
(2006) 02 MAD CK 0116

In the Madras High Court

Case No : Writ Appeal No. 5 of 2006, Writ Petition No. 28348 of 2005, W.A.M.P. No. 19 of 2006 and W.P.M.P. No. 30865 of 2005

State Government of Tamil Nadu

APPELLANT

Vs

K. Vijayakumar and Smt. Kamala A. Christopher
K. Vijayakumar Vs The Secretary to Government, Health and Family Welfare Department, The Director of Drug Control and Smt. Kamala A. Christopher, Government Analyst, Drug Testing Laboratory

RESPONDENT

Date of Decision : 22-02-2006

Acts Referred:

Citation : (2006) 3 LW 133 : (2006) 2 MLJ 465

Hon'ble Judges : Ajit Prakash Shah, C.J.;Prabha Sridevan, J

Bench : Division Bench

Advocate : A.L. Somayaji, A.A.G for V. Karthikeyan, A.G.P. in Writ Appeal No. 5 of 2006 and T.R. Rajagopalan for Hidayathullahkhan, in Writ Petition No. 28348 of 2005, for the Appellant; A.L. Somayaji, A.A.G. for V. Karthikeyan, A.G.P. for Respondents 1 and 2 in Writ Petition No. 28348 of 2005, T.R. Rajagopalan for Hidayathullahkhan, for Respondent-1 in Writ Appeal No. 5 of 2006 and K. Alagirisamy for S. Elambharathi, for Respondent-2 in Writ Appeal No. 5 of 2006 and for Respondent-3 in Writ Petition No. 28348 of 2005, for the Respondent

Judgement

Ajit Prakash Shah, C.J.—We have heard learned counsel appearing for the parties. By consent of the parties, the writ appeal as well as the writ petition are taken up for hearing. The parties are referred as arrayed in the writ petition.

2. The writ petitioner is challenging G.O. Ms. No. 201, Health and Family Welfare (M1) Department dated 31.08.2005 issued by the first respondent granting extension of service to the 3rd respondent for a period of one year commencing from 01.09.2005 to 31.08.2006. The impugned order is purportedly passed in exercise of power available under Fundamental Rule 56(1)(a) in terms of G.O. Ms. No. 2035, Public (Services-A) Department dated 28.10.1969.

3. The writ petitioner is working as Deputy Government Analyst in Drug Testing

Laboratory, Chennai having rendered 28 years of service. The next promotion for him is to the cadre of Government Analyst. The Drug and Cosmetic Rules, 1945 prescribe the qualification for the post of Government Analyst. As per the Rules, a graduate with two years experience as Deputy Government Analyst and also having training experience in Schedule "C" drugs would be appointed as Government Analyst. There is no dispute that the writ petitioner satisfies the qualifications laid down by the Rules. The 3rd respondent, who was holding the post of Government Analyst was due to retire with effect from 31.08.2005. The grievance of the writ petitioner is that the 1st respondent, without considering his claim and qualifications, issued the impugned order dated 31.08.2005 thereby granting extension of service to the 3rd respondent depriving his right of promotion. The petitioner contends that the Government has issued clear guidelines in Government Letter No. 82 P & AR Department dated 30.03.1994 enumerating criteria to be adopted while granting extension of service. As per the said Government letter, extension of service could be granted on the satisfaction of the two conditions alone viz., extraordinary ability and dearth of qualified officer. The writ petitioner complains that none of the conditions has been fulfilled in this case by the 3rd respondent and the impugned order is wholly arbitrary and illegal.

4. G.O. Ms. No. 2035, Public (Services-A) Department, dated 28.10.1969 reads as follows:

Abstract:- Public Services - Technical and Scientific Personnel Utilisation of Services - beyond age of superannuation - Revised instructions - issued.

Read:- 1. G.O. Ms. No. 290, Public (Services-A) dated 19.02.1963

2. G.O. Ms. No. 917, Public (Services-A) dated 18.05.1963.

ORDER:

In the G.O. first read above, the Government ordered that persons with scientific and technical (including medical) qualifications might be normally retained in service upto the age of 58 years if they are physically and otherwise fit for the public service to meet the situation created by the declaration of the National Emergency in 1962 as there was demand for large number of technical personnel. In the G.O. second cited the Department of Secretariat were requested to draw up a list of posts, in consultation with the Heads of Departments if necessary the holders of which would come within the scope of the orders G.O. Ms. No. 290, Public (Services), dated 19.02.1963. As the National Emergency has been lifted and as the demand for technical personnel has eased the Government have reconsidered the orders mentioned above and they issue the following orders:-

1) The orders issued in the two G. Os. read above be hereby cancelled.

2) Cases of re-employment of Government servants of all categories including technical personnel should be examined on merits of each case as the case before the issue of orders read above.

3) Re-employment will be considered only where there is dearth of qualified persons or where a person is of outstanding ability. Officers of average ability and below, and those of doubtful in nature should not be retained.

SECTION OFFICER

5. By the Government Letter No. 82 P & AR Department dated 30.03.1994 guidelines have been issued by the State Government in the matter of re-employment of retired government servants. The letter is reproduced below:

From

Thiru M. Ahmed, I.A.S., Secretary to Government.

To

All Secretaries to Government, Departments of Secretariat, Madras - 600 009.

Sir,

Sub: Public Services - Re-employment of Retired Government Servants - Avoidance of - Further instructions - Issued.

Ref: 1. U.O. Note No. 7881/68-2, Public (Ser. A), dated 7.6.1969.

