



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On : 15.11.2017

Judgment Pronounced On: 12.12.2017

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THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL OUDDHOSE

W.A.(MD) Nos.1300 and 1301 of 2017
and
C.M.P.(MD)Nos.9020 and 9021 of 2017

W.A.(MD)No.1300 of 2017:

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary, Health and Family
Welfare Department,
Fort St. George, Chennai - 600 009.
 - 2.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
- .. Appellants / Respondents
vs.
- 1.Dr.S.Revwathy
... Respondent/Petitioner
 - 2.Dr.A.L.Meenakshi Sundaram
S/o. Alagappan,
Dean,
Government Tiruvarur Medical College and Hospital,
Tiruvarur.
... Respondent/3rd Party
(3rd Party impleaded as 2nd Respondent
vide Court order dated 24.10.2017, made in
C.M.P.(MD)No.9134 of 2017 in W.A.(MD)
No.1300 of 2017 by MVJ&AQJ)

Prayer: Writ Appeal filed under Clause 15 of the letters patent against the order dated 20.09.2017 made in W.P.(MD)No.10257 of 2017.

Prayer in WP(MD). 10257/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari mandamus or any other writ or order or direction in the nature of writ calling for the records of the 1st respondent herein relating to the impugned G.O.(D).No.948 Health and Family Welfare (A1) Department dated 25.04.2017 and consequential G.O.



(D).No.950 Health and Family Welfare (A1) department dated 25.04.2017 quash the same and consequently direct the 1st respondent to promote and appoint the petitioner in the post of director of medical education forthwith.

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For Appellants : Mr.B.Pugalendhi
Additional Advocate General
For R1 : Mr.S.Alagarsamy
For R2 : Mr.G.Sankaran

W.A. (MD) No.1301 of 2017:

Dr.A.Edwin Joe ... Appellant / 3rd Respondent

vs.

1.Dr.S.Revwathy ... 1st Respondent/Writ Petitioner

2.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.

3.The Director of Medical Education,
Kilpauk,
Chennai - 600 010. ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of the letters patent against the order dated 20.09.2017 made in W.P.(MD)No.10257 of 2017.

Prayer in WP(MD). 10257/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified mandamus or any other writ or order or direction in the nature of writ calling for the records of the 1st respondent herein relating to the impugned G.O.(D).No.948 Health and Family Welfare (A1) Department dated 25.04.2017 and consequential G.O.(D).No.950 Health and Family Welfare (A1) department dated 25.04.2017 quash the same and consequently direct the 1st respondent to promote and appoint the petitioner in the post of director of medical education forthwith.

For Appellant : Mr.S.Silambanan
Senior Counsel
for Mr.R.Murali
For R1 : Mr.S.Alagarsamy
For R2 & R3 : B.Pugalendhi
Additional Advocate General

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

W.A.(MD)No.1300 of 2017:

The Appellants/Respondents have preferred the instant Intra-Court Writ Appeal before this Court, as against the order, dated 20.09.2017 in W.P.(MD)No.10257 of 2017, passed by the Learned Single Judge.

(2).W.A.(MD)No.1301 of 2017:

The Appellant has focussed the instant Writ Appeal, as against the order, dated 20.09.2017 in W.P.(MD)No.10257 of 2017, passed by the Learned Single Judge.

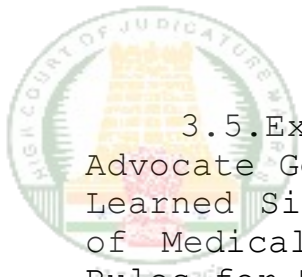
W.A.(MD)No.1300 of 2017:(3).The Appellants' Contentions:

3.1.The Learned Additional Advocate General for the Appellants submits that the Learned Single Judge should have taken note of Rule 12 of the Tamil Nadu Medical Service Special Rules that the promotion upto the level of Senior Civil Surgeon, Civil Medical List seniority will be taken into consideration. However, above the 'Senior Civil Surgeon', only panel seniority and the date of appointment will be taken into consideration.

3.2.The Learned Additional Advocate General for the Appellants contends that Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) was considered as senior to the Respondent / Writ Petitioner and the same has been furnished in the Counter Affidavit filed by the First Respondent/Writ Petitioner and a statement that she is senior most to Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) is not acceptable in the eye of law.

3.3.The Learned Additional Advocate General for the Appellants proceeds to take a plea that the Government had taken a decision to promote and appoint the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwin Joe), as the Director of Medical Education by considering that he is the senior most Dean and senior of all promotional level and he was the first to complete more than 10 years of teaching experience.

