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W.A.No.2430 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN

AND

THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.2430 of 2023

and

C.M.P. No. 20332 of 2023

Dr.N.Shajil
S/o. K.P.Raman,
Associate Professor
Rajiv Gandhi Ayurveda Medical College
Chalakkara,
New Mahe 673 311

... Appellant

Vs.

1.Perunthalaivar Kamaraj Medical College Society,
Puducherry
represented by the Chief Secretary,
No.225, Vazhudavur Road,
Kathirkamam, Thattanchavadi,
Puducherry 605 009

2.The Principal
Rajiv Gandhi Ayurveda Medical College
(A Unit of Perunthalaivar Kamaraj Medical College Society,
Puducherry)
Post Box No.26
Mahe 673 310.

3.Dr.Shine S. Nair
Lecturer
Raji Gandhi Ayurveda Medical College,
Chalakkara
Mahe 673 311

... Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.08.2023 passed by the learned Judge in WP. No. 13412 of 2016.

For Appellant : Mr.M.R.Thangavel

For Respondents : No appearance (R1)

Mr.Ramaswamy Meyappan (R2)

Mr.Ravikumar Paul, Sr.Advocate
for M/s.Paul and Paul &
J.Hudson Samvel Patners (R3)

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

The challenge made in this writ appeal is to the order passed by the learned Judge in W.P.No.13412 of 2016 on 01.08.2023.

2.The aforesaid writ petition was filed by the third respondent herein to issue a writ of certiorarified mandamus, after calling for the connected records, quashing of the order of selection and appointment of the appellant herein (3rd respondent in the writ petition) *vide* Order No.7-60-RGAMC/2015 dated 04.03.2016 passed by the second respondent insofar as the post of Associate Professor is concerned, as illegal and void, and for consequential direction to the respondents 1 and 2 to appoint the writ petitioner as Associate Professor in



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Kaumarabhritya subject in pursuance of selection through Notification dated 30.12.2015 with all attendant benefits.

3.By the order impugned herein, the learned Judge allowed the writ petition by setting aside the order selecting the appellant to the post in question. Consequently, a direction was given to the respondents 1 and 2 to forthwith remove the appellant from the post of Associate Professor in Kaumarabhritya subject and appoint the writ petitioner with all attendant benefits, taking into consideration the date of appointment of the appellant in that particular post, for which entire period, he was not eligible and he did not deserve to be in such post. It was further observed by the learned Judge that the respondents 1 and 2 may also take a decision to recover the salary paid to the appellant herein, since he was selected without any qualifications at all. Aggrieved by the order so passed by the learned Judge, the appellant is before this court with the present appeal.

4.Before proceeding further, the facts of the case as projected in the writ petition, which are necessary for disposal of this appeal, would run thus:

4.1. The writ petitioner obtained his post graduate degree in Ayurveda



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Vachaspathi (M.D. Ayurveda) in Kaumarabhritya subject from Rajiv Gandhi University of Health Sciences, Karnataka, in the year 2010. Earlier, he obtained his bachelor degree in Ayurvedic medicine and surgery from the same University in 2005 and also registered as a Medical practitioner under the Medical Practitioners Act. After obtaining degree, he worked as Assistant Professor in Mannam Ayurveda Co-operative Medical College, Pandalam, Kerala for a period of three years from June 2010 to March 2013. Thereafter, he worked as a Lecturer in the second respondent college from 05.03.2013 to till date. While so, a notification dated 30.12.2015 came to be issued, inviting applications for filling up of various posts including the category of Associate Professor in Kaumarabhritya subject in the 2nd respondent college. Pursuant to the same, the writ petitioner applied for the said post, along with two other doctors, including the appellant herein. After completion of the selection process, the appellant (3rd respondent in the writ petition), whose post graduate degree is in Kayachikitsa and not in Kaumarabhritya subject, was selected as Associate Professor, by order dated 04.03.2016 passed by the second respondent. Stating that once the eligible candidates are available, the question of selecting another candidate only with an allied subject, would not arise at all and hence, the same is without any justification, the writ petitioner preferred the writ petition bearing no.13412 of 2016 to quash the selection of the appellant



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herein to the post in question and for consequential relief. The learned Judge, after having found that the appellant has not possessed the required educational qualification, and that, the experience certificate produced by him, is a fabricated one, allowed the writ petition as prayed for by the writ petitioner, by order dated 01.08.2023, which is questioned in this appeal, at the instance of the appellant / third respondent in the writ petition.

