



W.P.(MD)No.4656 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 4656 of 2016

Dr.C.Roshy Joseph

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai.
2. The Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam,
Chennai.
3. The Principal,
Government Ayurveda Medical College,
Kottar, Nagercoil,
Kaniyakumari District.
4. Dr. Jayakrishnan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to



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the impugned G.O.(D)No.303 Health & Family Welfare (IM-1(1) Department, dated 19.02.2016 passed by the 1st respondent and the consequential order of appointment issued by the 2nd respondent vide his impugned proceedings in Ref.No. 9894/E1/1/2010, dated 25.02.2016 and quash the same as illegal and consequently to direct respondents to fill up the vacancy in the cadre of Reader, Rasashastra and Bhaishajya Kalpana by posting the petitioner as per G.O.Ms.No. 10 Health & Family welfare Department dated 23.01.2006.

For Petitioner : Mr.M.Ajmalkhan, Senior Counsel, for
M/s.Mohammed Imran

For R-1 to R-3 : Mr.Veera Kathiravan,
Additional Advocate General, assisted by
Mr.R.Suresh Kumar,
Additional Government Pleader

For R-4 : M/s.R.Vidhya

ORDER

This writ petition is filed to quash the impugned order, dated G.O. (D)No.303 Health & Family Welfare (IM-1(1) Department, dated 19.02.2016 and the consequential appointment dated 25.02.2016 issued by the 2nd respondent, with a consequential direction to the respondents to fill up the vacancy in the cadre of Reader as per G.O.Ms.No.10 Health and Family Welfare Department, dated 23.01.2006.



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2. Heard Mr.M.Ajmal Khan, the Learned Senior Counsel, for M/s.Mohammed Imran, appearing for the petitioner and Mr.Veera Kathiravan, the Learned Additional Advocate General, assisted by Mr.R.Suresh Kumar, the Learned Additional Government Pleader appearing for the respondents 1 to 3, M/s.R.V.Vidha, the Learned Counsel appearing for the 4th respondent and perused the material documents available on record.

3. The petitioner acquired the degree of Bachelor of Ayurveda Medicine and Surgery (Ayurvedacharya) in the year 2000 and duly registered in Tamil Nadu Board of Indian Medicine. Thereafter completed Post Graduate Degree in (M.D. Ayurveda) in the year 2006, then completed Ph.D. in the subject of Bhaishiya Kalpana in the year 2011 and the same was awarded in the year 2012. The petitioner is having teaching experience of more than 8 years in the said subject and fully eligible to be appointed in the post of Reader / Associate Professor. The 3rd respondent College was started in the year 2011. The 2nd respondent, vide proceedings, dated 22.12.2011 appointed the petitioner as Lecturer Grade II (Ayurveda) in Indian Medicine and Homeopathy Department under the Tamil Nadu State and Subordinate Rules in the regular time scale of



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pay at Government Ayurveda Medical College, Nagercoil, as per G.O.(D)No. 1367 Health and Family Welfare (IMI-2) Department, dated 20.12.2011, pending approval of Adhoc Rules for the post by the Government. The petitioner was working as Lecturer in the 3rd respondent College from 26.12.2011 and she has more than 18 years of experience. Though, the petitioner's appointment was made under Rule 10(1)(a) of the Tamil Nadu State and Subordinate Rules, but it was intended to be made permanently. It is only on account of pending approval of Adhoc Rules, the petitioner's appointment is under Rule 10(1)(a) of the State Subordinate Service Rules.

4. The government had issued orders for the establishment of Government Ayurveda Medical College and Hospital at Nagercoil at Kanyakumari District in G.O.Ms.No.10 Health & Family Welfare Department dated 23.01.2006 and also sanctioned a total number of 99 posts for the total period of four years, including 16 posts of Reader / Tutor. The contention of the petitioner is that the G.O.Ms.No.10 contemplates that since there are no qualified persons, initially Tutors will have to be appointed and they will be promoted as Lecturer / Reader as and when they qualify for the said post. The Commissioner



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is mandated to send proposal at the appropriate stage for upgradation of the posts for the Bachelors of Ayurveda Medicine and Surgery Course started in this college. The petitioner would be eligible for promotion as Reader, since she is in possession of necessary educational qualification as well as service qualification as per G.O.Ms.No.10 and the petitioner with the fond hope was continuing in the employment.

