



W.P.No.13412 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.13412 of 2016
and W.M.P.Nos.11761 & 11762 of 2016

Dr.Shine S.Nair

.. Petitioner

vs

1.Perunthalaivar Kamaraj Medical College
Society, Puducherry.
Rep. By its Chief Secretary,
No.225, Vazhoduvar Road, Kathirkamam,
Thattanchavadi, Pondicherry – 605 009.

2.The Principal
Rajiv Gandhi Ayurveda Medical College,
(A unit of Perunthalaivar Kamaraj Medical
College Society, Puducherry)
Post Box No.26, Mahe – 673310
Union Territory of Puducherry.

3.Dr.N.Shajil

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorarified mandamus after calling for
the connected records, quashing of the order of selection and
appointment of the 3rd respondent vide order No.7-60-
RAGMC/2015 dated 04.03.2016 by the 2nd respondent, in so far as
the post of Associate Professor is concerned, as illegal and void
and for consequential direction to respondents 1 and 2 to appoint



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the petitioner as Associate Professor in the Kaumarbharitya subject in pursuance of selection through notification dated 30.12.2015 with all attendant benefits.

For Petitioner : Mr.Ravikumar Paul, Sr.Adv
for M/s.Paul & Paul Associates

For Respondents : Mr.R.Syed Mustafa
Government Pleader
(Puducherry)
for R1, R2

Mr.V.R.Kamalanathan for R3

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking interference with the selection and appointment of the third respondent by proceedings / order No.7 - 60/ RAGMC / 2015 dated 04.03.2016 of the second respondent qua the post of Associate Professor and for a consequential direction to the respondent nos. 1 and 2 to appoint the petitioner as Associate Professor in Kaumarbharitya, consequent to the notification dated 30.12.2015 and also grant all attendant benefits.

2. The petitioner had applied for the post of Associate Professor in the Union Territory of Puducherry in Rajiv Gandhi Ayurveda Medical College at Mahe for the post of Associate



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Professor in Kaumarbhritya / Balroga subject. The notification was dated 30.12.2015. The educational qualifications required for being eligible to be considered for appointment to the said post of Associate Professor was Ayurveda Vachaspathi (MD) Ayurveda in the concerned subject and in this case the concerned subject was Kaumarbhritya / Balroga from a recognized university approved by the Central Council of Indian Medicine (hereinafter referred to as 'CCIM'), a statutory body under the Ministry of Ayush, Government of India and also five years' experience as Senior Lecturer or as Associate Professor in teaching in the said subject or ten years' of combined experience in teaching in the said subject and also research. Desirable qualifications were Ph.D in Ayurveda and extensive experience in research and working knowledge of Hindi and English. It was also specified that the essential criteria which has been stated, namely, educational qualification in the concerned subject is a minimum requirement and possession of the same would not entitle for the candidates to be called for interview. It had also been provided that the competent authority would have the right to short list the candidates on the basis of the higher qualification or on the basis of years of experience in the subject or screening test or any other criteria. The age limit for application was prescribed as 50 years.



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3. In the affidavit filed in support of the writ petition, the petitioner claimed that he possessed the aforementioned educational qualification and also had necessary teaching experience as required. He very specifically stated that he had obtained a degree in Kaumarbhritya and also worked as Assistant Professor in Mannam Ayurveda Cooperative Medical College, Pandalam, in Kerala for a period of three years between June, 2010 – March, 2013 and thereafter as a Lecturer from 05.03.2013 till the date of filing of the writ petition in the second respondent medical college. He, therefore, claimed that having had the necessary qualifications prescribed for eligibility, he had a reasonable and legitimate expectation that he would be short-listed as among the candidates to be selected for the post of Associate Professor. The method of selection was viva voce which was conducted by, what is called, the Committee of the second respondent college. The petitioner claimed that he had done reasonably well in the said screening test.

4. The petitioner, however, found that the third respondent was selected to the said post and the petitioner was placed as waiting list candidate no.1. He still remains in the



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waiting list no.1 and the third respondent having been selected, is now working as Associate Professor in the said subject. Complaining that the third respondent did not have requisite qualification, particularly the PG degree in Kaumarbhritya subject, the petitioner had approached this Court questioning the selection of the third respondent. It had been specifically alleged and claimed that the third respondent had degree only in another subject, which is Kayachikitsa.

