

RESERVED ON :03.11.2016

DELIVERED ON:23.11.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

**W.P.No.22675 of 2008 and
M.P.Nos.2 & 3 of 2008**

Dr.S.Vetrivel Chezian

.. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. By its Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai-600 009.

2. The Director of Medical Education,
Poonamalle High Road,
Kilpauk, Chennai 600 010.

3. Thiru.A.Sukumaran,
Deputy Director of Medical Education,
(Academic & Research)
Ponamale HighRoad,
Kilpauk, Chennai – 60 010.

4.Dr.P.Sridhar, (CML.No.07329/02)
Associate Professor of Orthopaedics
Department of Orthopaedics,
Kanyakumari Medical College,
Kanyakumari.

5.Dr.K.Ravichandran, (CML No.07193/02)
 Associate Professor of Orthopaedics
 Department of Orthopaedics,
 Government Mohankumaramangalam Medical College Hospital,
 Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records leading to the issue of G.O. (D) No.217 Health and family welfare (A1) Department dt 24.3.2005 and G.O.(D) No.987 Health and Family welfare (A1) Department dt 20.8.2008 on the file of the 1st respondent and quash the same in so far as the promotions of the 4th and 5th respondents alone is concerned and consequently direct the 1st respondent to promote the petitioner herein to the post of Associate Professor in Orthopaedics in any one of the Government Medical Colleges in the State of Tamilnadu.

For Petitioner	:	Mr.A.L.Ganthimathi
For R1 & R2	:	Mr. Sanjay Gandhi A.G.P
For R4	:	M/s.Tranguebar Durai vasu for Mr.K.Kuppusamy

O R D E R

The prayer in the writ petition is for a writ of certiorarified mandamus, calling for the entire records leading to the issue of G.O. (D) No.217 Health and Family Welfare (A1) Department, dated 24.3.2005 and G.O.(D) No.987 Health and Family Welfare (A1)

Department, dated 20.8.2008 on the file of the 1st respondent and quash the same in so far as the promotions of the 4th and 5th respondents are concerned and consequently direct the 1st respondent to promote the petitioner herein to the post of Associate Professor in Orthopaedics in any one of the Government Medical Colleges in the State of Tamilnadu.

2.The facts leading to the filing of this writ petition is as follows:

(i) The petitioner was selected as Civil Assistant Surgeon by the Tamil Nadu Public service Commission on 06.04.1990 and the petitioner joined in the said service at Government Primary Health Centre, Vaikuntham, Sangagri, Salem District. The petitioner was assigned with CML No.07173/2002. Subsequently, the petitioner's services were transferred to the Directorate of Medical Education's side and he was appointed as Tutor in Physiology on 07.04.2000 in the Coimbatore Medical College, Coimbatore. Subsequently, the petitioner was transferred and posted as Tutor in Accident and Emergency Orthopaedics in the Coimbatore Medical College Hospital, Coimbatore on 12.05.2000 and he served in that capacity till 06.12.2002.

(ii) Thereafter the petitioner was posted as Tutor in Orthopaedics from 06.12.2002 to 05.12.2003 and he was further re-designated as Assistant Professor in Orthopaedics in the Coimbatore Medical College, Coimbatore with effect from 12.05.2000 and served there in that capacity till 17.05.2005. Therefore, the petitioner had completed his Teaching Experience/Service of five years and five days after he obtained post graduation degree viz. M.S Orthopaedics from Madras Medical College on 10.03.1999.

(iii) Thereafter, the petitioner was shifted back to the Directorate of Medical Services and promoted as Senior Civil Surgeon on 18.05.2005 and was posted at Government Head Quarters Hospital Tiruppur upto 31.10.2007. From 01.11.2007 onwards, the petitioner had been working in ESI Hospital, Coimbatore.

(iv) The further case of the petitioner is that the promotion to the post of Reader/Associate Professor in any specialty is governed by Rule 4 of the Tamil Nadu State and Sub-Ordinate Service Rules. As per the said rules, the following qualification and teaching experience are necessary for consideration of promotion to the post of Reader/Associate Professor :

"(i)Post Graduate Degree in the specialty concerned

(ii)Must have had teaching experience in the specialty concerned as detailed below:

(a) 5 years prior to and 2 years subsequent to acquiring the Post Graduate Qualification in the specialty.

or

(b) 3 years prior to and 3 years subsequent to acquiring the Post Graduate Qualification in the specialty

or

(c) 4 years subsequent to acquiring the Post Graduate Qualification in the specialty. "

(v) In view of the said qualification as has been prescribed under the relevant rules, since the petitioner had completed four years of service/teaching experience after acquiring the Post Graduate Qualification, he was eligible to be considered for promotion from 11.05.2004 as he joined as Tutor on 12.05.2000.

