

A. Maran Vs. Directorate of Medical Education, Kilpauk and Another

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Court : Chennai

Decided On : Nov-29-2012

Judge : D. Hariparanthaman

Appeal No. : W.P.NO.3380 OF 2012 AND M.P.NO.5 OF 2012

Appellant : A. Maran

Respondent : Directorate of Medical Education, Kilpauk and Another

Advocate for Pet/Ap. : For the Petitioner: G. Sankaran, Advocate. For the Respondents: RM. Muthukumar, Government Advocate.

Judgement :

(PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders passed by the 2nd respondent in Letter No.38600/C2/2011-2 dated 10.01.2012 and quash the same and consequently direct the respondents to consider the petitioner for appointment to the post of "Non Medical Assistant to the Professor of Bio-Chemistry" in the available vacancies notified for the panel year 2011-2012 by way of recruitment by transfer from other category of the services as per Special Rules for Tamil Nadu Medical Subordinate Services, by considering the representation made by the petitioner dated 07.09.2011.

The petitioner was appointed as Lab Technician (Grade II) on 29.11.1991 in the Directorate of Medical Education. He was promoted to the post of Lab Technician

(Gradel) on 29.12.1995. He is presently working in Rajiv Gandhi Government General Hospital, Chennai. According to him, he is eligible for appointment to the post of Non Medical Assistant to Professor of Bio-Chemistry in teaching Medical Institutions, as per the Special Rules for Tamil Nadu Medical Subordinate Services.

2. However, the second respondent passed the impugned order dated 10.01.2012 stating that in view of the rule position, as stated in the letter dated 04.11.2011, of the first respondent, the request of the petitioner to consider him for appointment to the post of Non Medical Assistant to Professor of Bio-Chemistry in Government Medical Colleges, by promotion or transfer, cannot be considered.

3. The petitioner has filed the present writ petition seeking to quash the aforesaid order dated 10.01.2012 of the second respondent and for a consequential direction to the respondents to consider him for appointment to the post of Non Medical Assistant to Professor of Bio-Chemistry in the available vacancies notified for the year 2011-2012 by way of recruitment by transfer from other category in the same service as per the Special Rules for Tamil Nadu Medical Subordinate Services.

4. The respondents have filed counter affidavit refuting the allegations made by the petitioner. It is the case of the respondents that the petitioner cannot be considered for appointment to the post of Non Medical Assistant to Professor of Bio-Chemistry in view of Rule 2(15-B) of the Tamil Nadu State and Subordinate Service Rules. According to the respondents, as per Rule 2(15-B) of the Tamil Nadu State and Subordinate Service Rules, appointment by transfer from one category to another category in the same service can be made only if both the categories carries identical scale of pay. Since the scale of pay of Non Medical Assistant to Professor of Bio-Chemistry carries higher pay than the scale of pay of Lab Technician (Grade-I), the petitioner cannot be appointed to the post of Non Medical Assistant to Professor of Bio-Chemistry under the Special Rules for Tamil Nadu Medical Subordinate Services, by way of transfer, from the post of Lab Technician (Gradel). It is further stated that the petitioner does not possess the qualification as prescribed under the Rules and the M.Sc., degree obtained by him

from Vinayaga Mission University, Salem, is not recognised as the qualification under the Special Rules for Tamil Nadu Medical Subordinate Services.

5. Heard the submissions made on either side.

6. The issues that arises for consideration in this writ petition are as follows:

(I) Whether the petitioner holding the post of Lab Technician (Gradel) is entitled to be considered for appointment to the post of Non Medical Assistant to Professor of Bio-Chemistry in teaching Medical Institutions?

(II) Whether the petitioner is in possession of the requisite qualification as prescribed under the Rules?

ISSUE NO.(I)

7. Both the posts of Lab Technician (Gradel) and Non Medical Assistant to the Professor of Bio-Chemistry in teaching Medical Institutions belong to Special Rules for Tamil Nadu Medical Subordinate Services framed under the proviso to Article 309 of the Constitution of India, but however, the same belong to different categories. The relevant rule providing method of appointment for the post of Non Medical Assistant is extracted hereunder:

"(2) Category 1

Non - Medical Assistant to the Professor of Bio-Chemistry in teaching Medical Institution.

By promotion from among the holders of posts of Non-Medical Demonstrators in Bio-Chemistry and the Laboratory Assistants (Non-Medical) in Government teaching Medical Institutions in the ratio of 1:1

Provided if no suitable and qualified candidate is available for appointment by promotion, recruitment shall be made by transfer from any other class or category of the service or recruitment by transfer for special reasons from any other service or by direct recruitment."

8. According to the respondents, the petitioner do not come under the zone of consideration in view of Rule 2(15-B) of the Tamil Nadu State and Subordinate Service Rules. In fact, in the counter affidavit filed by the respondents, they have referred to Rule 2(15-A) of the Tamil Nadu State and Subordinate Service Rules. It was stated that it was not Rule 2(15-A) and it was Rule 2(15-B) of the Tamil Nadu State and Subordinate Service Rules that comes in the way of consideration of the petitioner. Rule 2(15-B) of the Tamil Nadu State and Subordinate Service Rules is extracted hereunder:

"2(15-B) Transfer:- A member of a service is said to be appointed by transfer when the appointment is made from one category to another category in the same service carrying identical scale of pay."

