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NC: 2024:KHC-D:5738-DB
WP No. 100881 of 2024

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IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 26TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE MR JUSTICE M.I.ARUN

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA
WRIT PETITION NO.100881 OF 2024 (S-KAT)

BETWEEN:

DR. VIDYAVATHI U.PATIL D/O. UJJANGOUDA,
AGED ABOUT 42 YEARS, OCC: TALUK HEALTH OFFICER,
R/O: H.NO.12, TEMPLE ROAD,
O/O. TALUK HEALTH OFFICE,
HUBBALLI-KUNDGOL MAIN ROAD,
KUNDGOL-581113, DHARWAD DISTRICT.

...PETITIONER

(BY SRI. H.R. GUNDAPPA, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
REPTD., BY ITS ADDITIONAL SECRETARY,
HEALTH AND FAMILY WELFARE SERVICES
DEPARTMENT, VIKASA SOUDHA,
BENGALURU-560001.

...RESPONDENT

(BY SRI. G.K. HIREGOUDAR, GOVERNMENT ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, 1) TO ISSUE WRIT OR ORDER DIRECTION IN THE NATURE OF CERTIORARI TO QUASH THE ORDER PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL BELAGAVI BENCH IN APPLICATION NO.11058/2023 DATED 24.01.2024 AS PER VIDE ANNEXURE-A IN SO FAR AS PETITIONER CONCERNED AND TO QUASH THE IMPUGNED ORDER VIDE ANNEXURE-A6 AAKUKA 867 HSH 2022 DATED. 08.09.2023 PASSED BY THE RESPONDENT.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY,
M.I.ARUN, J., MADE THE FOLLOWING:





ORDER

Aggrieved by the order passed in Application No.11058/2023 dated 24.01.2024 by the KAT, the applicant therein has preferred this writ petition.

2. The petitioner is a dentist and an employee of the State Government. She was posted as Taluk Health Officer, Kundgol on 02.01.2023. Subsequently, her transfer has been cancelled by an order dated 08.09.2023. On the ground the order passed on 08.09.2023 amounts to a premature transfer, the petitioner has preferred Application No.1105/2023 before the KAT. The KAT on the ground that petitioner was not entitled to hold the post of Taluk Health Officer, dismissed the application. Aggrieved by the same, the present writ petition is filed.

3. The case of the petitioner is that she is a Class I Officer (Group A) and as per the government guidelines, she could not have been transferred from the post she held as Taluk Health Officer, Kundgol for a period of three years from 02.01.2023. It is further contended that she is a Medical Officer as per the provisions of the Karnataka State Civil Services



(Regulation of Transfer to Medical Officers and Other Staff) Act, 2011 and she is entitled to hold the post of Taluk Health Officer and KAT erred in holding it otherwise and for that reason, it is prayed that the writ petition be allowed and the impugned order canceling her transfer as Taluk Health Officer, Kundgol be set aside.

4. *Per contra*, the learned Government Advocate justifies the order passed by KAT and prays for dismissal of the writ petition.

5. The question that arises for consideration in the instant writ petition is, whether the petitioner is entitled to hold the post of Taluk Health Officer or not.

6. As per the notification dated 02.06.2011 bearing government order No.ಆಕೃಕ 82 ಎಂ.ಎಸ್.ಎಸ್.2011, a General Duty Medical Officer is entitled to hold a post of Taluk Health Officer.

7. In gazettee notification dated 17.07.1992, Karnataka Directorate of Health and Family Welfare Services (Recruitment) (Amendment) Rules, 1992, is passed under Section 8 read with Section 3(1) of Karnataka State Civil Services Act, 1978, which speaks about different categories of



government doctors and one such category is General Duty Medical Officer and he is required to possess a MBBS Degree.

8. Thus reading of the aforementioned provisions makes it clear that a Taluk Health Officer has to be a General Duty Medical Officer and he should possess a MBBS Degree. Admittedly, the petitioner in the instant case is a dentist and she does not possess a MBBS Degree.

9. The petitioner is relying upon the provisions of the Karnataka Civil Services (Regulation of Transfer of Medical Officers and Other Staff) Act, 2011 and is contending that she is entitled to be appointed as Taluk Health Officer. She relies upon Section 2(g) of the Karnataka Civil Services (Regulation of Transfer of Medical Officers and Other Staff) Act, 2011 and Schedule I of the said Act. Section 2(g) defines Medical Officer and it reads as follows:

"2(g) "medical officer" means a medical officer appointed by the Appointing Authority to any of the category of posts specified in Schedule - I.

10. Schedule I of the Act reads as under:



Schedule – I

(See section 2(g), (I) and section 10)

Posts which come under the meaning of 'Medical Officer'

<i>Sl. No.</i>	<i>Category of Posts</i>
<i>1.</i>	<i>Senior Specialist / Specialist / Deputy Chief Medical Officer / Senior Medical Officer.</i>
<i>2.</i>	<i>General Duty Medical Officer / Physician – Grade I (Ayurveda / Unani / Homoeopathy / Naturopathy / Siddha and Yoga) / Physician – Grade II (Ayurveda / Unani / Homoeopathy / Natoropathy / Siddha and Yoga).</i>
<i>3.</i>	<i>Chief Dental Health Officer / Senior Dental Health Officer / Dental Health Officer.</i>

11. Perusal of the said enactment and also the specific provisions of the Act relied upon by the petitioner shows that the said enactment defines who is a Medical Officer under the State service in terms of the post held by him. It is submitted that the petitioner is presently working as a Senior Dental Health Officer. She is definitely a Medical Officer as per the provisions of the Act. However, General Duty Medical Officer is a post and similarly Senior Dental Health Officer is also a post under the State service. A Senior Dental Health Officer is a BDS graduate, whereas, General Duty Medical Officer is a MBBS graduate. Apart from these posts, there are several post as mentioned in Schedule I to the Act, who all are considered as



Medical Officers for the purposes of the Act, but they are not General Duty Medical Officer. General Duty Medical Officer is a separate category of post, who is also considered as a Medical Officer.

12. For the aforementioned reasons, the petitioner is not a MBBS graduate, she cannot be considered as a General Duty Medical Officer and thus, she is not entitled to hold the post of a Taluk Health Officer. Admittedly, her posting as a Taluk Health Officer, Kundgol was erroneous. Realizing the same, the State Government has recalled the said order. For the said reason, we do not see any error in the order passed by the KAT.

13. For the aforesaid reason, writ petition is hereby dismissed.

Sd/-
JUDGE

Sd/-
JUDGE