2. G.O. Ms. No. 2035, Public (Services A), dated 28.10.1969.

3. Letter (Ms) No. 1, Personnel and Administrative Reforms

(Per. S) Department, dated 04.01.1993.

In the reference third cited Government have reiterated that it is not desirable to grant extension of service or re-employment of retired employees in Government. Only where there is dearth of qualified candidates and where a person is of outstanding ability, cases may be considered on merits for extension or re-employment.

2. Proposals are received from Departments of Secretariat for extension of service/re-employment without sufficient particulars to show the outstanding ability of the officer concerned or the dearth of qualified persons. It is considered that not only should proposals for re-employment/extension of service be rare, but such proposals should be supported by the following particulars:

(1) The Personal File of the retiring/retired officer with up to date entries.

(2) A resume of the personal file to substantiate that the person is of outstanding ability as revealed by the personal file for at least the last 5 consecutive years.

(3) Details of punishments awarded, if any, during the last 10 years.

(4) Details of any pending charges/vigilance enquiries, in the case of officials yet to retire from service.

(5) Details of any commendations received by the officer for his work during the last five years.

(6) A brief gist of the duties proposed to be assigned to the officer when he is to be on re-employment/extension of service indicating also the time frame within which such work will be completed.

(7) Reasons why the work cannot be immediately handed over to any of the other serving officials of equivalent or higher or lower categories.

3. I am therefore to request that whenever proposals for re-employment/extension of service of Government Servants are sent to this department, the above particulars should also be included in the proposal.

Yours faithfully, For SECRETARY TO GOVERNMENT.

6. There is no gainsaying that in each case of extension or re-employment, it is not only the next man who misses promotion but often several people miss consequential promotions all along the hierarchical strata. Therefore, one person getting re-employment or extension means depriving promotion of several persons and frequent orders of extension of service or re-employment have a tendency to cause frustration and affect the morale of the staff in general. From a bare reading of the relevant Government Order and the Government Letter referred to above, it is apparent that a government servant can be re-employed subject to satisfying the two conditions viz., outstanding ability and dearth of qualified candidates. The short question that falls for our consideration is whether the impugned order granting extension of service is legal and valid.

7. According to the respondent-State extension of service has been granted to the 3rd respondent under Fundamental Rule 56(1)(a) only after taking into consideration her extraordinary capabilities. It is claimed that the 3rd respondent has 37 years of vast experience in testing food/drugs and cosmetics and has knowledge in testing all drugs and she has been notified as member of the prestigious Drug Technical Advisory Board. She has also audited certain State Drug Testing Laboratories, and on the request of the Jammu and Kashmir Government, she has submitted her report in respect of strengthening their State Drug Testing Laboratory. Apart from that, she is a Fellow of the Chemical Society of London. It is also claimed that during her tenure, she has developed the Microbiology Section of the Laboratory and Vitamin B-12, Folic Acid and Calcium Pantothenate (in Multivitamin formulations) assay by Microbiological method during the year 1987. It is also claimed that during her tenure, the Government of India and the World Bank have sanctioned funds for the Drug Testing Laboratory, Chennai. It is claimed that keeping in view of all these factors, the State Government has decided to grant extension to the 3rd respondent for a period of one year.

8. We have heard learned counsel appearing for the parties, and after perusing the records, we are of the opinion that the impugned order cannot be sustained in law. In the first place, it is not even the case of the respondent-State that there was dearth of qualified officers. However, it is claimed that the 3rd respondent is an officer having outstanding ability and she is instrumental in developing the Microbiology Wing of the laboratory. We shall presently show that this has no basis whatsoever. It is seen that Microbiology Wing has been in existence for more than 40 years and it has undergone developments during various periods. It appears that Microbiology Wing was developed during the tenure of Senior Analyst Mr. Nithyanandan. It is undoubtedly true that during last several years, the Laboratory has made certain developments, but surely, a single official cannot be given credit for the development of the Laboratory. The claim of the 3rd respondent that she developed Vitamin B12, Folic Acid and Calcium Pantothenate is totally exaggerated as it is pointed out to us that these preparations are already available in the text book of USP (United States Pharmacopoeia). The fact that the 3rd respondent was nominated as a Member of the Drug Technical Advisory Board and she audited certain State Drug Testing Laboratories also cannot be taken as an indicator for her outstanding ability. The assignments are only occupational assignments. It is also brought to our notice that the Fellow of the Chemical Society of London is only a membership and obtained by paying required fees in pounds with introduction of senior members of the Society. The original Confidential Reports of the 3rd respondent were made available for our perusal. There is nothing to indicate in the reports that the 3rd respondent possesses any outstanding ability. On the other hand, it has been brought to our notice that the 3rd respondent in the last 9 years, has been given promotion by giving repeated concessions at every stage of promotion. We are satisfied that none of the conditions laid down in G.O. Ms. No. 2035, Public (Services-A) Department dated 28.10.1969 has been fulfilled for granting extension to the 3rd respondent. It is also clear that the procedure prescribed by the Government Letter No. 82 P & AR Department dated 30.03.1994 has not been followed while granting extension of service to the 3rd respondent. In the facts and circumstances of the case, we do not see any justification for granting re-employment to the 3rd respondent by invoking Fundamental Rule 56(1)(a). We, therefore, quash the impugned Government Order (Ms.) No. 201, Health and Family Welfare (M1) Department dated 31.08.2005.

9. With the above observations, the writ appeal and the writ petition are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.