

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.11599 of 2013
and Cont.P.No.1699 of 2016
and M.P.No.2 of 2015 in W.P.No.11599 of 2013

W.P.No.11599 of 2013

R.Sankar

... Petitioner

versus

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

2. Union of India,
Rep. by the Director General,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
(Medical Stores Organisation),
Room No.456, A Wing, Nirman Bhavan,
New Delhi - 110 108.

3. Additional Director General (Stores),
Ministry of Health & Family Welfare
Directorate General of Health Services,
(Medical Stores Organisation),
West Block No.1, Wing No.6,
R.K.Puram, New Delhi 110 605.

4. Deputy Director (Admin),
Ministry of Health & Family Welfare
Directorate General of Health Services,
(Medical Stores Organisation),
West Block No.1, Wing No.6,
R.K.Puram, New Delhi 110 605.

5. Senior Chief Medical Officer (SAG),
Incharge, Govt. Medical Stores Depot,
Ministry of Health & Family Welfare,
37, Naval Hospital Road,
Periamet, Chennai - 600 003.

6. R.Sridhara Nambi

7. V.Lakshminarasimhan

8. Poorna Bhat

9. K.Rajamannar

10. A.Rajashekaran ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the proceedings of the 1st respondent Tribunal in OA.No.1388 of 2011 dated 13.03.2013 and quash the same.

For Petitioner : Mr.Karthik Mukundan

For Respondents : Mr. Kumaraguru (for R2 to R4)

Mr.Su.Srinivasan (for R5)

Assistant Solicitor General of India

Mr.R.Malaichamy (For R6 to R9)

Mr.R.Sreedhar (for R10)

Cont.P.No.1699 of 2016

1. R.Sridhara Nambi

2. V.Lakshminarasimhan

3. Poorna Bhat

4. K.Rajamannar

... Petitioners

versus

Mr.C.S.Suri Babu,
Senior Chief Medical Officer (SAG),
Incharge, Govt. Medical Stores Depot,
Ministry of Health & Family Welfare,
37, Naval Hospital Road,
Periamet, Chennai - 600 003.

... Respondent

Petition under Section 11 of the Contempt of Courts Act, 70/71 to punish the respondents for having committed contempt of Court for disobeying the order dated 23.07.2014 and made in W.P.No.11599 of 2013

For Petitioners : Mr.Karthik Mukundan

For Respondent : Mr. Kumaraguru (for R2 to R4)

COMMON ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Respondents 6 to 9 in this writ petition have filed O.A.No.1388 of 2011, to call for the records of the Deputy Director (Admin), Ministry of Health and Family Welfare, Directorate General of Health Services (Medical Stores Organisation), New Delhi, 4th respondent herein, made in File No.I.17014/1/2008-St-I dated 24.06.2011 and to set aside the same.

2. In the said OA, the said respondents have also sought for a direction to the 5th respondent herein viz., Senior Chief Medical Officer (SAG), I/c. Government Medical Store Depot, Chennai, to follow the office order issued with the approval of the competent authority by the 4th respondent herein in File No.A.12018/2/2009-St-I dated 25.02.2011 and to promote the applicants therein to the post of Depot Superintendent in the ratio of 75:25.

3. Mr.R.Sankar, writ petitioner herein, has been impleaded as one of the respondents in O.A.No.1388 of 2011. Before the tribunal, relief sought for has been opposed by the official and private respondents. Considering the rival contentions, vide order in O.A.No.1399 of 2011 dated 13.03.2013, the Central Administrative Tribunal, Madras, quashed the order made in File No.I.17014/1/2008-St-I dated 24.06.2011 and consequently, directed the 5th respondent herein, to promote the respondents 6 to 9 / original applicants, to the post of Depot Superintendent, as per office order in File No.A.12018/2/2009-St-I dated 25.02.2011, if they are otherwise eligible. Accordingly, OA has been allowed. Being aggrieved by the order made in O.A.No.1388 of 2011 dated 13.03.2013, the impleaded respondent in the Original Application R.Sankar, has filed the present writ petition.

4. Record of proceedings shows that after hearing the learned counsel for the writ petitioner, official respondents and Mr.R.Malaichamy, learned counsel for respondents 6 to 9 herein / original applicants, a Hon'ble Division Bench of this Court, at paragraph Nos.2 and 3 of the order made in W.P..No.11599 of 2013 dated 23.07.2014, has passed the following orders:

"2. The merger of three cadres into one cadre has been ordered by executive direction vide proceedings dated 25.02.2011 thereby creating a post called "Depot

Superintendent", which comes into effect immediately on the issuance of the instructions. However, the very same authority has taken a decision on 24.06.2011 to promote the eligible persons among the existing three cadres as per the recruitment rules available and re-designating them to the posts of 'Depot Superintendent'. It is informed that while the petitioner is employed as Pharmacists, the private respondents, namely respondents 6 to 9, all all UDC's and most of them had retired from service and both the cadres are basic cadres.

3. According to the instructions received by the learned counsel appearing for the Department, as on date there are 7 vacancies available. Therefore, it is possible that the Department can take a decision to promote the eligible candidates including the petitioner as well as the private respondents notionally, if they are found otherwise entitled for promotion and inform the decision to this Court in the next hearing dated."

5. Pursuant to the abovesaid directions, a DPC meeting has been convened on 11.01.2016 and both the writ petitioner and respondents 6 to 9, have been promoted to the post of Depot Superintendent. Inasmuch as respondents 6 to 9 are seniors, to the writ petitioner / R.Sankar, the date of effect of notional promotion given to the respondents 6 to 9, is anterior.

