



W.P(MD)No.7427 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7427 of 2023

and

W.M.P.(MD)No.6964 of 2023

T.M.Senthiasari

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.

2.The Director / Commissioner,
Directorate of Indian Medicine and Homeopathy,
Chennai-600 106.

3.The Principal,
Government Ayurvedha Medical College and Hospital,
Kottar, Nagercoil,
Kanyakumari District.

... 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 order impugned passed by the first respondent and quash the same as illegal and devoid of merits and consequently, direct the respondents to confirm and regularize the petitioner in the post of reader in the Department of Kaumarabhrtya in the third respondent's college by considering her lengthy



W.P(MD)No.7427 of 2023

service in the said post having been appointed pursuant to the proceedings dated 30.12.2014 under Reference No.2815/E/2014 on the file of the third respondent with all monetary, attendant and consequential benefits as from the date of her appointment namely 30.12.2014 forthwith.

For Petitioner : Mr.J.Sankara Pandian

For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner was appointed as Assistant Medical Officer (Ayurveda) in the Government Primary Health Centre at Muthur, Erode District. She joined duty on 05.06.2008. She was regularised in the said post subsequently. When the Government established the third respondent medical college, the petitioner was sent on deputation to the said college as a teaching faculty. Pursuant to the direction given by the Madras High Court in W.P.No. 26668 of 2011, dated 23.11.2021, the petitioner was redesignated and appointed as Lecturer Grade-II in the third respondent college vide G.O. (Ms)No.12, dated 18.03.2013. The petitioner has been officiating as reader in the said college since 2014. The petitioner filed W.P.(MD)No.10308 of 2020 for confirming and regularising her in the post of reader by considering her



W.P(MD)No.7427 of 2023

representation dated 30.12.2014. The writ petition was disposed of on 28.08.2020 in the following terms:-

“13.Considering the above, this Court is inclined to dispose of this writ petition with the following direction:

The respondents, especially, the respondents 1 & 2 are hereby directed to consider the request by way of representation made by the petitioner dated 20.03.2020 and pass orders thereon, by taking into account the aforesaid discussion, especially in the context of the educational qualification and the teaching experience gained by the petitioner to hold the post of Reader and accordingly, pass necessary orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order”

Since the said direction has not been complied with, the petitioner filed Cont.P. (MD)No.1765 of 2022. When the matter was taken up for hearing, the copy of the impugned order rejecting the petitioner's request was produced. There upon the contempt petition came to be closed on 20.01.2003. Challenging the rejection order, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for. He drew my attention to G.O.(D).No.1135, Health and Family Welfare (IM I-1) Department, dated 20.10.2022 issued in favour of one Dr.J.Clarence Davy. The learned counsel would point out that the said Clarence



W.P(MD)No.7427 of 2023

Davy was directed to be regularly appointed as Principal by relaxing the relevant statutory rules. The case of the petitioner is that she is also similarly placed. It is strongly contended that when the Government chose to relax the rules in favour of certain individuals, denying similar benefit to the petitioner herein would amount to act of discrimination. The learned counsel would contend that the conduct of the respondents in rejecting the petitioner's request is in breach of Article 14 of the Constitution of India.

4. I am not persuaded by the said submission of the learned counsel appearing for the petitioner. As rightly pointed out by the learned Special Government Pleader, the posts in question are covered by Adhoc Rules laid down in G.O.Ms.No.125, Health and Family Welfare (IMI-1), dated 10.04.2018. The said Adhoc Rules pertain to as many as five posts. They are as follows:-

- (1) Principal
- (2) Professor
- (3) Reader
- (4) Lecturer
- (5) Lecturer Grade-II



W.P(MD)No.7427 of 2023

5. It is clear that the post of Lecturer is different from Lecturer Grade-II.

The post of reader has to be filled up by promotion from among the holders of the post of lecturer in the concerned speciality and only if no qualified person is available, it has to be filled up by direct recruitment. When the petitioner has not been so far regularly appointed as Lecturer, she cannot aspire to be regularised in the post of reader. That would run contrary to the service rules. This Court will not be justified in issuing a writ of mandamus. Of-course, in the case of Dr.J.Clarence Davy and few others, Rule 3 of Adhoc Rules had been relaxed. Merely because, relaxation was made in favour of Dr.J.Clarence Davy, the petitioner will not be justified in demanding or insisting that similar relaxation should be given to her also. No judgment can be anchored on concession given in favour of another individual. It is for the petitioner to persuade the authorities to grant similar relaxation. At this stage, the learned Special Government Pleader would submit that proposal for granting regular promotion to the post of Lecturer is presently pending. The petitioner can very well continue in her present position and the Government can pass order on the said proposal.

6. The first respondent is directed to consider promoting the petitioner as Lecturer. Once the said process is completed, the Government can very well



W.P(MD)No.7427 of 2023

consider the case of the petitioner for regularizing the petitioner in the post of reader. All that I am holding is that the statutory scheme set out in the Adhoc Rules must be borne in mind and scrupulously adhered to. I refrain from granting any relaxation in the case. I hope that the first respondent would pass appropriate orders on the pending proposal pertaining to the petitioner in the light of the observation set out in the order dated 28.08.2020 made in W.P. (MD)No.10308 of 2020. Exercise of granting regular promotion to the petitioner for the post of Lecturer will be completed within a period of eight weeks from the date of receipt of a copy of this order. It is open to the first respondent to grant the said benefit retrospectively so that her case for regularization in the post of reader is not affected.

7. With this direction and observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.7427 of 2023

To

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Health and Family Welfare Department,
Fort St.George, Chennai-600 009.
- 2.The Director / Commissioner,
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- 3.The Principal,
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W.P(MD)No.7427 of 2023

G.R.SWAMINATHAN, J.

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W.P(MD)No.7427 of 2023

03.04.2023