

M.Ashok Vs. 1.The Medical Services Recruitment Board,

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SooperKanoon Citation : sooperkanoon.com/44574

Court : Chennai

Decided On : Feb-11-2015

Judge : The Honourable Mr. Justice K.Ravichandrabaabu

Appellant : M.Ashok

Respondent : 1.The Medical Services Recruitment Board,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

11. 02.2015 CORAM THE HONOURABLE Mr. JUSTICE K.RAVICHANDRABAABU W.P.(MD)No.5956 of 2014 and M.P(MD)Nos.1 and 2 of 2014 M.Ashok ... Petitioner Vs. 1.The Medical Services Recruitment Board, rep. by its Member Secretary, DMS Building, 359, Mount Road, Chennai. 2.The Director Employment and Training, Guindy, Chennai ?.

32. 3.The District Collector, Madurai District. 4.The District Employment Officer, Ramanathapuram. 5.The Revenue Divisional Officer, Madurai. ... Respondents Prayer Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the fourth respondent dated 05.03.2014 and consequently, direct the fourth respondent to sponsor the petitioner's name for the appointment for the post of Pharmacist to respondents 1 and 2 forthwith under the priority category and further direct the respondents 1 and 2 to appoint the petitioner as pharmacist in

the existing vacancy. !For Petitioner : Mr.ARL.Sundaresan Senior Counsel for Mr.J.Anandkumar ^For Respondents : Mr.R.Anandaraj Govt. Advocate. Orders reserved on :

04. 02.2015 ***** :

ORDER

The petitioner is aggrieved against the impugned communication of the fourth respondent dated 05.03.2014 and consequently, he is seeking for a direction to the fourth respondent to sponsor his name for the appointment to the post of Pharmacist to respondents 1 and 2 forthwith under priority category and further direction to the respondents 1 and 2 to appoint him as Pharmacist in the existing vacancy.

2. The case of the petitioner is as follows:- He belongs to Backward Class Community and completed D.Pharm and he is eligible to be appointed as Pharmacist. He has registered his name with fourth respondent in the year 1998, after completion of D.Pharm. His registration number is 1101/1998. The same is renewed periodically and the same is still in force. In 1982, the lands belonged to the petitioner's family was acquired under land acquisition proceedings for Railways. Due to the such acquisition, his family lost its livelihood. The Government has come forward with a proposal to give preference to the members of those families, who lost their lands due to acquisition proceedings, in the Government employment. Accordingly, G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel-P) Department, dated 28.12.1976, was issued. As per the said G.O., the petitioner is entitled to the benefit of preference in the employment. The petitioner applied for preference certificate to the fifth respondent. As no order was passed on his application, he filed writ petition in W.P(MD)No.4148 of 2013 to issue preference certificate. On 15.04.2013, this Court directed the fourth respondent to consider the petitioner's request. Thereafter, the fifth respondent through his proceedings dated 02.07.2013 issued preference certificate. On receipt of the said certificate, the petitioner produced the same before the fourth respondent along with employment seniority. The fourth respondent sent the said certificate to the third respondent for verification of its

genuineness. When the preference certificate was under verification, the first respondent has issued notification dated 09.01.2014 calling upon the application for filling up the post of Pharmacist. The fourth respondent, while sponsoring names to the said post, ought to have included the name of the petitioner in the priority category. However, his name was not sponsored only on the reason that his preference certificate was under verification. There is no necessity for sending the certificate for verification when its genuineness was not doubted by anybody. Therefore, the petitioner filed W.P(MD)No.2043 of 2014, wherein this Court has granted an interim order directing the respondents to keep one post vacant, by an order dated 07.02.2014. The petitioner's registration was further made under priority category on 19.03.2014. Therefore, the petitioner was waiting for his name to be sponsored by the fourth respondent to the second respondent. However, to his shock and surprise, the fourth respondents issued the impugned communication stating that his name will be sponsored only after sponsoring of all the persons coming under the category of Destitute Widows, Ex-serviceman, under the priority category. Therefore, the present writ petition is filed before this Court.

