

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30-03-2015

CORAM:

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR

Writ Petition No.24261 of 2014
and
M.P.No.1 of 2014

1. Union of India
Rep. by its Secretary Ministry of Health &
Family Welfare Nirman Bhavan
New Delhi- 110011.
2. The Additional Secretary
Health & Admin. Ministry of Health & Family
Welfare Nirman Bhavan New Delhi-110011.
3. The Director General
Ministry of Health & Family Welfare CGHS
Nirman Bhavan New Delhi-110011.
4. The Additional Director
CGHS E II-C Rajaji Bhavan Besant Nagar
Chennai-90.

... Petitioners

Vs

1. Dr. Yasoda Thanikachalam
Retired CMO CGHS 19/47 Kalakshetra Road
Thiruvanmiyur Chennai-41.
2. The Registrar
Central Administrative Tribunal
High Court Campus Chennai-104.

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for a writ of Certiorari calling for the records relating
to the order dated 02.08.2013 of the Central Administrative
Tribunal Chennai Bench in Original Application No.1463 of 2011
and quash the same

For petitioner : Mr. A.S. Chakravarthy

For respondents : Mr. V. Parthiban
for M/s. Paul & Paul for RR1 and 3
R2- Tribunal

ORDER

The Union of India has come up with the above writ petition, challenging the order passed by the Central Administrative Tribunal setting aside a communication by which the respondent was marked not as 'very good', but only as 'good' and issuing a consequential direction to notionally promote the first respondent herein to the post of Senior Administrative Grade.

2. Heard Mr. A.S. Chakravarthy, learned counsel for the petitioners and Mr. V. Parthiban, learned counsel for the first respondent.

3. The first respondent herein was originally appointed as a Medical Officer in the Central Government Health Scheme in 1979. She was promoted as Chief Medical Officer in 1993 and was granted non-functional selection grade in the year 2000. She took voluntary retirement with effect from 01-09-2011.

4. In the year 2006, the first respondent and a few others successfully challenged the appointment of one Dr. Elizabeth Mathews as Additional Director of the Central Government Health Scheme. But, during the pendency of a challenge to the order of the Administrative Tribunal setting aside her promotion, the aforesaid Dr. Elizabeth Mathews retired from service on 30-06-2007. Therefore, the writ petition became infructuous, though she continued in the said post till the date of retirement.

5. By virtue of being the Additional Director of Central Government Health Scheme, the said Dr. Elizabeth Mathews happened to write the Annual Confidential Report of the first respondent herein. Despite the fact that the performance of the first respondent was consistently rated above the benchmark as 'very good' in the past, Dr. Elizabeth Mathews gave only a grading of 'good'. Consequently, the first respondent was denied Senior Administrative Grade and her juniors got promotion.

6. Therefore, the first respondent filed an application in O.A.No.1463 of 2011 on the file of the Central Administrative Tribunal. The said application was allowed by the Tribunal by an order dated 02-08-2013. Challenging the said order, the Union of India is before us.

7. Even in the writ petition filed by the Union of India, there is no denial of the fact that, (1) that the first respondent successfully challenged the appointment of Dr. Elizabeth Mathews as

Additional Director (2) that despite her protest the said Dr. Elizabeth Mathews wrote the Annual Confidential Report of the first respondent for the period 2006-2007 and that even after pointing this out the superior officers did not rectify the mistake.

8. Therefore, in the light of the above, the Tribunal was obliged to point out that the case of the first respondent fell within the exception inculcated by the Supreme Court in M.V. Thimmiah and others Vs. UPSC and others(2008 (2) SCC 119). Moreover, the Tribunal had found that as per the Office Memorandum dated 27-07-2010 all Doctors, who came within the zone of consideration for promotion and who had been assessed 'very good' in the preceding five years had been given an opportunity to represent against the lesser grading. The first respondent has always been on a higher grading. The only reason why she was overlooked for promotion was the lower grading given to her by the aforesaid Dr. Elizabeth Mathews. In such circumstances, the Tribunal was right in granting relief to the first respondent.

9. In view of the above, we find no reason to interfere with the order of the Tribunal. Hence the writ petition is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

To

1. Secretary Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi- 110011.

2. The Additional Secretary
Health & Admin.
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi-110011.

3. The Director General
Ministry of Health & Family Welfare CGHS
Nirman Bhavan
New Delhi-110011.

4. The Additional Director
CGHS E II-C
Rajaji Bhavan
Besant Nagar
Chennai-90.

5. The Registrar
Central Administrative Tribunal
High Court Campus
Chennai-104.

+1cc to Mr.Paul & Paul, Advocate, S.R.No.17731
+1cc to Mr.A.S.Chakravarthy, Advocate, S.R.No.18008

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CTK(CO)
CA(16/04/2015)



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