9. It is true that Rule 2(15-B) of the Tamil Nadu State and Subordinate Service Rules provides for appointment of a person from one category to another category, in the same service, if the scale of pay of both the categories are identical. But, as rightly pointed out by the learned Government Advocate, Rule 2(15-B) of the Tamil Nadu State and Subordinate Services is not attracted in this case, as the petitioner does not claim appointment, by way of transfer, within the same service and on the other hand, the petitioner claims recruitment by transfer, as contemplated under Rule 2(15-A) of the Tamil Nadu State and Subordinate Service Rules. Rule 2(15-A) of the Tamil Nadu State and Subordinate Service Rules is extracted hereunder:

"2(15-A) Transfer:- A member of a service is said to be appointed by transfer when the appointment is made from one category to another category in the same service carrying identical scale of pay."

10. The aforesaid rule for appointment to the post of Non Medical Assistant to Professor of Bio-Chemistry contemplates promotion / recruitment by transfer. The petitioner is not claiming promotion, since he does not belong to feeder category. He claims recruitment by transfer from one category to another category in the same service. In fact, the Rules contemplates even recruitment by transfer from some other service for reasons to be recorded for non-availability of sufficient hands. The proviso to the Rules makes it clear that if no suitable and qualified

candidates are available for appointment by promotion, recruitment shall be made by transfer within the same service or outside the service.

11. In the case of recruitment by transfer under Rule 2(15-A), there is no condition like appointment by transfer under Rule 2(15-B) that both categories shall carry identical scale of pay. Hence, there is no bar for recruitment by transfer from the category of Lab Technician (Grade I) to the category of Non Medical Assistant to the Professor of Bio-Chemistry in the same service.

12. In present case on hand, there are 28 vacancies and only 10 persons are said to be available for promotion to the post of Non Medical Assistant. Hence, recruitment by transfer can be resorted to. Since the said Rules contemplates recruitment by transfer and not appointment by way of transfer carrying same scale of pay in both the categories in a service, I am of the view that the person holding the post of Lab Technician (Grade I) in Special Rules for Tamil Nadu Medical Subordinate Service is entitled to be considered for recruitment by transfer to the post of Non Medical Assistant to the Professor of Bio-Chemistry, if he possess the requisite qualification and there are no qualified candidates for promotion from the feeder category. Issue No.I is answered accordingly.

ISSUE NO.II

13. The second issue is as to whether the petitioner possesses the requisite qualification for appointment to the post of Non Medical Assistant to the Professor of Bio-Chemistry. The Special Rules prescribes the following qualification:

"A degree of M.Sc., by research in Bio-Chemistry or Chemistry or a first or second class degree in M.Sc., M.A. or B.Sc., (Hons.) in Bio-Chemistry or Chemistry of the Madras or Annamalai University:

Provided that the above qualification shall not be necessary in the case of any Non-Medical Demonstrator in Bio-Chemistry in the Medical Colleges who has put in a service of five years in the post."

14. Admittedly, the petitioner does not possess the prescribed qualification, as contemplated under the Special Rules.

15. Furthermore, Rule 19 of the Tamil Nadu State and Subordinate Service Rules provides for special qualifications and the same is extracted hereunder:

"19. Special qualifications:- No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he

(a) Possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules; or

(b) Possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests-

(i) by the State Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission for the purpose, in cases where the appointment has to be made in consultation with the Commission; and

(ii) by the State Government or by the appointing authority with the approval of the State Government in other cases.

Explanation - (i) In cases where the Special Rules prescribed a degree or diploma as a qualification, then a degree or diploma granted by any of the Universities or Institutions recognised by the University Grants Commission for the purpose of its grant mentioned in Schedule II to this part shall be recognised as the qualification."

As per Explanation (i) of Rule 19 of the Tamil Nadu State and Subordinate Service Rules, the degree prescribed under the Special Rules shall be granted by the Universities / Institutions as mentioned in Schedule II to the Tamil Nadu State and Subordinate Service Rules.

16. In the present case, the petitioner obtained M.Sc., Degree from Vinayaga Mission University, Salem, which is not mentioned in Schedule - II to the Tamil Nadu State and Subordinate Service Rules, though number of Universities are mentioned in Schedule-II. Thus, I am of the view that the petitioner does not possess the requisite qualification as prescribed under the Special Rules and he is not entitled to be considered for appointment to the post of Non Medical Assistant

to the Professor of Bio-Chemistry. Issue No.II is answered accordingly.

17. Though I have held that a person holding the post of Lab Technician (Grade-I) is entitled to be considered for the post of Non Medical Assistant to the Professor of Bio-Chemistry, if he possesses the requisite qualification, since I have held that the petitioner does not possess the requisite qualification, the writ petition is liable to be dismissed and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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