

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2017

DELIVERED ON : 14.09.2017

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.16681 of 2010
and
M.P.No.2 of 2015

R.S.Dwarakanath ... Petitioner

Vs.

- 1.The Government of Tamilnadu,
Rep. by its Special Secretary and Commissioner,
Health and Family Welfare Department,
Fort St. George, Chennai-9.
- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 10.
- 3.The Accountant General,
Office of the Accountant General,
Anna Salai, Chennai. -6.

4.A.Kumaresan ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to G.O.Ms.No.298/Health, dated 17.06.1997 issued by the 1st respondent herein, to quash the same and consequently direct respondents 1 and 2 herein to treat the petitioner as having been promoted and appointed to the post of Joint Director of Medical Education (Pharmacy) in the office of the Director of Medical Education, Chennai in the place of the 4th respondent herein ignoring his alleged seniority and re-fix the petitioner's salary appropriately in the then pay scale of the said post and intimate it to the 3rd respondent herein within a stipulated time and consequently direct the third respondent herein to re-fix amount of pension due to the petitioner appropriately within a time limit to be fixed by this Honourable Court and consequently direct the first respondent to pay the appropriate arrears of salary from the date of promotion

and temporary appointment of the 4th respondent herein as Joint Director of Medical Education (Pharmacy) till the petitioner retired from service from 31.01.1998 A.N. and the appropriate arrears of pension from the date of retirement from service till payment in full.

For Petitioner : Mr.A.R.Gokulnath

For Respondents : Mrs.M.E.Raniselvam (for R1 & R2)
Additional Government Pleader

Mr.V.Vijayshankar (for R3)

No appearance (for R4)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records pertaining to G.O.Ms.No.298/Health, dated 17.06.1997 issued by the 1st respondent herein, to quash the same and consequently direct the respondents 1 and 2 herein to treat the petitioner as having been promoted and appointed to the post of Joint Director of Medical Education (Pharmacy) in the office of the Director of Medical Education, Chennai, in the place of the 4th respondent herein ignoring his alleged seniority and re-fix the petitioner's salary appropriately in the then pay scale of the said post and intimate it to the 3rd respondent herein within a stipulated period of time and consequently direct the first respondent to pay the appropriate arrears of salary from the date of promotion and temporary appointment of the 4th respondent herein as Joint Director of Medical Education (Pharmacy) till the petitioner retired from service on 31.01.1998 A.N. and the appropriate arrears of pension from the date of retirement from service till payment in full.

2. The facts in a nutshell are as under: The petitioner was appointed as Assistant in Pharmacy in Madurai Medical College, Madurai by proceedings dated 31.08.1965 of the Dean, Madurai Medical College, Madurai and he reported for duty on 01.09.1965. Thereafter, by proceedings dated 14.09.1966 of the second respondent, the petitioner was promoted and posted as Assistant Reader in Pharmacognosy at Madurai Medical College. The services of the petitioner as Assistant Reader in Pharmacognosy were regularized with retrospective effect from 16.09.1966, whereas the services of the fourth respondent were regularized with effect from 17.09.1966 as Assistant Reader in Pharmaceutical Chemistry.

3. It is the case of the petitioner that he was promoted to the post of Reader in Pharmacognosy by the second respondent herein and, later the second respondent re-designated the petitioner as Professor of Pharmacognosy, Madurai Medical College, Madurai with retrospective effect from 30.04.1988, i.e., the date on which the petitioner started working as in-charge Professor of Pharmacognosy.

4. It is averred that in the subject-wise seniority notified by the first respondent, for the subject Pharmacy, the fourth respondent was placed as senior to the petitioner. The case of the petitioner is that even though the fourth respondent is senior on the basis of subject, service wise the petitioner is senior.

5. According to the petitioner, the next avenue of promotion in relation to service under the first respondent was Joint Director of Medical Education and it was not subject-wise seniority which matters for such promotion, even though the nomenclature was Joint Director of Medical Education (Pharmacy).

