

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-08-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.27433 OF 2004

and

WPMP.NOs.33345 OF 2004 & 1281 of 2005

Dr.B. Syed Shah,
M.D. Siddha (Maruthuvam &
M.D. Siddha (Pharmacology)
Lecturer,
Government Siddha Medical College,
Chennai 106. ... Petitioner

Vs.

1. The Special Commissioner of Indian
Medicine and Homeopathy,
-Cum-Officer on Special Duty,
National Institute of Siddha,
Arignar Anna Govt. Hospital of
Indian Medicine Campus,
Arumbakkam, Chennai 106.
2. Dr.V. Subramanian,
Joint Director of Indian Medicine (Retd)
Selection Committee Member to the Post
of Professor (Podhu Maruthuvam Dept.)
National Institute of Siddha,
Tambaram.
3. Dr. Manickavasagam,
Government Siddha Medical College,
Arumbakkam, Chennai 106. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of declaration declaring the selection made to the post of Professor for the department of Maruthuvam pursuant to the Advertisement No.2 of the 1st respondent published in Dina Malar dated 1.3.2004 and consequent interview conducted in Ref.No.4584/NIS-Staff/03 dated 30.7.2004 of the 1st respondent be null and void and thereby directing the 1st respondent to constitute fresh selection committee and select the candidates to the post of Professor for the department of Maruthuvam under the first respondent.

For Petitioner : Mr.V. Dhanapalan for
Mr.S. Srinivasan

For Respondent-1 : Mr.K. Veeraraghavan, SCGSC

Respondent-3 : Mr.C. Selvaraju
Senior Advocate for
M/s.S. Mani &
T. Sellapandian

J U D G M E N T

The present writ petition has been filed for declaration that the selection made to the post of Professor for the Department of Maruthuvam on the basis of the interview conducted in Ref.No.4584/NIS-Staff/03 dated 30.7.2004 is null and void and for a direction to the first respondent to constitute a fresh selection committee for the selection of the candidates to the post of Professor for the said department.

2. The relevant facts are as follows :-

The National Institute of Siddha, Tambaram, is functioning under the Ministry of Health and Family Welfare. The first respondent had issued Advertisement No.2 dated 1.3.2004 for various posts, including the posts of Professor and Associate Professor in the Department of Maruthuvam. In the present case, the disputed question relates to the post of Professor. The required qualification for the post of Professor is indicated as hereunder :-

| Name of the Post | Qualification |
|------------------|--|
| Professor | 1. PG Qualification in Siddha in the concerned Subjects recognised by CCIM. 2. 5 Years regular service in the Pay scale of Rs.12000 - 16500 or its equivalent as Reader/Associate Professor or incumbent is holding analogous post in the same Pay scale. |

The petitioner, who was at the relevant time working as a Lecturer in Government Siddha Medical College, Chennai, applied for the said post. The petitioner was called for the interview for the post of Professor to be held on 6.8.2004. The petitioner claims that to his shock and surprise, he found that the Selection Committee consisted of, among others, the present second respondent, who was the retired

Joint Director in the Department of Indian Medicine. According to the petitioner, the said second respondent had earlier developed enmity against the petitioner as the petitioner was perceived to be a competitor of the wife of the second respondent for the promotional post in the State service. It has been specifically alleged in the petition that such second respondent was responsible for many setbacks the petitioner suffered during his service career and he was also responsible in preventing the petitioner getting Ph.D. Research degree. It has been asserted by the petitioner that the said second respondent was inimical towards the petitioner and stood as a stumbling block in his career. The petitioner has also asserted that immediately after the interview, he had protested "orally to the first respondent". It is specifically claimed that the petitioner in spite of his qualification and experience, was not selected because of the mala fide intention and ulterior motive of the second respondent. On these basic allegations, the petitioner has prayed for quashing the selection process and for a direction to hold a fresh selection.

3. Separate counter affidavits have been filed by the first respondent and the third respondent respectively. However, in spite of service of notice, the second respondent has not entered appearance and no counter affidavit has been filed by the second respondent.

4. In the counter affidavit filed by the first respondent, it has been indicated that the Selection Committee consisted of several officials and experts and the Committee had interviewed the candidates on the basis of academic records, attitude for research, attitude for guide the student (sic), alertness, capacity to handle the students and solve the problems, measures of proficiencies, skills in teaching, temperament and measures of adaptability, feasibility, versatility etc., and performance in the interview. It has been further stated that after scrutiny, the Committee had recommended for appointment of the third respondent and another person, namely, Dr. Logamania. Thereafter, the Government of India had approved the selection and the third respondent had been appointed. It is stated that the claim of seniority of the petitioner over the selected candidates was immaterial as such seniority under the State Government was not a relevant consideration for appointment to the post, which was under the Central Government. The specific allegation made against the second respondent had been denied. It has been indicated that the wife of the second respondent had retired in May, 2001 and she was not an applicant for the post, and, therefore, there could not have been any malice against the petitioner by the second respondent.

