

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13774 of 2016 And
W.M.P.Nos.12078 & 12079 of 2016

Dr.S.Dhivya

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St., George,
Chennai - 600 009.
2. The Director of Medical Education,
Chepauk, Chennai - 600 010.
3. The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi - 110 077.
4. Dr.T.Suresh Kumar-MD-Anatomy
5. Dr.Lakshmi-MD-Anatomy
6. Dr.V.Dhanalakshmi-MD-Anatomy
7. Dr.S.Satish Kumar-MD-Anatomy
(R4 to R7 are impleaded as per order
dated 07.02.2017 in W.M.P.Nos.38505
to 38508/2016 in W.P.No.13774/2016)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in Ref.No.4734/E1/5/2016 dated 04.02.2016 and to quash the same in so far as the Preparation of Panel for promotion to the post of Associate Professor in Anatomy is concerned and consequently direct the Respondents to prepare the panel for promotion to the post of Associate Professor in Anatomy for the year 2016-2017 in accordance with qualifications prescribed under MCI Regulations namely Minimum qualifications for teachers in Medical Institution Regulations 1998 and consequently include the name of the petitioner in the temporary panel for the year 2016-2017 and to promote the petitioner to the post of Associate Professor in Anatomy.

For Petitioner : Mr.G.Sankaran
For RR 1 & 2 : Mr.K.Dhananjayan
Special Government Pleader

For RR 4 to 7 : Mr.S.Thankasivan

O R D E R

The proceedings of the second respondent dated 04.02.2016, is sought to be quashed in this writ petition and for a consequential direction to prepare the panel of promotion to the post of Associate Professor in Anatomy for the year 2016-2017 in accordance with qualifications prescribed under the MCI Regulations and consequently include the name of the writ petitioner in the temporary panel for the year 2016-2017.

2. The learned counsel of the writ petitioner made a submission that the writ petitioner is now holding the post of Assistant Professor and the next avenue of promotion is Associate Professor. The learned counsel appearing for the writ petitioner further made a submission that the promotions to the post of Associate Professor is sought to be made in violation of the MCI Regulations and therefore, the writ petitioner is constrained to move this writ petition.

3. Mr.S.Thankasivan, the learned counsel appearing for the contesting respondents states that the Respondents are already qualified and they are seniors to the writ petitioner and they are unnecessarily prevented from getting their right of promotion in the order of seniority. In view of the interim order granted in this writ petition, the promotional opportunities of all the candidates are delayed and therefore, it is necessary that the interim order granted to be vacated, in order to consider all the eligible candidates for promotion to the post of Associate Professor in the order of seniority, and in accordance with the Rules.

4. The learned Special Government Pleader appearing on behalf of the Department filed a counter and made a submission that, in view of the interim order granted on 26.09.2016, the post of Associate Professor of Anatomy, could not be filled during the panel year and it caused disruption for getting approval from the Medical Council of India for PG/UG seats in Government Medical Colleges for the year 2017-2018.

5. Further, it is stated in paragraph 20 of the counter statement that in Tamil Nadu Medical Service, 52 specialities exist, in some of the specialities in the cadre of Associate Professor governed by the Special Rules and some specialities

governed by the adhoc rules at the time of preparing the regular panel/temporary list for promotion to the post of Associate Professor in the particular speciality, the eligibility of the Medical Officers are examined as per the relevant rules governed by the concerned speciality. As per the Rules in force, the post governed by Special Rules/adhoc Rules, should be filled up by preparing the list of approved candidates for the particular year. In the case on hand, the speciality of Anatomy is governed by the special rules and as per the said rules, the Medical Officer should have completed five years of teaching experience in the cadre of Assistant Professor for promotion to the post of Associate Professor. The crucial date for the preparation of panel for promotion to the post of Associate Professor in Tamil Nadu Medical Service, is 15th March of the every year.

6. However, none of the Medical Officers have completed five years of teaching experience as on crucial date for the last several years, though there were many vacancies exist in the Department of Anatomy. Therefore, the Government have temporarily promoted the Medical Officers, who have completed five years teaching experience in the cadre of Assistant Professor as on the date of consideration, if they were otherwise eligible as per the Special Rules for the past several years, for smooth functioning of the Department.

7. The learned counsel appearing for the writ petitioner filed an additional typed set of papers in which he has enclosed a copy of the G.O.(Ms).No.77, Health and Family Welfare (A1) Department, dated 23.02.2016, by stating that the rules relating to the qualification for holding the post of Professor/Associate Professor in Government Medical Colleges are issued. However, the said Government Order was issued on 23.02.2016 itself and the writ petitioner has failed to brought to the knowledge of this Court in respect of the rules released in the said G.O.(Ms).No.77. The writ petition was filed on 12.04.2016 and the aforesaid Government Order was issued on 23.02.2016, two months prior to the filing of the writ petition. If this Government Order would have been brought to the knowledge of this Court at the relevant point of time, then all these complications would have been averted at the time of grant of the interim order by this Court.

8. However, now the Government has stated in the counter that on earlier occasions since there were no qualified candidates as per the Rules, they have appointed candidates to the post of Associate Professor on temporary basis in order to avoid further inconvenience in the Department of Anatomy in the Government Medical Colleges. Now the respondents are in the verge of preparing the regular panel for promotion to the post of Associate Professor and the contesting respondents as well as the writ petitioner are also eligible for

consideration.

9. In this view of the matter, the respondents are directed to prepare the panel in accordance with Rules and Regulations and by following the respective seniority of the eligible candidates and accordingly grant promotion by following the Rules in force.

10. With these observations, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Health & Family Welfare Department,
Secretariat, Fort St., George,
Chennai - 600 009.
2. The Director of Medical Education,
Chepauk, Chennai - 600 010.
3. The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi - 110 077.

+1cc to Government Pleader sr.67001

+1cc to Mr.S.Thankasivan, Advocate

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W.P.No.13774 of 2016

GMR(co)
ss(12/10/2017)