6. The petitioner further stated that a temporary panel of two officials, viz., Alen Chidambaram and the fourth respondent herein was prepared and approved by the first respondent vide proceedings dated 30.04.1997 and consequent to the same, Alen Chidambaram was promoted and appointed temporarily as Joint Director of Medical Education (Pharmacy) in the office of the Director of Medical Education, Chennai. It is the plea of the petitioner that pursuant to such appointment of Alen Chidambaram, the said panel ceased to exist, but the second respondent promoted the fourth respondent temporarily as Joint Director of Medical Education (Pharmacy), of course, without preparation of fresh panel for appointment.

7. It is stated that the petitioner retired from service on 31.01.1998 as Professor of Pharmaceutical Chemistry, Madurai Medical College, Madurai and the said fact of promotion of the fourth respondent as Joint Director of Medical Education (Pharmacy) without preparing a fresh panel was not known to him while in service.

8. Aggrieved by the promotion of the fourth respondent, the petitioner sent a representation on 16.07.2008 to the Special Officer, Chief Minister's Special Cell, Secretariat, Chennai, to re-fix his salary by giving promotion as upgraded Joint Director of Medical Education (Pharmacy) from the date when the fourth respondent was promoted and appointed to the said post. However, by proceedings dated 20.03.2009 of the Principal Secretary to Government, Health and Family Welfare (AA1) Department, addressed to the Director of Medical Education, Chennai, a copy

of which was sent to the petitioner, the request of the petitioner was turned down by referring to G.O.Ms.No.167, Health and Family Welfare Department, dated 30.04.1997. The petitioner was not furnished with copy of such government order and he had finally received the copies of the relevant government orders in response to the query raised under the provisions of the Right to Information Act.

9. In such backdrop, the petitioner has filed this writ petition for the relief stated supra.

10. The main plank of the argument advanced by the learned counsel for the petitioner is that even though the petitioner was senior to the fourth respondent and was fully eligible and entitled to be promoted and appointed as Joint Director of Medical Education (Pharmacy), the respondent authorities have erroneously promoted the fourth respondent to the said post causing great prejudice and hardship to him.

11. The next limb of the argument is that the temporary panel of two officials, viz., Alen Chidambaram and the fourth respondent herein, ceased to exist on the appointment of Alen Chidambaram, and, therefore, without drawing a fresh panel, the fourth respondent ought not to have been appointed automatically as Joint Director of Medical Education (Pharmacy).

12. The learned Additional Government Pleader appearing on behalf of respondents 1 and 2, reiterating the stand of the said respondents in the counter affidavit, submitted that the petitioner is junior to the fourth respondent and, therefore, there is no illegality in promoting the fourth respondent as Joint Director of Medical Education (Pharmacy). He added that even though the petitioner joined in the promoted post on 16.09.1966 and the fourth respondent joined in the promoted post on 17.09.1966, a day later, that does not confer any seniority to the petitioner, as the fourth respondent being senior in the initial appointment, continues to be a senior unless he has been reduced to a lower rank as a punishment.

13. Qua the plea of the petitioner that the temporary panel drawn for promotion will cease to exist on the promotion of one individual and thereafter a fresh panel needs to be drawn for promoting a candidate, it is submitted by the learned Additional Government Pleader appearing for the respondent authorities that temporary panel need not be drawn due to emergency conditions and the petitioner cannot find fault with the same.

14. Repudiating the above said stand of the learned counsel for the respondent authorities, in the rejoinder filed by the petitioner, it is alleged that the petitioner was appointed as a

Government servant on regular basis from the date of entering into service, whereas the fourth respondent was appointed only temporarily. It is further claimed that the petitioner, as Professor of Pharmacognosy, was the Head of the Department and was teaching the subject of Pharmacognosy and was also guiding Post Graduates, whereas the fourth respondent was teaching only Diploma Students in Thanjavur Medical College.

15. In reply to the contention of the respondent authorities that during emergency conditions, the authorities are empowered to promote a person from a temporary panel already drawn, the learned counsel for the petitioner submitted that even before the promotion of Alan Chidambaran, the post of Joint Director of Medical Education (Pharmacy) was lying vacant for several months and even after his retirement, it was vacant for several months and, therefore, the authorities cannot take shelter under the plea that there existed emergency conditions warranting them to promote the fourth respondent, without drawing a fresh panel.