(vi) While so, on 18.03.2004, the respondents had issued a notification to fill up the post of reader for the year 2004 – 2005. The petitioner's name was also short listed in the panel wherein he was placed at S.I. No. 57 with CML.No.07173/02 whereas the respondents 4 & 5 herein were placed at S.I. No. 59 & 58 with CML.No.07329/02 and 07193/02, respectively. Pursuant to the said preparation of panel,

the eligible candidates were called for counselling by the second respondent. The counselling for the post of Associate Professor in Orthopaedics was called for on 22.02.2005. However, the petitioner was not called for even though he was eligible to be called for counseling for consideration for promotion to the post of Associate Professor in Orthopaedics. However, to the shock and surprise to the petitioner, he came to know that the fourth respondent, who was in fact placed at Sl. No.59, below the petitioner, had been considered for promotion and he was promoted as such as Associate Professor in Orthopaedics and by G.O.(D) No.217 Health and Family Welfare (A1) Department, dated 24.03.2005, the fourth respondent was promoted and posted as Associate Professor of Orthopedics at Kanyakumari Medical College, Kanyakumari.

(vii) Thereafter, the petitioner had given an appeal on 09.06.2008 to the first and second respondents through proper channel. Since it did not get any response, the petitioner had sent the reminders on 19.06.2008 and 23.06.2008 seeking consideration of the candidature of the petitioner for promotion as his junior had been promoted by G.O.(D).No.217, dated 24.03.2005. In the meanwhile, the second respondent called the petitioner for counseling on

03.03.2008 for promotion to the post of Associate Professor. The petitioner had also attended the counselling on 03.03.2008 and he opted to be posted at Government Medical College, Coimbatore and he had given second choice at Government Mohankumaramangalam Medical College Hospital, Salem. In spite of the petitioner having attended the counseling and had given two options for postings to be given to the petitioner as Associate Professor, the petitioner was not given promotion, instead, again to the shock and surprise to the petitioner, the 5th respondent had been considered and had been promoted as Associate Professor Orthopaedics at Government Mohankumaramangalam Medical College Hospital, Salem by G.O.(D) No.987, Health and Family Welfare(A1) Department dated 20.08.2008. Challenging these two orders viz., G.O.(D) No.217 Health and Family Welfare (A1) Department, dated 24.03.2005 as well as G.O.(D) No.987, Health and Family Welfare(A1) Department, dated 20.08.2008, the petitioner has filed the present writ petition with the above said prayer.

3. Heard the learned counsels appearing for the respective parties.

4. The learned counsel appearing for the petitioner had submitted the relevant rule for consideration of promotion to the post of Associate Professor was that the candidate must be a Post Graduate in Medicine, must have teaching experience in the specialty concerned of either five years prior to and two years subsequent to acquiring the PG Qualification or three years prior to and three years subsequent to acquiring the PG Qualification or four years subsequent to acquiring the PG Qualification in that specialty. The learned counsel would contend that since the petitioner joined as Tutor and his service was considered to be Tutor in the teaching side from 12.05.2000 and he completed the four years in the teaching side on 11.05.2004, the clause 'C' of the said rule, namely, four years subsequent to acquiring the Post Graduate qualification in the specialty, the petitioner has been fulfilled. Therefore, the petitioner should have been considered for promotion immediately, on acquiring the said four years teaching experience after acquiring the PG Qualification i.e on or after 11.05.2004. In spite of this factor, the petitioner was not considered for promotion in the counselling held on 22.02.2005 for the post of Associate Professor in Orthopedics. However, the fourth respondent who was in fact junior to the petitioner had been considered for promotion and by impugned order in G.O.(D) No.217 dated

24.03.2005, the fourth respondent was given promotion as Associate Professor of Orthopedics.

5. The learned counsel for the petitioner would further contend that even thereafter, in the second consideration i.e in the year 2008, once again by the impugned order in G.O.(D) No.987, dated 20.08.2008, the fifth respondent was considered and promoted as Associate Professor of Orthopedics and this time also the petitioner was not considered, even though he was called for counseling and attended the counseling on 03.03.2008. Absolutely, there is no plausible reason on the part of the official respondent to support the promotion given to respondents 4 & 5, without giving such promotion to the petitioner, who is not only eligible to get such promotion as Associate Professor, but also was Senior to the said respondents 4 & 5, as the petitioner was placed at Sl. No.57 and the respondents 4 & 5 were placed at Sl. Nos 59 & 58 in the proceedings dated 18.03.2004 where the seniority list was prepared for the purpose of promotion.