5.The learned counsel for the appellant submitted that the appellant completed his degree of bachelor of Ayurvedic Medicine and Surgery (Ayurvedcharya) in Tamil Nadu Dr. M.G.R. Medical University on 21.03.1996. Thereafter, he joined as a Medical Officer at M.K.U.K.M. Hospital maintained by Pappiniseri Vishachikitsa Society, Kerala on 22.05.1997. During the said service, he joined Post graduate course at DGM Ayurveda College, Gadag, Karnataka in 2003 and completed the same in 2006. While so, the said hospital started an Ayurveda Medical College in the name and style of “Parasinnaikadavu Ayurveda Medical College” and the appellant joined as Assistant Professor in the said college on 01.05.2006 and was subsequently, promoted as Associate Professor on 01.05.2011 and was further promoted as Head of the Department (Kayachikitsa) as well as Vice Principal of the said college. According to the learned counsel, the appellant also worked as faculty



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in-charge of Kaumarabhritya Department, and had vast experience in teaching in the said subject. Considering the same, he was appointed as Associate Professor (Kaumarabhritya) on contract basis and allotted teaching code by the Central Council of Indian Medicine (CCIM), New Delhi. Thus, the learned counsel submitted that the appellant has required educational qualification and experience for the post in question as per the subject notification issued by the second respondent; and accordingly, he was rightly selected to the post of Associate Professor (Kaumarabhritya) by order dated 04.03.2016. However, the learned Judge erroneously quashed the said selection and appointment of the appellant and allowed the writ petition in favour of the writ petitioner.

6. Assailing the order passed by the learned Judge, the learned counsel for the appellant has raised the following grounds:

(i) That the appellant was appointed as an Associate Professor (Kaumarabhritya) on 04.03.2015, on contract basis by the 2nd respondent even prior to the subject notification dated 30.12.2015 and he was allotted Code No. AYUKB0639 by CCIM, vide Letter No. 26-52/2015-AY-Teacher Code dated 06.07.2015;

(ii) That the experience certificate produced by the appellant and the



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certificate produced by the writ petitioner i.e., communication of PAMC college relating to cessation of employment, are two different letters and hence, the experience certificate produced by the appellant cannot be termed as a fabricated one;

(iii) That the selection committee of the 2nd respondent college had unanimously selected the appellant considering the teaching experience of the appellant and the same had also been approved by the Chairman of the 1st respondent Society;

(iv) That the subject notification dated 30.12.2015 to fill up the various posts including the post of Associate Professor – Kaumarabhritya / Balaroga, requires the candidate to possess M.D. (Ayurveda) in the concerned subject. CCIM also enables, the candidate with a qualification in the allied subject, be considered for appointment. That apart, Kayachikitsa is an allied subject of Balaroga as per the norms of the CCIM. Hence, the appellant cannot be non-suited on the ground of educational qualification and be termed as unqualified.

(v) That many faculties of Kayachikitsa are working as faculty in Kaumarabhritya Department in various Ayurveda Medical colleges all over India and therefore, nothing wrong in appointing the appellant as Associate Professor in Kaumarabhritya Department.

6.1. It is also submitted that without considering all these aspects, the



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learned Judge erred in allowing the writ petition by setting aside the selection of the appellant as Associate Professor and directing the respondents 1 and 2 to remove the appellant and appoint the writ petitioner as Associate Professor with all attendant benefits. Besides this, it was erroneously observed by the learned Judge that the respondents may also take a decision to recover the salary paid to the appellant. Therefore, the learned counsel prayed to set aside the order so passed by the learned Judge and thereby allow this writ appeal.