Sl.No.	Name	Ranking	Date of effect of notional promotion	Retired on
1	R.Sridharanambi	R6		
2	V.Lakshminarasimhan	R7	01.05.2012	30.11.2013
3	B.Poorna Bhat	R8	No vacancy	30.09.2012
4	K.Rajamannar	R9	01.02.2013	31.05.2013
5	R.Sankar	Writ petitioner	26.10.2012	

However, promotions given are subject to the pendency of this writ petition.

6. While the matter stood thus, contending inter alia that when the Hon'ble Division Bench of this Court in W.P.No.11599 of 2013 dated 23.07.2014 only directed the official respondents to

find out as to whether the writ petitioner, as well as the private respondents, are eligible for promotion and to inform the decision to this Court on the next hearing date, it is not open to the competent authority viz., the 5th respondent herein, to promote the writ petitioner, Contempt Petition No.1699 of 2016, has been filed.

7. On 05.10.2016, the alleged contemnor appeared and we dispensed with his future appearance. On this day, Mr.Su.Srinivasan, learned Assistant Solicitor General appearing for the 5th respondent, submitted that the contemnor's wife is hospitalised for a surgery and therefore, counter affidavit could not be filed.

8. Representing the writ petitioner, Mr.Karthik Mukundan, learned counsel submitted that though, the petitioner has assailed the correctness of the order made in O.A.No.1388 of 2011 dated 13.03.2013, in view of the subsequent promotion, granted by the department, petitioner is not interested in pursuing the challenge. Submission is placed on record.

9. Whereas, Mr.R.Malaichamy, learned counsel for the respondents 6 to 9 contended that the promotion given to the writ petitioner is through back door method, and that there is also an element of contempt in issuing orders of promotion, when the directions of this Court was only to find out the eligibility for promotion and report.

10. By virtue of implementation of the interim directions granted in W.P.No.11599 dated 23.07.2014, respondents 6 to 9, have also been promoted. Therefore, if the contention of Mr.R.Malaichamy, learned counsel for respondent 6 to 9, has to be accepted, then the order granting promotion to respondents 6 to 9, also would be contumacious. The further contention that the writ petitioner, has been given promotion through back door method, cannot be countenanced. There is absolutely no intentional violation of the orders of this Court made in W.P.No.11599 of 2013 dated 23.07.2014. On the contra, the promotion has benefited both the private respondents 6 to 9 and the writ petitioner, retaining their inter se seniority from the date of notional promotion. Hence, the Contempt Petition is closed.

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11. Further, in the light of the above, nothing survives in this writ petition for further adjudication. Writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1. The Registrar,
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Chennai Bench, Chennai - 104.

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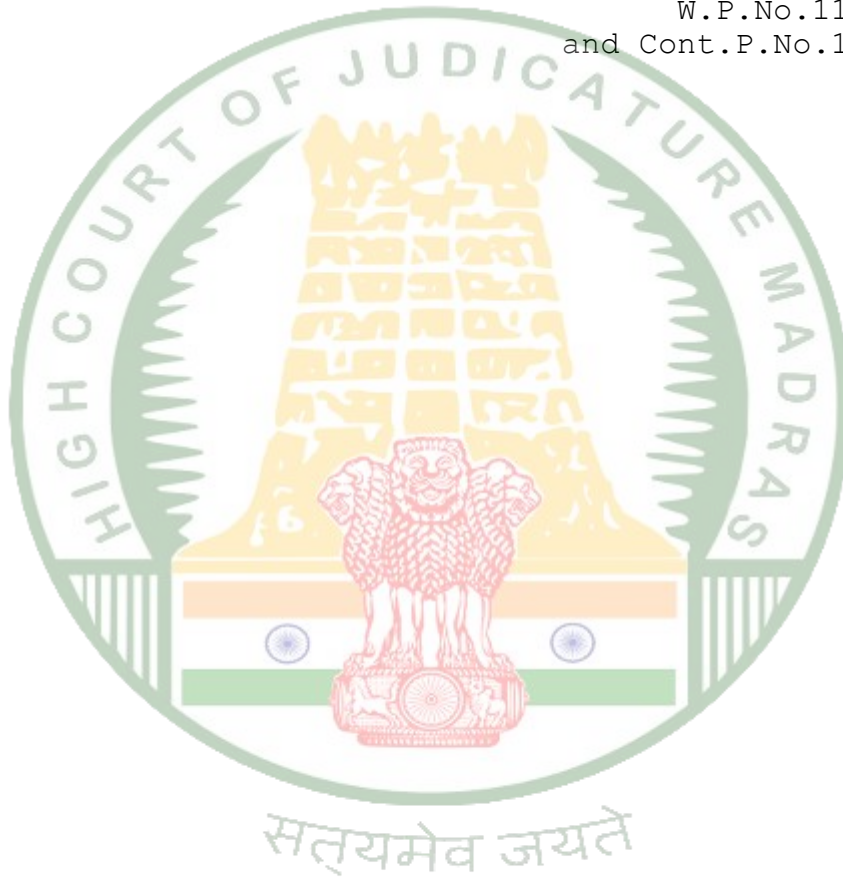
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37, Naval Hospital Road,
Periamet, Chennai - 600 003.

1 cc to Mr.Su.Srinivasan, Advocate, Sr. 59960
1 cc to Mr.Menon Karthik Advocate, Sr. 59737

W.P.No.11599 of 2013
and Cont.P.No.1699 of 2016

MG (CO)
kk 4/11



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