
(2015) 03 MAD CK 0162

In the Madras High Court

Case No : Writ Petition (MD) Nos. 4075 of 2010, 12426 of 2012 and M.P. (MD) Nos. 2 to 4 of 2012 in W.P. (MD) No. 12426 of 2012

Maruthuva Aaivaga Nutbunar Munnetra Sangam (CMLT) and Others APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 03 MAD CK 0162

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : M. Ajmalkhan, Senior Counsel for Ajmal Associates, for the Appellant; K. Chellapandian, Additional Advocate General for A.K. Baskara Pandian, Special Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—Since common issues are involved in these writ petitions, they are heard together and disposed of by this common order.

W.P. (MD) No. 4075 of 2010:

2. The facts of the case:

(i) The petitioner is a registered Association under the Tamil Nadu Societies Registration Act. Its members are Certificate Holders of one year Lab Technician Course. They have also registered themselves in the various Employment Exchanges in the Districts since 1994-1995. At the relevant point of time, one year Certificate Course viz., CMLT alone was available. The said Course was offered by King Institute, Chennai, and some selected Institutions. The candidates, who have joined the Certificate Course were promised that they would be absorbed in the post of Lab Technician Grade II available in the Health Department.

(ii) Subsequently, a Diploma Course for Lab Technicians, viz., DMLT came to be offered by various Institutions including six Government Medical Colleges in the State. As a result, huge members of candidates enrolled themselves in the DMLT course and got themselves registered with the Employment Exchange. The syllabus for CMLT and DMLT Courses was similar and one and the same. The CMLT candidates are better suited for the post of Lab Technician with CMLT Grade-I and they are to be absorbed and appointed at least in the post of Lab Technicians Grade II.

(iii) While so, the Government passed G.O.(Ms) No. 39, Health and Family Welfare Department, dated 05.02.2007, giving preferential treatment to the candidates, who have completed DMLT Course. The Members of the petitioner Association challenged the said Government Order. Number of writ petitions were filed before the Principal Bench of this Court. At the time of arguments, the Government submitted before the Principal Bench of this Court that 700 vacancies are available and after absorbing 442 DMLT Candidates, the remaining vacancies would be filled up by the CMLT candidates.

(iv) The first respondent also created a new post called Lab Technician Grade III exclusively for the absorption of CMLT candidates. This Court, by order dated 23.10.2007, dismissed the writ petitions and directed the respondents to fill up the vacancies from the DMLT candidates and rest of the vacancies to be filled up by the CMLT candidates.

(v) Based on such directions, call letters were issued to the Members of the petitioner Association. Instead of appointing them, the first respondent issued G.O.(Ms) No. 335, Health and Family Welfare (EAP 1/2) Department, dated 15.10.2008, stating that the persons who were already appointed on contract basis and working in the project of RNTC Programme and completed five years of service as on the date would be absorbed in the post of Lab Technician Grade III.

(vi) The said Government Order virtually deprived the employment of the Members of petitioner Association. Therefore, the petitioner has filed W.P. No. 10495 of 2008 before this court. This Court, by order, dated 11.02.2009, quashed the said Government Order. The contract employees got themselves impleaded in the writ petition and filed Writ Appeal No. 224 of 2009 against the order dated 11.02.2009, made in W.P. No. 10495 of 2008. The said writ appeal was dismissed on 10.12.2009, by a Division Bench of this Court.

(vii) While so, the respondents instead of accommodating the CMLT candidates, either in the remaining posts of Lab Technician Grade II or appointing them in the newly created post of Lab Technician Grade III, issued the impugned G.O. (Ms) No. 22, Health and Family Welfare (C2) Department, dated 29.01.2010 to circumvent the orders passed by this Court in W.P. No. 10495 of 2008 and W.A. No. 224 of 2009. By the impugned Government Order, the first respondent has fixed qualification for DMLT candidates on State-wide seniority. This runs counter to G.O. (Ms) No. 39, Health and Family Welfare Department, dated 05.02.2007

and the directions issued by this Court, dated 23.10.2007, as the Government Orders restricts the appointment of only DMLT holders.

