

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.25995 of 2017

Dr.K.Saravanan

.. 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 &
Rural Health Services
Anna Salai, DMS Compound
Teynampet
Chennai 600 006
 3. The Director of Public Health
& Preventive Medicine
Anna Salai, DMS Compound
Teynampet
Chennai 600 006
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to pass orders for restoring Civil Medical List number of the Petitioner (7477/ 2005; 5284/ 2010, Sl.No.3947/2013) based on 1995 TNPSC Selection in the Civil Medical List-2017 with consequential and other attendant benefits, based on the representation submitted by the petitioner dated 18.09.2017 within a time frame to be fixed by this Hon'ble Court.

For Petitioner :: Mr.G.Sankaran

For Respondents :: Mr.ERA.Premnath
Government Advocate

ORDER

Dr.K.Saravanan, being appointed as an Assistant Surgeon

by the Director of Public Health and Preventive Medicine, the third respondent herein in Vilanthai Primary Health Centre, Kallakurichi District, pursuant to the selection made by the Tamil Nadu Public Service Commission in the year 1995, was undergoing PG course at the time of his selection. Hence, he submitted a representation to the third respondent along with other similarly placed persons seeking extension of joining time to pursue the PG course. But the third respondent did not permit him to pursue the PG course. Under these circumstances, the petitioner along with Dr.V.Jegannathan and others filed O.A.Nos.1564 to 1586 of 1996 including O.A.No.1577 of 1996 filed by the petitioner on the file of the Tamil Nadu Administrative Tribunal seeking extension of time to join duty till the completion of their respective PG courses, which were allowed by order dated 24.4.96. However, the said order was not obeyed by the respondents and they filed S.L.P.Nos.24290 to 24312 of 1996 challenging the correctness of the Tribunal's order dated 24.4.96. During the pendency of the said Special Leave Petitions, the petitioner and similarly placed persons were not allowed to join duty, although they completed their respective PG courses in October, 1997. Therefore, during the pendency of the Special Leave Petitions filed by the State Government, the Tamil Nadu Public Service Commission also issued a notification for recruitment to the post of Assistant Surgeon for the year 1997. Pursuant to the same, the petitioner applied for the same and he was selected in 1997. Based on the results published thereon, he also joined service on 6.10.97. Subsequently, the Supreme Court passed an order in the pending Special Leave Petitions in December, 1998 confirming the order passed by the Tamil Nadu Administrative Tribunal in O.A.Nos.1564 to 1586 of 1996 dated 24.4.96. Based on the order, the petitioner and other similarly placed persons are entitled to join service. But, however, since the petitioner joined service on 6.10.97, he is also entitled to get the benefit of seniority in the CML seniority list for the 1995 selection.

2. Learned counsel for the petitioner, continuing his arguments, submitted that when the CML seniority list was prepared by the Director of Medical and Rural Health Services, Chennai, the second respondent herein in the year 2005, the petitioner was assigned with CML No.7477/2005 based on 1995 selection. However, the second respondent also prepared another seniority list based on 1997 selection showing the petitioner's number as 8291/2005. That shows that the CML seniority list carried dual CML numbers, one based on 1995 selection and another for 1997 selection. Likewise, the seniority list for other similarly placed doctors who got selected both in 1995 and 1997 carried dual CML numbers for both selections. Based on the 1995 CML seniority given to similarly placed persons, when Dr.M.Nandakumaran (CML No.7447/2005; 8154/2005), Dr.Ashok Victor

(CML No.7619/2005; 8257/2005) and Dr.S.Murugan (CML No.7493/2005; 8782/2005), who are working in the Department of Cardiology, were given further promotion to the post of Associate Professor in Cardiology, the petitioner also should be extended the similar benefit, for which he has given a representation to rectify the anomaly of dual CML numbers and to maintain CML number based on 1995 TNPSC selection alone as per the order passed by the Tamil Nadu Administrative Tribunal and confirmed by the Hon'ble Apex Court. Finding no response, the petitioner has been advised to come to this Court.