5. It had been stated that the two subjects are not related to each other and when the Notification prescribed qualification in a particular subject, no reasons have been given as to why the petitioner had not been considered for selection though he had the necessary requisite qualification in that particular subject whereas, again, without providing any reasons, the third respondent who was not qualified in that particular subject, had been selected. Complaining that therefore the petitioner had been very seriously prejudiced by this particular selection, the present writ petition has been filed seeking interference with the selection process and also more particularly, the selection of the third respondent and since the petitioner claimed to have the requisite qualification, the petitioner also has sought a consequential direction to be declared



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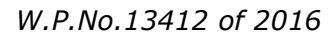
as the selected candidate.

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6. A counter affidavit has been filed by the respondent nos. 1 and 2 by the Government Pleader of Puducherry. They were the appointing authorities of the third respondent. It had been stated that the Rajiv Gandhi Ayurveda Medical College at Mahe had been functioning from 2010 onwards. It had been stated that the governing authority of the said college is the Central Council of Indian Medicine which, as aforementioned, comes under the Ministry of Ayush / Central Government at New Delhi.

7. In the counter affidavit it had been stated that the Associate Professor in Kaumarbhritya Department, who had been appointed in accordance with the CCIM norms had resigned from the service on 10.02.2014 and consequent to such vacancy which had arisen, respondents nos. 1 and 2 had issued the notification but even prior to that, the third respondent, who, according to respondent nos. 1 and 2, has nine years of teaching experience in Kaumarbhritya subject was working on contract basis and not on regular basis.

8. It had been further stated that after fulfilling all necessary regulations of CCIM, and examining all possible aspects,



9. It had also been stated that there are various colleges across the country where Kaumarbhritya is functioning as an independent department but, faculties are those who have qualification in Kayachikitsa. Therefore, on that ground also, the appointment / selection of the third respondent had been justified by respondent nos. 1 and 2.

10. It had also been stated that the third respondent had about ten months of experience as Assistant Professor, Kaumarbharitya in the second respondent institution. It had been stated that the Chairman of the first respondent, had approved the minutes of the recruitment committee and had appointed the third respondent as the Assistant Professor.

11. Learned Government Pleader appearing for respondent nos. 1 and 2, took efforts to impress upon this Court that the



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been allotted by CCIM. Thereafter, when the notification came up, he had applied and taking into consideration his experience, particularly in teaching Kaumarbharitya not only in the very same college but also earlier when he was Medical Superintendent of the PAMC college, after due assessment of his eligibility, he had been selected by the second respondent college. He claimed that the grievances expressed by writ petitioner about his lack of qualifications are not founded on facts and reasserted that he had been properly appointed and, therefore, stated that the writ petition should be dismissed.

14. Heard arguments advanced by Mr.Ravikumar Paul, learned Senior Counsel appearing on behalf of the petitioner; Mr.R.Syed Mustafa, learned Government Pleader (Puducherry) appearing on behalf of respondents nos. 1 and 2 and Mr.V.R.Kamalanathan, learned counsel appearing on behalf of the third respondent.

15. The main thrust of the arguments of Mr.Ravikumar Paul, learned Senior Counsel on behalf of the petitioner was that the third respondent did not have the essential qualifications, namely, qualification in P.G. in that particular subject for which the



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Notification had been issued, namely, Kaumarbhritya.

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15.1 Learned Senior Counsel stated that it was the petitioner alone who had that particular qualification. It was also pointed out by learned Senior Counsel that the petitioner had applied seeking information through Right to Information Act and had received the entire set of certificates of the third respondent and stated that none of the certificates reveal or reflect that the third respondent had either teaching experience in Kaumarbhritya as claimed by him or qualifications undergoing a regular course of study in Kaumarbhritya.

15.2 Learned Senior Counsel also stated that while the third respondent was earlier working as Professor or Medical Superintendent at PAMC College, the particular code which was allotted was the code which was meant for Kayachikitsa subject and not Kaumarbhritya subject. It was stated that that particular code was allotted not out of any inspection made by CCIM but out of information given by the college and, therefore, the college where the third respondent worked have themselves categorized that the third respondent had experience only in that particular subject.



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15.3 Learned Senior Counsel also pointed out that therefore by no stretch of imagination could the respondent nos. 1 and 2 justify the selection of the third respondent.

15.4 Learned Senior Counsel also took umbrage about the particular certificate which had been produced by the third respondent and compared that particular certificate with the certificate issued under the Right to Information Act and stated that there was a serious attempt to play fraud on the Court by claiming that the third respondent had experience in Kaumarbharitya whereas the certificate which was obtained did not so reflect such experience.

15.5 Learned Senior Counsel also pointed out the regulations which had been filed and on which the learned Government Pleader had placed reliance, and stated that the said regulations applied only to Assistant Professors and Lecturers and certainly not to Associate Professors for which the Notification had been issued. It was also contended that the selection process was opaque and the only method of selection was through interview and, therefore, assailed the selection of the third respondent by



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imputing malafide and being one borne out of bias towards the third respondent and corresponding bias against the petitioner.

