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W.A. No.3557 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. No.3557 of 2023 & C.M.P. No.29094 of 2023

Dr. Jude. J.

Appellant

v

- 1 The Secretary to Government
Department of Health & Family Welfare (B1) Department
Fort St. George, Chennai 600 009
- 2 The Medical Services Recruitment Board
represented by its Member Secretary
VII Floor, No.359, Anna Salai
Teynampet, Chennai 600 006
- 3 The Principal
Tamil Nadu Government Dental College and Hospital
Chennai 600 003
- 4 Dr. N. Jayalakshmi

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 11.03.2019 passed in W.P. No.27823 of 2014.

For appellant Mr. Dude. J. - Party-in-person

For RR 1 & 3 Mr. J. Ravindran, Addl. Adv. Gen.
assisted by Mrs. Sneha, Spl. Counsel

For R2 Mr. L. Murugavelu



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JUDGMENT

(delivered by R. MAHADEVAN, J.)

The legality and validity of the order dated 11.03.2019 passed by a learned Judge in W.P. No.27823 of 2014 is put to assail in this writ appeal.

2 The germane facts in short leading to the filing of this writ appeal are given below:

2.1 The appellant, after completing M.D.S. Degree, registered his name in the Tamil Nadu Dental Council on 28.06.2012. While so, in response to an advertisement, he applied for the post of Tutor/Assistant Professor (Oral Pathology) and he was also temporarily appointed to the said post in the Tamil Nadu Government Dental College and Hospital, Chennai, *vide* G.O. (3D) No.72, Health and Family Welfare (B2) Department dated 18.07.2014 and was posted at the Dental College Hospital, Chennai. Nearly a month thereafter, i.e., on 26.08.2014, a communication was issued to him requiring him to appear for a hearing on 27.08.2014 in connection with an application received under the Right to Information Act.



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2.2 When things stood thus, *vide* G.O. (4D) No.9, Health and Family Welfare (B1) Department dated 26.09.2014, based on a communication from the Chairman, Medical Services Recruitment Board, the appointment of the appellant was cancelled and in his place, the private respondent by name Jayalakshmi was appointed.

2.3 The reason assigned in the said Government Order for cancelling the appellant's appointment and appointing the private respondent was that the private respondent had made an application under the Right to Information Act questioning her non-selection despite she scoring 70 marks, in pursuance whereof, it was found that her application was bundled along with the applications of Assistant Surgeon (Dental) (General) category, since she had applied for that post as well and hence, she was inadvertently omitted to be selected.

2.4 Challenging the said Government Order by which his appointment was cancelled and the private respondent was appointed and also seeking a direction to the respondents to permit him to work as Tutor/Assistant Professor



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(Oral Pathology), the appellant preferred a writ petition being W.P. No.27823 of 2014.

2.5 In the counter affidavit filed in the aforesaid writ petition, the respondents did admit that due to wrong bundling of the private respondent's application, she was not selected and in her place, the appellant was selected.

2.6 Further, seemingly, pending the writ petition, the appellant was appointed as Assistant Surgeon (Oral Pathology) *vide* G.O. (3D) No.106, Health and Family Welfare Department (B2) dated 06.10.2015 at the Government Hospital, Natham, Dindigul, to which, there was no response from the appellant nor did he raise any objection with regard to said Government Order.

2.7 It also appears that the learned counsel for the appellant had submitted before the learned Judge that the appellant would join the post of Assistant Surgeon (Oral Pathology) at the Government Hospital, Natham, Dindigul and that in the event of any vacancy arising in future in the post of Assistant Professor (Oral Pathology), the appellant's name may be considered given the fact of pendency of the said writ petition for well over four years.



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2.8 Based on the subsequent development which transpired pending the writ petition and also the submissions of the learned counsel for the appellant, the learned Judge, *vide* order dated 11.03.2019, disposed of the writ petition by directing the respondents to issue posting order to the appellant to join the Government Hospital, Natham, Dindigul. The learned Judge further directed that in the event of any future vacancy arising in the post of Assistant Professor (Oral Pathology), the appellant may be informed to appear for counselling on preferential basis and that it is open to the appellant to claim seniority from the date of his appointment, subject to the same being permissible under law. In the said order, the learned Judge recorded the factum that the appellant undertook to join duty at the Government Hospital, Natham, Dindigul, within a period of two weeks.

2.9 The aforesaid order of the Single Judge is put to challenge in this writ appeal.



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3 Today, when this writ appeal was taken up for hearing, it was brought to the notice of this Court that the private respondent has retired from service on attaining the age of superannuation.

4 In view of the above development, the appellant becomes entitled to be posted as Assistant Professor in the Department of Oral Pathology in the Tamil Nadu Government Dental College and Hospital, Chennai.

5 *Ergo*, the respondents are directed to issue orders to the appellant posting him specifically as Assistant Professor in the Department of Oral Pathology in the Tamil Nadu Government Dental College and Hospital, Chennai on or before 28.06.2024 after obtaining code of conduct certificate from him. It is further directed that the appellant's representation seeking continuity of service as well as other benefits be considered in the meanwhile.

With the above directions, this writ appeal stands disposed of, sans costs. Connected C.M.P. stands closed.

cad

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