16. I heard Mr.A.R.Gokulnath, learned counsel for the petitioner, and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 and 2, Mr.V.Vijayshankar, learned counsel for the 3rd respondent, there was no representation on behalf of the 4th respondent and perused the documents on record.

17. A perusal of the proceedings of the Assistant Director of Medical Services (Medical) dated 14.09.1966 reveals that the petitioner, whose name finds place at Serial No.8 has been promoted as Assistant Reader; and the fourth respondent, whose name finds place at Serial No.13 has also been promoted as Assistant Reader. Thereafter, by proceedings dated 21.04.1976, of the Madurai Medical College, the probation of the petitioner and the fourth respondent, among others, was declared. The annexure to the said proceedings reads as under:

S. No.	Name and Designation	Date of regular appointment	Date of completion of probation	Date of passing the test
1.	Thiru.S.Subramanian Nainar, formerly Assistant Reader in Pharmaceutical Chemistry, now as Reader in Pharmaceutical Chemistry, Madras Medical College.	26.9.1966	25.9.1968 A.N.	November, 1969

S. No.	Name and Designation	Date of regular appointment	Date of completion of probation	Date of passing the test
2.	Thiru.V.Ranganathan, Assistant Reader in Pharmaceutics	16.9.1966	15.9.1968 A.N.	November, 1971
3.	Thiru.R.S.Dwarakanath, Assistant Reader in Pharmacognosy	16.9.1966	15.9.1968 A.N.	May, 1973
4.	Thiru.A.Kumaresan, Assistant Reader in Pharmaceutical Chemistry	17.9.1966	17.9.1968 A.N.	November, 1968

The above annexure makes it ample clear that the petitioner's regular appointment was on 16.09.1966, whereas the fourth respondent's regular appointment was on 17.09.1966. Even the date of completion of probation of the petitioner (15.09.1968) is two days earlier to that of the fourth respondent (17.09.1968). Even though the date of passing the test by the petitioner was after that of the fourth respondent, by proceedings dated 18.07.1977 of the Madurai Medical College, Rule 10(a) of the Special Rules for Tamil Nadu Medical Services was relaxed in favour of the petitioner for the purpose of declaration of probation. Therefore, the delayed passing of the test by the petitioner is of no relevance. Even the annexure to the proceedings dated 18.07.1977 places the petitioner in third place, whereas the fourth respondent in fifth place. The above said factors show beyond any iota of doubt that the petitioner is senior to the fourth respondent.

18. It is also seen from the records, more particularly, the G.O.Ms.No.167, Health and Family Welfare Department, dated 30.04.1997, that a temporary panel was drawn for appointment to the post of Joint Director of Medical (Pharmacy), which panel consisted of names of two individuals, viz., (i) Alen Chidambaram; and (ii) A.Kumaresan (fourth respondent), and from that panel Alen Chidambaram was appointed temporarily as Joint Director of Medical Education (Pharmacy).

19. Subsequently, by G.O.Ms.No.298, Health Department, dated 17.06.1997, the fourth respondent was temporarily promoted and appointed to the post of Joint Director of Medical Education (Pharmacy) under Rule 39(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Service Rules. The said government order refers to the earlier Government Order dated

30.04.1997 and bears no reference to drawing of any fresh panel before promoting and appointing the fourth respondent. Neither does the said government order cite any emergent conditions, warranting appointment to be made without drawing any panel.

20. Admittedly, the petitioner retired from service only on 31.01.1998 A.N., and while the above said exercise was undertaken, he was very much in service.

21. Under identical circumstances, in respect of employee of State Transport Department, a learned Single Judge of this Court in K.Krishnan Nair v. Government of Tamil Nadu and others, 1978 II LLJ 40, held that even in the matter of temporary promotions under Rule 39(a)(i), the claims of duly qualified senior cannot be ignored.

22. Qua the ratio that a panel ceases to exist with the appointment of the first candidate, it is apposite to refer to a decision of the Hon'ble Supreme Court in State of Punjab v. Raghubir Chand Sharma and another, (2002) 1 SCC 113, wherein it is held as under:

"4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The circular order dated 22-3-1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the circular orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies."