5. In the counter affidavit of the successful candidate, namely, the third respondent, it has been indicated that selection had taken place on merit and there is no justification in

the allegations made by the petitioner. The third respondent has specifically stated that the petitioner being ineligible even to apply for the post as he was not a Reader or Associate Professor with five years experience in the scale of pay of Rs.12,000/-, he has no locus standi to challenge the selection. It is also indicated that the selection is for a post which is to be held on deputation basis for a period of 2 years. The deputationists have to retire in their 58th year and since the petitioner was due to retire in May, 2005, he did not have two years of service for deputation and he was not rightly selected.

6. A reply affidavit has been filed by the petitioner replying to the assertions made in the counter affidavit of the first respondent. However, after the counter affidavit of the third respondent was filed, no further reply has been filed by the petitioner. In reply to the counter affidavit of the first respondent, the petitioner has reiterated the allegations of mala fide against the second respondent.

7. It is rather unfortunate that the second respondent, in spite of being specifically impleaded, has not chosen to appear and reply to the allegations of mala fide made by the petitioner. The first respondent, who has denied the allegation regarding mala fides in a routine manner, obviously did not have any personal knowledge in the matter. When specific allegations of mala fides were made, it was the duty of the first respondent to ensure filing of proper affidavit by an appropriate person. The only person who could have replied to the allegations regarding mala fide is the second respondent, but such second respondent has not chosen to enter appearance and file any counter affidavit. It may be that the second respondent being a retired person might have felt to be under no obligation to appear and file counter, and thereby incurring certain expenditure. But, since he was a part of the Selection Committee, it was at least the duty of the first respondent to ensure a proper reply from the second respondent. In the absence of any specific reply from the person concerned, prima facie, there is no reason as to why the allegations of mala fide, so far as the second respondent is concerned, should not be accepted.

8. However, such mala fides on the part of one member of the Selection Committee, in the peculiar facts and circumstances of the present case, may not have the effect of vitiating the selection as the Committee consisted of other officials, including other experts. There is no specific allegation by the petitioner that the second respondent has prevailed upon other members of the Selection Committee to ignore the claim of the petitioner. It is also to be noted that the main allegation of mala fide against the second respondent is based on the fact that the petitioner was perceived to be a competitor to the wife of the second respondent in the matters relating to promotional prospects of the wife of the second

respondent. There is no dispute that the wife of the second respondent was not a candidate and she had retired from the service in 2001.

9. Even assuming that non-selection of the petitioner was on account of mala fides of the second respondent, the relief claimed by the petitioner cannot be granted in the peculiar facts and circumstances of the case, discussed hereinafter.

10. The Advertisement lays down the qualification required. As per such qualification, the second condition is that the candidate should be 5 years regular service in the Pay scale of Rs.12000 - 16500 or its equivalent as Reader/Associate Professor or incumbent is holding analogous post in the same Pay scale. In spite of the specific statement made by the third respondent in his counter affidavit that the petitioner was not eligible as he was not a Reader/Associate Professor and not in the pay scale of Rs.12000 - 16500, no contrary materials have been produced by the petitioner to rebut such allegation. Of course the learned counsel for the petitioner has contended that the petitioner was found eligible by the first respondent, and, therefore, he was called for the interview. However, in my opinion, the mere fact that the petitioner was called for the interview would not clothe him with the required eligibility to apply, if he was not otherwise eligible. The petitioner in his writ petition has admitted that he was functioning as a Lecturer at the relevant time. He has nowhere stated that he was in the required pay scale or holding the required post. In such view of the matter, the contention of the third respondent that the petitioner was ineligible appears to be acceptable.

11. Apart from the above, the petitioner is having another practical hurdle in his way. There is no dispute that the posting of Professor was to be on the basis of deputation for a period of two years. The petitioner has now reached the age of 58 and even if a selection process is ordered at this stage it would obviously take some time, and, therefore, keeping in view the advanced age of the petitioner, there is no likelihood of the petitioner continuing for any considerable length of time (assuming that the age of retirement under the first respondent is 60 years).

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12. For the aforesaid reasons, I do not consider this to be a fit case where selection of the third respondent is required to be quashed. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs. Consequently, WPMP.Nos.33345 of 2004 and 1281/2005 are closed.

dpk

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

The Special Commissioner of Indian
Medicine and Homeopathy,
-Cum-Officer on Special Duty,
National Institute of Siddha,
Arignar Anna Govt. Hospital of
Indian Medicine Campus,
Arumbakkam, Chennai 106.

+1cc to Mr.S. Srinivasan, Advocate (SR.No.36109)
+1cc to Mr.S. Mani, Advocate (SR.No.35978)
+1cc to Mr.K. Veeraraghavan SCGSC. (SR.35865)

MM(co)
rvr 6.9

JUDGMENT IN WP.NO.27433/2004

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