



W.P.(MD).No.889 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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Ramesh

... Petitioner

Vs.

1.The Principal Secretary to the Government,
Department of Health and Family Welfare,
Secretariat,
Chennai.

2.The Principal Secretary to Government,
Personal and Administrative Reforms Department,
Secretariat,
Chennai.

3.The Director of Medical Education,
Kilpauk, Chennai – 10.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to frame scheme for promotions to the Scientific Officer's post in Forensic Medicine Department based on our Educational Qualification and in the light of the judgment by the Hon'ble Apex Court in State of Tripura Vs. K.K.Roy 2004(9) SCC 65 within time frame fixed by this Court.



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For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General.
Assisted by,
Mr.R.Suresh Kumar,
Additional Government Pleader.

ORDER

This Writ Petition is filed for Mandamus directing the respondents to frame scheme for promotions to the Scientific Officer's post in Forensic Medicine Department based on the Educational Qualification and in the light of the judgment by the Hon'ble Apex Court in State of Tripura Vs. K.K.Roy 2004(9) SCC 65.

2. The petitioner is working as Scientific Officer in the Department of Forensic Medicine at Government Rajaji Medical College, Madurai, which comes under Medical Education Department. The said post was created through Government vide G.O.Ms.No.2694 dated 01.11.1973. Subsequently, the Government has increased 22 Medical Colleges, but the respondents have not created the scientific officers post to each Medical Colleges. Now 4



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persons alone are working all over the State. Approximately, 270 Autopsies/ Post-mortems are being conducted in Madurai Medical College per month. Approximately, per year 50,000 autopsies are being conducted in the State. In spite of so much volume of work, the respondents have not created the post. Moreover, the said post is not having any promotional avenue. The petitioner has submitted representation to the respondents to create promotional avenue. The claim of the petitioner is that in the Forensic Department, the same Scientific Officer post is available. In the Forensic Science Department, the hierarchy is as under:

- (i) Scientific Assistant Grade – II
- (ii) Scientific Assistant Grade – I
- (iii) Scientific Officer
- (iv) Assistant Director
- (v) Deputy Director
- (vi) Additional Director
- (vii) Director

Such promotional avenue is not available in the present Medical Education Department. For the same issue, a Writ Petition was filed before the Division Bench as Public Interest Litigation. The Division Bench has issued series of directions to the respondent Government. One such direction is to create such post which is extracted hereunder:



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(xii) The Government should appoint Scientific Officers in all the Government Medical College Hospitals and in every District headquarters. The qualification, duties and responsibilities for the post of Scientific Officers shall be defined by the Government with the assistance of a Committee of Experts constituted by the Government consisting of experts in Forensic Science. Criminology and medical examination and in other fields as may be suggested by the Forensic Department. The State Government is directed to constitute a Committee or Experts within six months and the appointment of required number of Scientific Officers should be made within one year after the qualifications and duties and responsibilities of the Scientific Officer are defined by the Committee of Experts.

Inspite of such direction, the respondents have not created such post. Against the order of the Division Bench, a Contempt Petition was also filed and the same is pending. Interestingly the respondents are taking steps to dispense with the post and stop recruiting any person. However, the petitioner is claiming promotion. The learned counsel appearing for the petitioner relied on the judgement rendered by the Hon'ble Supreme Court, wherein it is stated as under:

6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional



Where it has been stated under Article 14 and 16 of the Constitution of India, any person is working as the Government employee has right to claim promotion and constitutional obligation adumbrated in Articles 14 and 16 of the Constitution of India. Therefore, the petitioner is claiming to create the promotion post for the Scientific Officer.



4. After hearing the rival submissions, this Court is of the considered opinion that a positive direction cannot be issued to the Government to create any promotion post to the Scientific Officer. The only thing that can be considered is to direct the respondents to consider the claim of the petitioner and pass orders. The alternative plea that was made by the petitioner is that atleast the present Department, where the petitioner is functioning, can be merged with the Forensic Department, so that, the petitioner would get promotional opportunities in the Forensic Department. Therefore, the respondents are directed to consider the alternative claim of the petitioner. The said exercise shall be completed within a period of six (6) months from the date of receipt of a copy of this order.



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5. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

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

To

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S.SRIMATHY, J.

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