

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

C O R A M

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.13039 of 2016
and
MMP.No.11384 of 2015

Dr.G.Mathiazhagan

... Petitioner

Vs

State of Tamil Nadu
Rep.by its Secretary to Government
Health Department,
Fort.St.Geroge, Chennai

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus directing the respondent to grant the petitioner with CML.No.36A/2005 Notional Promotion to the post of Joint Director of Health Services, Additional Director of Medical Services and Director of Medical Services, in par with the petitioner immediate juniors in service in compliance to GO.Ms.No.7 Health and Family Welfare (B2) Department dated 04.01.2012 and fix the grade pay and scale of pay and pay all arrears of salary, attendant benefits and proportionate increase in pension.

For Petitioner ... Mr.K.Sridhar

For Respondent ... Mr. S.Gunasekaran
Additional Government Pleader

O R D E R

Dr.G.Mathiazhagan, who retired as Deputy Director of Medical Services on 31.10.2007, has come to this Court seeking a writ of mandamus directing the respondent to grant Notional Promotion to the post of Joint Director of Health Services, Additional Director of Medical Services and Director of Medical Services, in par with his immediate juniors in service in compliance of GO.Ms.No.7 Health and Family Welfare (B2) Department dated 04.01.2012 and fix the grade pay and scale of pay and all arrears of salary, attendant benefits and proportionate increase in pension.

2. The petitioner and other similarly placed persons earlier approached the Tamil Nadu Administrative Tribunal by filing original Application No. 4616 of 2000 seeking direction to the respondent therein to regularize their services as Assistant Surgeons in the Tamil Nadu Medical Services with effect from the date of their initial appointments by conferring all the benefits including seniority, promotion, pay, allowances and pension. Thereafter, as the Tribunal was abolished, the cases were transferred to this Court and renumbered as WP.Nos.41500 of 2006, 45693 of 2006, 5233 of 2007, 8440 and 8441 of 2007. Pending the above writ petitions, the petitioner filed another WP.No.22445 of 2007 seeking promotion. Pursuant to the direction of this Court dated 31.10.2007, the petitioner was promoted as Deputy Director of Medical Services (TB), Sivagangai on 26.10.2007 and retired on 31.10.2007. Thereafter, by order dated 06.7.2010, this Court while allowing the writ petition Nos.4100 of 2006, 45693 of 2006 and 8440 of 2007, directed the Government to regularize the petitioner's services from the date of appointment in the Panchayat Union Services. This Court further directed the Government that Local Body Service rendered by him also to be counted in full with all benefits. The petitioner and others were directed to be placed immediately below the Assistant Surgeons directly recruited by TNPSC with full seniority, promotions and pay benefits. In this regard, it is useful to extract the relevant portion of the said order, which reads as follows:

28. Accordingly, para 4 of G.O.Ms.No.464, Health and Family Welfare Department, dated 29.10.1999 depriving the benefit of services rendered by the Medical Officers in Panchayat Union Dispensaries is quashed. Likewise, G.O. (2D) No.5, Health and Family Welfare (B2) Department, dated 08.02.2002 treating the Medical Officers absorbed from Panchayat Union Dispensaries into Primary Health Centres as Juniors to the Assistant Surgeons and the consequential letter dated 12.08.2002 are quashed. A direction is issued to the respondents to count the services of the Medical Officers rendered in Panchayat Union Dispensaries i.e. Local Body service on their absorption into Primary Health Centres i.e. Tamil Nadu Medical Service as Assistant Surgeons, for all purposes including seniority, promotion etc. The Medical Officers should be placed below the directly recruited Assistant Surgeons of the year in which those Medical Officers were appointed in the Panchayat Union Dispensaries. That is, it is

made clear that if a Medical Officer was recruited to Local Body service in a particular year and an Assistant Surgeon was recruited to Tamil Nadu Medical service in the same year, the Medical Officer absorbed into the Tamil Nadu Medical service could be treated as juniors to those Assistant Surgeons who were recruited in the same year in which those Medical Officers were recruited by the Local Body service.

3. Pursuant to the said direction, the Government issued G.O.Ms.No.7, Health and Family Welfare (B2) Department, dated 04.01.2012 regularising the petitioner's services from the date of appointment i.e. on 20.9.1974. Consequent to the said Government Order, the Director of Medical and Rural Health Services issued proceedings No.158115/E6/2/2012 dated 10/05/2012 and the petitioner was allotted with CML No.2594E/85, 1459E/96, 291E/02 and 36A/05.

