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W.P.No.2063 of 2023.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.2063 of 2023

and

W.M.P.No.2152 of 2023

R.Anandan

...Petitioner

vs.

- 1.Union of India
rep.by its Secretary to the Government,
Ministry of Health and Family Welfare,
New Delhi.
- 2.The Directorate General of Health Services
rep. by its Director General,
Nirman Bhavan,
New Delhi -110 108.
- 3.The Union Public Service Commission
rep. by its Secretary,
Dholpur House,
New Delhi.
- 4.The Director,
BCG Vaccine Laboratory,
Guindy,
Chennai - 600 032.



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5.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai - 600 104.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 5th respondent Tribunal in its order dated 03.01.2023 in O.A.1544 of 2018, quash the same and consequently, allow the Original Application as prayed for.

For Petitioner : Mr.Karthik

For Respondents : Mr.R.Priya Kumar
Standing Counsel for UPSC

Mr.C.Samivel,
SPCGSC for R1, R2 and R4

ORDER

(Order of the Court was delivered by V. LAKSHMINARAYANAN, J.)

This Writ Petition has been filed for a Writ of Certiorari calling for the records on the file of the fifth respondent in O.A.No.1544 of 2018 dated 03.01.2023 and to quash the same.



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2.The case of the petitioner is that he had joined the fourth respondent as an Electrical and Mechanical Supervisor. It was a Group B post. He joined by direct recruitment in the year 1996. The petitioner's post has no promotional avenue. Another post which was available in the fourth respondent was the post of Refrigeration Engineer. The incumbent to the post expired in 2004. The filling up of the post of Refrigeration Engineer was according to the 1978 recruitment rules. However, from 1978 till 06.09.2016, the post was not filled. On 18.08.2016, the post of Refrigeration Engineer at the fourth respondent was revived with immediate effect.

3.The first respondent in consultation with the second respondent issued draft recruitment rules on 28.12.2016. As per draft rules, the mode of selection was modified from direct recruitment to that of promotion from the post of Electrical and Mechanical Supervisor. The draft rules were not operational and from 2016, the post remained vacant. The applicant relied upon several communications between the fourth respondent and the second respondent. By an Advertisement No.19/2018, the UPSC called for applications from qualified persons to several posts.



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Soon thereafter on 16.11.2018, he filed O.A.No.310/1544/2018 before the Central Administrative Tribunal for the following reliefs:

“To set aside the Advertisement Notification No.A.12018/11/2016EPL/VI dated 28.12.2016 issued by the 3rd respondent insofar as it seeks to fill up one post of Refrigeration Engineer, BCG Vaccination Laboratory, Guindy, Chennai, by way of direct recruitment and consequently direct the respondents 1 and 2 to finalise the draft Recruitment Rules notified vide Notification No.A.12018/11/2016-EPI/VI dated 28.12.2016 for filling up the post by the method of promotion and further direct the 3rd respondent to consider the applicant for promotion to the vacant post of Refrigeration Engineer and upon being found fit, promote him to such post from the due date with all consequential benefits flowing therefrom including monetary benefits and pass such further or other order as may be deemed fit and proper.”



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5. On service of notice, the respondents filed a common counter.

According to the respondents, the application seeking to promote the Writ Petitioner on the basis of the draft rules is not maintainable. Owing to the Administrative constraints, the post was not filled in time and consequently, it was deemed to have been abolished. After protracted efforts, the post was revived on 16.03.2016. They further added that the amended draft notification for the post of Refrigeration Engineer was approved by DoPT and sent to UPSC for approval. UPSC had returned the proposal stating that the recruitment rules to the feeder post that is Electrical and Mechanical Supervisor should be notified. The reply further pointed out that the recruitment rules to the post of Electrical and Mechanical Supervisor is still under process and the file was pending with DoPT. However, in order to fill the Refrigeration Engineer's post, the third respondent/UPSC had issued an advertisement inviting applications which is impugned in the Original Application.

6. It is on record that the UPSC was permitted to go ahead with the selection process but was not permitted to make any appointment without leave of the Court. The categorical stand taken by the respondents is that



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unless and until the revised recruitment rules is notified in the Gazette of India, the action taken by the respondents on the basis of the 1978 rules, is justified.

7.We heard Mr.Karthik for M/s.Menon, Mukundan and Neelakantan, learned counsel for the petitioner, Ms.R.Priya Kumar, learned Standing Counsel for UPSC and Mr.C.Samivel, learned Standing Counsel for the respondents 1, 2 and 4.