15.6 It had therefore been contended by the learned Senior Counsel that this Court should interfere with the selection of the third respondent and should consequently, direct the respondent nos. 1 and 2 to take into consideration the application filed by the petitioner herein, particularly because the petitioner had the requisite qualifications, which were termed essential in the Notification.

16. Learned Government Pleader, however, justified the selection of the third respondent. He further stated that the third respondent was already working on contract basis from about March, 2015 and, therefore, it was a very easy choice to appoint him on permanent basis consequent to the Notification issued. Learned Government Pleader also stated that the third respondent was actually working on contract basis as Associate Professor in the very same subject, for which the Notification was issued, Kaumarbhritya and stated that the respondents nos. 1 and 2 had no reason to disbelieve any of the certificates produced by the third respondent and having had first hand information and



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experience with him about his teaching capacities, had taken a very prudent decision to appoint him on regular basis consequent to the Notification. It was therefore stated that the Committee as a whole and the Chairman after application of mind had taken a conscious decision to appoint the third respondent.

17. Mr.V.R.Kamalanathan, learned counsel appearing for the third respondent, pointed out the qualifications which the third respondent had acquired and stated that he had gradually been recognized wherever he had functioned and stated that his last place of employment was in PAMC college where he was moved up to the position of Head of Department of Kayachikitsa. He then pointed out that while holding that particular post, the third respondent was additionally the faculty in-charge of Kaumarbhritya Department and, therefore, gained valuable experience in teaching that particular subject.

17.1 Learned counsel appearing for the third respondent also pointed out that the third respondent was additionally the Medical Superintendent at the said college and also therefore had an opportunity of experience in teaching Kaumarbhritya subject. It was stated that the third respondent had been working on contract



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basis in the second respondent college from March, 2015 and recognizing that particular aspect, the Governing body namely, CCIM, had allocated a special code for the third respondent.

17.2 Learned counsel for the third respondent also produced an annexure to the counter affidavit giving a list of colleges in other States across the country where for the department of Kaumarbhritya, those who were qualified in Kayachikitsa subject were appointed and had been recognized and rather not been disqualified. It was therefore stated that the selection was proper and there was no scope or necessity for interference with the selection process.

18. I have carefully considered the arguments advanced and also perused the material records.

19. The facts are clear. The facts are simple.

(i) The petitioner was qualified in P.G in Kaumarbhritya.

(ii) The Notification was for the Associate Professor in Kaumarbhritya / Balroga.



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19.1 The essential qualifications required even to apply for that particular post was PG degree in the required subject, namely, Kaumarbhritya or Balroga. The next essential requisite was teaching experience of five years in that particular subject or a combined ten years as Associate Professor. There is also an additional restriction with respect to age.

19.2 It is neither denied nor disputed that it was the petitioner alone, who has the requisite educational qualifications in PG (Kaumarbhritya). The third respondent is not so qualified. The third respondent, had, therefore, fallen back on the other aspect of teaching experience.

19.3 It is the case of the third respondent that he had earlier worked in PAMC college where there were similar departments. He was promoted to the rank of Head of Department of the subject in which he had specialised, namely, Kayachikitsa. While working as Head of Department in that particular subject, he had an opportunity of also being appointed as faculty in-charge of Kaumarbhritya Department. He was also appointed as Medical Superintendent. He therefore claimed that while functioning as faculty in-charge and as Medical Superintendent, he gained



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experience in teaching Kaumarbhritya subject in PAMC college.

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20. The moot question is whether that would over ride the educational qualification in PG Kaumarbhritya. While, undergoing the process of getting a PG degree, a student is tested not only on theory but also on practical aspects. Subjects herein which are dealt are related to natural medicinal course. It not only requires a thorough basic knowledge of each and every medicine and also how to apply them. As is seen, there are distinctive medicines in the natural medicinal field.

21. There is no argument advanced that both Kaumarbhritya and Kayachikitsa are allied practices or subjects. Each have their own significance and require independent skills to master in the respective subjects. Those skills can be inculcated only when formal education is undergone by any student. If one can claim qualification, merely because one has teaching experience then such experience can be obtained by any person, not necessarily one who undergoes a regular course of education. Undergoing a regular course is a foundational requirement to be appointed as a Professor or as a Teacher in that particular subject.



