

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2016

DATE OF DECISION : 03.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6431 of 2015

Dr.G.Vinodh

.. Petitioner

-vs-

1. The Secretary to Government
of Tamil Nadu
Health and Family Welfare Department
Fort St.George
Chennai

2. The Director of Medical Education
Kilpauk, Chennai

3. Dr.A.Nandhini

4. Dr.P.Shakunthala

5. Dr.R.Krishnaveni

6. Dr.V.Bakthavatchalam

(R5 & R6 are impleaded as per order
dt. 5.2.2016 in M.P.No.4 of 2015 in
W.P.No.6431 of 2015)

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in its proceedings Ref.No.88967/E1/5/2014 dated 4.3.2015 and quash the same in so far as panel to the post of Associate Professor in Dental Surgery for the year 2014-2015 is concerned for non inclusion of petitioner's name in the said list and consequently direct the first and second respondents to include the name of the petitioner in the panel for the year 2014-2015 so as to consider his case for promotion to the post of Associate Professor in Dental Surgery.

For Petitioner :: Mr.V.Vijay Shankar

For Respondents :: Mr.R.Vijayakumar
 Additional Government Pleader
 for R1 & R2
 Mr.R.Ramachandran for R3
 Mr.R.Sankarasubbu for R4
 Mr.G.Sankaran for R5 & R6

ORDER

Dr.G.Vinodh, who is currently serving as Senior Assistant Professor, aggrieved by the non-inclusion of his name in the panel for the next avenue of promotion, namely, Associate Professor, has come to this Court challenging the circular issued by the Director of Medical Education, Chennai, the second respondent herein in Ref.No.88967/E1/5/2014 dated 4.3.2015, to quash the same insofar as the panel to the post of Associate Professor in Dental Surgery for the year 2014-2015 is concerned and for a consequential direction to the first and second respondents to include the name of the petitioner in the panel for the year 2014-2015 so as to consider his case for promotion to the post of Associate Professor in Dental Surgery.

2. Mr.V.Vijay Shankar, learned counsel appearing for the petitioner submitted that the petitioner, after completing his B.D.S. Course, joined the post of Assistant Dental Surgeon in the Tamil Nadu Government Medical Service on 25.8.2000 and thereafter he did his post graduation in the department of Conservative Dentistry. Consequently he switched over to the Directorate of Medical Education by joining as Assistant Professor in the department of Conservative Dentistry on 27.3.2008 in the Tamil Nadu Government Dental College and Hospital, Chennai and since then, he is working as Senior Assistant Professor sincerely to the satisfaction of his superiors. While so, he is awaiting promotion to the post of Associate Professor. Adding further, he submitted that a person with post graduate degree and five years of teaching experience is eligible to be promoted to the post of Associate Professor. However, he claims that there is no separate service rules meant for Dental services. But the practice in vogue for promotion to various cadres is that the respondents stick on to what was prescribed in the Medical Council of India norms. In the meanwhile, the second respondent by the proceedings dated 21.8.2014, directed all the heads of institutions to furnish the complete service particulars of medical officers in order to prepare the promotional panel for the post of Associate Professor of Dental Surgery for the year 2014-15, making it clear to furnish the proforma particulars in respect of the medical officers who have completed five years of service as on 15.3.2014. Accordingly, a list of medical officers was prepared

showing the name of the petitioner at Serial No.20 and the respondents 3 & 4 at Serial Nos.22 & 21 respectively. This apart, when the petitioner has completed his five years of teaching experience as early as on 26.3.2013, he was hopefully expecting the respondents 1 & 2 to empanel him for promotion to the post of Associate Professor for the year 2014-15. On the contrary, to his shock and surprise, the second respondent issued a circular on 4.3.2015 informing that the Government have approved the regular/temporary panel for the post of Associate Professor in respect of dental surgery, micro-biology and physiology; that the promotion counselling for the post of Associate Professor would be held on 6.3.2015 at the office of the second respondent. Adding further, the learned counsel submitted that even in the panel for promotion to the post of Associate Professor in Dental Surgery is concerned, the names of the respondents 3 & 4 have been shown without showing the petitioner's name. On enquiry it was found that the respondents 3 & 4 do not satisfy the criteria of possessing five years teaching experience as on 15.3.2014. However, in spite of the said defect, they have been included in the panel for promotion ignoring the petitioner's name. Therefore, the petitioner has been forced to come to this Court seeking a prayer for quashing the impugned circular.

