

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.6325 of 2010

K.K.Senthil Kumaran

... Petitioner

Vs.

1.The Secretary to Government,
Health and Family Welfare Government,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Director of Medical and Rural
Health Services,
Anna Salai, Chennai 600 006.

3.The Director of Public Health and
Rural Medicine,
Anna Salai, Chennai 600 006.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus,

(i) To call for the records in the impugned G.O.[D] No.1346 dated 30.10.2007 and Govt.Letter No.25073/B2/07-6 dated 07.12.2007, on the file of the first respondent and consequential proceedings in reference NO.31057/E4/2/08, dated 16.07.2008, of the second respondent and quash paragraph 3 of the G.O.[D] No.1346, Health and Family Welfare (B2) Department dated 30.10.2007 of the first respondent insofar as it treats the appointment of the petitioner regularly as Assistant Surgeon in Tamil Nadu Medical Service with effect from 26.12.2005 and affects the selection of the petitioner and approval for first appointment along with 1989-1990 batch and consequentially,

(ii) To direct the first respondent to include the name of the petitioner in G.O.Ms.No.1679, Health and Family Welfare Department dated 14.09.1990, below the name of Dr.Lakshmanadas having CML seniority at S.No.201 on the basis of the TNPSC rank given to the petitioner with consequential service and monetary benefits in the Tamil Nadu Medical Services such as Assistant Surgeon and Civil Surgeon and other service benefits as applicable to the petitioner on par with those appointed as Assistant Surgeon pursuant to G.O.Ms.No.1679, Health and Family Welfare Department, dated 14.09.1990.

For Petitioner : Mr.N.S.Nandakumar

For Respondents: Mr.R.A.S.Senthilvel

Additional Government Pleader

O R D E R

Heard Mr.N.S.Nandakumar, learned counsel appearing for the petitioner and Mr.R.A.S.Senthilvel, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has approached this Court for seeking the following reliefs,

"to issue a Writ of Certiorari Mandamus,

(i) To call for the records in the impugned G.O. [D] No.1346 dated 30.10.2007 and Govt.Letter No.25073/B2/07-6 dated 07.12.2007, on the file of the first respondent and consequential proceedings in reference NO.31057/E4/2/08, dated 16.07.2008, of the second respondent and quash paragraph 3 of the G.O. [D] No.1346, Health and Family Welfare (B2) Department dated 30.10.2007 of the first respondent insofar as it treats the appointment of the petitioner regularly as Assistant Surgeon in Tamil Nadu Medical Service with effect from 26.12.2005 and affects the selection of the petitioner and approval for first appointment along with 1989-1990 batch and consequentially,

(ii) To direct the first respondent to include the name of the petitioner in G.O.Ms.No.1679, Health and Family Welfare Department dated 14.09.1990, below the name of Dr.Lakshmanadas having CML seniority at S.No.201 on the basis of the TNPSC rank given to the petitioner with consequential service and monetary benefits in the Tamil Nadu Medical Services such as Assistant Surgeon and Civil Surgeon and other service benefits as applicable to the petitioner on par with those appointed as Assistant Surgeon pursuant to G.O.Ms.No.1679, Health and Family Welfare Department, dated 14.09.1990."

3. The case of the petitioner is as follows:

The petitioner was selected as Assistant Surgeon in the Tamil Nadu Medical Services for the year 1989-90, pursuant to the notification issued by the Tamil Nadu Public Service Commission, along with 590 members selected for appointment. The petitioner was assigned seniority rank at Serial No.202 by the Service Commission. However, ultimately the appointment was not given to the petitioner and the same had been withheld, whereas the appointment was given to the selected candidates vide G.O.Ms.No.1679, dated 14.09.1990. On verification, the petitioner came to know that his appointment was withheld on the basis of his claim of his community status, the petitioner according to him belong to scheduled caste community.

4. It appears that his community status was subjected to verification which was a subject matter of challenge before

this Court in W.P.No.17070 of 1993. The said writ petition was dismissed on 28.09.2000, against which the petitioner filed a Writ Appeal No.876 of 2011, the Division Bench of this Court passed an order in the writ appeal, holding that the action by the Tamil Nadu Public Service Commission was non-est. The said order was passed on 02.04.2004.

5. In pursuance of the order passed by the Division Bench of this Court, The Tamil Nadu Public Service Commission had issued a memorandum on 07.06.2005, confirmed the petitioner's selection for the year 1989-90 for the post of Assistant Surgeon by restoring the seniority and granted seniority rank at Serial No.202. Thereafter, the petitioner was informed to await for the appointment order to be issued by the first respondent. The first respondent by G.O.(D) No.841, Health and family Welfare (B2) Department, dated 19.10.2005, appointed the petitioner as Assistant Surgeon (General) in the vacancy reserved for SC community for the year 1989-90, at Serial No.202. On the basis of aforesaid Government Order, the petitioner joined the service on 26.12.2005.