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22. There cannot be no two answers about that. If the third respondent had not completed his PG in Kaumarbharitya, the only conclusion is he has not so completed and he was not therefore qualified in that subject. The third respondent may have practical experience in teaching but if there is an in depth examination of his knowledge going into the foundational facts of that particular subject, he can never claim equal skill or knowledge with someone who had undergone a regular Post Graduate degree in that particular subject. He could have a cursory and surface knowledge of all that is required for a student but for a Professor to examine and to do research, some what more deeper knowledge is required and that depth in knowledge is gained only when a course is undergone in a regular manner. It is the petitioner and the petitioner alone who has studied PG Kaumarbharitya. It is not in dispute that the third respondent also has not studied PG Kaumarbharitya.

23. The post for which the Notification was issued was Associate Professor in Kaumarbharitya / Balroga. Neither the petitioner nor the third respondent, have advanced arguments about their qualifications in Balroga. So let me keep that aspect aside. The essential aspect is Post Graduate degree in



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Kaumarbhritya. The petitioner has that educational qualification.

The third respondent does not have that educational qualification.

24. Quite apart from all these aspects, one interesting aspect is the experience, according to the third respondent, which he gained while working in PAMC college. The documents relating to that have not been voluntarily produced by the third respondent though he had asserted that particular fact. Having asserted that particular fact, there was a burden on the third respondent to produce documents relating to his earlier experience.

25. On the other hand, the petitioner had got the said documents after obtaining them through an application filed under the Right to Information Act. These documents give a very interesting reading. Right through it has been stated that the third respondent was qualified only in Kayachikitsa subject. He was Lecturer, Professor and Assistant Professor but whatever those posts are, they were only with respect to Kayachikitsa subject.

26. Learned Government Pleader appearing on behalf of respondent nos. 1 and 2 and the learned counsel appearing on behalf of the third respondent had stated that recognizing the



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teaching experience in the second respondent college, CCIM had given a unique code to the third respondent as having had the requisite teaching experience in Kaumarbhritya subject.

27. But the documents reveal that he was given the teaching code by CCIM only for Kayachikitsa subject when he was working in PAMC college. Let me take as an illustration, a letter addressed dated 17.12.2015 to the Principal, PAMC College. It shows the description of the faculty and the allotment of teachers' code. It had been very clearly stated that CCIM had not independently examined the expertise of the teachers but went along with the information given by the college. On information given by the college, in that particular letter, they had given a code of AYUKC0749 to the third respondent which is relatable to Associate Professor in Kayachikitsa.

27.1 A perusal of the other faculty also shows that, in that very particular college and in that very particular document, there is also reference to an Associate Professor and to Assistant Professor, Dr.Rajesh P N and Dr.Arun B, in Kaumarbhritya and they had been given the code AYUKB0426 and AYUKB0427 respectively. This belies the statement of the learned counsel for



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the third respondent that the third respondent was actually teaching Kaumarbharitya subject in that particular college. There was as Associate Professor and an Assistant Professor in place and the third respondent was not equated with them but recognized only as Associate Professor in Kayachikitsa and not in Kaumarbharitya.

27.2 It is also seen that the third respondent had gained that particular recognition by CCIM only on information provided by the second respondent and not by any independent examination by CCIM. The third respondent obtained the code in Kaumarbharitya, while functioning as Associate Professor in the second respondent college. This particular document is a self serving document.

27.3 The College gives the information. The CCIM takes it and then they allot the code. The code, therefore, does not have any sanctity. While allotting the code, it had been very specifically stated by CCIM that they *"will not be held responsible in any case, if any information in respect of the teacher was found to be incorrect / changed"*. It is also stated that *'code number to the eligible teachers are issued on the basis of the information*



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provided by the college'. Thus, it is seen that the allotment of code would not accrue to the advantage of the third respondent herein.

28. A one very disturbing factor which has been pointed out by the learned Senior Counsel appearing on behalf of the petitioner herein, and I fervently hope that it had not been done deliberately, is that a document had been filed with malafide intention before this Court.

28.1 That particular aspect is the production of a certificate, which appears to have played upon the minds of the respondent nos. 1 and 2 while selecting the third respondent, and overriding the educational qualification of the petitioner herein. This is a certificate produced by the third respondent.

28.2 In that particular certificate, which was issued by PAMC college and which can be termed as experience or relieving certificate dated 17.04.2015 in certificate no. ESTT/1211/07/PAMC, the third respondent had produced it with an additional sentence. *'He had teaching experience in both Kayachikitsa and in Kaumarbhritya subjects from 1st May, 2006 to 17th April, 2015'*. This certificate had been signed by the Principal



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of that college. There is also the seal of the said college.