3. Continuing his arguments, Mr.V.Vijay Shankar, learned counsel submitted that on the cut-off date, namely, 15.3.2014, the respondents 3 & 4 did not possess the five years of teaching experience as prescribed by the second respondent, because admittedly the respondents 3 & 4 completed their post graduate degree one year after the petitioner obtained the same. Concluding his arguments, he submitted that though the promotions are made under the guise of temporary promotion, the norms followed all along cannot be bypassed to suit the convenience of the respondents 3 & 4 for getting promotion. In the present case, when the petitioner being fully qualified and eligible in all respects is readily available to be considered for promotion to the post of Associate Professor, the preparation of the panel excluding the name of the petitioner is liable to be set aside.

4. Opposing the above prayer, a detailed counter affidavit has been filed by the respondents 1 & 2. Mr.R.Vijayakumar, learned Additional Government Pleader for the respondents 1 & 2, heavily urging this Court to dismiss the writ petition as it is devoid of any merits, submitted that the petitioner is junior to the respondents 3 & 4 according to the Civil Medical List seniority. Therefore, his name was not considered for the two vacant posts of Associate Professor of Conservative Dentistry & Endodontics. Moreover, when the Director of Medical Education, the second respondent herein prepared a panel to the post of Associate Professor for the year 2014-15 based on the seniority

of the medical officers in the Civil Medical List, the petitioner and the respondents 3 & 4 have completed the requisite period of teaching experience, however, the petitioner is junior, as he was selected by the Tamil Nadu Public Service Commission only in the 1997-98 batch, whereas the respondents 3 & 4 have been selected in the 1994-96 batch, even though all of them were appointed as Assistant Dental Surgeons under Rule 10 (a)(i) of the General Rules for Tamil Nadu State and Subordinate Services. Adding further, the learned Additional Government Pleader submitted that when the date of entry into Government service clearly shows that the respondents 3 & 4 joined the service on 17.2.98 and 20.10.97 respectively, the petitioner had joined only on 25.8.2000. Therefore, the Civil Medical List seniority shows the respondents 3 & 4 in Nos.141/2005 & 152/2005 respectively, whereas the petitioner has been shown in No.189/2005. Therefore, it is not open to the petitioner to say that he has been wrongly left out when the respondents 3 & 4 are shown in the seniority list. In view of the seniority maintained in the Civil Medical List, as per Rule 35(a) of the General Rules for Tamil Nadu State and Subordinate Services, the ranking assigned by the Tamil Nadu Public Service Commission is the basis for arriving at the seniority of the medical officers. Hence the Director of Medical and Rural Health Services, Chennai has allotted the Civil Medical List No.189/2005 to the petitioner and Civil Medical List Nos.141/2005 & 152/2005 respectively to the respondents 3 & 4. Taking stock of the above situation, the Government in their letter (D) No.168, Health and Family Welfare (A1) Department dated 5.2.2015 decided to promote the respondents 3 & 4 on adhoc basis under Rule 4 of the Tamil Nadu State and Subordinate Services pending framing of special/adhoc rules and also requested the second respondent to send the proposals to Government for appointing the medical officers, as there were only two vacancies in the department of Conservative Dentistry and Endodontics. Accordingly, promotion counselling was held by the second respondent on 6.3.2015 for the post of Associate Professor Speciality and since the respondents 3 & 4 have opted for the post of Associate Professor of Dental Surgery (Conservative Dentistry and Endodontics) at Tamil Nadu Government Dental College and Hospital, Chennai, the first respondent decided to promote the respondents 3 & 4, as there is no rule provision to consider the name of the petitioner based on the completion of post graduation degree. Replying to the contention of the learned counsel for the petitioner that the petitioner's name has been shown above the respondents 3 & 4 in the proceedings dated 21.8.2014, the learned Additional Government Pleader submitted that when the second respondent issued the proceedings dated 21.8.2014 calling for the service particulars of medical officers and proforma particulars of eligible medical officers from the Heads of medical institutions for the preparation of panel for the year 2014-15 to the post of Reader/Associate Professor of Dental