(viii) The impugned Government Order is arbitrary and violative of Article 14 of Constitution of India. The first respondent by earlier G.O. (Ms) No. 39, Health and Family Welfare Department, dated 05.02.2007, instructed to fill up the vacancies by DMLT candidates and the remaining vacancies by CMLT candidates. By the impugned Government Order, the first respondent restricts the appointment of Lab Technician Grade II only to DMLT candidates. The CMLT candidates cannot be deprived of their right to be considered to the said post. The CMLT candidates are waiting for the past 15 years and they have legitimate expectation for being considered for appointment of Lab Technician Grade II. The first respondent ought to have taken State-wise seniority to DMLT and CMLT candidates and considered them equally for appointment to the post of Lab Technician Grade II.

(ix) For the above reasons, the petitioner has filed the writ petition to quash the impugned Government Order.

3. The third respondent filed counter affidavit denying the various averments made by the petitioner. The third respondent denied the allegation that the syllabus for CMLT and DMLT is one and the same. The duration of the DMLT Course is two years and CMLT Course is one year. The first respondent, by G.O. (Ms) No. 115, Health and Family Welfare (C2) Department, dated 03.04.2007, created a new post of Lab Technician Grade III, for appointment of CMLT candidates based on the State-wide seniority in Employment Exchange.

4. The first respondent, by G.O.(Ms) No. 39, Health and Family Welfare Department, dated 05.02.2007, prescribed the qualification for the post of Lab Technician Grade II in Tamil Nadu Medical Subordinate Services as Diploma in Medical Laboratory Technology [DMLT] conducted by the King Institute of Preventive Medicine or from any other Institution recognised by the first respondent. It is also stated that if DMLT candidates are not available, then the CMLT candidates from recognised Institutions may be appointed. The second respondent by his letter in Ref. No. 91338/PM/3/2008, dated 20.05.2009 stated that 1450 DMLT candidates undergo training every year in six Government Medical Colleges. Hence, the question of non-availability of DMLT candidates will not arise in future.

5. The first respondent has issued orders for filling up the post of Lab Technician Grade II with DMLT candidates by calling for the list of eligible candidates from the District Employment Exchanges of the State and by giving wide publicity through advertisement in the Newspapers throughout the State, so as to enable any willing candidate with DMLT qualification even though registered in different Districts to participate in the selection based on the State-wise Employment Exchange seniority.

6. The allegations that qualifications for CMLT and DMLT Courses are equal is

denied by the respondents. According to the third respondent, the CMLT is one year course and the DMLT is two years course. In W.A. (MD) No. 601 of 2010, dated 18.10.2010, this Court held that DMLT and CMLT candidates are not equal to claim parity. The first respondent has created a new post of Lab Technician Grade III in public health side by G.O.(Ms) No. 115, Health and Family Welfare (C2) Department, dated 03.04.2007, for CMLT candidates. No post exist for Lab Technician Grade III in the respondents 2 to 4. The said post is available only in the fifth respondent and CMLT candidates are appointed based on State-wide seniority obtained from the District Employment Exchanges whenever vacancies arise in the fifth respondent.

7. For the above reasons, he prayed for dismissal of the writ petition.

W.P. (MD) No. 12426 of 2012:

8. This writ petition has been filed by 18 CMLT candidates seeking to quash the impugned proceedings issued by the first respondent in G.O.(Ms) No. 22, Health and Family Welfare (C2) Department, dated 29.01.2010 and the consequential recruitment of Lab Technicians pursuant to the call letter issued by the second respondent in his proceedings in Na.Ka. No. 08/??? (I)/2012, dated 16.08.2012, and consequently, to direct the respondents to consider the candidates with CMLT qualification for appointment to the said post of Lab Technician Grade-II in conformity with the Madras Medical Subordinate Service Rules on the very same averments made in W.P. (MD) No. 4075 of 2010.

