

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6914 of 2015
and
M.P.Nos.1 & 2 of 2015

Dr.M.B.Aswath Narayanan

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary,
Health and Family Welfare Department,
Fort St George, Chennai-600 009.

2.The Director of Medical Education,
Office of Directorate of Medical Education,
Chennai-600 010.

3.Dr.B.Saravanan, MDS, Ph.D.,
Principal,
Tamil Nadu Government Dental
College and Hospital,
Chennai-600 003.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent issued in G.O.(D).No.194, Health & Family Welfare (A1) Department, dated 10.02.2015 and the consequential G.O. (D).No.195, Health & Family Welfare (A1) Department, dated 10.02.2015, and to quash the same and consequently, to direct the respondents 1 & 2 to promote the petitioner as Principal to the Tamil Nadu Government Dental College and Hospital.

For Petitioner : Mr.R.Muthukumarasamy, Senior Counsel
for M/s.A.Jenasenan

For respondents : Mr.K.Dhananjayan, Spl GP (For R1 & R2)
Mr.Bharatha Chakravarthy
for M/s.Sai, Bharath & Ilan (For R3)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent issued in G.O.(D). No.194, Health & Family Welfare (A1) Department, dated 10.02.2015 and the consequential G.O.(D).No.195, Health & Family Welfare (A1) Department, dated 10.02.2015, and to quash the same and consequently, to direct the respondents 1 & 2 to promote the petitioner as Principal to the Tamil Nadu Government Dental College and Hospital.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioner acquired BDS Degree in the year 1991 and thereafter, he pursued the MDS Course in Public Health Dentistry and acquired his Post Graduate Degree in the year 1994. Based on the said qualification, the petitioner underwent the recruitment process for appointment as Assistant Surgeon (Dental), conducted by the Tamil Nadu Public Service Commission and he was selected to the said post.

2-2.The petitioner joined the Tamil Nadu Medical Service as Assistant Civil Surgeon (Dental) and on 12.12.1994, he was posted at the ESI Hospital, Salem. On 28.11.1995, he was given a posting as Tutor in the Madras Medical College, Chennai to work at Tamil Nadu Government Dental College and Hospital. The petitioner commenced his probation as Tutor in the Tamil Nadu Government Dental College & Hospital on 11.12.1995 and he was declared as successfully completed his probation with effect from 11.12.1996. The post of Tutor in Dental Surgery is borne on Category-III, Class IX of the Tamil Nadu Medical Service. On 28.11.1996, the petitioner was re-designated as Assistant Professor (erstwhile post of Lecturer) in the same institution. The post of Assistant Professor equivalent to the erstwhile post of Lecturer is borne of category-II, Class IX of the Tamil Nadu Medical Service.

2-3.After a spell of about six years, the petitioner was promoted and posted as Lecturer/Registrar on 06.05.2002 in the same institution. The said post was in the grade of Senior Civil Surgeon and therefore, equivalent to the post of Reader in Dental Surgery which is a post borne on Category I of Class IX of the Tamil Nadu Medical Service. The said post of Lecturer / Registrar in the Department of Preventive and Community Dentistry, Tamil Nadu Dental College, was later redesignated as Reader by proceedings in G.O.Ms.No.860, Health and Family Welfare, dated 12.06.2003. The petitioner was elevated/promoted to the category of Reader which is a post borne on Category-1 of Class IX of the Tamil Nadu Medical Service with effect from 06.05.2002. On 31.07.2003, the petitioner was posted as the Head of the Department of Preventive and Community Dentistry in the same institution. By proceedings dated 09.03.2004, the petitioner who was Reader in Preventive and Community Dentistry, was re-designated as Professor with effect from 30.01.2004 and he was posted as Professor of Preventive and Community Dentistry, at Tamil Nadu Government Dental College and Hospital.

2-4.It is further stated by the petitioner that Rules relating to the Tamil Nadu Medical Service, do not provide for or deal with the post of Professor in Dental Surgery. The Government has issued orders to the effect that any person holding the post of Reader either on a regular basis or a temporary basis, shall be designed as a Professor after he has completed 8 years of teaching experience in the Specially concerned. It is pursuant to the above order, the petitioner was re-designated as a Professor with the effect from 30.01.2004.

