

(2011) 01 MAD CK 0103

In the Madras High Court

Case No : Writ Petition No. 13287 of 2006 and (O.A. No. 7031 of 2000)

K. Mohan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 01 MAD CK 0103

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; R. Murali, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner was appointed as Assistant Medical Officer (Ayurveda) on 07.08.1978 temporarily. Subsequently, when

regular selections were made to the post of Assistant Medical Officer (Ayurveda) through the Tamil Nadu Public Service Commission, the case of

the Petitioner was rejected on two occasions on the ground that he was over-aged to enter into Government service. But however, on his

persistence for grant of regularisation, the State Government, by granting appropriate regularisation of his maximum age from entering into service

and after consulting the Tamil Nadu Public Service Commission, passed an order in G.O. Ms. No. 1000, Health and Family Welfare (IM II)

Department, dated 12.07.1993. The Government found that the Petitioner had already completed more than 10 years of service in the temporary

post and also registered his name in the Tamil Nadu Board of Indian Medicine, Chennai and therefore on the recommendation made by the

Director of Indian Medicine and Homeopathy, the Government decided to relax the upper age limit in his favour so as to make him eligible to be

considered for the regular post, provided he is physically fit for holding the post. Therefore, in exercise of the powers conferred under Rule 48 of

the General Rules, the Government relaxed the provisions of Rule 4 of the adhoc rules relating to the upper age limit in favour of the Petitioner. By

the said Government Order, the Petitioner was indicated that the relaxation was given only from the date of the said order viz., on 12.07.1993.

2. The Petitioner accepted the said Government Order and was working in the post. But subsequently, the Petitioner found that the State

Government had granted relaxation in respect of similarly placed Doctors from the date of their entry into the adhoc employment and therefore, he

sent representations dated 02.07.1998 and 11.10.1999. The Respondent -State Government by a communication dated 17.02.2000 rejected the

request of the Petitioner stating that he was not eligible to get relaxation from the initial date of employment viz., 07.08.1978 and there was no

necessity to review the case of the Petitioner as ordered by the Government on 21.04.1998. In that order, the State Government stated that the

Tribunal's order in O.A. No. 683/1989 directing the Government to consider the case of irregular appointments made till 05.02.1992 can be

looked into. It is also informed that because of the directions issued by the Tribunal, the cases which are already disposed of need not be re-

opened and hence, the Petitioner was informed that his case was already been disposed of in the year 1993 and therefore, the question of his being

granted the benefit on par with others may not arise.

3. Challenging the order dated 17.02.2000 of the Respondent, the Petitioner filed Original Application in O.A. No. 7031 of 2000 before the Tamil

Nadu Administrative Tribunal. The Tribunal admitted the Original Application on 25.10.2000.

4. It is claimed that the Respondent has filed reply affidavit in June 2004 itself. Though the copy of the reply affidavit is not found in the Original

Application, the learned Government Advocate supplied a copy of the same along with the covering letter dated 20.12.2010 issued by the

Department.

5. Earlier the Petitioner moved this Court by filing a writ petition in W.P. No. 4055

of 2006 seeking for a direction to transfer his case to this Court

in view of the fractured bench of the Tribunal. This Court by order dated 14.02.2006 directed the Tribunal to transfer the Original Application

before this Court. Accordingly, the Tribunal despatched the records to this Court, which was renumbered as W.P. No. 13287 of 2006.

6. In the Original Application, the Petitioner referred to the cases of Dr. K. Rajamma and Dr. A.N. Ayyappan, who were admittedly juniors to him

and were granted the relief of retrospective regularisation from the date of their entry into service. In response to this allegation, in the reply

affidavit, in para 10, it was averred as follows:

(10) Regarding grounds para 6(D), it is submitted that the applicant has stated that the Government have also relaxed Rule 4 (Relating to age) in

favour of Dr. K. Rajamma, who is over-aged in the light of the directions of the Hon"ble Tamil Nadu Administrative Tribunal, Chennai in Original

Application No. 824/1995, dated 24.04.1997, so as to enable her to be regularly appointed as Assistant Medical Officer with effect from the date

of her initial appointment, i.e. from 14.11.1983 and Government have ordered to regularise the services of Dr. K. Rajamma, Junior with effect

from 14.11.1983 in G.O.(MS) No. 442, Health and Family Welfare Department, Dated 12.09.1997. Further, in G.O.(MS) No. 483, Health and

Family Welfare Department, Dated 03.10.1997, the Government have ordered to regularise the services of Dr. A.N. Ayyappanpillai, Assistant

Medical Officer (Ayurveda) from 17.12.1983, the date of his temporary appointment in the light of the judgment pronounced on 22.12.1997 in

O.A. No. 6124/1994 by this Hon"ble Tribunal.

7. Apart from the case of Dr. K. Rajamma and Dr. A.N. Ayyappan, in para 11, the reply referred to the case of 83 temporary Assistant Medical

Officers both in Siddha and Ayurveda wing working from 1983 onwards, who were also got their services regularised from the date of their initial

appointment vide G.O.(Ms) No. 442, Health and Family Welfare Department, dated 12.09.1997. But however, it was contended that the

Petitioner cannot have the same relief as his case was already disposed of by the Government.

8. The Petitioner filed a rejoinder dated 10.01.2011. In the rejoinder, he claimed that ultimately, it was the Petitioner alone who was left out only

because he directly got the relief from the State Government. Those who went to the Government via the Tribunal's order were given the benefit of

retrospective regularisation from the date of entry into service and therefore, there is hostile discrimination.

9. Mr. R. Murali, learned Government Advocate contended that the Petitioner was satisfied with the order passed in 1993, but he chose to come

to the Tribunal only after six years and hence, he is guilty of delay.

10. In any event, in the present case, the reply affidavit filed by the Respondent clearly shows that the Assistant Medical Officers both in Siddha

and Ayurveda wing who were appointed temporarily had the benefit of retrospective regularisation from the date of their entry into service whether

with the assistance of the Tribunal's order or otherwise is immaterial. In the present case, the case of the Petitioner does not differ from the cases

of others who got beneficial order from the Government, whereas he has been regularised only from the date of the G.O. Hence, when he found

that similarly placed Doctors have got a better benefit, there is no reason that he should be content with the earlier order given by the Government.

When the Government chooses to implement the orders in respect of other Doctors by relaxing the rules, unless the Government points out that the

case of the Petitioner is different from others, clearly it is violative of Article 14 of the Constitution. It can be presumed that the Petitioner was not

an adhoc Assistant Medical Officer. It is not the case that the earlier order passed by the Government is being found fault with. In fact, the

Government itself showed reluctant by considering the case of the Petitioner only basing upon the reliance of the clarification issued by the State

Government by letter dated 21.04.1998 wherein they proposed to implement the orders of the Tribunal passed in O.A. No. 683/1989. Either the

Government might have taken a stand not to reopen other cases or suo motu reviewed all other cases. Though the Petitioner has made

representations relying upon the Government letter, he was denied the similar benefit as granted to other Doctors.

11. In view of the above, the Petitioner is liable to succeed. Accordingly, the impugned order stands set aside and the writ petition stands allowed.

The Respondent State Government is directed to grant relaxation to the Petitioner in the post of Assistant Medical Officer (Ayurveda) with effect

from 07.08.1978 and also to workout benefits if any, in accordance with law. The Respondent State Government is hereby further directed to

implement this order as expeditiously as possible and in any event, not later than three months from the date of receipt of a copy of this order. No

costs.