

(2008) 04 MAD CK 0073

In the Madras High Court

Case No : Writ Appeal No. 139 of 2008 and M.P. No's. 1 and 2 of 2008

G. Gayathri and Others

APPELLANT

Vs

K. Ramesh and Others

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Citation : (2008) 04 MAD CK 0073

Hon'ble Judges : S.J. Mukhopadhaya, J;R. Subbiah, J

Bench : Division Bench

Advocate : R. Yashodhvardhan, for E. Girirajan, for the Appellant; M. Hidayathullah Khan, for R-1 to R-10 and Dakshayini Reddy, for R-11 and R-12, for the Respondent

Judgement

R. Subbiah, J.—Appellants, who are respondents No. 3,4,6 and 8 to 19 in the writ petition, have filed this appeal, aggrieved by the order

dated 12.12.2007 passed by the learned single Judge quashing the G.O.(D) No. 1127, Health & Family Welfare Department dated 30.10.2006

and consequently directing respondents 11 and 12 herein to fill up the post of Ophthalmic Assistant, according to the Employment Exchange

seniority.

2. The relevant facts in brief, which are necessary for disposal of this writ appeal, are as follows:

The subject matter of the writ appeal relates to the appointment for the post of Ophthalmic Assistant in Government Medical Institutions. In the

Medical Subordinate Service, the qualification for the appointment in the said post is a pass in Plus Two examination with science subject and the

candidate must have undergone two years Ophthalmic Assistant course conducted by the State Medical College. After some time, the Government

was not able to provide with the posting for all who have come out successfully in the course run by the Medical Department. At one point of time,

the Government had stopped the course. However, by G.O.Ms. No.455, Health and Family Welfare Department dated 13.04.1993,

permitted a private institution viz., Sri Gokulam Hospitals Private Limited, Salem, to start Ophthalmic Assistant course with an annual intake of 20

(twenty) candidates from the academic year 1993-1994, subject to the conditions stipulated in G.O.Ms. No. 1438, Health dated 28.07.1987.

The appellants herein have joined and passed the course in the said private Institution between the years 1993 and 1996.

3. So far as respondents 1 to 10 are concerned, they underwent the Paramedical course of Diploma in Optometry with 2 years duration in the

Regional Institute of Ophthalmology, Government Ophthalmic Hospital at Chennai during the years 1988, 1991 and 1992. Since the Government

had stopped the course of Diploma in Ophthalmic Assistant, there has been a shortage for the post of Ophthalmic Assistant. However, the

appointments sought for by the appellants in the Government Medical Institution was rejected by the Director of Medical Education stating that

Ophthalmic Assistant who passed the course from private Institutions cannot be appointed in the Government posts as per the Rules. So, as a stop

gap arrangement, in order to meet the exigent circumstances, the Government had decided to give additional training to the Refractionists and the

person who possesses qualification in Diploma in Optometry from Government Medical Institution, to discharge the functioning of Ophthalmic

Assistant. For this purpose, the Government has issued a Government Order in G.O.Ms. No. 662 Health and Family Welfare Department, dated

09.12.1998 to provide 3 months condensed training course to the persons who possessed Diploma in Optometry from the Government

Ophthalmic Hospital. Pursuant to the said G.O., respondents 1 to 10 underwent the condensed training course during the year 2000-2001.

4. Aggrieved over the decision of the Government in not allowing the private institution trained candidates for the above refresher course and

denying the appointment for them in the Government Medical Institutions, the appellants herein moved the Tamil Nadu Administrative Tribunal in

O.A. No. 7723 of 1999 etc., to direct the Government to appoint them as Ophthalmic Assistants in Government Primary Health Centre/District

Headquarters Hospital.

5. Similarly, some of the candidates who had completed the diploma in Optometry in Government Institution and undergone 3 months condensed

course in Ophthalmic Assistant also moved the Tamil nadu State Administrative Tribunal by filing O.A. No. 7965 of 2001, etc., stating that they

are the seniors to those who have obtained Diploma course from private institutions and they have also registered their names in the Employment

Exchange between the years 1990 and 1993. Because of the pendency of the applications filed by the Diploma Holders from the private

institutions, the Government have not so far made appointments but have sought for a direction to appoint them as Ophthalmic Assistants in the

Government medical Institutions within a time frame.