4. When the matter stood as above, the Juniors to the petitioner were given promotion as Senior Civil Surgeon with effect from 12.02.1999 by proceeding dated 20.01.2015.

5. It is the grievance of the petitioner that though the order of this Court dated 06.07.2010 has been implemented by the Government by issuing G.O.Ms.No.7, Health and Family Welfare (B2) Department, dated 04.01.2012 and he was allotted with CML No.2594E/85, 1459E/96, 291E/02 and 36A/05 re-fixing seniority, his case has not been considered for promotion. Therefore, he seeks a direction to the respondents to consider his representation in the light of the order of this Court dated 06.7.2010 and also in the light of the Government Order dated 10.5.2012.

6. Mr.S.Gunasekaran, learned Additional Government Pleader, who takes notice on behalf of respondent, submitted that the case of the petitioner would be considered if fresh representation is made by him by enclosing the order dated 06.7.2010 passed by this Court in WP.No. 4100 of 2006, 45693 of 2006 and 8440 of 2007 as well as the other consequential Government Orders.

7. In view of the above submission, this Court, without going into the merits of the writ petition, directs the petitioner to submit a fresh representation along with the copy of the order of this Court dated 06.7.2010 and relevant documents including the Government orders as stated above, within a period of one week from the date of receipt of a copy of this order and on receipt of the same, the respondent shall

consider and pass orders on merits and in accordance with law, within a period of eight weeks thereafter.

With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

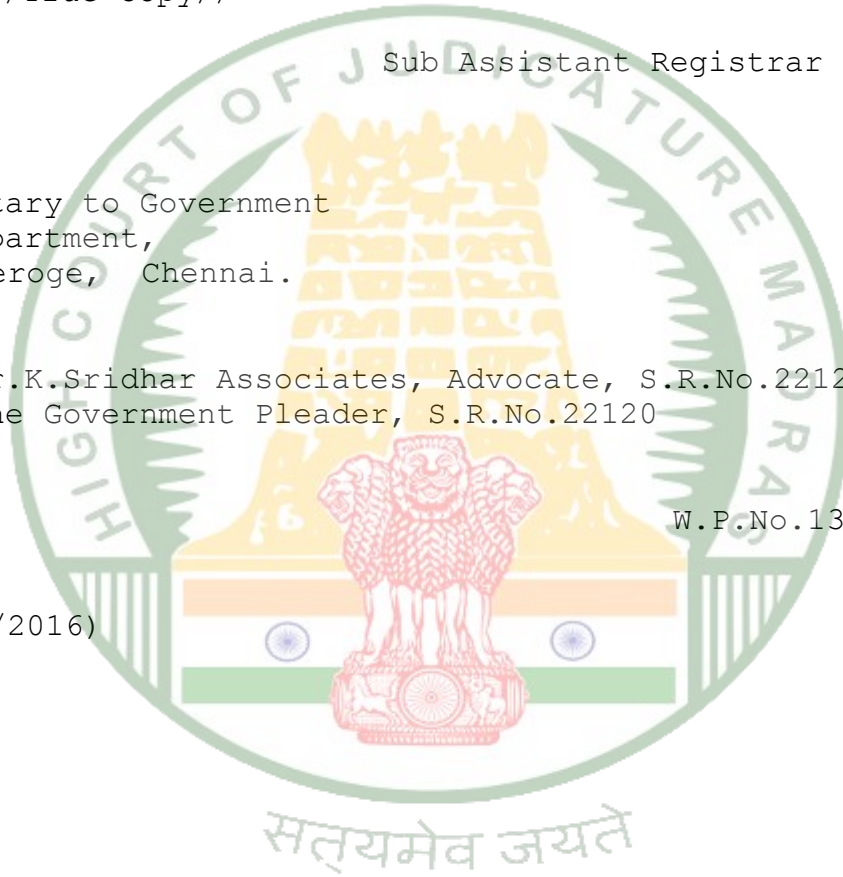
To

The Secretary to Government
Health Department,
Fort.St.Geroge, Chennai.

+1cc to Mr.K.Sridhar Associates, Advocate, S.R.No.22122
+1cc to the Government Pleader, S.R.No.22120

W.P.No.13039 of 2016

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