



W.P.No.1044 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.1044 of 2021

Dr.Shenaz Begum Modi

... Petitioner

Vs.

1. The Principal Secretary
Health and Family Welfare Department,
Government of Tamil nadu,
Secretariat, Chennai 600 009.

2. The Director of Indian Medicine
& Homeopathy Department,
Arumbakkam,
Chennai 600 106

3. The Principal,
Government Unani Medical College,
Arumbakkam, Chennai 600 106

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to issue promotion and instate the petitioner from the post of Lecturer (Grade II Unani) towards the posting of Lecturer (Unani) as stated in G.O (2S) No.122 dated 07.12.2015 and G.O (2D) No.63 dated 11.05.2020.



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For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel for
Mrs.C.Uma

For Respondents : Mr.T.Arunkumar
Additional Government Pleader

ORDER

The Petitioner was appointed as an Assistant Medical Officer (Unani) in the District Siddha Hospital, Nagapattinam in the year 2008. She was transferred and posted to Government Unani Medical College, Chennai during February, 2009. Her services are regularized in the year 2005. Her probation also declared subsequently in the year 2016. The Petitioner had completed her post graduation course in MD Unani and passed in the year 2022.

2. In the year 2018-19, the government has approved the regular panel for the post of Lecturer [Unani] to be filled up by promotion from the post of Lecturer, Grade - II Unani. The names of 8 Lecturer Grade - II (Unani) in the order of seniority is sent in G.O. (2D) No.63, Health and Family Welfare Department, dated 11.05.2020. The petitioner stands at Serial No.7. However the government has promoted only six



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candidates in Sl.No.1 to 6 as Lecturer (Unani) vide G.O. No.762, Health and Family Welfare Department dated 01.09.2020, by wrongly estimating the vacancies in the post of Lecturer (Unani) as 6.

3. Even though there were 9 vacancies in the post of Lecturer (Unani) and the panel only comprised of 8 candidates and the Petitioner in SL.No.7 and one Dr.K.Salecha Umrana in Sl.No.8 also were omitted to be promoted as Lecturers. Hence this writ petition is filed seeking direction to the respondents to issue an order of promotion to the petitioner from the post of Lecturer, Grade - II Unani to Lecturer[Unani] as stated in G.O. (2D) No.122, Health and Family Welfare Department, dated 07.12.2019 and G.O. (2D) No.63, Health and Family Welfare Department, dated 11.05.2020 with effect from the date when the first six persons have got promoted i.e, 01.09.2020.

4. Mrs. Nalini Chidambaram, learned Senior Counsel for Mrs.C.Uma for the petitioner submitted that though there were 9 vacancies in the post of Lecturer [Unani] and the panel comprised only 8



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candidates, but 6 candidates have been promoted as Lecturers by leaving the petitioner and the other one.

5. It is further submitted that as per the information furnished to the petitioner vide Right To Information Act, about the vacancy position in the post Lecturer [Unani] as on 21.10.2020, it is learnt that two posts of Lecturers approved by G.O.(Ms) No.141, Health and Family Welfare (IM1-1) Department, dated 21.04.2016 with the name of the post Lecturer in Niswan Wa Qabalat (Gynecology & Obstetrics), Lecturer in Amraze Jild Wa Tazeeiyat (Skin and Cosmetology) have been amended as Lecturer [Unani]. To this effect, the Government Order issued in G.O.(Ms) No.06, Health and Family Welfare (IM2(1)) Department, dated 06.01.2020.

6. It is further claimed by the petitioner that two more lecturer posts have been sanctioned vide G.O.(Ms) No.660, Health and Family Welfare (IM1-1) Department, dated 19.06.1992 under redeployment condition and the said posts were permitted to be filled up



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without the condition of redeployment as a special case as per Government Letter No.23152/IM-II/2/98-9, dated 07.09.1993.