6. The learned counsel for the petitioner would also contend that in the counter filed by the respondents, they have stated that upto the year December 2007, the promotion for the post of Associate

Professor was made as per the qualification referred to above i.e., the four years teaching experience after acquiring the PG qualification. However, after issuance of G.O.Ms. No.13, Health and Family Welfare Department dated 11.01.2008, the eligibility criteria for promotion to the post of Associate Professor of Orthopedics had been changed. According to which, the candidate must have acquired PG qualification and he must have had teaching experience of 5 years as Assistant Professor in the specialty concerned. Since the petitioner did not have the 5 years in teaching after acquiring the PG qualification even though the petitioner attended the counselling on 03.03.2008, he was not promoted, cannot be accepted for the reason that the petitioner since has completed four years teaching experience as early as in the year 2004 itself, the question of applying G.O.Ms.13 would not arise in the case of the petitioner and therefore the only objection raised for non consideration of petitioner's promotion as Associate Professor, cannot be countenanced and therefore, the learned counsel for the petitioner would contend that the writ petitioner is entitled to get promotion as claimed in the writ petition. Hence, the learned counsel wants this writ petition to be allowed.

7. Per contra the learned Additional Government Pleader

appearing for the official respondents would contend that the petitioner was re-designated as Assistant Professor of Orthopedics only with effect from 06.01.2004 and not from 12.05.2000, as claimed by the petitioner. Therefore, according to the official respondents, the petitioner had completed four years and one month teaching experience as Assistant Professor, which was insufficient for promotion to the post of Associate Professor in Orthopaedics, as per G.O. Ms No.13, Health and Family Welfare Department, dated 11.01.2008. The learned Additional Government Pleader would further contend that the said G.O Ms. No.13 was in accordance with the directives issued by the Medical Council of India for fixing the minimum qualifications for teachers in medical institutions in consonance with Medical Council of India norms for minimum qualification for teachers in Medical Institutions Regulations, 1998.

8. The learned Additional Government Pleader would further contend that subsequently, the petitioner's case was considered in pursuance of the directions issued by this Court on 30.04.2009 by way of interim order in the present writ petition and by G.O.(D) No.357, Health and Family Welfare Department dated 27.04.2010 was issued by which the petitioner was given promotion as Associate Professor of

Orthopedics at Coimbatore Medical College with effect from the date of taking of charge, ofcourse, subject to the outcome of the present writ petition. In view of said promotion having been given to the petitioner, pursuant to the orders of this court in the present writ petition, the petitioner cannot have any further grievance and therefore, in that view of the matter, the learned Additional Government Pleader states that the writ petition is liable to be dismissed.

9. The rival submissions made by the respective learned counsels as well as the materials placed before this court for its perusal have been carefully considered.

10. It is not in dispute that the petitioner has acquired the PG qualification, namely, MS Orthopaedics from Madras Medical College on 10.03.1999. It is also not in dispute that the qualification, which was required for the purpose of promotion as Associate Professor in Tamil Nadu Medical Education Service, was originally governed under Rule 4 of Tamil Nadu State and Subordinate Service Rules and the said procedure also has been accepted by the official respondents at paragraph 6 of the counter affidavit wherein they have stated that the said qualification as prescribed for promotion by way of acquiring PG

qualification and subsequent acquiring of teaching experience after PG qualification as claimed by the petitioner had been followed for promotion to the post of Associate Professor in Medical Education side till December 2007. It was only claimed by the official respondents that only after the issuance of G.O.Ms No.13, Health and Family Welfare Department, dated 11.01.2008, the required qualification was modified to state that after acquiring PG Qualification, the person must have a teaching experience of five years as Assistant Professor in the speciality concerned. Therefore, there is no quarrel that atleast, till December 2007, the required qualification for the promotion of Associate Professor is that the candidate must have completed Post Graduate Degree in the speciality concerned and he must have had teaching experience in the speciality of either five years prior to and two years subsequent PG or three years prior to and three years subsequent to PG or four years subsequent to acquiring the PG Qualification in the specialty.