6. After joining, the petitioner submitted a representation on 12.05.2006, requesting for all consequential benefits by taking into consideration his original date of selection for the year 1989-90, on par with the other batch mates who were appointed as Assistant Surgeon vide G.O.Ms.No.1679 dated 14.09.1990. The said representation was made with particular reference to the Tamil Nadu Public Service Commission memorandum dated 07.06.2005, confirming the petitioner's selection for the year 1989-90, restoring the seniority rank at Serial No.202.

7. According to the petitioner, the consequential service benefit which the petitioner was otherwise entitled to at the time of his selection in the year 1989-90, had not been considered favourably. In the said circumstances, the petitioner has approached this Court seeking to challenge the impugned orders dated 30.10.2007, 07.12.2007 and 16.07.2008, by eventually treating his appointment as a fresh appointment of the year 2005 and denying the benefits which was given to other office batch mates who were selected along with him for the year 1989-90.

8. The learned counsel appearing for the petitioner at the outset, would submit that since it was no fault of the petitioner that he was denied appointment though he was selected in the year 1990 and subsequently the Division Bench of this Court had concluded that the action by the Tamil Nadu Public Service Commission towards the cancellation of the appointment was non-est. The first respondent ought to have restored the position of the petitioner on par with the other office batch mates who were selected and appointed as Assistant Surgeon (General) in the year 1990. Not treating on par with the other members who came to be appointed in 1990

and treating him as appointed for the year 2005, denying the benefits for the said period is per se arbitrary and unjust, unreasonable and violative of the Article 14 of the Constitution of India.

9. The learned counsel appearing for the petitioner would further submit that when the seniority rank has been restored by the Tamil Nadu Public Service Commission, on the basis of the selection for the year 1989-90, the respondents action in denying him all the service benefits that are otherwise admissible to the petitioner from 1989-90, is without any justification and the same cannot stand the test of judicial scrutiny. The learned counsel would also submit that in support of this contention, he would rely on the decision of the Hon'ble Supreme Court of India, in the case of Balwant Singh Narwal and others Vs. State of Haryana and others , reported in (2008) 7 SCC 728, the paragraph 9 of the Judgment which is extracted below,

"9. There is no dispute about these general principles. But the question here is in regard to seniority of respondents 4 to 16 selected on 01.10.1993, against certain vacancies of 1992-93 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 01.10.1993, were appointed on 02.06.1994. Considering a similar situation, this Court, in Surendra Narain Singh Vs. State of Bihar, held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies."

Therefore, he would submit that the petitioner in all fours is entitled to the benefits that are applicable to the other batch of Doctors who are selected along with him.

10. Upon notice, the learned Additional Government Pleader entered appearance and filed a detailed counter. The learned counsel would submit that the petitioner having joined the post of Assistant Surgeon only on 26.12.2005, the benefits as admissible to him were extended only from that date, not from earlier date, since the petitioner was not in service at all from 1990.

11. This Court has considered the rival submissions of the counsels and perused the documents and pleadings placed on record. The arguments put forth by the learned counsel appearing for the petitioner has considerable force that once the selection of the petitioner was found to be in order and appointed on the basis of selection which took place in 1989-90, it was not open to the respondents to deny the benefits to the petitioner which otherwise was available to him on par

with the other Doctors who were selected along with him in the year 1989-90.

12. It is an admitted case, it was not the fault of the petitioner that his appointment was delayed by the illegal action initiated by the Tamil Nadu Public Service Commission from 1990-2005. Such delay cannot be held against the petitioner for the purpose of denying the benefits. In fact, the Government itself has recognized his position and granted exemption vide G.O.(D)No.370 dated 15.03.2007, granting him exemption for applying PG course as in service candidate.

13. Such being the case, the denial of other benefits by the Government cannot be countenanced in law and on facts. In the above circumstances, this Court has no hesitation in allowing the writ petition and the impugned orders dated 30.10.2007, 07.12.2007 and 16.07.2008, are set aside and the first respondent is directed to confer all the benefits of the petitioner by treating his selection of appointment as one which had taken place in 1990, on par with the other Doctors who were selected along with him in accordance with G.O.Ms.No.1679 dated 14.09.1990.

14. It is made clear that the petitioner is entitled to all service benefits on par with the other members who were selected along with the petitioner in the year 1989-90, except the benefit of back wages for the period when he was not in employment. The first respondent is directed to pass a detailed order in this regard and grant him all the benefits as per the entitlement of the petitioner within a period of three months from the date of receipt of a copy of this order.

15. With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Secretary to Government,
Health and Family Welfare Government,
Secretariat, Fort St.George, Chennai 600 009.

2.The Director of Medical and Rural
Health Services,
Anna Salai, Chennai 600 006.

3.The Director of Public Health and
Rural Medicine, Anna Salai, Chennai 600 006.

+ 1 cc to Thiru N.S. Nandakumar, Advocate SR.66044

W.P.No.6325 of 2010

mr (CO)

<https://hcservices.ecourts.gov.in/hcservices/>

EU (26/09/2017)