8.The respondents were given time to file their counter to the Writ Petition but unfortunately, they have not availed the opportunity. On the basis of the available records, we are proceeding to pass orders after hearing the learned counsel appearing on either side.

9.We have heard and perused the records, Original Application and carefully considered the arguments of the Writ Petitioner and the respondents.

10.At the outset, it must be pointed out that the rules which governed the recruitment till 03.04.2021 where the rules framed on



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03.06.1978 (the 1978 Rules). As per these rules, the method of recruitment to the post of Refrigeration Engineer is by direct recruitment.

These rules were operational between 03.06.1978 to 04.02.2021. On 04.02.2021, the post was made as a selection post wherein method of recruitment being modified as one “promotion filled which deputation including short term contract (ISTC).

11.The 1978 Rules as well as the 2021 Rules have been framed in exercise of the powers conferred by proviso to Article 309 of the Constitution of India. Therefore, no exception can be taken to the UPSC applying 1978 Rules calling for advertisement in 2018.

12.It is no doubt true that the respondents 1 to 4 had made attempts to revive the post between 2004 to 2016 and the efforts got through only in 2016. On the date of the revival, the rules that were applicable were the 1978 Rules. It is pending the Original Application filed in 2018 that the new rules have come into force. The fact that the new rules came into force pending the application gives no right to the petitioner to seek for a direction that the 2021 rules should be applied to the 2018 vacancies and not 1978 Rules. It is pertinent to point out that the 2021 Rules



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specifically states that it comes into force from the date of publication in the official Gazette, which is, 04.02.2021. In other words, the Rules have not been given retrospective effect. If we were to accept the argument of the learned counsel for the petitioner, it will amount to give retrospective operation to the 2021 rules to operate from the date of revival which is 2016.

13.The Law is settled in **Y.V. Rangaiah and others v. J.Sreenivasa Rao and others** reported in [(1983) 3 Supreme Court Cases 284]. In the said Judgment, the Supreme Court in Para 9 had held that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

14.The position, being clear and categorical, despite all the sympathies that we have for the petitioner, we are constrained to reject the arguments that the 2021 Rules must be applied. Furthermore, the applicant/Writ Petitioner has not challenged the validity of the 2021 Rules. The Rules, as they stand if made applicable, the Writ Petitioner is not entitled to be considered. The case of the petitioner may be unfortunate and even pitiable but the laws as stand have to be applied.



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Therefore, no fault can be found with the UPSC in applying the 1978 Rules and calling for the advertisement.

15.The learned counsel for the petitioner would call for our attention to instructions on "deemed abolition" on revival of post under Para 5.1 (a) and (b) issued by the Ministry of Finance, Department of Expenditure, New Delhi, dated 12.04.2017. He wanted us to hold that the post having been revived on 16.08.2016, and having been kept vacant till July 2018, the post should have been deemed to have been abolished, as no exemption have been obtained at the time of sanctioning of the post and since filling up of the post did not have permission from the Department of Expenditure. This case was not pleaded by the petitioner before the Tribunal. But, the learned counsel seems to have placed reliance upon the same. It was rejected by the Tribunal holding that the action was taken by the fourth respondent vide its letter dated 06.09.2016. Therefore, it cannot be said that the fourth respondent had left the post to be kept vacant under "deemed abolition" category. The reasoning of the Tribunal is not perverse which requires interference under Article 226 of the Constitution of India. We are not going into details on the arguments with respect to deemed abolition and revival of post notification issued by



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the Ministry of Finance, Department of Expenditure, New Delhi, as the case was never pleaded before the Tribunal. It is for the petitioner to work out his rights independently, if so advised.

Hence, the Writ Petition stands dismissed. It is open to the writ petitioner to approach the appropriate Authorities to such relief as may be open to him. The order of the fifth respondent in O.A.No.1544 of 2018 dated 03.01.2023 stands confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (V.L.N., J)
21.03.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
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To

1.The Secretary to the Government,
Union of India,
Ministry of Health and Family Welfare,
New Delhi.



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2.The Director General,
Directorate General of Health Services,
Nirman Bhavan,
New Delhi -110 108.

3.The Secretary,
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Dholpur House,
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V.M.VELUMANI,J.
and
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Pre-delivery Orders in
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