11. If the petitioner satisfied any one of the requirement by way of teaching experience after acquiring the PG Qualification before December 2007, then certainly, the petitioner would be eligible to be considered for promotion as Associate Professor. In this regard, the

contention of the official respondents would be that the petitioner originally was working in the Medical side and only subsequently, re-designated as Assistant Professor of Orthopaedics only with effect from 06.01.2004. In this regard, the claim made by the petitioner that he was considered to be in the teaching side as Tutor from 12.05.2000 is disputed by the official respondents. The learned counsel for the petitioner taking this Court to the proceedings issued by the Dean, Coimbatore Medical College where the petitioner was working in the year 2000. The proceedings issued by the Dean, Coimbatore Medical College, dated 01.04.2000 states as follows:

"Dr.S.Vetrivel Chezian, Tutor in Orthopaedics, Coimbatore Medical College, Coimbatore, on acquiring the Post Graduate Degree in M.S.(Ortho) has completed three years of teaching experience in the concerned specialty.

Thus he has satisfied the regulations prescribed for redesignating him as Assistant Professor of Orthopedics and he is hereby redesignated as Assistant Professor of Orthopedics with effect from 7.4.2000."

12. The said proceedings issued on 01.04.2000 was subsequently modified by way of corrigendum issued by the Dean Coimbatore Medical College on 27.06.2008 which reads thus:

"Dr.S.Vetrivel Chezian, M.S.Orthopaedics, Assistant Professor in Orthopedics Coimbatore Medical College, Coimbatore who has rendered services as Tutor in Accident and Emergency from 12.05.2000 to 06.12.2002 is taken for teaching purpose in Orthopedics. On acquiring the Post

Graduate Degree in M.S.(Ortho) has completed three years of teaching experience in the concerned speciality.

Thus he has satisfied the regulations prescribed for redesignating him as Assistant Professor of Orthopedics and he is hereby redesignated as Assistant Professor of Orthopedics with retrospective effect from 12.05.2000."

13. The aforesaid position infact has been reiterated in the Government order G.O.(D) No.357, Health and Family Welfare Department dated 27.04.2010 by which ultimately, the petitioner had been given promotion as Associate Professor. Even in the said G.O.(D).No.357 dated 27.04.2010, after giving promotion to the petitioner as Associate Professor of Orthopedics, it has further been stated that the request of the Medical Officer (petitioner) for revision of seniority in the cadre of Associate Professor on par with his junior shall be considered later based on the final orders of the Madras High Court in the main writ petition in W.P.No.22675/2008(the present writ petition).

14. Therefore, the only controversy for calculating or ascertaining the qualification and experience gained by the petitioner for the purpose of promotion to the post of Associate Professor of Orthopaedics is whether the petitioner has been in service in the

teaching side either from 12.05.2000 as claimed by petitioner or from 06.01.2004 as claimed by the official respondents. In this regard, a clarity has been given by the second respondent herself in a latest proceedings dated 06.05.2016 which has been brought to this court by way of additional typed set of papers filed by the petitioner. According to the said proceedings dated 06.05.2016, the petitioner's service as Associate Professor of Orthopedics, Coimbatore Medical College, Coimbatore has been restructured and therefore, orders were issued. The relevant portion of the said proceedings of second respondent dated 06.05.2016 can be usefully referred to here under:

"As per G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.09 and Government letter No.10908/E2/10-1, Health dated 07.04.10 his period of Teaching Experience in Director of Medical Education side is modified and refitment is done as Assistant Professor, Senior Assistant Professor, Associate Professor and Professor in accordance with the Medical Council of India norms by counting all the Teaching Experience in the concerned Specialty. Now, Director of Medical Education hereby order for the refitment as detailed below."

Assistant Professor of Orthopaedics	Coimbatore Medical College Hospital, Coimbatore Coimbatore Medical College Coimbatore	12.05.2000 to 06.12.2002 07.12.2002 to 11.05.2003
Senior Assistant Professor of Orthopaedics	Coimbatore Medical College Coimbatore	12.05.2003 to 11.05.2005
Associate Professor of Orthopaedics	Coimbatore Medical College Coimbatore	12.05.2003 to 19.05.2005 30.04.2010 to 21.04.2014
Professor of Orthopaedics	Coimbatore Medical College Coimbatore	22.04.2014 to till date

15. From the above proceedings of the second respondent, it becomes crystal clear that the petitioner's service at Coimbatore Medical College from 12.05.2000 to 06.12.2002 and again from 07.12.2002 to 11.05.2003 as Assistant Professor of Orthopaedics were taken into consideration. Like that, the petitioner's further service at Coimbatore Medical College from 12.05.2003 to 11.05.2005 as Senior Assistant Professor of Orthopedics also have been taken into account. This period i.e., from 12.05.2000 to 11.05.2005 as Assistant Professor of Orthopedics and Senior Assistant Professor of Orthopedics at Coimbatore Medical College are very much relevant for the purpose of deciding the claim made by the petitioner.

