

In the High Court of Judicature at Madras

Dated: 28.07.2017

Coram

The Honourable Mr.JUSTICE HULUVADI G.RAMESH
and
The Honourable Dr.JUSTICE G.JAYACHANDRAN
W.A.No.789 of 2017
& C.M.P.No.10883 of 2017

Dr.P.Sridhar

.... Appellant

Vs.

1. Dr.Vetrivel Chezian

2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 010.

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

4. Thiru A.Sukumaran

5. Dr.K.Ravichandran

.... Respondents

APPEAL filed under Clause 15 of the Letters Patent against the order dated 23.11.2016 made in W.P.No.22675 of 2008 on the file of this Court. 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 Appellant : Mr.R.Prem Narayan

JUDGMENT

(Judgment of the Court was delivered by G.JAYACHANDRAN,J.)

1. This Writ Appeal is filed challenging the order of the learned Single Judge dated 23.11.2016 made in W.P.No.22675 of 2008, whereby, the learned Single Judge allowed the Writ Petition, thereby directed the official respondents to give promotion to the first respondent herein as Associate Professor in Orthopaedics.

2. The facts in brief are as follows:

The first respondent/Writ Petitioner was selected as Civil Assistant Surgeon on 06.04.1990. Thereafter, the petitioner was appointed as Tutor in Physiology on 07.04.2000. Subsequent thereto, the petitioner was served as Tutor in Accident and Emergency Orthopaedics in the Coimbatore Medical College Hospital, Coimbatore between 12.05.2000 and 06.12.2002. Thereafter, the petitioner was re-designated as Assistant Professor in Orthopaedics in the Coimbatore Medical College, Coimbatore and he was served in that capacity till 17.05.2005. While so, the State Government had issued a notification to fill up the post of reader for the year 2004-2005. The first respondent's name was also shortlisted in the panel. However, the first respondent was not called for the counselling, which was scheduled on 22.02.2005. Hence, the first respondent had given an appeal on 09.06.2008 to the State Government and Director of Medical Examination seeking consideration of his promotion, as his juniors had been promoted.

3. In the meanwhile, the Director of Medical Education had called the first respondent for counselling. The first respondent had attended the said counselling. However, the first respondent was not given promotion, instead, the fifth respondent herein had been given promotion. Challenging the same, the first respondent has approached this Court by way of a Writ Petition.

4. This Court, by order dated 23.11.2016, allowed the claim of the first respondent.

5. Aggrieved by the same, the fourth respondent in the Writ Petition has filed the present Writ Appeal on the ground that the first respondent had served as Medical Officer in the Department of Accident and Emergency from 12.05.2000 to 06.12.2002, which is not a teaching post and hence, cannot be taken into account for the purpose of calculating the teaching experience. Further, the certificate issued on 27.06.2008 with retrospective effect from 12.05.2000 indicating that the first respondent had completed five years teaching experience was

neither available at the time of preparation of panel not on the date of counselling. Hence, the first respondent's claim has to be rejected.

6. Learned counsel appearing for the appellant submitted that appellant was given promotion vide G.O.D.No.217, Health and Family Welfare (A1) Department dated 24.3.2005 as Associate Professor in Orthopaedics. He further submitted, that as per Rule 4 of the Tamil Nadu State and Subordinate Service Rules, the first respondent did not acquire necessary qualification at the relevant point in time. He also submitted that the first respondent had approached this Court belatedly and hence, on the ground of laches, the first respondent is not entitled to the relief prayed for in the Writ Petition.

7. He further submitted that the appellant had completed 6 years and 8 months of teaching experience and satisfied the regulations of the MCI Rules. At the time of panel preparation, the first respondent has not completed the teaching experience of 5 years, which is mandatory for the post of Associate Professor. Hence, the first respondent is not entitled for any promotion.

8. Heard the learned counsel appearing for the appellant and perused the materials placed before this Court.

9. The only issue that has arisen in this case is as to whether the first respondent had acquired necessary teaching experience in the required field.

10. It is seen from the records that the first respondent/Writ Petitioner has acquired the PG qualification, namely, MS Orthopaedics from Madras Medical College. It is not in dispute that the first respondent had acquired required teaching experience, as per Rule 4 of the Tamil Nadu State and Subordinate Service Rules. Furthermore, it is also not in dispute that the Dean, Medical College Coimbatore issued a corrigendum dated 27.6.2008, wherein the services of the first respondent as Assistant Professor were recognised with effect from 12.05.2000. Hence, the first respondent has fulfilled the required qualification as per Rule 4. After issuance of this corrigendum only, promotion was given to the fifth respondent herein, who is junior to the first respondent, by overlooking the seniority as well as the merits and qualification.

11. It is seen from the proceedings of the Director of Medical Education dated 06.05.2016 that the first respondent was served in the 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. Since the first respondent had acquired PG qualification in the year 1999 itself, his service as Assistant Professor from 12.05.2000 fulfils the requirement

under Rule 4.

12. The above said fact has been reiterated by the learned Single Judge in his order, the relevant portion of the same reads as follows:

"15. From the 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 Assistant Professor of Orthopaedics and Senior Assistant Professor of Orthopaedics 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 to 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 Orthopaedics 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."

13. Thus, having noted the various aspects, the learned Single Judge justified the case of the first respondent and directed the authorities concerned to consider the case of the first respondent for grant of promotion. The appellant cannot controvert the factual position and the educational qualification acquired by the first respondent and more over, on two occasions, the first respondent had been deprived of the the opportunity of being promoted as Associate Professor, even though, he had acquired necessary qualification.

14. In the circumstances, the grounds so raised by the appellant did not survive for consideration.

15. Accordingly, the Writ Appeal stands dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

sl

Sd/-
Assistant Registrar (CCC)
/TRUE COPY/
Sub-Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 010.
2. The Director of Medical Education,
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

+1CC to MR.R.PREM NARAYAN Advocate SR.NO.53706
+1CC to GOVT PLEADER SR.NO.54380

W.A.No.789 of 2017
& C.M.P.No.10883 of 2017

CS[CO]
MK:04/09/2017
MK:20/09/2017