3. Counter affidavit is filed, wherein it is stated as follows:- The petitioner belongs to Backward class community and he is coming under the priority category (Land Acquisition). His qualification was registered with seniority on 17.04.1998. The petitioner submitted a petition to the fourth respondent to register his name under the land acquisition priority and the certificate was issued by the fifth respondent. The fourth respondent requested the third respondent to verify the said genuineness of the said certificate. As the genuineness of the certificate was confirmed by the third respondent, the petitioner was registered under the Land Acquisition priority by the fourth respondent on 19.02.2014. Accordingly, his seniority will be maintained under the land priority quota. In the Backward Class General Priority and OC General Priority category, all available candidates in the priority category of Destitute Widow and Intercaste married were nominated. In the category of Dependent of Ex- Serviceman candidates registered upto 21.02.2001 in Backward Class Priority and 14.12.2004 in the General Turn General Priority were nominated. The petitioner's category of Land Acquisition Priority has not reached in the purview of sponsorship as per G.O.Ms.No.188 Personnel and

Administrative Reforms (Personnel-P) Department dated 28.12.1976. The priority candidates are sponsored as per the seniority in the particular priority category to which they belong and only after exhausting the candidates in one group, the candidates in the next group are considered. Though the petitioner is coming under Backward Class General Turn (Land Acquisition) category, his name could not be forwarded by the second respondent to the first respondent as the petitioner's priority group has not reached the purview of nomination.

4. Mr.ARL. Sundaresan, learned Senior Counsel appearing for the petitioner submitted that the petitioner has registered his name in Employment Exchange as early as on 17.04.1998 and though the priority certificate was issued on 02.07.2013 and the same was registered under the priority category on 19.02.2014, such priority should date back to the date of original registration, namely, 17.04.1998 and therefore, the respondents are not justified in not sponsoring the petitioner's name. He further submitted that the land belonging to the petitioner's family was acquired as early as in the year 1982, i.e., even before the original registration. Merely because the petitioner has got the priority registration in the year 2013, it does not mean that his priority cannot be considered along with others.

5. On the other hand, it is submitted by the learned Government Advocate appearing for the respondents that the respondents have followed the order of priority as per G.O.Ms.No.188 Personnel and Administrative Reforms (Personnel-P) Department, dated 28.12.1976 and the petitioner's name could not be forwarded to the second respondent as his priority group has not reached the purview of nomination in view of the fact that other categories in the same group who were placed above than the petitioner's category are being considered and only after exhausting those persons, the petitioner's category will be considered. Therefore, he submitted that the impugned communication has been rightly issued.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. In this case, the petitioner, who belongs to Backward Class community, got his name registered with the fourth respondent on 17.04.1998 on completion of D.Pharm. It is stated that the land belonged to the petitioner's family was acquired in the year 1982. G.O.Ms.No.188, giving preference to members of the family, whose lands have been acquired for public purposes, was issued as early as on 28.12.1976 i.e., much prior to the land acquisition of the petitioner's land as well as to the registration of the petitioner's name with the employment exchange. However, the petitioner has not chosen to register his name under the priority category (Land Acquisition) and kept quiet for several years and only has chosen to file the application at a latter point of time for issuance of preference certificate. No doubt, such certificate was also issued by the fifth respondent and thereafter, after verification of its genuineness, the petitioner's registration was made under the priority category on 19.02.2014.

8. Perusal of the identity card issued by the Department of Employment Training, District Employment Officer, Ramanathapuram, issued to the petitioner would show that the date of registration of the petitioner under priority category is 19.02.2014.

9. According to the learned Senior Counsel, even though the date of registration under priority category was made on 19.02.2014 the effect of such benefit should be given with effect from the date of original registration namely 17.04.1998. I am not able to appreciate the said contention for the reason that the petitioner himself has chosen to claim such benefit of preferential treatment by making an application only later point of time and obtained the certificate only on 02.07.2013, which was subsequently, registered in the employment exchange on 19.02.2014, after verification. Therefore, it is clear that the petitioner cannot overlook the persons, who got already registered themselves under the priority category much earlier to the petitioner.