9. The second respondent filed counter affidavit denying the various averments made by the petitioners. The second respondent has stated that though the syllabus of CMLT and DMLT Courses is similar and, they are not identical. According to the second respondent, the duration of CMLT Course is one year and the DMLT Course is two years, and the two years Diploma Course offered is more comprehensive and technically higher in standard. The second respondent issued call letters to DMLT holders as per impugned G.O. Ms. No. 22, Health and Family Welfare (C2) Department, dated 29.01.2010, for certificate verification. The petitioners have no cause to file the present writ petition and prayed for dismissal of the writ petition.

10. In support of his submission, the learned Senior Counsel appearing for the petitioners relied on the following Judgments:

(i) State of Bihar Vs. Chandreshwar Pathak, , wherein in paragraph 16, it has been held as follows:-

"16. Accordingly, it has to be held that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. Learned Single Judge was justified in dismissing the writ petition while the Division Bench erred in interfering with the same."

(ii) State of Orissa and Another Vs. Mamata Mohanty, , wherein in paragraphs 18 and 19, it has been held as follows:-

"18. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, ; State of Haryana and others Vs. Piara Singh and others etc. etc., ; Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, ; Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others, ; Binod Kumar Gupta and Others Vs. Ram Ashray Mahoto and Others, ; National Fertilizers Ltd. and Others Vs. Somvir Singh, ; Telecom District Manager and Others Vs. Keshab Deb, ; State of Bihar Vs. Upendra Narayan Singh and Others, ; and State of Madhya Pradesh and Another v. Mohd. Ibrahim, (2009) 15 SCC 214)

19. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

(iii) P. Mohanan Pillai Vs. State of Kerala and Others, , wherein in paragraphs 10 and 11, it has been held as follows:-

"10. It may be that in a given situation, a decision of the State may be changed, but therefor good and sufficient reasons must be assigned. The Company failed to do so. The decision taken in this behalf smacks of arbitrariness. It prejudiced the candidates like the appellant.

11. It is now well settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as were prevailing on the date of vacancy should ordinarily be followed."

(iv) S. Vimalraj and Others Vs. The Additional Chief Secretary to Government, School Education (C2) Department and Others, , wherein in paragraph 16, it has been held as follows:

"16. Considering the said Judgments of the Supreme Court as well as this Court, we are of the view that the declaration sought for by the Appellants are deserved to be allowed and accordingly, the Writ Appeal is allowed insofar as the declaration prayer alone is concerned, namely, to declare Rule 10-A(a) of the Tamil Nadu State Subordinate Service Rules empowering the Government to get list only from the Employment Exchange for appointing persons in various posts [as ultra vires]. As directed in the Division Bench order dated 9.6.2014, the Respondents shall call for Applications through Advertisement as well as call for the list from Employment Exchange, if it is required to be called for, and make any selection in public employment for both temporary and permanent appointments. The Writ Appeal is disposed of accordingly. No costs."

(v) M. Ramamoorthy Vs. The Vice Chancellor, Alagappa University, Karaikudi and others [W.P. (MD) No. 15397 of 2012, dated 21.08.2014], wherein in paragraphs 8 to 10, it has been held as follows:

"8. At the outset, let us have a quick look into the legal position on this subject. The learned counsel for the petitioner has placed reliance on the Constitution Bench judgment of the Hon''ble Supreme Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . That was a case where admission by the Educational Institution by allotting 33 1/3% of total marks for oral interview was examined by the Hon''ble Supreme Court. The Hon''ble Supreme Court ultimately held that allocating more than 15% of marks for interview is likely to lead to arbitrariness offending Article 14 of the Constitution of India and therefore, the marks allocated for interview should not exceed 15% of the total marks. In paragraph-19 of the judgment, after having served the legal position, the Hon''ble Supreme Court held as follows:

"We are of the view that, under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid."

9. Very recently, in Indian Council for The Director General, Indian Council for Agricultural Research and Others Vs. D. Sundara Raju, , the Hon''ble Supreme Court had occasion to consider the same issue. That was a case of promotion based on interview marks. In that judgment, after having surveyed all the previous judgments, including Ajay Hasia''s case, referred to supra, the Hon''ble Supreme Court, in paragraphs 42 and 43, has held as follows:

"42. The appellants were totally unjustified in allocating 50% marks for the interview particularly when the appellants did not even disclose to the respondent that the interview would also be held to evaluate the suitability of the candidate for the said post. The procedure evolved by the Selection Committee for evaluating the respondent was totally arbitrary and contrary to the settled

legal position.