6. All the applications were disposed of by the Tribunal by a common order dated 03.04.2002 holding that the persons who have successfully

completed the refresher course and who have long ago completed two year course in Government run colleges are seniors to the applicants from

private institution who have also registered their names in the Employment Exchange long prior to Sri Gokulam Institute Paramedical Science

candidates and as such, they should be given preference in the appointment for the post of Ophthalmic Assistant and thereafter the case of the

candidates from Sri Gokulam Institute of Para Medical Sciences, Salem may be considered, for which suitable relaxation of the rules may be

made. The Tribunal has also observed in the said order to the effect that as a first step, the diploma holders from the private Medical College may

be also admitted to the 3 months refresher course conducted by the Director of Medical Examination in the Eye Hospital, Chennai, since the same

was made as one of the requirements for appointment to the post of Ophthalmic Assistant.

7. Consequent to the order of the Tribunal, in the year 2006, the Government has passed G.O.(D). No. 1127 Health and Family Welfare (C2)

Department dated 30.10.2006 permitting the Director of Medical Education for giving three months refresher training to the 10 candidates who

had completed the certificate course in Ophthalmic Assistant (some Appellants 1 to 8 and two others) in the Sri Gokulam Institute of Paramedical

Science, Salem and also directing the Public Health Preventive Medicine to

appoint the said 10 candidates after their successful completion of the above said refresher training as Ophthalmic Assistants in the Primary health Centres in terms of the relaxation of rules and further directing the Director of Public Health and Preventive Medicine to submit necessary proposal for the relaxation of the Rule 5(b) of the ad hoc rules for the post of Ophthalmic Assistants for regularising the services of these candidates in the post of Ophthalmic Assistants after they join the post, if necessary.

8. Challenging the said order, respondents 1 to 10 filed W.P. No. 8285 of 2007 stating that they had completed the Diploma in Optometry and

undergone the 3 months condensed course, which is required for appointment for the post of Ophthalmic Assistant long before and the

Government had also issued orders as early as in 1998 itself directing to provide them appointment according to Employment Exchange seniority.

Since they have been waiting for the post of Ophthalmic Assistant for a long time, the order passed by the Government in the circumstances to give

posting to the Diploma Holder of Ophthalmic Assistants from the private Medical Institution immediately after their successful completion of 3

months condensed course, is not correct. Moreover, the said Order of the Government in G.O. No. 1127 is not in conformity with the direction

given by the Administrative Tribunal by its order dated 03.04.2002, which order says that the Diploma holders from the Government Institution

who have successfully completed the 3 months refresher course conducted by the Government Ophthalmic Hospital should be given first

preference in appointment and only thereafter the case of Diploma holders should be considered by making suitable relaxation in the rules. Hence,

in the said circumstances, if the G.O. No.(D) 1127 dated 30.10.2006 is given effect to, it would be against the spirit of the order passed in O.A.

No. 7723 of 1999 by the Tamil Nadu Administrative Tribunal. For the above said reasons, respondents No. 1 to 10 sought for quashing of G.O.

(D) No. 1127 dated 30.10.2006 and also for a direction to the Government to fill up the post of Ophthalmic Assistant according to Employment

Exchange seniority.

9. Accepting the contentions of respondents 1 to 10 in this appeal, the learned single Judge quashed the G.O. holding that it would cause prejudice

to respondents 1 to 10 herein as contended and consequently directed the

Government to consider the order originally passed in O.A.by the Tribunal in entirety and relax the rules accordingly.

10. Aggrieved by the order passed by the learned single Judge, respondents No. 3,4,6 and 8 to 19 in the writ petition, who are the Diploma

Holders from the Private Medical Institution, have filed the present appeal.

11. The contentions of the learned senior counsel for the appellants are mainly based on the following grounds:

(1) The appellants had completed the course of the Diploma Ophthalmic Assistants who are the persons to assist and help the Doctors at the time of surgery whereas respondents 1 to 10 are only Optometrician and trained in optical glasses.

(2) The required 3 months refresher course completed by respondents 1 to 10 for the post of Ophthalmic Assistants cannot be equated to the 2 years course completed by the appellants in Diploma in Ophthalmic Assistant in Private Medical Institution .

(3) The selection to the post of Ophthalmic Assistant is only by direct recruitment and as such, application of the Employment Exchange seniority has no meaning.