Surgery, the names of the medical officers were furnished in random order, instead of in chronological order, which is not the seniority list of medical officers for the post of Reader/Associate Professor. Therefore, the petitioner cannot claim that he has been shown as senior to the respondents 3 & 4, because there is no seniority list prepared. Moreover, when the petitioner is junior to the respondents 3 & 4 as per the Civil Medical List seniority, his name was not considered for the two vacant posts of Associate Professor of Conservative Dentistry and Endodontics. Hence, he pleaded that the writ petition is liable to be dismissed.

5. The respondents 3 & 4 have also filed counter affidavits in M.P.Nos.3 & 5 of 2015 to vacate the interim injunction granted in M.P.No.2 of 2015 on 9.3.2015. Mr.R.Ramachandran, learned counsel appearing for the third respondent, adopting the arguments of the learned Additional Government Pleader, submitted that the prayer in the writ petition is misconceived, inasmuch as it is wrong for the petitioner to presume that he has been made as senior to the third respondent on the mere assignment of serial No.20 to him compared to serial No.22 assigned to the third respondent in the proceedings dated 21.8.2014 sent by the second respondent. This presumption conceived by the petitioner is false, for the reason that the third respondent entered the service as Assistant Dental Surgeon after passing the B.D.S. Course on 17.2.98 in respect of the 1994-96 batch, whereas the petitioner has entered the service in the said post only on 25.8.2000 in respect of the 1997-98 batch. Therefore, the petitioner was ranked in the Civil Medical List at No.189/2005 and 156/2010, whereas the third respondent was ranked at No.141/2005 and 102/2010. Besides the third respondent, after passing her post graduation during March 2009, has been working as Assistant Professor and Senior Assistant Professor in the Tamil Nadu Government Dental College and Hospital from 1.5.2010. Since the ranking assigned in the Civil Medical List by the Tamil Nadu Public Service Commission is playing a pivotal role for deciding the seniority for the post of Associate Professor, it is needless to say that the third respondent is senior to the petitioner by virtue of the ranking given in the Civil Medical List. With regard to the possession of the mandatory teaching experience of four years, it was contended that as on date of filing of the miscellaneous petition, the third respondent was having the experience of 4 years and more than 10 months to her credit in the Tamil Nadu Government Dental College and Hospital, which is more than enough as per the Dental Council of India norms. Moreover, the post of Senior Resident in Dental Surgery held by the third respondent from 26.3.2009 to 30.4.2010, Assistant Professor in Conservative Dentistry from 1.5.2010 to 14.3.2010 and Senior Assistant Professor in Conservative Dentistry from 15.3.2013 till the date of filing, which comes to 5 years and 11 months,

should be counted as the teaching experience. This apart, even for 2014-15 also, the third respondent did possess sufficient teaching experience. Therefore, the third respondent is in a higher pedestal than the petitioner in regard to the seniority and experience. Hence he pleaded that the interim injunction is liable to be vacated by dismissing the writ petition.

6. Mr.R.Sankarasubbu, learned counsel appearing for the fourth respondent also, adopting the arguments of the learned Additional Government Pleader, submitted that the fourth respondent joined the service on 20.10.97, which is three years prior to the petitioner's date of joining on 25.8.2000. Thereafter, the fourth respondent completed her post graduation in the year 2009 and has been serving as Assistant Professor from the year 2010 and gained teaching experience in her speciality for about six years. Therefore, she is fully qualified to be considered for the post of Associate Professor in the Tamil Nadu Government Dental College, Chennai and by virtue of her seniority and experience, she appeared for the counselling and was promoted to the post of Associate Professor in Conservative Dentistry. These facts have been completely misplaced by the petitioner. Therefore the writ petition, accepting the counter affidavit filed by the respondents 1 & 2 that the petitioner had joined the service three years later to the fourth respondent and two and half years behind the third respondent, is liable to be dismissed.