43. The appellants themselves have found 50% marks for interview highly excessive, therefore, now the criterion has been changed from 50% to 10%. This is indicative of the fact that good sense had ultimately dawned on the appellants."

10. Applying the above legal position to the facts and circumstances, if we look into the facts, it is crystal clear that the selection was based only on the interview marks, i.e., 100% of marks allocated for interview alone. Marks were not awarded for other criteria like experience, higher education, age, seniority etc. Thus, in my considered opinion, making selection by allocating 100% marks for interview, is highly arbitrary. It is needless to point out that when 100% marks is awarded for interview and the selection is made solely on the interview marks, certainly there is likelihood of favoritism, nepotism or any other things alike. The rule of law on this aspect, finds recognition in Article 14 of the Constitution of India as a basic structure. On several occasions, the Hon"ble Supreme Court has held that any procedure which is likely to lead to arbitrariness is liable to be struck down, as offending Article 14 of the Constitution of India. That is what has been done by the Hon"ble Supreme Court in its judgments cited supra, wherein the Hon"ble Supreme Court has held that allocating more than 15% of marks for interview will be unconstitutional. Since, in the instant case, 100% marks was allocated for interview, the selection conducted by the Selection Committee is liable to be set aside and consequentially the order promoting the third respondent as Deputy Registrar is liable to be set aside."

11. I have heard Mr. M. Ajmalkhan, learned Senior Counsel appearing for the petitioners and Mr. K. Chellapandian, learned Additional Advocate General appearing for the respondents in both the writ petitions, considered the arguments put forth by them and perused the materials on record.

12. The learned Senior Counsel for the petitioners and the learned Additional Advocate General reiterated the averments made in the affidavit and the counter affidavit.

13. The contention of the petitioners is that their qualification of CMLT is equal to DMLT. According to the petitioners, they are better than the DMLT candidates. The impugned Government Order issued to circumvent the orders passed by this Court, dated 23.10.2007, wherein the respondents were directed to fill up the vacancies by DMLT candidates and after that to fill up the balance vacancies by CMLT candidates. By calling for DMLT candidates on State-wide Employment Exchange seniority, they are deprived the opportunity to get appointment as Lab Technician Grade II.

14. Both the contentions are untenable and unsustainable. The issue that CMLT and DMLT qualifications are equal is no longer res integra. This issue had already been considered by the learned Judge in the order dated 23.10.2007, made in W.P. Nos. 18237 of 2007 etc. batch, wherein in paragraph No. 11, it has been

held as follows:-

"11. The Court paid its anxious consideration on the submissions made. This Court is unable to agree with the contentions put forth by the petitioners" side for more reasons than one. Concededly, all the petitioners herein have underwent the CMLT course which is admittedly for a period of one year. As far as the DMLT candidates are concerned, they have undergone the training for a period of two years, and thus, comparatively, the DMLT course candidates who have undergone the training for two years, in view of their experience in training, have got to be necessarily given preferential treatment since it is concerned with the medical laboratory technology which would expect more experience. Further, when the matter was taken up before the Tribunal, an order came to be passed, a copy of which is placed in the hands of this Court. The above said reason is adduced by the Tribunal for giving preferential treatment. It is also true that for a period of about a decade, the DMLT course was not available, and thus, the candidates, who are the petitioners herein, along with others were compelled to undergo CMLT course, and it was for a period of one year. As stated above, the DMLT candidates having two years training, have got to be necessarily given preference in view of their experience and training than the CMLT course for one year training. The main contention put forth by the learned Counsel for the petitioners that all these petitioners along with others underwent CMLT course with the fond hope of getting employment opportunity in the hands of the Government; and that in view of the above said G.O., if the DMLT candidates are preferred and posted, the petitioners are likely to lose the job opportunities cannot be countenanced. Such a situation should have been taken into consideration by the Government which has resulted in creation of these posts namely Laboratory Technician Grade-III and also Field Assistant which are exclusively for the candidates from the CMLT. It is brought to the notice of the Court by the State that more than 2000 posts in Laboratory Technician Grade-III and Field Assistant were available out of which more than 1000 posts from the CMLT candidates have been filled up, and the rest of the posts are yet available. According to the learned Counsel for the State, 442 posts are available today to be filled up."