3. Adding further, the learned counsel for the petitioner submitted that pursuant to the confirmation of the order dated 24.4.96 passed by the Tamil Nadu Administrative Tribunal by the Supreme Court, the petitioner should have been conveniently shown in the CML seniority list prepared in the year 1995. Since the petitioner, during the pendency of the matter before the Apex Court, had participated in the selection process held by the TNPSC in the year 1997 for the post of Assistant Surgeon, the respondents cannot deny the benefit of seniority on the basis of 1995 TNPSC selection to the petitioner.

4. It is true that the petitioner is entitled to be placed in the CML seniority list prepared on the basis of the TNPSC selection for the year 1995. But in the present case, although the petitioner was selected in the year 1995 for the post of Assistant Surgeon, he has not joined duty along with others and approached the Tamil Nadu Administrative Tribunal seeking time to join duty for pursuing the respective PG courses. No doubt, the Tamil Nadu Administrative Tribunal also, in its order dated 24.4.96, directed the respondents therein to extend the joining time till the applicants complete the respective PG courses. Subsequently, the Government also preferred S.L.P.Nos.24290 to 24312 of 1996 challenging the correctness of the said order. The learned counsel for the petitioner submitted before this Court that the said order was also confirmed. When the order passed by the Supreme Court has not been produced before this Court, this Court is unable to appreciate the same.

5. Be that as it may. When the petitioner has not joined service on the basis of his selection made in the year 1995 and pursued the PG course, may be on the strength of the order passed by the Tamil Nadu Administrative Tribunal dated 24.4.96, subsequently, he had taken part in the subsequent selection held in the year 1997 and got selected for the post of Assistant Surgeon. While so, it is not known how the respondents can proceed that he is also entitled to be retained in the CML seniority list prepared in the year 1995, which he himself had abandoned and joined the service pursuant to 1997 selection. The

precedents placed before this Court that similarly placed persons selected in the year 1995 were given dual seniority numbers, although they were also selected in the year 1997, cannot be pressed into service and this Court is not inclined to accept the same. The reason being there cannot be two CML seniority lists. If there are two seniority lists, the department would be put to grave problems in following more than one seniority. It will also be highly impossible for any one to travel in two horses. When the respondent Department has committed a blunder, this Court cannot accept to follow the same. Therefore, the representation made by the petitioner on the issue having not been considered till date, cannot be directed to be considered. Even the contention made before this Court that Dr.M.Nandakumaran (CML No.7447/2005; 8154/2005), Dr.Ashok Victor (CML No.7619/2005; 8257/2005) and Dr.S.Murugan (CML No.7493/2005; 8782/2005), were given the benefit of promotion to the post of Associate Professor based on the basis of 1995 CML seniority, cannot stand to the scrutiny of this Court. Therefore, this Court is not inclined to accept the prayer of the petitioner. Moreover, this Court has also settled the issue in W.P.Nos.26180 of 2010 etc., dated 2.2.2011 (Dr.R.Senthilnathan v. Medical Council of India rep.by its Secretary, New Delhi and others) that the CML seniority is relevant and shall be followed for the post of Assistant Surgeon till the post of Associate Professor, while considering the G.O.No.354, Health and Family Welfare Department dated 23.10.2009. Therefore, this Court is not inclined to take a different view. Hence, the writ petition fails and it is dismissed. No costs.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Principal Secretary to Government
Health & Family Welfare Department
Fort St. George
Chennai-600 009

2. The Director of Medical &
Rural Health Services
Anna Salai, DMS Compound
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3. The Director of Public Health
& Preventive Medicine
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Chennai 600 006

- 1 cc to Mr.G.Sankaran, Advocate Sr.No.71647
- + 1 cc to The Government Pleader Sr.No.71987
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VS 22/11/2017



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