

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.28572 of 2016

Dr.Shankar

.. Petitioner

vs.

- 1.The State of Tamil Nadu
Rep. by Secretary to Government,
Health & Family Welfare Department,
Fort St.George,
Chennai-600 009.
- 2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Frazer Bridge Road,
V.O.C. Nagar, Chennai.
- 3.The Director of Public Health &
Preventive Medicine,
O/o. Director of Medical Service,
DMS campus,
Teynampet,
Chennai-600 006.
- 4.The Director of Medical Services,
Teynampet, Chennai-6.
- 5.The Director of Medical Education,
Poonamallee High Road,
Kilpauk,
Chennai-600 010.

6.R.Arul

7.P.K.Senthilkumar

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 2 to 5 to prepare the seniority list for the purpose of appointment to the post of Associate Professor in the Department of Nephrology under the 5th respondent in accordance with the merit list published by the second respondent during the year 1999 as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules by

considering the representation of the petitioner dated 30.06.2016.

For Petitioner :Mr.R.N.Amarnath

For Respondents :Mr.S.Gunasekaran,
Additional Govt. Pleader for R1, R3 to R5
Mr.M.Lonathan for R2

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Mandamus directing the respondents 2 to 5 to prepare the seniority list for the purpose of appointment to the post of Associate Professor in the Department of Nephrology under the fifth respondent in accordance with the merit list published by the second respondent during the year 1999, as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, by considering the representation of the petitioner dated 30.06.2016.

2. The petitioner has completed his M.B.B.S. degree in the year 1998 and secured 654.85 out of 910 marks in the written and oral examinations held in the year 1999 for the post of Assistant Surgeon and he belongs to Most Backward Class community. The petitioner name was shown as Sl.No.558 in the turn list prepared by the Tamil Nadu Public Service Commission and appointed as Assistant Surgeon before the third respondent in the year 2000. The petitioner had also completed his Post Graduate Degree (M.D.) in General Medicine in the year 2007 and completed his Doctorate in Nephrology (DM) during the year 2013 and he is fully qualified to be appointed as Associate Professor in the Department of Nephrology. The petitioner would state that though he belonged to Most Backward Class category, he was selected under General Turn and placed below in the seniority list against Backward Community rank holders, who have scored lesser marks, namely the respondents 6 and 7. The petitioner would also state that as per roster system, the Most Backward Class candidates will be placed above Backward Class candidates and the writ petitioner's opportunity to get promotion is seriously affected and as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, the seniority of a person in service class/category/grade shall be determined on the basis of rank obtained by the candidate in the list of approved candidates drawn by TNPSC. The petitioner, in this regard, has made repeated representations before the respondents 2 to 5 requesting to prepare the seniority list for the purpose of promotion on the basis of rank assigned by the second respondent in the merit list issued at the time of appointment in the year 1999, but the respondents are taking steps to fill up the vacancies on the basis of merit list prepared on the

basis of communal wise and hence, left with no other alternative, the petitioner has filed this writ petition.

3. Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents 1, 3 to 5 would submit that the second respondent has sent a communication dated 23.06.2016 in Memo No.3349/OTD-A2/1998 to the petitioner informing him to send representation through proper channel i.e., through the Director of Public Health and Preventive Medicine, Chennai and in the event of doing so, the same will be considered by the respondents.

4. However, the learned counsel appearing for the petitioner would submit that the petitioner has submitted the representation through proper channel only and also placed reliance upon the judgment in N.Santosh Kumar and Others v. The Tamil Nadu Public Service Commission and Others [(2015) 4 MLJ 281].

5. In the light of the above, this Court permits the petitioner to submit a fresh representation through proper channel viz., through the Director of Public Health and Preventive Medicine, Chennai within a period of one week from the date of receipt of a copy of this order and the respondents 2 to 5, on receipt of the same, is directed to consider in the light of the above cited judgment and pass orders on merits and in accordance with law within a period of four weeks thereafter.

6. This Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jvm

To

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

2.The Secretary,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Chennai.

3.The Director of Public Health & Preventive Medicine,
O/o. Director of Medical Service,
DMS campus, Teynampet,
Chennai-600 006.

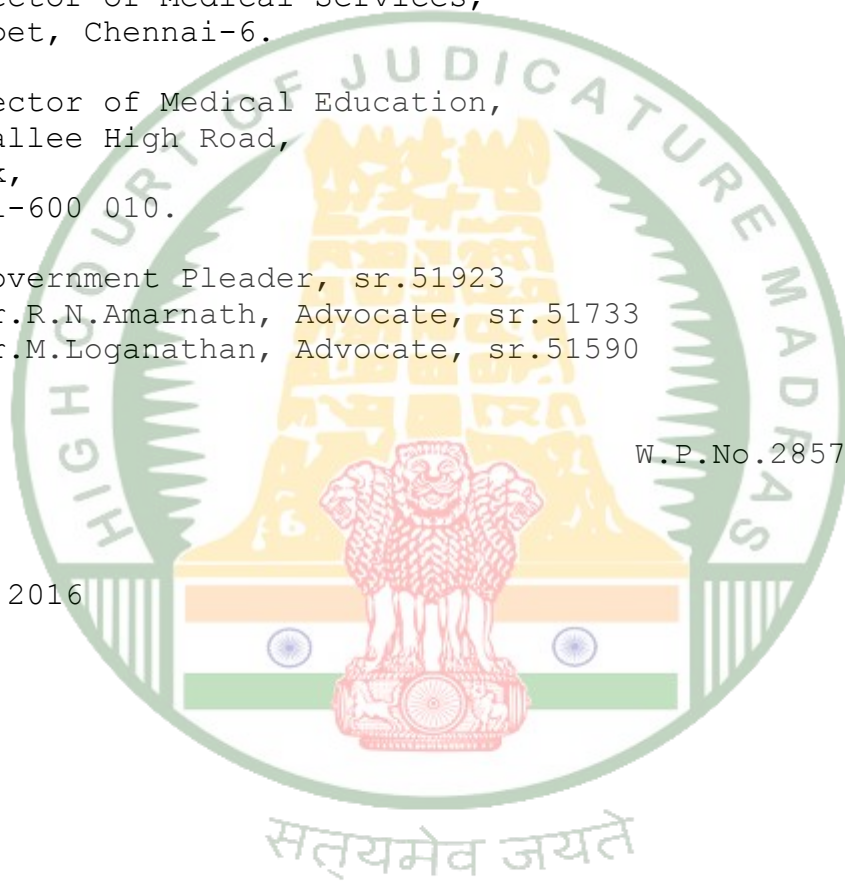
4.The Director of Medical Services,
Teynampet, Chennai-6.

5.The Director of Medical Education,
Poonamallee High Road,
Kilpauk,
Chennai-600 010.

1 cc to Government Pleader, sr.51923
1 cc to Mr.R.N.Amarnath, Advocate, sr.51733
1 cc to Mr.M.Loganathan, Advocate, sr.51590

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