15. A Division Bench of this Court in the Judgment dated 08.02.2010, passed in W.A. (MD) No. 68 of 2010, held that CMLT candidates are not equal to DMLT candidates. Paragraph 7, it has been held as under:

"7. Therefore, the position of the State is very clear. The order of the learned Single Judge cannot be understood as a direction to do something contrary to Law and in particular the special Rule and the relevant Government Orders. It can only be understood to mean that if there are still vacancies remaining after appointing the DMLT candidates, then the CMLT candidates could be considered. The clarification dated 07.01.2008 also makes the position clear. There is no discrimination or injustice since it is clear that the DMLT candidates undergo two years course, whereas the CMLT candidates undergo one year course. They are

not equals to claim parity. The Government has also provided for appointment for the CMLT candidates, which is Laboratory Technician Grade III."

16. The second contention of the petitioners that by considering the DMLT candidates on State-wide Employment Exchange Seniority, the respondents deprived them the opportunity to get appointment as Lab Technician Grade II. They are entitled to get appointment in Lab Technician Grade II in the balance post after filling up the post with DMLT candidates. This contention is not tenable and sustainable. In the counter filed in W.P. (MD) No. 4075 of 2010, the respondents have stated that every year, 1450 DMLT candidates undergo training in six Government Medical Colleges. Therefore, there will be no balance vacancy after filling up the posts by DMLT candidates. Though the counter was served on the petitioners on 06.06.2011 itself, the petitioners have not denied the said averments by filing any re-joinder.

17. In the following Judgments, it has been held that efforts must be made for calling all the eligible candidates. It has been held that in addition to calling the list from the Employment Exchange, an advertisement must be made to enable the eligible candidates to apply.

(i) State of Bihar Vs. Chandreshwar Pathak,

(ii) S. Vimalraj and Others Vs. The Additional Chief Secretary to Government, School Education (C2) Department and Others,

(iii) State of Orissa and Another Vs. Mamata Mohanty,

18. The Judgment referred to by the learned Senior Counsel for the petitioners, dated 21.08.2014, made in W.P. (MD) No. 15397 of 2012, does not relate to the issue in this proceedings. It relates to awarding 100% marks for promotion in the interview.

19. The first respondent, by G.O.(Ms) No. 115, Health and Family Welfare (C2) Department, dated 03.04.2007, created a new post of Lab Technician Grade III in the fifth respondent. The CMLT candidates are exclusively appointed as Lab Technician Grade-III and also as Field Assistants. The learned Judge in the order dated 23.10.2007, made in W.P. (MD) Nos. 18237 of 2007 etc. batch, took note of the fact that 1000 CMLT candidates were appointed as Lab Technician Grade III and another 1000 vacancies are available and CMLT candidates will be appointed in those vacant posts. Therefore, the contention of the petitioners that the appointment opportunity of CMLT candidates are affected is untenable and unsustainable.

20. The impugned Government Order is in consonance with the Judgments reported in State of Bihar Vs. Chandreshwar Pathak, , 2011(4) MLJ 692 (supra), 2015(1) CTC 424 (supra). The efforts of the respondents to get all the eligible candidates for selection and appointment cannot be held to be arbitrary and violative of Article 14 of the Constitution of India.

21. For the above reasons, I hold that the impugned Government Order is valid one not arbitrary and not violative of Article 14 of the Constitution of India. The impugned Government Order is issued to get application from all the eligible DMLT candidates throughout the State of Tamil Nadu.

22. In the result, both the writ petitions fail and dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are dismissed.