.SRIMATHY, J.

Nsr

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