

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 02.01.2026****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****AND****THE HON'BLE MRS.JUSTICE R.KALAIMATHI**

W.A.(MD)No.2193 of 2023 AND
C.M.P.(MD)No.17576 of 2023

Dr.G.Jayakrishnan

... Appellant / 4th Respondent

Vs.

1. The State of Tamil Nadu,
Rep. by its,
Health and Family Welfare Department,
Rep. by its Secretary,
Secretary, Chennai – 600 009.
2. The Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai – 600 106.
3. The Principal,
Government Ayurveda Medical College,
Kottar, Nagercoil,
Kanyakumari District. ... Respondents/ Respondents
4. Dr.C.Roshy Joseph ... 4th Respondent/ Writ petitioner
5. Dr.S.Rajapandi
6. The Tamil Nadu Ayurveda Medical College Tachers Association,
Rep. By its Secretary, Dr.Shegdar Praveen,
S/o.Karabasappa Shegedar,



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Presently serving as Reader and Head of Department of
Rachana Shareera,
Government Ayurveda Medical College and Hospital,
Kottar, Nagercoil,
Kanyakumari District.

(R-5 & R-6 are impleaded vide common order dated 08.12.2025
made in C.M.P.(MD)Nos.863 and 7402 of 2025)

... Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent,
to allow the writ appeal and set aside the order of the learned Judge
dated 27.06.2023 made in W.P.(MD)No.4656 of 2023.

For Appellant : Mr.N.Subramaniyan,
for Mr.A.Balaji.

For Respondents : Mr.T.Amjad Khan,
Government Advocate for R-1 & R-2.

Mr.Mohammed Imran,
for M/s.Ajmal Associates for R-4.

Mr.Niranjan S.Kumar for R-5.

Mr.M.Saravanakumar for R-6.

No appearance for R-3.

* * *

JUDGMENT

Heard both sides.

2. This writ appeal is directed against the order dated



27.06.2023 made in W.P.(MD)No.4656 of 2023 filed by the fourth

WEB COPY respondent herein (Dr.C.Roshy Joseph).

3. Dr.Roshy Joseph filed the said writ petition challenging the appointment of the appellant herein(Dr.Jayakrishnan) as Reader in the Government Ayurveda Medical College, Kottar, Kanyakumari District vide G.O.(D)No.303 Health and Family Welfare (IM-1(1) Department dated 19.02.2016 as well as the consequential posting order dated 25.02.2016. The learned single Judge after hearing both sides allowed the writ petition in the following terms:-

“ 10. ...

a.The impugned order, dated 19.02.2016 and the consequential appointment, dated 25.02.2016 are hereby quashed.

b.Either the Government may consider to regularize all the exiting 10(a)(i) appointees by conducting special tests so that all the eligible candidates' rights are protected. For the remaining available vacancies separate notification may be issued under the Adhoc Rules to fill up the posts.

c.Alternatively, the government shall conduct fresh recruitment based on Adhoc Rules to fill up all the posts including the posts occupying by the



10((a)(i) employees.

d.The respondents shall carry out the above directions, within a period of 12 weeks from the date of receipt of a copy of the order.

e.Till such time, all the employees shall continue in their same post as 10(a)(i) employees including the 4th respondent.

11. With the above terms, this Writ Petition is allowed. No Costs."

Aggrieved by the same, the appellant whose appointment as Reader was set aside, has filed this writ appeal.

4. The basic facts are not in dispute. The Government Ayurveda Medical College, Kottar was established in the year 2006 vide G.O.Ms.No.10 Health and Family Welfare Department dated 23.01.2006. It can be seen therefrom that the Government envisaged creation of as many as 16 posts of Reader in various departments. In the case on hand, we are concerned only with the post of Reader in the Department of Rasa Shastra and Bhaishajya Kalpana. The Government issued notification dated 26.09.2010 calling for applications for the post of Professors and Readers. The notification stipulated that the applicants for the post of Reader must have



teaching experience of five years in the concerned subject. The upper age limit was 35 years.