7. According to the petitioner, if all these posts are included the post available in the Lecturer would have been more than sufficient to accommodate the petitioner and the other one who stands in the 8th position in the promotion panel. The information was furnished to the petitioner vide letter reference No. 1128/E1/1/2016 dated 18.05.2020 is extracted as hereunder:

Sl.No.	Name of the Post	No. of Posts sanctioned	No. of posts filled up	No. of posts vacant
1	Lecturer (Unani)	10	1	9

8. Even though the petitioner has claimed totally ten posts which is inclusive of two posts sanctioned vide G.O.(Ms) No.141, Health and Family Welfare (IM1-1) Department, dated 21.04.2016 in which the name of the post was amended subsequently as Lecturer [Unani] vide G.O.(Ms) No.06, Health and Family Welfare (IM2(1)) Department, dated 06.01.2020 and two more vacancies available under



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redployment [G.O.(Ms) No.660, Health and Family Welfare (IM1-1) Department, dated 19.06.1992.], which were later allowed as sanctioned posts vide a Government Letter No.23152/IM-II/2/93-9, dated 07.09.1993, the government claims that the total vacancies were only 6 and it was so approved by the Government vide G.O.(D) No.86, Health and Family Welfare (IM1-1) Department, dated 11.01.2019.

9. Since there is fundamental contradiction between the contention of the petitioner and the respondents with regard to the number of vacancies available as on 2018-2019 in the post of Lecturer [Unanai], first the said point has to be clarified first. If there were more than six vacancies at the relevant point of time, no doubt the petitioner who was in the promotion panel ought to have been given with promotion. If the available posts was only 6 in the cadre of Lecturer [Unanai], during 2018-2019, the petitioner has got no other way except to wait until the next vacancy arises in the said cadre (Lecturer [Unani]).

10. From the submission of Mrs. Nalini Chidambaram, learned



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Senior Counsel for the petitioner, it is learnt that those 6 persons who had already been promoted as Lecturer [Unani] have further promoted as Readers. Even in that case the positions occupied by those individuals who were senior to the petitioner and who said to have recently promoted to Readers, will be available to the benefit of the petitioner.

11. Mr.T.Arunkumar, learned Additional Government Pleader appearing on behalf of respondents submitted that as per current instructions given to him the total number of sanctioned post in Lecturer is 10. Out of which, so far six posts have been filled up and there are four posts remaining. At the time, when the 2018-2019 panel was prepared, the additional posts available by virtue of GO Ms.No.141, Health and Family Welfare (IM1-1) Department 21.04.2016 and G.O.Ms.No.660, Health and Family Welfare (IM1-1) Department, dated 19.06.1992, were not considered and hence, the petitioner and three other persons were not accommodated in the promotion panel.

12. So what is made clear is that there were vacancies available



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even during the time when the petitioner's seniors were promoted and the promotion panel had been prepared only by including all the available vacancies. In that case, the petitioner ought to have got her promotion then itself. The failure on the part of the authorities for not according promotion to the remaining four posts should not affect the interest of the individuals.

13. Though the petitioner was consistently claiming that there are vacancies in Lecturer – Unani, the petitioner has not been considered for the same by the respondents. Infact, all those eight persons who have been recommended as early as on 11.05.2020 by virtue of GO 2D No.63, Health and Family Welfare Department, could have been promoted by giving them the seniority for the year 2018-2019 itself. The 1st respondent has restricted the promotion only for six candidates for the reason best known to him. So it cannot be said that the petitioner and the other Doctor K.Salecha Umrana, should wait until the preparation of the next promotion panel. Since the promotions are long due and it has been omitted to be given by the authorities concerned without any acceptable



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reasons, the writ petition deserves to be allowed.

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14. In the result, this writ petition is allowed and there shall be a direction to the respondents 1 and 2 to issue orders of promotion to the petitioner and other three eligible persons for whom the vacancies were available in the year 2018-2019 itself by giving effect from 01.09.2020 on which date the promotion for other six persons were given by allowing notional increment from 01.09.2020 till the date when the petitioner assumes charge in the promoted cadre and with monetary benefit from the date of her joining in the promoted post with all consequential attendant benefits. No costs.

30.11.2023

Index : Yes

Internet : Yes/No

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R.N.MANJULA, J.

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To

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Health and Family Welfare Department,
Government of Tamil nadu,
Secretariat, Chennai 600 009.
2. The Director of Indian Medicine
& Homeopathy Department,
Arumbakkam,
Chennai 600 106
3. The Principal,
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