7. Mr.G.Sankaran, learned counsel appearing for the impleaded respondents 5 & 6 also submitted that since the Civil Medical List seniority alone has to be followed for promotion to the post of Associate Professor, the respondents 3 & 4 were rightly included in the panel of the year 2014-15 and considered for promotion to the post of Associate Professor, as they were admittedly seniors to the petitioner on the basis of the ranking given to them in the aforesaid list. Hence he submitted that the writ petition is liable to be dismissed as devoid of any merits.

8. I also find merits in the submissions made by the learned Additional Government Pleader for the respondents 1 & 2 and the respective learned counsel for the contesting respondents. At the outset, to find out whether the petitioner is senior or not, it is necessary to extract the service particulars given by the respondents 1 & 2 in the counter affidavit in respect of the petitioner and the respondents 3 & 4, as follows:-

Details	Dr.A.Nandhini (3 rd Respondent)	Dr.P.Shakunthala (4 th Respondent)	Dr.G.Vinodh (Petitioner)
Mode of Appointment	TNPSC	TNPSC	TNPSC
TNPSC Selection Year	1994-1996	1994-1996	1997-1998
Date of entry into Government Service	17.02.1998	20.10.1997	25.08.2000

Details	Dr.A.Nandhini (3 rd Respondent)	Dr.P.Shakunthala (4 th Respondent)	Dr.G.Vinodh (Petitioner)
CML No.	141/2005	152/2005	189/2005
Year of Selection PG MDS Course	2006-2009	2006-2009	2005-2008
Month and Year of Passing MDS Degree	March 2009	March 2009	March 2008
Total teaching experience at the time of promotion counselling i.e., on 06.03.2015	05 Y, 11 M, 11 D	05 Y, 11 M, 11 D	06 Y, 11 M, 10 D

9. The above table clearly shows that the petitioner, having been selected in the 1997-98 batch, joined the service only on 25.8.2000, whereas the respondents 3 & 4, having been selected in the 1994-96 batch, joined the service on 17.2.98 and 20.10.97 respectively, although they were selected by the Tamil Nadu Public Service Commission and appointed under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services in the post of Assistant Dental Surgeon after securing the B.D.S. Degree. In view of the above selection and appointment, it is not open to the petitioner to say that he is senior to the respondents 3 & 4. Moreover, the seniority as per the Civil Medical List also shows that the petitioner was in No.189/2005, whereas the respondents 3 & 4 were in Nos.141/2005 and 152/2005 respectively. No doubt, the petitioner has passed the M.D.S. Degree in March 2008, whereas the respondents 3 & 4 have passed the M.D.S. Degree in March 2009. In addition thereto, the third respondent, on successful completion of the post graduation, has been posted as Senior Resident in Dental Surgery, Chengalpattu Medical College and subsequently posted as Assistant Professor of Conservative Dentistry & Endodontics at Tamil Nadu Government Dental College and Hospital, Chennai and joined duty on the forenoon of 3.5.2010. Similarly, the fourth respondent, on successful completion of the post graduation, has been posted as Senior Resident/Assistant Professor of Dental Surgery at Government Arignar Anna Memorial Cancer Institute, Kanchipuram and subsequently posted as Assistant Professor of Conservative Dentistry and Endodontics at Tamil Nadu Government Dental College and Hospital, Chennai and joined duty on the forenoon of 1.5.2010. However, the teaching experience gained at the time of promotion counselling on 6.3.2015 shows that the respondents 3 & 4 had 5 years, 11 months and 11 days, whereas the petitioner had 6 years, 11 months and 10 days. When the seniority has been arrived at based on the ranking assigned in the Civil Medical List by the Tamil Nadu Public Service Commission under Rule 35(a) of the General Rules for Tamil Nadu State and Subordinate Services, the petitioner cannot claim that he is senior to the respondents 3 & 4, when they have got the