7. On the other hand, the learned counsel for the second respondent reiterating the arguments placed before the writ court, submitted that the second respondent college was started functioning from 2010 onwards and its staff - strength position is as per the minimum standard requirements of the CCIM norms. In respect of a vacancy arisen to the post of Associate Professor in Kaumarabhritya Department, on 10.02.2014, the second respondent appointed the appellant herein, who had obtained nine years of teaching experience in Kaumarabhritya subject, upon fulfilling the regulations of CCIM, New Delhi. It is also submitted that the appellant is working in the second respondent college on contract basis from 20.04.2015 onwards and is handling the subject Kaumarabhritya effectively; and that, many faculties of Kayachikitsa are working as faculties in Kaumarabhritya Department in various Ayurveda



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Medical Colleges all over India; and hence, the selection committee unanimously selected the appellant as Associate Professor in Kaumarabhritya Department on 26.02.2016, in order to restore the meritorious service of the appellant in the second respondent college and the same was also approved by the Chairman of the first respondent. Thus, according to the learned counsel, there is no illegality in the selection of the appellant to the post in question.

8.The learned senior counsel appearing for the third respondent / writ petitioner submitted that the learned Judge thoroughly examined the facts and circumstances of the case and rightly concluded that the appellant was not qualified for the post in question. It is further contended that though the appellant was already working in the second respondent college on contractual basis even before the subject notification, his educational qualifications and working experience did not meet the required standards. Further, there was discrepancy in the certificate relating to experience produced by him. However, the appellant was selected as Associate Professor in Kaumarabhritya Department and the writ petitioner was kept in the waiting list by the respondent authorities. Hence, the learned Judge set aside the same and directed the respondents 1 and 2 to appoint the writ petitioner to the said post with all attendant benefits, by the order impugned herein, which does not call for any



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interference by this court.

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9.Heard the submissions made on behalf of all the parties and also perused the materials available on record.

10.Concededly, *vide* notification dated 30.12.2015, the second respondent called for applications from the eligible candidates for various posts, including one post of Associate Professor (Kaumarabhritya / Balaroga). As per the said notification, the educational qualification and experience prescribed for the said post, are that

(1)Ayurveda Vachaspati / MD (Ayurveda) in the concerned subject from a recognized University approved by CCIM with a valid registration of State / Central Council

(2)5 years as Sr. Lecturer or Asst. Professor in teaching in the subject or 10 years combined experience in teaching in the subject (as Assistant Professor / Lecturer) and Research

Desirable:

(1) Ph.D in Ayurveda / Extensive experience in Research

(2) Working knowledge in Hindi and English”

11.According to the respondent authorities, for the post in question, five applications were received; of which, three candidates were called for interview on 24.02.2016, including the appellant and the writ petitioner; that, considering

the teaching experience and performance during the interview in



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Kaumarabhritya subject, the selection committee unanimously decided to select the appellant as Associate Professor (Kaumarabhritya) in order to restore his meritorious service in the second respondent college; and that, the decision so taken was also approved by the Chairman of the first respondent, who is the competent authority.

12. At the instance of the writ petitioner, the selection and appointment of the appellant as Associate Professor (Kaumarabhritya) in the second respondent college, were set aside by the learned Judge, on two grounds viz., (i) the appellant does not have the required educational qualifications, as he completed his PG degree in Kayachikitsa and not in Kaumarabhritya subject; and (ii) the experience certificate produced by the appellant by way of letter dated 17.12.2015 issued by the PAMC college, to the effect that he had vast experience in Kaumarabhritya subject as well, is a fabricated one. After having found that the writ petitioner had studied PG degree in Kaumarabhritya subject and had required experience as notified by the second respondent for the post in question, the learned Judge directed the respondents 1 and 2 to remove the appellant and appoint the writ petitioner as Associate Professor (Kaumarabhritya) in the second respondent college with all attendant benefits. The order so passed by the learned Judge is put to challenge by the appellant in



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this writ appeal.