10. Further a perusal of the G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel-P) Department, dated 28.12.1976, would show that the Government directed that the order of priority in regards to provision of employment assistance through employment exchanges should be as indicated in

the annexure to the said G.O. A perusal of the annexure would further show that the petitioner's category namely, members of family including members of SC/ST whose lands have been acquired for Government purposes, has been placed in Serial No.5 in Group II. For proper appreciation, the Group II is extracted hereunder:-

- i).Destitute Widows?. (Destitute widow means one who has neither any means by herself to live on nor any dependent to protect her from starvation) (Authority: G.O.Ms.No.229, Personnel and Administrative Reforms (Personnel-R) Department, Dated 7.4.1988.
- ii).Intercaste Married Couple?. (Where one of the spouses belongs to SC/ST) (Authority: G.O.Ms.No.939, Personnel and Administrative Reforms (Personnel-R) Department, Dated 24.9.86.)
- iii) Ex-Servicemen and wives, sons and unmarried daughters of serving military personnel. (Ex-servicemen means a person, who after having served for any period of time in the Defence Service (Indian Army, Indian Air Force, Indian Navy, the Auxiliary Forces of India and the Boy's Companies) has been discharged (except that one who has been dismissed by a competent authority or one who has been discharged on account of mis-conduct or inefficiency before completing six months' service shall not be treated as Ex-Servicemen)
- iv) Indian Nationals retiring from Burma/Sri Lanka and East African Countries of Kenya, Uganda and Tanzania due to repatriation.
- v) Members of family including members of scheduled Castes/Scheduled Tribe, whose lands have been acquired for Government purposes as well as for the project of the Public Sector undertakings subject to the condition that preference should be given to those who are dependant for their livelihoods primarily or wholly on the lands acquired and from among them to members of the Schedules Castes and Scheduled Tribes who may be eligible for employment.?

11. Therefore, when other categories of persons were placed above than the petitioner in the Group - II, the petitioner cannot claim that he should be preferred above than those persons and given employment. The impugned communication only states that sponsorship was made in respect of persons coming under the category of Destitute Widow, Intercaste Marriage and Ex- serviceman candidates who got registered upto 22.04.2005.

12. It is further stated in the impugned communication that only after completion of the sponsorship of persons under the Ex-serviceman, the names of candidates belonging to the category of members of family, whose lands have been acquired, can be sponsored. I find nothing wrong in the said communication issued by the fourth respondent. As already stated supra, when several categories of persons are placed in one group, sponsorship should be made by considering all categories of persons one after another, according to their category serial numbers. In the absence of any specific guidelines or directions given in the said G.O. as to how persons have to be sponsored from various categories of same group, the general rule is to sponsor the person coming under the first category first in preference to other categories of same group.

13. In this case, as rightly stated in the impugned communication the Destitute Widow, Intercaste marriage couple and Ex-servicemen are placed in serial Nos.1, 2 and 3. The petitioner's category is placed in serial No.5 only in Group - II. Therefore, the petitioner is not entitled to seek for a direction to sponsor his name over looking those persons above than him in the Group - II priority category.

14. Accordingly, I find no merits to interfere with the impugned communication. Consequently, Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. 11.02.2015 Index:Yes/No Internet:Yes/No skn To 1.The Member Secretary, Medical Services Recruitment Board, DMS Building, 359, Mount Road, Chennai. 2.The Director Employment and Training, Guindy, Chennai ?.

32. 3.The District Collector, Madurai District. 4.The District Employment Officer, Ramanathapuram. 5.The Revenue Divisional Officer, Madurai. K.RAVICHANDRABAABU, J skn Order made in W.P.(MD)No.5956 of 2014 and M.P(MD)Nos.1 and 2 of 2014 11.02.2015 Pre-Delivery Order made in W.P.(MD)No.5956 of 2014 To The Hon'ble Mr.Justice K.RAVICHANDRABAABU, submitted by S.Kannan