

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.36971 of 2016

and

W.M.P.Nos.31770 and 31771 of 2016

Dr.S.Dhalapathy

... Petitioner

Vs.

1. The State of Tamil Nadu,  
Rep. by its Principal Secretary to Government,  
Health and Family Welfare Department,  
Secretariat, Fort St.George,  
Chennai-600 009.

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorariafied Mandamus to call for the records relating to the impugned proceedings issued by the first respondent in Letter No.33160/E1/2016-1, dated 09.09.2016 and to quash the same and consequently direct the respondents to sanction the post of Associate Professor in Endocrine Surgery for Madras Medical College/Rajiv Gandhi Government General Hospital, Chennai and to promote the petitioner in the sanctioned post of Associate Professor in Endocrine Surgery with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.K.Dhananjayan,  
Special Government Pleader

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorariafied Mandamus to call for the records relating to the impugned proceedings issued by the first respondent in Letter No.33160/E1/2016-1, dated 09.09.2016 and to

quash the same and consequently direct the respondents to sanction the post of Associate Professor in Endocrine Surgery for Madras Medical College/Rajiv Gandhi Government General Hospital, Chennai and to promote the petitioner in the sanctioned post of Associate Professor in Endocrine Surgery with all consequential and other attendant benefits.

2. It is the case of the petitioner that he was appointed in the Tamil Nadu Medical Service on 24.04.2000 as Assistant Surgeon. While in service, he had completed post-graduate course in M.S.(General Surgery) as service candidate and posted as Assistant Professor in the year 2006. In the year 2007, he was selected for the post of Senior Resident (Hospital Services) in Endocrine Surgery at Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow by competitive examination and he availed the temporary post of Senior Resident (Hospital Service) as a pre-condition for admission to M.Ch. (Endocrine Surgery) in the academic year 2008-2011. The Government issued orders in G.O.(D).No.879, Health and Family Welfare Department, dated 24.07.2007, permitting the petitioner to take up the temporary appointment for getting M.Ch. in Endocrine Surgery at his own cost, on sanctioning extraordinary leave without pay and allowances. Accordingly, he joined the said Senior Resident post at Lucknow on 01.08.2007 and was selected for M.Ch. (Endocrine Surgery) through competitive examination conducted in June 2008. He was given permission to undergo the course with sanction of three years leave from 01.07.2008 to 30.06.2011 without pay and allowances as per G.O.Ms.No.1212, Health and Family Welfare Department, dated 30.11.2009. Accordingly, he completed M.Ch. in Endocrine Surgery Course on 30.06.2011, after which, the petitioner reported to the second respondent on 01.07.2011 for posting and he was posted as Tutor in Anatomy in MMC, Chennai from 25.07.2011.

3. It is the further case of the petitioner that he is having teaching experience in Endocrine Surgery for more than 9 years. Since the petitioner is qualified with M.Ch. in Endocrine Surgery, after completion of two years of service after acquiring higher speciality in the relevant subject, he is entitled for promotion to the post of Associate Professor in Endocrine Surgery as per the MCI Rules and Tamil Nadu State Medical Service Rules. It is the grievance of the petitioner that when a vacancy arose to the post of Associate Professor (Endocrine Surgery), one Dr.Zahir Hussain, who was actually posted as Senior Resident only on 09.08.2011 subsequent to the petitioner's appointment on 25.07.2011, was promoted to the post of Associate Professor overlooking the eligibility and seniority of the petitioner. In this regard, he sent a representation, dated 26.08.2013 to the respondents.

4. It is further alleged by the petitioner that in respect of Endocrine Surgery Department, MMC is the second institution in the country to conduct M.Ch. (Endocrine Surgery) course and there is an abnormal increase of out-patients and in-patients in the Department of Endocrine Surgery and therefore, the Dean, MMC, Chennai forwarded a proposal to the Director of Medical Education, the second respondent herein, for creation of one more post of Associate Professor (Endocrine Surgery) in MMC, Chennai. Thus, by taking into consideration the increased workload in the Department of Endocrine Surgery in MMC, proposal was forwarded to the Government for creation of additional post of Associate Professor (Endocrine Surgery).

5. While so, Crl.O.P.No.1976 of 2016 was filed by one P.Chandrasekaran, who is a third party not connected to the medical field, alleging that the post of Associate Professor in Endocrine Surgery is sought to be created with mala-fide intention to promote the petitioner in the newly created post and further alleging that the petitioner was posted as Senior Resident in Lukcnov and it is double employment and accordingly, he sought for a direction to consider his complaint by the Directorate of Vigilance and Anti-Corruption, Chennai. The said Crl.O.P. was not listed at the instance of the petitioner therein and the same was pending.

6. It is further alleged by the petitioner herein that since he was not considered for promotion to the post of Associate Professor in Endocrine Surgery, he filed W.P.No.26720 of 2016, in which, by order dated 01.08.2016, this Court directed the first respondent-State Government to consider the representation of the petitioner, dated 25.01.2016 and pass appropriate orders on merits and in accordance with law, within a period of two months from the date of receipt of a copy of the order. Thereafter, the first respondent issued proceedings in Letter No.33160/E1/2016-1, dated 09.09.2016, stating that Crl.O.P.No.1976 of 2016 filed by the said P.Chandrasekaran is still pending before this Court and further action could be taken as and when the orders of this Court in the said Crl.O.P. is received. Challenging the said order dated 09.09.2016, the petitioner has filed this Writ Petition for the relief stated supra.

7. Today, when the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the said Crl.O.P.No.1976 of 2016 was dismissed by this Court on 01.11.2016 and he has also filed an additional affidavit to that effect. Therefore, the reason stated by the first respondent in the impugned order, is not available as of now, as the said Crl.O.P. was dismissed by this Court.

8. Accordingly, the respondents are directed to consider sanction of the post of Associate Professor in Endocrine Surgery for the Madras Medical College / Rajiv Gandhi Government General Hospital, Chennai and thereafter pass appropriate orders, on merits and in accordance with law, with regard to the promotion of the petitioner in the sanctioned post of Associate Professor in Endocrine Surgery with all consequential and other attendant benefits, within a period of one week from the date of receipt of a copy of this order.

9. With the above observations and directions, the Writ Petition is disposed of. No costs. W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,  
Health and Family Welfare Department,  
Secretariat, Fort St.George,  
Chennai-600 009.
2. The Director of Medical Education,  
Kilpauk,  
Chennai-600 010.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.15259

+1cc to the Government Pleader, S.R.No.63953

W.P.No.36971 of 2016

NR(CO)  
CA(17/11/2016)

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