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28.3 While seeking information through the RTI Act, this particular certificate was also forwarded to the petitioner herein along with other certificates relating to the third respondent while he was working in various capacities in the aforementioned PAMC college.

28.4 The certificate now produced on behalf of the petitioner, does not have that particular line extracted above. It is also dated 17.04.2015. It has the same number ESTT/1211/07/PAMC and it had also been signed by the Principal and also had the college seal. It had also been attested as true copy by the Principal. That attestation not probably be at the time of issuing the certificate for the purposes of RTI Act. It is thus evident that the certificate varies from what is available in the records of PAMC College so far as the third respondent is concerned.

28.5 This fact has been explained by learned counsel for the third respondent by stating that two separate certificates were issued, one relating to experience as Associate Professor and the



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other recognizing his services as teaching experience, but in both the subjects. But if that explanation is to be accepted, then two separate certificates one as Head of Department of Kayachikitsa and the other as Medical Superintendent or Faculty in-charge of Kaumarbhritya had been issued, then only one of the two certificates produced before the court can be a true certificate. The other should have been prepared for the purpose of the case.

28.6 Facts stare in the face of the third respondent. Document has been produced by the petitioner and no reply affidavit had been filed explaining as to how another certificate was produced by the third respondent before this Court. On this very ground itself, this Court can come to a very definite conclusion that respondent nos. 1 and 2 have joined hands with the third respondent to the disadvantage of the petitioner and had taken steps to ensure that the third respondent was retained inspite of the fact that he did not have requisite educational qualification.

29. I wonder as to how alleged teaching experience based on a certificate which apparently had been fraudulently produced, could over ride a basic educational qualification. To repeat, it is



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neither denied nor disputed that the petitioner has the requisite educational qualification. The fraud played on the Court, can never be condoned. It vitiates every solemn proceedings. Courts have come down heavily when parties to the litigation have indulged in producing documents or try to influence the mind of either one of the parties or of the Court by producing documents which are on the face of it not genuine. Let me be put it very mildly in that particular manner. This certificate stares in the face of the third respondent and negates all contentions of respondent nos. 1 and 2 in justifying the selection of the third respondent. However, their justifications do not with stand scrutiny of the Court. It is clear that they were swung by his presence as contract professor and had taken a decision to appoint him. This act cannot be condoned, and his selection should be re-examined by this Court.

30. The Court necessarily has to issue a certiorari to strike down the selection of the third respondent with immediate effect. The petitioner on the other hand has requisite qualifications, but there are no reasons given as to why the petitioner was not selected. There are no reasons given as to why the third respondent was selected.



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31. I would allow the writ petition and direct the respondents nos. 1 and 2 to immediately withdraw the selection of the third respondent and appoint the petitioner herein as Associate Professor in Kaumarbharitya.

32. This is after all for the benefit of the students, who study that particular subject. They require a Professor, who knows the subject, who has taught the subject and who has experience with the subject and the students will have confidence that their teacher had studied that particular course and, therefore was eligible to teach them.

33. Learned counsel for the third respondent submitted that other colleges have Lecturers who are qualified in Kayachikitsa. This statement has to be scrutinised. That fact does not mean that the quality of education should be watered down and unqualified persons can be appointed. If so done, there is no justification at all. If the respondent nos. 1 and 2 have any intention of providing quality education then they must appoint a Professor who is qualified in that particular subject and who had studied in that particular subject. There cannot be any compromise on quality, so far as imparting education is concerned.



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34. The respondent nos. 1 and 2 have to balance the interest of the students also while selecting the third respondent, who does not have the requisite qualifications. He no longer has the right to continue in the post of Associate Professor in Kaumarbharitya Department in the second respondent college. A direction is issued to forthwith remove him from that particular post and appoint the petitioner herein with all attendant benefits, taking into consideration the date of appointment of the third respondent in that particular post, for which entire period, he was not eligible and he did not deserve to be in such post. The petitioner is entitled for all attendant benefits. The respondent nos. 1 and 2 may also take a decision to recover the salary paid to the third respondent, since he was selected without any qualifications at all.

34. Writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

01.08.2023

Index:Yes
Neutral Citation:Yes
ssm



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To

1. The Chief Secretary,
Perunthalaivar Kamaraj Medical College Society, Puducherry,
No.225, Vazhuduvar Road, Kathirkamam,
Thattanchavadi, Pondicherry – 605 009.
2. The Principal
Rajiv Gandhi Ayurveda Medical College,
(A unit of Perunthalaivar Kamaraj Medical
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Post Box No.26, Mahe – 673310
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C.V.KARTHIKEYAN,J.

ssm

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