



WEB COPY

WA No. 2826 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-07-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

**WA No. 2826 of 2024
& CMP.No.20722 of 2024
& CMP.No.5795 of 2025**

1. The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
2. The Director of Indian Medicine,
& Homeopathy Department,
Arumbakkam, Chennai - 600 106.
3. The Principal,
Government Unani Medical College,
Arumbakkam, Chennai- 600 106.

..Appellant(s)

Vs

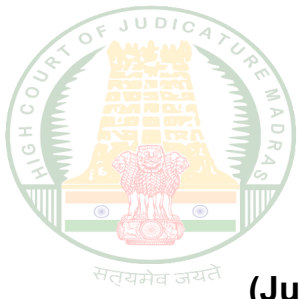
Dr.Shenaz Begum Modi

..Respondent(s)

Prayer: The Writ Appeal has been filed under Clause 15 of Letters Patent, seeking to set aside the order dated 30.11.2023 made in WP No.1044 of 2021.

For Appellant(s): Dr.R.Gouri, Government Counsel

For Respondent(s): Mrs.Nalini Chidambaram, Senior Counsel,
for Mrs.C.Uma for Caveator



JUDGMENT

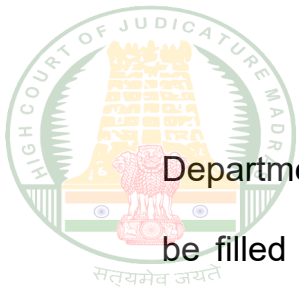
(Judgment of the Court was delivered by S.M.Subramaniam J.)

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To set aside the writ order dated 30.11.2023, passed in W.P.No.1044 of 2021, the State preferred the present intra-Court appeal, mainly on the ground that the competent authority notified the approved panel to fill up six posts of Lecturer (Unani) and the name of the respondent, in the panel, is placed in Serial No.7 and therefore, she was not granted promotion. However, the Writ Court granted the relief on the pretext that eight posts are vacant and therefore, the respondent also to be promoted to the post of Lecturer (Unani). The very basis on which the relief granted is not in consonance with the vacancies notified to be filled up as well as the promotion rules in force. Thus, the Writ Order is to be set aside.

2.The learned Senior Counsel appearing on behalf of the respondent would submit that even in the counter affidavit, the appellants have stated that they have inadvertently notified six vacancies instead of ten vacancies. Actually, ten posts of Lecturer were vacant in the year 2018-2019 but, they have notified six vacancies and promoted six candidates and on that basis, the Writ Court granted the relief.

3.The learned Senior Counsel would rely on the Order of the Government issued in G.O(Ms).No.660, Health and Family Welfare

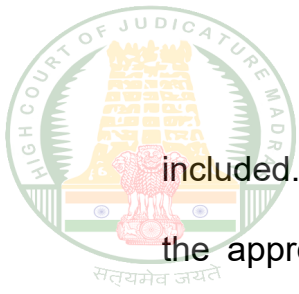


Department, dated 19.06.1992 and would submit that two posts of Lecturer to be filled up by deployment. In continuation, the Government issued a letter

dated 07.09.1993, to fill up the additional posts sanctioned to the Government Unani Medical College, Madras, based on G.O(Ms).No.660. Therefore, ten posts were vacant, even as per the counter filed by the appellants and the Writ Court considered the availability of vacancy and directed the appellants to promote the respondent to the post of Lecturer (Unani) in Government Unani Medical College, Chennai.

4.This Court has considered the rival submissions made between the parties to the case.

5.The facts in brief would show that the Government issued G.O(D).No.86, Health and Family Welfare Department, dated 11.01.2019, publishing the estimate of vacancies for the panel of the year 2018-2019 as '6' (six). Consequently, the panel of eligible persons for promotion to the post of Lecturer (Unani) for the year 2018-2019 was published by the Government in G.O(2D) No.63, Health and Family Welfare Department, dated 11.05.2020. The opening paragraph of the panel would reiterate that as per the Government Order issued in G.O(D).No.86 dated 11.01.2019, the Government have approved the estimate of vacancies for the post of Lecturer (Unani) in Tamil Nadu Medical Services for the year 2018-2019 as '6' (six). Eight eligible Lecturer Grade – II (Unani) are considered and their names are



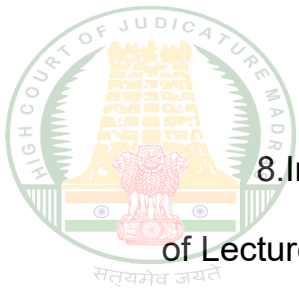
included. Admittedly, the name of the respondent is in serial no.7. Based on the approved panel, promotion orders are issued by the Government vide

WEB G.O(D).No.762, Health and Family Welfare Department, dated 01.09.2020.

Six persons serving in the cadre of Lecturer Grade - II (Unani) are promoted to the post of Lecturer (Unani) as per estimated vacancies notified.

6.A question arises whether the High Court, in exercise of the powers of judicial review, can enhance the number of estimated vacancies notified by the Government, and issue direction to grant promotion to a candidate, who is otherwise not within the seniority for grant of promotion, in respect of the notified vacancy.

7.The legal principles on promotion are that; promotion per se cannot be claimed as an absolute right. However, consideration for promotion is a fundamental right. Filling up of the post is a prerogative of the Government. The Government may notify the vacancies to be filled up by exercising its powers. Even if more number of vacancies are available, it is the prerogative of the Government to notify the vacancies to be filled up by way of promotion. An employee cannot claim that posts are vacant and therefore, they should be promoted to the higher post. Since promotion is not a right, direction to promote, in respect of the vacancy which are all not notified for grant of promotion, cannot be granted.



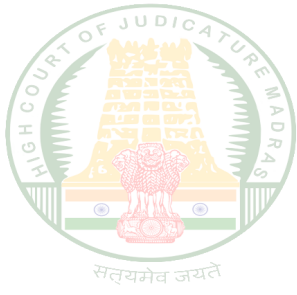
8. In the present case, admittedly, the estimate of vacancies for the post of Lecturer (Unani) for the panel of the year 2018-2019 is six and eight eligible Lecturers Grade -II are included in the approved panel. But, six Lecturer Grade-II alone are granted promotion to the post of Lecturer (Unani) in G.O(D).No.762, dated 01.09.2020. This Court, in exercise of powers of judicial review, cannot grant the relief, over and above the notified vacancies by the Government, to be filled up by way of promotion, in the panel of the year 2018-2019. Such a relief granted would fall beyond the realm of the powers of Judicial Review of this Court.

9. This being the promotion rules and principles to be followed, the Writ Court has granted relief in excess exercise of power, which is not in consonance with the promotion rules and service law applicable for promotions. In view of the principles, the respondent has not established any right to secure the relief in the Writ Petition.

10. Accordingly, the Writ Order dated 30.11.2023, passed in W.P.No.1044 of 2021, is set aside and the Writ Appeal is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

(S.M.S.,J.) (N.S.,J.)
10-07-2026

Index: Yes
Speaking order
Neutral Citation: Yes/No
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**S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.**

TSG

To

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