

(2010) 09 MAD CK 0284

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 4249 of 2008 and M.P. (MD) No's. 1 and 2 of 2008

Dr. P. Thangam Jesudian

APPELLANT

Vs

The State of Tamil Nadu and
Medical Council of India

RESPONDENT

Date of Decision: Sept. 13, 2010

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: V. Panneerselvam, for the Appellant; S.C. Herold Singh, GA for RR1 to 3 and P. Krishnasamy, CGSC for R-4, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

In this writ petition, the Petitioner seeks for a direction to select him under service quota for undergoing Post Graduate Degree/Diploma/M.Ch (Neuro Surgery) course for the year 2008-2009 after ascertaining the marks obtained by him in the entrance examination and grant him admission.

2. When the matter came up on 30.04.2008, this Court directed one seat to be kept vacant. Thereafter on 03.04.2009, this Court held that since for that academic year, number of seats are vacant, there is no necessity to reserve any seat and hence the earlier order should be revoked.

3. It is the case of the Petitioner that he is fully qualified in Bachelor of Dental Surgery. He had also registered his name with the Tamil Nadu Dental Council. The Petitioner had joined as Dental Officer in the Ex-servicemen Contributory Health Scheme (for short ECHS) in one of the polyclinic at Tirunelveli after advertisement in the newspaper and attending an interview. He has been discharging his duties as a Dentist. He wanted to do Post Graduate Course either in M.D. or M.S. Hence he applied under the service quota for selection for the year 2008-2009. Since

Respondents had not considered his application, he also sent a detailed representation. Since reply was not forthcoming, he has filed the present writ petition.

4. Under paragraph 55(3) of prospectus issued by the selection committee for medical education for selection for the year 2008-2009, for the purpose of service quota, it was defined as follows:

55(3). Medical officers serving (for three years) in:

(a) Local Bodies in Tamil Nadu (Except Medical Officers working in Panchayat Union part time or full time as the case may be, who have to be treated as Non-service candidates).

(b) Government of India Institutions in Tamil Nadu.

(c) Public Sector undertakings or organizations under the control of Government to Tamil Nadu or Government of India in Tamil Nadu.

5. According to the Petitioner, he is coming under paragraph 55(3)(c). Therefore, he should be treated as a service candidate. A copy of the agreement, dated 15.4.2004 executed at the time of appointment with the ECHS shows that he was serving only in contractual capacity as a Dental Officer. The initial period of contract was only 11 months from the date of joining in the polyclinic. It is liable to be renewed upto maximum period of two years. Further, it is also shown in Clause 9 that the agreement is liable to be terminated by giving one month notice or by offering one month salary. In Petitioner's case, a further term of contract was executed on 17.2.2006 in which the term was slightly altered, wherein for renewal, no period was specified. But, on the question of termination, it could be done by one month notice. Further, contract, dated 18.01.2007 was also produced in the typed set with similar terms.

6. The contention of the Petitioner that he also belongs to public sector health institution under the control of the Government of India and therefore, he is eligible to be considered under the service quota cannot be entertained.

7. On behalf of Respondents 1 to 3, a counter affidavit, dated 25.3.2009 has been filed. In the counter affidavit, it was stated that the Petitioner was working on contractual term with an agreement for 12 months and he is not in any regular service. Therefore, he cannot be considered as a service candidate. It was also claimed that assuming that he was eligible, he had not rendered three years of service which condition has been upheld by this Court as not arbitrary.

8. The term "service candidate" found in the prospectus has definite meaning and purpose. The term "service" came to be defined in many decisions of the Supreme Court. The Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, observed that the term has variety of meanings. It may mean any benefit or any act

resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory etc. The concept of service thus is very wide. How it should be understood and what it means depends on the context in which it has been used in an enactment.

9. In order to avail the benefit of quota meant for service candidate, a person must be in regularly constituted service and cannot hold any contractual post, which is liable to be terminated at the will of parties. A perusal of the entire prospectus will show that a candidate selected under the service quota will have to be in the Government service till the end of his service so as to utilize his knowledge obtained by the concession shown by the State. In sending a candidate under service quota for P.G. Super speciality course, the State incurs heavy liability not only providing him training, but also expenditure involving the candidate's three years' absence in undergoing the course. In case of contractual appointee, his obligation can never be enforced as his contract can be terminated at the will of the parties and there is no obligation for retaining such a candidate. Therefore, any person claiming to be coming under the service category, must belong to the constituted service either under the Government or under any public sector. It must be a career post and not a tenure post. Therefore, denial of consideration of the Petitioner's request was fully justified and no exception can be taken to the stand of the Respondents.

10. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.