2-5.The Government by G.O.Ms.No.1761, Health, dated 03.10.1979, sanctioned the creation of the post of Principal in Madras Dental College by converting the post of Senior Most Professor in that college. The Government has subsequently issued G.O.Ms.No.452, Health dated 17.03.1981 notifying the Rules for the post of Principal in the Madras Dental College. As per the said Rules, notified in the Gazette, the post of Principal in the Tamil Nadu Government Dental College & Hospital is to constitute a separate category in Class-I, Branch-I of the Tamil Nadu Medical Service. The General and Special Rules applicable to the holders of the permanent posts in Class-I, Branch-I Medical of the Tamil Nadu Medical Service was to apply to the holders of the post of Principal. As per the above said Rules, the appointment to

the post of Principal shall be made by promotion from the holders of the post of Readers/Professor in Dental Surgery in Category-I of Class IX of the Tamil Nadu Medical Service. The qualification prescribed for appointment to the post of Principal is that the person must possess a Degree of MDS in the faculty of Dentistry and must possess teaching experience of a period of not less than 15 years in the speciality after acquiring the Post Graduate qualification and must have worked as a Reader / Professor for a period of not less than 10 years.

2-6.The petitioner has come to hold the posts in Category-I of Class IX of the Tamil Nadu Medical Service as on 02.05.2002 and he has been continuously holding the said category and as Professor with effect from 30.01.2004. The petitioner has the necessary teaching experience and service experience as prescribed in the aforesaid Rules for being promoted as the Principal.

2-7.The post of Principal in the Tamil Nadu Government Dental College & Hospital was to fall vacant on 30.06.2014. The 2nd respondent has issued a circular dated 23.04.2014 informing the qualification and teaching experience essential to consider the name for inclusion in the panel for appointment to the post of Principal and indicating the crucial date of preparation of panel for the post of Principal as 15.03.2014. The qualification mentioned as pre-requisite does not reflect the exact qualification mentioned in the Rules notified by the Government. The said Circular also indicated the alleged seniority list of Medical Officers who are fit to be considered for the post of Principal. The said list of Medical Officer containing 6 in number has reckoned the CML seniority which is only inappropriate for the purpose of considering for promotion to the post of Principal from the category of Reader / Professor. The seniority for the purpose of promotion to the post of Principal should be the date on which the Medical Officer concerned has been appointed as a Reader. The petitioner who was appointed in the category of Reader in May, 2002, had been omitted in the said list, while persons who were appointed subsequently as Readers have been stated to be seniors fit to be considered for the post of Principal. Hence, the petitioner made a representation dated 10.06.2014, but, there was no response to the petitioner's representation. Thereafter, the petitioner came to know that by proceedings dated 16.02.2015 the 3rd respondent herein was promoted as Principal by orders of the Government in G.O.(D). NO.194, Health & Family Welfare (A1) dated 10.02.2015 and he

assumed charge on the same day. When the petitioner caused enquiries, he came to know that a panel had been drawn vide G.O.(D).No.194, Health & Family Welfare (A1) Department, dated 10.02.2015 with only one name viz., the name of the 3rd respondent and he has been promoted on the same day vide G.O. (D).No.195, Health & Family Welfare (A1) Department, dated 10.02.2015. Aggrieved over the same, the petitioner has now come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned senior counsel appearing for the petitioner submitted that the petitioner was promoted to the post of Reader as early as on 06.05.2002, whereas the 3rd respondent was promoted to the post of Reader only on 03.01.2003. Hence, the petitioner is the senior to the 3rd respondent. A panel had been drawn vide G.O.(D).No.194, Health & Family Welfare (A1) Department, dated 10.02.2015 with only one name viz., the name of the 3rd respondent and he has been promoted on the same day vide G.O.(D).No.195, Health & Family Welfare (A1) Department, dated 10.02.2015. According to the learned senior counsel for the petitioner, the petitioner is the senior most person and the respondents 1 & 2 ought to have promoted the petitioner to the post of Principal; whereas violating the Rules and the seniority in Medical officers, the promotion has been given to the 3rd respondent, which is not legally sustainable.

4. The learned Special Government Pleader appearing for the respondents 1 & 2, by filing a detailed counter, would contend that the petitioner is not the senior most person for consideration to the post of Principal, Tamil Nadu Government Dental College and Hospital, Chennai. The petitioner holds the post of 'Professor in Dental Surgery' in Category-I of Class IX of the Tamil Nadu Medical Service with effect from 30.01.2004. Whereas the 3rd respondent holds the post of 'Professor in Dental Surgery' in Category-I of Class IX, with effect from 09.01.2003. Further, as the post of Principal, Tamil Nadu Government Dental College and Hospital, Chennai, is governed by the adhoc Rules. The adhoc Rules were framed vide G.O.Ms.No.452, Health and Family Welfare Department, dated 17.03.1981 and subsequently, it was amended vide G.O. (Ms).No.87, Health and Family Welfare (B1) Department, dated 17.06.2002. The promotion to the post of Principal was made based on the said Government Orders; but, the petitioner has not challenged the said government orders. As per the amended Rule provision, the Medical Officer, who worked as Professor for a period of not less than five years, is eligible for promotion to the post of Principal. The petitioner without

appreciating the above said Rule provision, has filed the present writ petition. Thus, the learned special Government Pleader sought for dismissal of the writ petition.

