

(2011) 08 MAD CK 0287

Madras High Court

Case No: Writ Petition (MD) No. 12254 of 2009

Dr. S.K. Saravanan

APPELLANT

Vs

The Government of Tamil Nadu
and The Tamil Nadu Public
Service Commission

RESPONDENT

Date of Decision: Aug. 10, 2011

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: J. Nisha Banu, for Ms. Anjana, for the Appellant; S.P. Maharajan, for 3rd Respondent and T.S. Mohammed Mohideen, Special Government Pleader. for Respondents 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The writ petition challenges the order of the second Respondent, dated 6.10.2009 addressed to all the Deputy Directors of Health Services and the order of the Principal Secretary to Government, Health and Family Welfare Department, dated 07.10.2009 addressed to the third Respondent in and by which the first and second Respondents have stated that for the purpose of qualifying the Assistant Surgeons appointed on temporary basis under Rule 10(a)(i) under a special drive for appointment in the medical services, he should have been appointed upto 23.02.2009 and continue to be in service as on 07.08.2009.

2. It is admitted case that the Petitioner was appointed on 30.06.2009 by the proceedings of the Director of Public Health and Family Welfare Department, Chennai namely, the second Respondent in the sanctioned post of Assistant Surgeons (Specialties) in Government Primary Health Centre, Keeranur, Trichy.

3. A reference to the appointment order shows that the appointment is pursuant to the G.O. Ms. No. 215, Family Health and Welfare Department, dated 12.06.2007. In order to regularise 2109 persons working as Assistant Surgeons, Medical Officers and Non Service Post Graduate/Diploma holders through Employment Exchanges in the time scale of pay who were appointed in terms of various Government orders in G.O. Ms. No. 29, dated 21.01.2007, G.O.Ms. No. 83, dated 12.03.2007, G.O. Ms. No. 215, dated 12.06.2007 and G.O.Ms. No. 323, dated 07.09.2007 and who are in service as on 07.08.2009, the third Respondent issued a notification by way of public advertisement calling for applications from those 2109 persons appointed in terms of the above said Government orders. The Petitioner who was appointed as Assistant Surgeon (Specialties) in terms of G.O. Ms. No. 215, dated 12.06.2007 who comes within the ambit as per the advertisement of the third Respondent wherein G.O.Ms. No. 215, dated 12.06.2007 has applied to the third Respondent for regularisation. The application of the Petitioner was not considered by the third Respondent based on the impugned communications on the ground that the Petitioner was not appointed as Assistant Surgeon upto 23.02.2009 since his appointment was on 30.06.2009. It is in these circumstances, the two impugned communications which are inter departmental in nature and which are not served on the Petitioner and which are after the publication of the advertisement by the third Respondent are challenged on the ground that any subsequent communication or clarification departmentally will not take away the right which has already been conferred to the Petitioner as per the advertisement issued by the third Respondent; that the Petitioner being one of the persons appointed as Assistant Surgeon in terms of G.O. Ms. No. 215, dated 12.06.2007 comes within the total strength of 2109 persons to be appointed has rightly made application based on the advertisement issued by the Tamil Nadu Public Service Commission especially when as on 07.08.2009, the Petitioner was admittedly working as Assistant Surgeon, he is entitled to be considered for regularisation and that the reliance placed on by the Respondents the impugned communications have no application to the Petitioner.

4. It is the case of the third Respondent that while admittedly the advertisement was issued by the Tamil Nadu Public Service Commission on 15.09.2009, the impugned communications were subsequently issued namely on 17.09.2009 and 07.10.2009 respectively. But the Petitioner even though has been appointed in terms of G.O. Ms. No. 215, dated 12.06.2007, he does not come within the strength of 2109 persons and therefore, he is not as a matter of right eligible to be considered for regularisation drive which according to the third Respondent, is a special drive made by the Government for the purpose of facilitating the regularisation of 2109 Assistant Surgeons working in the Public Primary Health Centres.