16. The petitioner since has acquired the PG Qualification in Orthopaedics on 10.03.1999 itself, his service as Assistant Professor

from 12.05.2000 can be taken into account as a qualifying service within the meaning of Rule 4 as has been referred to above. The four years of continuous service as Assistant Professor of Orthopaedics and senior Assistant Professor of Orthopaedics which ended on 11.05.2005. Therefore, he fulfilled the said qualification of acquiring PG and also acquiring four years teaching experience after acquiring PG in the said Speciality, namely, Orthopaedics. Therefore, the petitioner would be fully entitled to be considered for the promotion for the post of Associate Professor of Orthopaedics. However, the petitioner was not considered in the year 2005 wherein the fourth respondent was considered and thereafter, on 20.08.2008, again the petitioner was not considered, only the fifth respondent was considered. Even at the time of consideration and granting promotion to the fourth respondent on 24.03.2005, the petitioner was qualified to hold the post of Associate Professor in Orthopaedics as the petitioner had completed the four years qualifying service/teaching experience on 11.05.2004 itself after acquiring the PG qualification in the year 1999. Therefore, the petitioner being senior to the fourth respondent would be fully eligible and entitled to claim promotion as Associate Professor of Orthopaedics before the fourth respondent. Since the petitioner would be eligible to get promotion as Associate Professor in Orthopedics even prior to the

fourth respondent i.e., on 24.03.2005, subsequently, the promotion given to the fifth respondent on 20.08.2008 without considering the petitioner, is wholly unjustifiable.

17. Even in the Government Order in G.O.(D) No.357, Health and Family Welfare Department dated 27.04.2010, the first respondent having considered the relevant merits of the petitioner's claim had given promotion to the petitioner temporarily, ofcourse pursuant to the interim direction given by this Court in the present writ petition. Thus, even the said promotion was given only subject to the outcome of the present writ petition and also the claim of the seniority made by the petitioner was directed to be considered on the basis of the final orders to be passed by this court in this writ petition.

18. During the pendency of the writ petition, this Court in M.P.No.3/2008 by order dated 30.04.2009 directed the respondent to consider the claim of the petitioner for promotion, if he is otherwise qualified pending disposal of the writ petition. In the said order, this Court has taken note of the corrigendum order issued by the Dean, Medical College Coimbatore by order dated 27.06.2008 where by his service as Assistant Professor was recognized with effect from

12.05.2000. All these factors would combinedly go to show that the petitioner has very well fulfilled the required qualification as well as teaching experience for getting promotion to the post of Associate Professor in Orthopaedics as early as on 11.05.2004 itself. Only after his eligibility, the consideration for the post of promotion to the Orthopaedics department was made and by the first impugned order, namely, G.O(D).No. 217 dated 24.03.2005, the fourth respondent was given promotion and by the second impugned order in 20.08.2008 in G.O.Ms. No.987, the fifth respondent was given promotion. These two promotions were given through the impugned orders to the fourth and fifth respondents by over looking the seniority as well as the merit and qualification acquired by the petitioner which is unjust and arbitrary.

19. In that view of the matter and based on the aforesaid discussion and consideration, this Court finds that the denial of promotion to the petitioner as Associate Professor in Orthopaedics in the year 2005 when the fourth respondent was given promotion, was unjust and totally arbitrary. Therefore this writ petitioner shall be entitled to claim promotion as Associate Professor Orthopaedics from the date his junior was promoted i.e., 24.03.2005. Hence, the petitioner succeeds in this writ petition thereby, he shall be given

promotion by the respondents from the date his junior, namely, the fourth respondent is given promotion i.e., from 24.03.2005 as Associate Professor, Orthopaedics and consequently, the petitioner shall be fully eligible to claim all other service benefits including the monetary benefits, difference of pay and arrears of pay.

20. In the result, the writ petition is allowed in the terms as indicated above. The official respondents are directed to pass necessary orders giving promotion to the petitioner as Associate Professor in Orthopaedics from 24.03.2005 and also confer the petitioner all consequential service benefits including monetary benefits. The needful shall be done by the official respondents within a period of eight weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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R.SURESH KUMAR,J.

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To

1. The State of Tamil Nadu,
rep. By its Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai-600 009.

2. The Director of Medical Education,
Poonamalle High Road,
Kilpauk, Chennai 600 010.

**Pre-Delivery order in
W.P.No.22675 of 2008**

23.11.2016