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W.A.No.615 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.615 of 2022

S.Suganthi

... Appellant

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health & Family Welfare Department,
Chennai-600 009.

2. The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai-600 010.

3. The Director of Medical and
Rural Health Services,
Teynampet, Chennai-600 006.

4. The Dean/Principal,
Government Stanley Medical College Hospital,
Chennai-600 001.

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.No. 18327 of 2016 dated 12.01.2022 and allow the writ appeal.



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For Appellant : Mrs.N.Kavitha Rameshwar for
Mr.V.Karnan

For Respondents : Mr.E.Sundaram, Government Advocate
(for R1 to R4)

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The writ appeal has been instituted challenging the writ order passed in W.P.No. 18327 of 2016 dated 12.01.2022.

2. The writ petitioner is the appellant before us. The appellant was initially appointed as Sanitary Worker which is a basic service, in Government Stanley Hospital at Chennai.

3. The learned counsel for the appellant would submit that pursuant to the circular dated 22.07.2015 issued by the Dean, Government Stanley Medical College Hospital, the appellant submitted an application for appointment to the post of ECG Technician by way of transfer of service. The appellant being fully qualified to hold the post of ECG Technician, was selected and appointed to the said post by the Dean, Government



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Stanley Medical College Hospital. Subsequently, an order of reversion was passed on the ground that the appointment of the appellant was not in accordance with the Service Rules in force. The reversion order came to be challenged by way of writ proceedings and the learned Single Judge rejected the petition and therefore, the present writ appeal is filed.

4. The contention of the appellant is that she is fully qualified and there is no impediment for appointing her to the post of ECG Technician. She possesses all the requisite qualification and had undergone training for a period of one year at the Government Stanley Medical College Hospital. Thus, her appointment is in accordance with the Service Rules in force and hence, the writ appeal is to be allowed.

5. The learned Government Advocate, appearing on behalf of the respondent would oppose by stating that the circular issued by the Dean, Government Stanley Medical College Hospital itself is irregular and in violation of the Service Rules. The appellant may be eligible for appointment to the post of ECG Technician but her case must be considered by the 3rd method of appointment as contemplated under the Service Rules.



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6. The method of appointment and educational qualifications prescribed in the G.O.Ms.No.1176 Health and Family Welfare Department dated 17.06.1986, for the post of ECG Technician reads as under:

“Mode of appointment : By Direct recruitment; or By transfer from any other class or category; or by recruitment by transfer from any other service.

Educational qualification : 1). By transfer from any other class or category or by recruitment by transfer from any other service.

(i). Must have completed S.S.L.C or a pass in Xth Standard under new regulations.

(ii). Must have undergone training in Government Institution or in a private institution recognized by the Government of Tamil Nadu or Government of India in the subject of operating and maintaining ECG apparatus for a period of not less than six months and should possess a certificate of proficiency in ECG Technique.

2). By direct recruitment:

(i). Must have passed P.U.C., under old regulations

(or)

(ii). A pass in plus 2 course with eligibility for University Course of study

(And)

(iii) Must have undergone training in Government Institution or in a private institution recognized by the Government of Tamil Nadu or Government of India in the subject of operating and maintaining ECG Apparatus for a period of not less than six months and should possess a certificate of proficiency in ECG Technique.”



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7. Further it is stated that the appellant was eligible for appointment to the post of ECG Technician only by the third method of appointment (i.e.) *"By recruitment by transfer from any other service"*. Only after exhausting the first two modes of appointment viz.(i).by direct recruitment and (ii) by transfer from any other class or category, the application of the appellant requesting appointment to the post of ECG Technician to be considered. The contents of the circular dated 22.07.2015 with regard to the method of appointment itself is violative of Rules. Without exhausting the first mode of appointment, due to inadvertence the circular has been issued. It is submitted that the circular mentioned supra was totally inconsistent with the rules in force at that time of appointment of the appellant as ECG Technician. By noticing the error committed, the fourth respondent issued order in Ref. No. 10851/E1/2/2015 dated: 10.05.2016, reverting the appellant to her original post of Sweeper, and she has joined duty in the reverted post on 12.05.2016, since the method of appointment followed for appointment in respect of the appellant to the post of ECG Technician is not in accordance with the service rules in force. The appointment of the appellant to the said post is irregular as per the special rules for Tamil Nadu Medical Sub-Ordinate Service at the time of



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appellant/petitioner appointment (As per G.O.Ms.No. 1176/ H & FW Department dated: 17.06.1986). Therefore the order dated 10.05.2016 was issued in strict accordance with the rules and also to set right the error occurred.

8. Relying on the above averment made in the counter affidavit filed by the respondents, the learned Government Advocate would submit that the authorities found that the circular was issued inadvertently and the method of appointment was improper. Thus, an order of reversion was passed and the writ Court has rightly rejected the writ petition.

9. Appointments / promotions are to be made by affording equal opportunity to all the candidates, who all are aspiring to secure appointments or promotions. The Dean, Government Stanley Medical College Hospital is not empowered to issue circular State vide. Only the Government or the Director of Medical Sciences are empowered to issue State vide circulars. There may be similarly qualified persons available in other medical college hospitals and they are deprived of their opportunity to participate in the process of selection for appointment to the post of ECG Technician. Therefore, selection and appointment by a circular



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issued by the Dean, Government Stanley Medical College Hospital is offending the equality clause enshrined under Constitution. Equal opportunity for appointment and promotion, are constitutional mandate. Thus, opportunity should be afforded to all aspiring candidates. Any appointment, violative of basic principles, cannot be sustained.

10. In the present case, the respondents have stated that the first mode of recruitment is by way of direct recruitment and thereafter, recruitment by transfer from any other service and the Dean, Government Stanley Medical College Hospital, opted to appoint the appellant by adopting the 3rd method of appointment which is improper and not in accordance with the Special Rules.

11. Thus, we do not find any reason to interfere with the writ order impugned. Accordingly, the writ appeal stands dismissed. No costs.

(S.M.S.J.,)

(C.K.J.,)

01.08.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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