12. We have carefully considered the submissions made by the learned senior counsel for the appellants on the above said lines. The arguments

putforth by the learned senior counsel for the appellants have to be considered only in the light of the G.Os .issued by the Government in the

appointment for the post of Ophthalmic Assistants and also in the light of the order passed by the Administrative Tribunal in O.A. No. 7723 of

1999 etc. Hence, it is necessary to mention the relevant portions from the G.O.at this juncture;

I. Rule 5(b) of the Ad hoc rules in G.O.Ms. No. 2484 Health, Indian Medicine & Homeopathy & Family Welfare Department dated 22.12.1988.

5(b) other qualifications:- No person shall be eligible for appointment to the post unless he has passed the Ophthalmic Assistant course conducted

by the State Medical Colleges.

II. G.O.(D) No. 662:

2. The Government after careful examination, accept the recommendation made by the Director of Medical Education on the lines suggested by

the Superintendent, Government Ophthalmic Hospital, Chennai and accord permission to the Director of Medical Education to take immediate

action for imparting additional training to qualified Refractionists as per the details given in the Annexure to this order from January 1999 session

onwards, subject to the condition that there will be no extra expenditure to the Government.

13. A careful reading of the above G.Os. clearly indicates that the Rule 5(b) of ad hoc rule in G.O.2484 dated 22.12.1988 clearly points out only

the persons who have passed the Ophthalmic Assistant course conducted by the State Medical College are eligible for appointment in the post of

Ophthalmic Assistant. In other words, the said G.O. prohibits the appointment to the persons who have passed in Diploma course from the private

Medical Institutions.

14. Similarly, a closer examination of G.O.662 dated 09.12.1998 clearly reveals that the Government had decided to give additional training

required for discharging the duties of Ophthalmic Assistants to qualified Refractionists before appointing them on Ophthalmic Assistants in

Government Medical Institutions. Pursuant to which, 3 months condensed course was conducted by the Government to the persons who were

holding Diploma in Optometry from the Government Medical Institutions.

15. The said G.Os. were not challenged by the appellants herein at the relevant point of time. On the other hand, when the Government had

decided to fill up the post of Ophthalmic Assistant, the appellants had approached the Tamil Nadu Administrative Tribunal only with a prayer of

direction to the Government to appoint them in the post of Ophthalmic Assistants in the Government Medical Institutions and the Tribunal has also

allowed only the prayer by giving direction to the Government to appoint the candidates holding Diploma from Private Medical Institutions by

relaxing the relevant rules, after giving preference to the candidates holding Diploma from Government Medical Institution with 3 months

condensed course training. The said order of the Tribunal has also reached finality since neither the appellants nor the Government has challenged

the said order dated 03.04.2002. Hence, in the said circumstances, the argument of the learned senior counsel for the appellants that the 3 months

Refresher course completed by respondents 1 to 10 in Ophthalmic Assistants

cannot be equated to the 2 years course completed by the appellants in Diploma in Ophthalmic Assistants from private Institution, has no force.

16. Similarly, coming to the other argument of the appellants, it is no doubt in the case of direct recruitment, the Employment Exchange seniority has no significant role to play in the appointment. On the other hand, in the direct recruitment, only the merit has a role to play and not the Employment Exchange seniority. But in the instant case, the Tribunal by its order dated 03.04.2002 directed the Government to give preference to the candidates holding Diploma from the Government Medical Institution with 3 months condensed training in Ophthalmic Assistant at the time of appointment. As stated supra, the said order was not challenged either by the appellants or by the Government and as such, it has reached the finality, whereas if the present G.O.1127, Health and Family Welfare Department dated 30.10.2006 is implemented, it would amount to appointing the appellants in the post of Ophthalmic Assistant without giving preference to respondents 1 to 10 in the appointment, which course of action is only going to be against the order of the Tribunal, which is in force.

17. In the said circumstances, we hold that the order passed by the learned single Judge in quashing the said G.O. and directing the Government to consider the order passed by the Tribunal, which is in force and to relax the rules to appoint the appellants on a finding that if the present G.O. is allowed to be implemented, it would be nothing but contrary to the original order passed in O.A. No. 7723 of 1999, does not suffer from any infirmity.

18. Hence, we are not inclined to interfere with the order passed by the learned single Judge in W.P. No. 8285 of 2007. Further, the learned senior counsel for the appellants represented that that in view of the interim stay granted in the writ appeal, the appellants have already been appointed in the posts and in such circumstance, there is no need to disturb the appointment at this stage. However, while appointing respondents 1 to 10, they shall be placed over and above the recruitment of the appellants in seniority as per the order of Tribunal. Accordingly, this writ appeal is disposed of. No costs. Consequently, connected M.Ps. are closed.