5. In the meanwhile, the Government had issued a notification dated 26.09.2010 inviting application for the three posts of professor and eight posts of Reader and in response to the same six candidates applied. However, most of the candidates who applied had already crossed the age of 35 as on 01.07.2010 and the Government has intended to grant age relaxation as well and accordingly issued letter dated 03.02.2010 relaxing the age as 45. Hence, the Government has issued another notification, dated 14.08.2011 in respect of vacancies which are already notified in notification dated 26.09.2010. While that being so, the Government has issued another notification, dated 11.09.2010 for the very same notified vacancies by changing the qualification as per the Central Council of Indian Medicine Norms. In response to the said notification, four applications



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were submitted. All the above three notifications were issued in respect of 11 vacancies i.e., 8 posts of Reader and 3 posts of Professor. But the petitioner was not considered for the said post. Hence, the petitioner prayed to fill up the post based on G.O.Ms.No.10 Health & Family welfare Department dated 23.01.2006.

6. The Learned Additional Advocate General submitted that the respondents did not consider the petitioner since there was subsequent changes in the qualification which is prescribed by the Central Council of Indian Medicine and the petitioner is not possessing the said qualification and hence the petitioner is not eligible to be appointed. But the petitioner refuted the claim of the respondent and submitted that the respondents cannot change the qualification in the midway. Had the respondents filled up the post based on first notification dated 26.09.2010, when the eligible candidates are available at the time of notification, the petitioner would have been appointed.

7. It is seen that the Government has issued G.O.Ms.No.125 Health and Family Welfare (IMI-1) dated 10.04.2018, wherein the Adhoc Rules relating to temporary posts in Government Ayurveda Medical College and Hospital in



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Tamil Nadu Medical Service was framed. Admittedly the said Adhoc Rules was framed pending writ petition. The contention of the respondents is that since the petitioner's appointment is only on 26.12.2011, the petitioner cannot claim right over the said post. Especially after framing of the rules, any appointment to any post will be as per the said Rules. Therefore, the petitioner is not entitled to any relief and prayed to dismiss the writ petition. The contention of the petitioner is that, if the plea of the respondents is accepted, then the 4th respondent who was also appointed in the same year i.e. 2011, which is well before framing of the Adhoc Rules is not entitled to appointment and therefore, the said appointment should also be considered as 10(a)(i) appointment under the Tamil Nadu State and Subordinate Rules. But the respondents have refuted the said contention and submitted that based on the qualification prescribed by the Central Council of Indian Medicine, the petitioner cannot have any grievance.

8. By taking all these facts into consideration, this Court is not able to accept the contention of the respondents. When the Adhoc Rules are framed on 10.04.2018, any appointment prior to the same ought to be considered as 10(a)(i) appointment under the Tamil Nadu State and Subordinate Rules. The



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petitioner as well as the 4th respondent are on the same ground and they ought to be considered as 10(a)(i) appointees. In such circumstances, the 4th respondent appointment based on the notification and the qualification prescribed by the Central Council of Indian Medicine will not make the appointment free from the clutches of 10(a)(i) and hence the 4th respondent cannot have merit over the petitioner. Either the respondents should treat all the 10(a)(i) appointees equal or should go for fresh recruitment under Adhoc Rules. Hence, this Court is inclined to quash the order issued to the 4th respondent.

9. It is pertinent to mention that the 10(a)(i) employees are in the service for more than 10 years and they would be in their mid service. If they are not regularized, at this point of time they could neither be in service nor be in their private practice. When the Government intended to open the new College, the petitioner and the other similarly placed persons with a fond hope that their service would be regularized, accepted the 10(a)(i) appointment, hence the candidates' right ought to be protected.



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10. Therefore, this Court is passing the following orders:

a.The impugned order, dated 19.02.2016 and the consequential appointment, dated 25.02.2016 are hereby quashed.

b.Either the Government may consider to regularize all the exiting 10(a)(i) appointees by conducting special tests so that all the eligible candidates' rights are protected. For the remaining available vacancies separate notification may be issued under the Adhoc Rules to fill up the posts.

c.Alternatively, the government shall conduct fresh recruitment based on Adhoc Rules to fill up all the posts including the posts occupying by the 10((a)(i) employees.

d.The respondents shall carry out the above directions, within a period of 12 weeks from the date of receipt of a copy of the order.



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e.Till such time, all the employees shall continue in their same post as 10(a)(i) employees including the 4th respondent.

10. With the above terms, this Writ Petition is allowed. No Costs.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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**ORDER made in
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