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13.As regards the educational qualification, it is evident from the documents enclosed in the typed set of papers that the appellant obtained his post graduation degree in M.D. Ayurveda in Kayachikitsa, whereas the writ petitioner completed his post-graduate degree in M.D. Ayurveda in Kaumarabhritya subject. According to the subject notification, PG - Ayurveda in Kaumarabhritya subject is the required qualification for the post in question. As such, the writ petitioner had fulfilled the said eligibility criterion and not the appellant, who secured PG degree only in the allied subject of Kayachikitsa. Further, the notification clearly stipulates that in the absence of the candidate of Post graduate qualification in the concerned subject, the candidate of the subjects viz., Prasuti & Striroga / Kayachikitsa shall be eligible for the post of Associate Professor (Kaumarabhritya / Balaroga). Therefore, in the given factual matrix, the writ petitioner alone is eligible for appointment to the post in question.

14.As far as the experience is concerned, it is seen from the records that the appellant joined as Medical Officer on 22.05.1997 in Parassinikkadavu Ayurveda Medical College; that, after completion of PG in Kayachikitsa, he



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worked as Assistant Professor from 01.05.2006 and as Associate Professor from 01.05.2011 to 17.04.2015; and thereafter, joined as Associate Professor (Kaumarabhritya) in the second respondent college on 20.04.2015 on contract basis. To buttress the same, the appellant produced a letter dated 17.04.2015 received from the Principal, PAMC college, wherein, it is *inter alia* stated that “*he had teaching experience in both Kayachikitsa and Kaumarabhritya subjects from 1st May 2006 to 17th April 2015*”. But, the credential of the said document was doubted by the writ petitioner and he produced the same letter obtained from the said Institution through RTI before the writ court, in which, there was no such sentence relating to the experience earned by the appellant in Kaumarabhritya subject. Placing strong reliance on the same, the learned Judge concluded that the experience certificate produced by the appellant is a fabricated one. Though the learned counsel for the appellant sought to contend that two different certificates were issued by the PAMC college, one relating to experience as Associate Professor and the other recognising the services of the appellant as teaching experience, no concrete evidence was produced to substantiate the said stand. That apart, the learned Judge also rejected the contention of the learned counsel for the appellant with respect to the allotment of the code in Kaumarabhritya subject by the CCIM, by stating that based on the information given by the college, the code was allotted by the CCIM to the



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candidate. It may be true that the appellant is having skill and very well capable of teaching the Kaumarabhritya subject, but, the same cannot entitle him to claim appointment as Associate Professor of that particular subject. As rightly observed by the learned Judge, undergoing a regular course is a foundational requirement to be appointed as a Professor or as a Teacher in that particular subject; and that, depth in knowledge is gained only when a course is undergone in a regular manner. Hence, this court comes to a definite conclusion that the appellant had the required experience only in the subject of Kayachikitsa and not in Kaumarabhritya. On the other hand, the writ petitioner worked as Assistant Professor (Kaumarabhritya subject) in Mannam Ayurveda Co-operative Medical College, Pandalam, Kerala from 03.06.2010 to 04.03.2013 and thereafter, in the second respondent college from 05.03.2013 to till the date of issuance of the subject notification i.e., 30.12.2015; and thus, he had the required teaching experience of more than 5 years in the Kaumarabhritya subject; and is hence, qualified for appointment to the post in question, than the appellant herein.

15. For the foregoing reasons, this court is of the view that the writ petitioner is fully qualified and eligible for appointment to the post in question, pursuant to the subject notification and hence, the appointment of the appellant



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who did not meet the eligibility criteria, is liable to be interfered with.

Accordingly, the learned Judge rightly set aside the selection and appointment of the appellant and directed the respondents 1 and 2 to remove him and appoint the writ petitioner to the post in question with all attendant benefits, by the order impugned in this writ appeal, which does not require any interference.

16.Finding no merit, the writ appeal fails and is hence, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
29.01.2024

Neutral Citation : Yes/No
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To

1.The Chief Secretary,
Perunthalaivar Kamaraj Medical College Society,
No.225, Vazhudavur Road,
Kathirkamam, Thattanchavadi,
Puducherry 605 009

2.The Principal
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