5. It is also the case of the third Respondent that regularisation is not a matter of right. Such regularisation if it is made under the special qualification examination, unless and until, the individual complies with the requirements, he cannot as a

matter of right claim himself to be considered. It is also the case of the third Respondent that the Petitioner's name has not been recommended by the Department of Public Health and Preventive Medicine so as to enable to make him eligible to be considered for regularisation in the special examination to be conducted by virtue of the advertisement issued by the Tamil Nadu Public Service Commission.

6. It is not in dispute that the Petitioner was appointed as Assistant Surgeon on 30.06.2009. A reference to the appointment order of the Petitioner, dated 30.06.2009 issued by the second Respondent shows that the Petitioner was appointed in Primary Health Centre, Keeranur, Trichy in terms of G.O. Ms. No. 215, dated 12.06.2007. In the notification issued by the Tamil Nadu Public Service Commission, by way of advertisement which was on 15.09.2009 calling for applications for the purpose of regularisation of temporary service of Assistant Surgeons, the Tamil Nadu Public Service Commission, has specifically stated as follows:

Applications are invited only from the 2109 persons, who were appointed as Assistant Surgeons, Medical Officers and Non-service Post Graduate/Diploma holders through Employment Exchange in the time scale of pay in G.O. Ms. No. 29, dated 21.01.2007, G.O. Ms. No. 83, dated 12.03.2007, G.O. Ms. No. 215, dated 12.06.2007 and G.O. Ms. No. 323, dated 07.09.2007 of Health and Family Welfare Department, as the case may be, and who are in service as on 07.08.2009, for regularisation of their temporary services so as to absorb them as Assistant Surgeons.

which includes those persons appointed by virtue of G.O. Ms. No. 215, dated 12.06.2007. When the Petitioner is one among the persons appointed as per the said Government order when he is qualified for making such application, there cannot be any embargo from considering his claim to undergo the necessary examination for regularisation on the basis of certain extraneous communications. This Court is emboldened to state that the impugned communications are extraneous based on the advertisement issued by the third Respondent for the simple reason that the impugned communications are not only inter departmental which are not communicated to the Petitioner but issued much after the advertisement issued by the Tamil Nadu Public Service Commission which is the recruitment authority empowered to perform its function under the Constitution of India. While so, the impugned communications which are issued subsequently by the first and second Respondents adding anew word that for the purpose of regularisation consideration of a person for regularisation by the Tamil Nadu Public Service Commission, he must have been in service upto 23.02.2009 which does not form part of the advertisement itself cannot be put against the Petitioner so as to disentitle him to be considered for the post. Therefore, the Petitioner is certainly entitled for the relief claimed in the writ petition and the impugned orders cannot be put against the

Petitioner for the purpose of disqualifying him to participate in the special qualification examination when he comes within the zone of consideration since his appointment was in term of G.O. Ms. No. 215, dated 12.06.2007. It is also seen that by virtue of interim order passed by this Court dated 26.11.2009, the Petitioner was permitted to take part in the special qualification examination conducted by the third Respondent on 29.11.2009 and that was of course subject to the final result in the writ petition.

7. In view of the above said reasoning given by me, I have No. hesitation to hold that the impugned communications cannot create any embargo on the right of the Petitioner to participate in the said drive for the purpose of regularisation in the post of Assistant Surgeon. Therefore, it is not necessary for this Court to decide as to whether the impugned communications given by the first and second Respondents are valid in law or not and the same cannot stand as an embargo against the Petitioner since that was not forming part of the advertisement issued by the Tamil Nadu Public Service Commission based on which the Petitioner has made application.

8. In such view of the matter, the writ petition stands disposed of with a direction to the third Respondent to release the result of the Petitioner in respect of the special qualifying examination written by him as per the direction of this Court and based on the results, if he is eligible, the Respondents 1 and 2 are directed to regularise the Petitioner as Assistant Surgeon in accordance with law, since admittedly he has undergone written test and viva voce. The entire process shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. No. costs. Consequently, connected miscellaneous petitions are closed.