5.The learned counsel for the 3rd respondent also, by filing a detailed counter, would contend that as per the amended Rules vide G.O.Ms.No.87, G.O.(Ms).No.87, Health and Family Welfare (B1) Department, dated 17.06.2002, the post of Professor alone is the feeder post for consideration for the promotion to the post of Principal. The petitioner hold the post of Professor with effect from 30.01.2004; whereas the 3rd respondent hold the post of Professor with effect from 09.01.2003. Hence, it is incorrect to state that the petitioner is senior to the 3rd respondent.

6.By way of reply, the learned senior counsel for the petitioner would submit that as per Rule 12 of the Special Rules for Tamil Nadu Medical Service, the seniority upto the cadre of Civil Surgeons shall be determined with reference to the their Civil Medical List number and that panel seniority or date of promotion is the criteria for future promotion to the next higher cadre and not the Civil Medical List. Thus, the learned senior counsel restricted his prayer stating that the petitioner is prepared to give a representation and if a direction is given to the 1st respondent to consider the same, it would suffice.

7.Heard both sides and perused the materials available on record.

8.In view of submission made by the learned senior counsel for the petitioner as well as the counter submissions made by the learned Special Government Pleader and the learned counsel for the 3rd respondent, this Court is not inclined to quash the impugned orders as sought for by the petitioner. However, the petitioner is directed to give representation to the 1st respondent, with regard to his promotion, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the 1st respondent is directed to consider the same and to pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

With the above terms, the writ petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
State of Tamil Nadu
Health and Family Welfare Department,
Fort St George, Chennai-600 009.

2.The Director of Medical Education,
Office of Directorate of Medical Education,
Chennai-600 010.

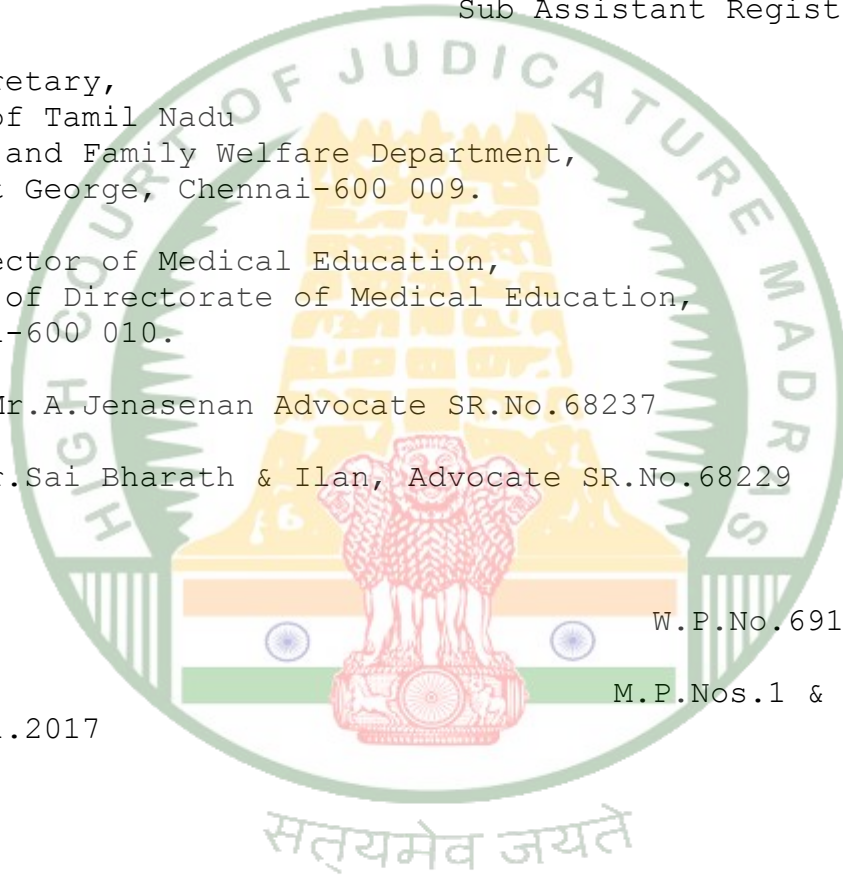
+2 cc to Mr.A.Jenasenan Advocate SR.No.68237

+1cc to Mr.Sai Bharath & Ilan, Advocate SR.No.68229

W.P.No.6914 of 2015
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SDR 04.01.2017



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