(emphasis supplied)

23. By virtue of the law enunciated in the decision referred supra, it is explicitly clear that with the promotion and appointment of Alen Chidambaram, the said panel ceased to exist and has outlived its utility and without drawing a fresh panel, the fourth respondent cannot be promoted overlooking the petitioner, who is senior to the fourth respondent even as per the records and annexures, referred supra.

24. In the result:

- a) This writ petition is allowed, by setting aside G.O.Ms.No.298/Health, dated 17.06.1997 passed by the first respondent;
- b) The respondents 1 and 2 are directed to treat the petitioner as promoted and appointed to the post of Joint Director of Medical Education (Pharmacy) in the office of the Director of Medical Education, Chennai, in the place of the fourth respondent and to re-fix the petitioner's salary appropriately;
- c) The third respondent is hereby directed to re-fix the amount of pension due to the petitioner appropriately within a period of twelve weeks from the date of receipt of a copy of this order, as per the orders of the re-fixation of salary of the petitioner;
- d) The first respondent is directed to pay the appropriate arrears of salary from the date of promotion of the petitioner as Joint Director of Medical Education (Pharmacy) till the petitioner's retirement;
- e) The above said exercise shall be done by the first respondent within a period of eight weeks thereafter.

No costs. Consequently, connected M.P.No.2 of 2015 is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Special Secretary and Commissioner,
Government of Tamilnadu,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

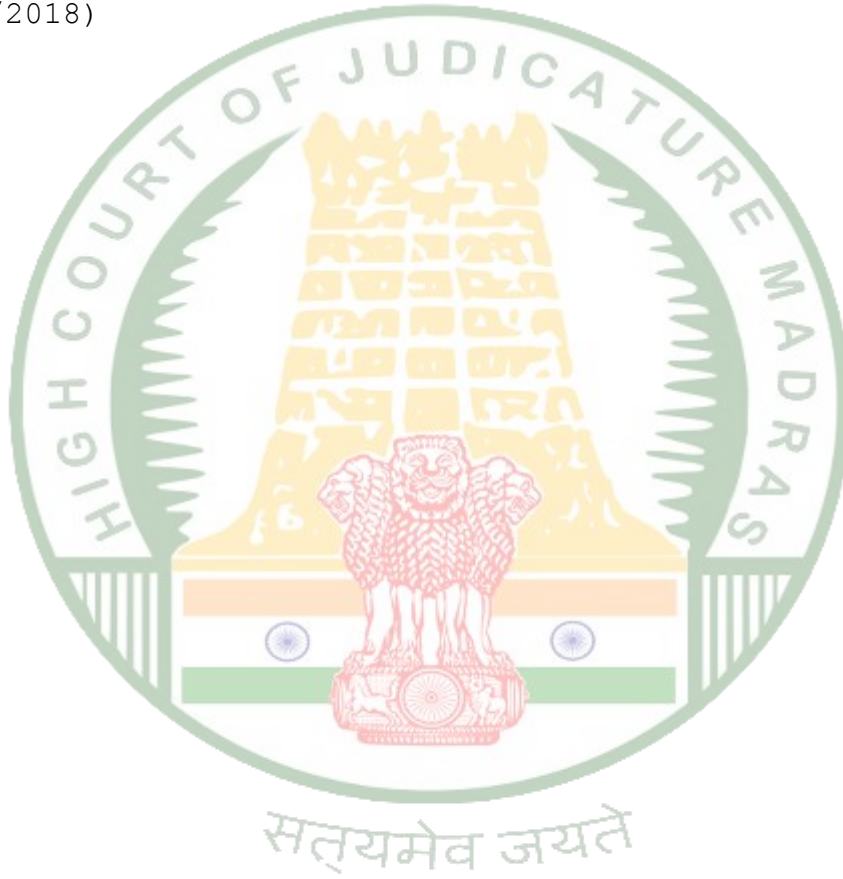
2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 10.

3.The Accountant General,
Office of the Accountant General,
Anna Salai, Chennai.

+1cc to Mr.A.R.Gokulnath, Advocate, S.R.No.66926
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.67352

Writ Petition No.16681 of 2010
and M.P.No.2 of 2015

GJ II(CO)
RRK(29/01/2018)



WEB COPY