5. Since all the candidates were agewise ineligible, the Government relaxed the age limit and 45 years was made the upper age limit. A fresh notification was issued on 14.08.2011. Once again, the appellant applied for the post of Reader in the subject of Rasa Shastra and by Bhaisajya Kalpana. Interview was held on 12.10.2011. Even though the appellant fulfilled all the requirements, he was not selected. The appellant would allege that his selection was put on hold so that one Dr.Clarence Davy could be accomodated in the post of Reader.

6. Aggrieved by his non-selection, the appellant filed W.P. (MD)No.181 of 2012. The said writ petition was taken up along with W.P.(MD)No.12039 of 2011 filed by Dr.Clarence Davy and W.P. (MD)No.12040 of 2011 filed by Dr.Nandhinee Vijay. All the three writ petitions were disposed of on 02.01.2013 with certain directions. One such direction was that if the appellant herein was qualified, he should be considered with reference to the relative merits and



demerits for the purpose of completing the process of recruitment.

WEB COPY 7. Pursuant to the aforesaid direction, the case of the appellant was considered and his request was rejected on 16.10.2014. Challenging the same, the appellant filed W.P.No.13566 of 2015 and interim order was granted in favour of the appellant on 30.04.2015. It is relevant to note that even in the previous round, an interim order was granted to keep one post vacant. During the pendency of the writ petition, the Government came to the conclusion that the writ appellant was having the requisite qualification to hold the post of Reader and accordingly issued G.O.(D)No.303 Health and Family Welfare Department dated 19.02.2016 appointing him to the post of Reader. The appellant is working in the said post of Reader till date. This appointment was put to challenge in W.P.(MD)No. 4656 of 2016 and quashed. Citing these subsequent developments as well as the pendency of this writ appeal, W.P.No.13566 of 2015 was dismissed as infructuous.

8. The only question that calls for consideration is whether the order passed by the learned single Judge calls for interference.



9. The Adhoc Rules in respect of the post of Reader as well as

WEB COPY other posts were issued by the Government only in the year 2018

vide G.O.(Ms)No.125 Health and Family Welfare Department dated 10.04.2018 with retrospective effect. The learned single Judge came to the conclusion that when the Adhoc Rules were framed only on 10.04.2018, any appointment made prior to the same ought to be considered as 10(a)(i) appointment under the Tamil Nadu State and Subordinate Service Rules. The appellant was also considered as a 10(a)(i) appointee.

10. We cannot endorse the view that the appointments made prior to the issuance of the Adhoc Rules should be considered as Rule 10(a)(i) appointments. This is for more than one reason. Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules reads that where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with the rules and the Special Rules, the appointing authority may temporarily appoint a person who possesses the qualifications



prescribed for the post otherwise than in accordance with the said WEB COPY rules. A bare reading of the above provision indicates that there must be recruitment rules in force and that it is not possible to make appointments in accordance with them immediately, but there is an urgent need for filling up the vacancy. When there is no recruitment rule at all, the question of invoking Rule 10(a)(i) does not arise at all. Therefore, treating the appellant as a Rule 10(a)(i) appointee is incorrect.

11. That leads us to the question whether the Government could have notified the vacancy as well as prescribed the qualification by an executive order in the absence of rules framed under Article 309 of the Constitution of India. In other words, when there is no legislative enactment either in the form of an Act or subordinate legislation, could the Government by a G.O. have made the appointments. Of course, it goes without saying that any appointment could not have been made in an arbitrary manner. A fair and transparent process must be adopted before making any public appointment. But there is no requirement that in the absence of recruitment rules, such appointments cannot be made. Such a view



would run counter to Article 162 of the Constitution of India.

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12. Article 162 of the Constitution of India reads as follows:-

"Extent of executive power of State.—

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

The proviso has no application to the facts on hand. The Constitutional Bench of the Hon'ble Supreme Court of India in the decision reported in AIR 1967 SC 1910 (Sant Ram Sharma Vs. State of Rajasthan and Others) had held that though there was no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts, that did not mean that till statutory rules were framed in this behalf the Government cannot



issue administrative instructions regarding the principle to be

WEB COPY followed in promotions of the officers concerned to selection grade

posts. The Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

13. In ***AIR 1993 SC 477(Indra Sawhney Etc. Etc vs Union Of India And Others, Etc. Etc.)***, the Hon'ble Supreme Court had held that a provision for reservation can be incorporated through an executive order. It was declared therein as follows:-

(1)(a) It is not necessary that the 'provision' under **Article 16(4)** should necessarily be made by the Parliament/Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory Corporations and other instrumentalities of the State falling under **Article 12** of the Constitution are themselves competent to make such a provision, if so advised.