requisite teaching experience on the cut-off date of promotion counselling. In the light of the above, the Government in their letter (D) No.168, Health and Family Welfare (A1) Department dated 5.2.2015 decided to promote the respondents 3 & 4 on adhoc basis under Rule 4 of the Tamil Nadu State and Subordinate Services pending framing of special/adhoc rules and also requested the second respondent to send the proposals to Government for appointing the medical officers, as there were only two vacancies in the department of Conservative Dentistry and Endodontics. Accordingly, the first respondent decided to promote the respondents 3 & 4, as there is no rule provision to consider the name of the petitioner based on the completion of post graduation degree. It is also pertinent to mention herein that when there were only two vacancies in the post of Associate Professor of Conservative Dentistry and Endodontics, the second respondent issued the proceedings dated 21.8.2014 calling for the service particulars of medical officers and proforma particulars of eligible medical officers from the Heads of medical institutions for the preparation of panel for the year 2014-15 to the post of Reader/Associate Professor of Dental Surgery. In this connection, the names of the medical officers were furnished in random order to the heads of medical institutions, instead of in chronological order, which cannot be taken as the seniority list of medical officers for the post of Reader/Associate Professor, since the Civil Medical List seniority alone is the basis for promotion. Therefore, it is not again open to the petitioner to say that he is senior to the respondents 3 & 4.

10. For all the aforesaid reasons, this Court is not able to find any merits in the writ petition. Accordingly, the writ petition fails and it is dismissed. Consequently, interim order stands vacated and the M.P.Nos.1, 2, 3 & 5 of 2015 are also dismissed. No costs.

-s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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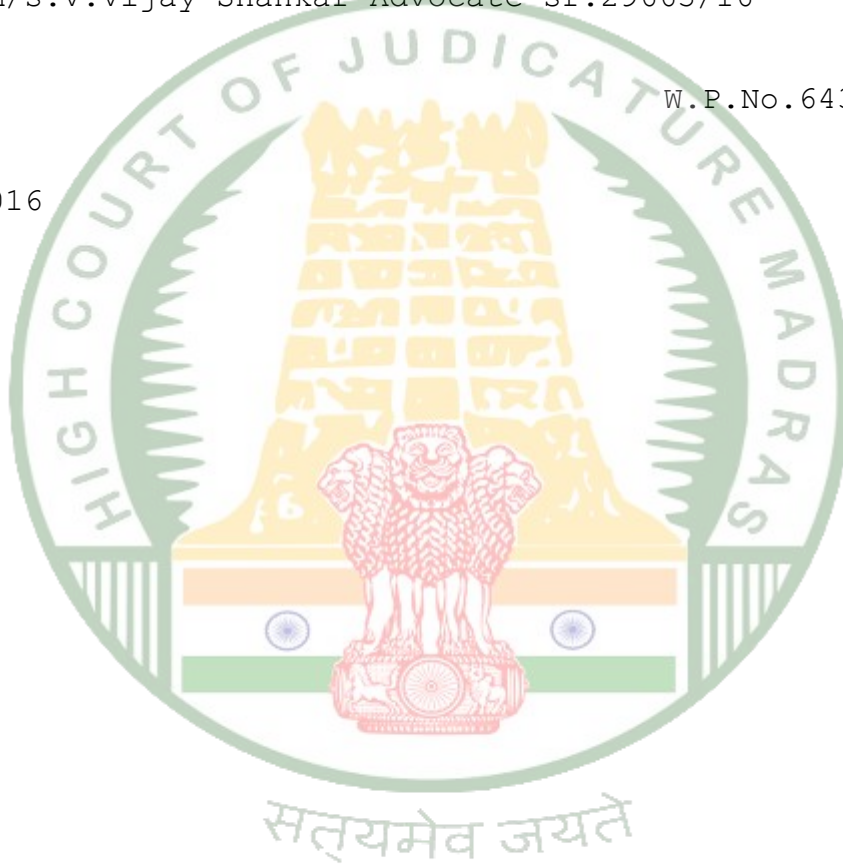
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