(b) An executive order making a provision under **Article 16(4)** is enforceable the moment it is made and issued.”

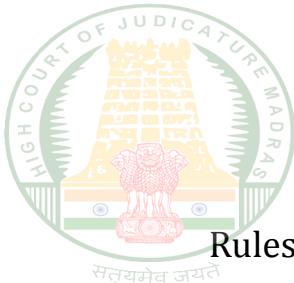


14. The Hon'ble Supreme Court in ***Krushna Chandra Sahu Vs. State of Orissa (1995) 6 SCC 1*** held that if the statutory Rules, in a given

case, have not been made, either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government) under [Article 73](#) and the State Government under [Article 162](#)) to issue executive instructions.

15. Therefore, merely because there were no recruitment or Adhoc Rules, the appointments made by the executive in a fair and transparent manner cannot be placed on a lesser pedestal. The executive was fully competent to make the appointments even in the absence of Adhoc Rules.

16. There is another aspect of the matter. Admittedly, it was the Government which established the Ayurveda Medical College. The college was also subsequently granted recognition by the UGC. Such recognition would not have been granted unless the college had a regular faculty. Therefore, it is not proper to rank all the appointments made prior to the framing of the Adhoc Rules as Rule 10(a)(i) appointments. It is conceded that long before the Adhoc



Rules were formulated, the college had been granted recognition.

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17. In fact, the writ petition ought to have been dismissed on a short ground. Admittedly, the writ petitioner was not an aspirant for the post of Reader in the subject of Rasa Shastra, when the recruitment process was made in 2010-2011. She was then pursuing PhD., in Jam Nagar, Gujarat. On the other hand, when the recruitment notification was issued, the appellant was an applicant. He was fully qualified to hold the post. His non-selection itself was improper. That is why, direction was given vide order dated 02.01.2013 in W.P. (MD)No.181 of 2012 to consider the petitioner's qualification while completing the process of recruitment. The appointment of the appellant made in 2016 was a culmination of the recruitment process that commenced in the year 2010-11. The writ petitioner was nowhere in the picture. It is well settled that only an aggrieved person could challenge an appointment made to a post [**(2013) 5 SCC 1 (State of Punjab Vs. Salil Subhlok]**. The writ petitioner could not be said to be an aggrieved person. A person can be said to be aggrieved only if he or she has been wrongfully deprived of anything to which he or she is legally entitled and not merely a person who

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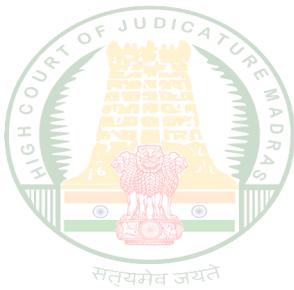


suffered some sort of disappointment (P.Ramanatha Aiyar's **WEB COPY** Advanced Law Lexicon). Only a non-appointee can challenge the appointment. The writ petitioner was not even an applicant for the post of Reader. Therefore, the writ petitioner completely lacked the standing to question the appointment of the writ appellant. The writ petition was not maintainable. These two aspects were not taken note of by the learned single Judge. Hence, we set aside the order made in W.P.(MD)No.4656 of 2023. The writ appellant as well as the private respondents including the writ petitioner may work out their rights in the manner known to law based on the declaration made in these proceedings. This writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (R.KALAIMATHI, J.)
2nd January 2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

1. The Secretary,
Health and Family Welfare Department,
Secretary, Chennai – 600 009.
2. The Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai – 600 106.



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AND

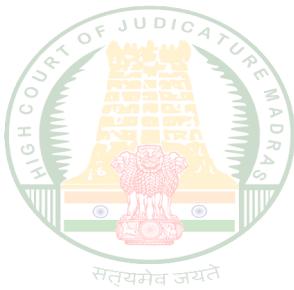
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