3.4.It is represented on behalf of the Appellants that Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) got promotion for the post of 'Dean' for the panel year 2009-10 and joined as Dean on 03.03.2010 and for more number of years served as Dean and therefore, the Government promoted him as 'Director of Medical Education' by following the existing Rules. Apart from that, it is the plea of the Appellants that the said Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) had rendered service of 6 years in the feeder category post of Dean. But the First Respondent/Writ Petitioner had rendered only three years of service in the feeder category post as on the crucial date of consideration i.e.15.03.2016.



3.5. Expatiating his contention, the Learned Additional Advocate General for the Appellants proceeds to point out that the Learned Single Judge should have noted that the post of 'Director of Medical Education' comes under selection post under Special Rules for Tamil Nadu Medical Service.

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3.6. The Learned Additional Advocate General for the Appellants projects an argument that as per the proviso of section 7(1) of the Tamil Nadu Government Servant (Condition of Service) Act 2016, while selecting the Head of the Department, the number of qualified candidates to be considered, shall be fixed as twice the number of vacancies plus three in the seniority list in the class, category or service. Moreover, the Appellants take a stand that in the present case, the number of vacancy was one and therefore, five candidates were considered and that Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) is not only senior most person in the feeder category of the post of 'Dean', but also meritorious candidate to hold the post of 'Director of Medical Education.'

3.7. The Appellants, in the 'Memorandum of Grounds of Appeal' has taken a categorical stand that merit wise also Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) is the most meritorious among the candidates in the panel and that the Government had considered the 'Seniority of Medical Officers' in the cadre of 'Dean'. The core contention advanced on behalf of the Appellants is that the Learned Single Judge should have taken note of that it is not mandatory to select the Medical Officers for the post of Head of the Department, as per the seniority (Civil Medical List). Moreover, the Learned Additional Advocate General for the Appellants submits that the Government have the powers to appoint a Medical Officer based on the 'Merit and Ability', who had fulfilled the qualifications prescribed as per the Rule provisions for the Head Of Department post.

3.8. The Learned Additional Advocate General for the Appellants brings it to the notice of this Court that the Government had filed a detailed counter in W.P.(MD)No.6790 of 2016 that Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) is the senior most person than Dr.S.Revwathy (Writ Petitioner), which was also accepted by this Court. The Learned Additional Advocate General for the Appellants points out that the Government issued orders in G.O.(Ms).No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 only for the Government Doctors for providing Dynamic Assured Career Progression (DACP) due to lack of adequate promotional opportunities and stagnation at various levels in the system and the said executive order is not overcoming the existing special Rules. The Appellants' case is that while preparing panel for the post of 'Director of Medical Education' for the year 2015-16, the name of the First

Respondent / Writ Petitioner was in the third place i.e. below the name of Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017).

3.9.The Learned Additional Advocate General for the Appellants contends that the post of 'Director of Medical Services' is governed by Rule 21 of the Tamil Nadu Medical Services Special Rules (Annexure I) and Rule 3(3) speaks of 'Director of Medical Education - Promotion from among the Officers holding the posts of Deans of Medical Colleges, Director, King Institute, Guindy and Directors of Upgraded Institutes. Further, Rule 4 enjoins 'Promotion to the posts shall be made on the grounds of merit and ability and seniority being considered only where merit and ability are approximately equal'.

3.10.The Learned Additional Advocate General for the Appellants emphatically proceeds to state that the post of Director of Medical Education is an important post, where the Director should have experience not only in the medical education, but should have an experience in the administration and reference to the Special Rule for Medical Rule 8(b), specifies that no person shall be eligible for appointment for the post of Director of Medical Education, unless (1) He possesses a post graduate degree in a Medical faculty or any other qualification approved by the Medical Council of India to be treated on par with MD/MS awarded by Indian University; (2) He has served for a period of not less than ten years after completing the required post graduate degree mentioned in clause (I) above, in one or more of the following posts, namely, Tutor/Assistant Professor/Professor/Reader in a Clinical or Non clinical department in a Government teaching medical institution, out of which four years must be of teaching experience as Reader/Professor; (3) He has administrative experience for a period of not less than two years in one or more of the following posts, namely Director of Upgraded Institute or Director Institute of Thoracic Medicine, Director of King Institute, Guindy/Dean/Principal/Superintendent of a Medical College/Medical College Hospital out of which one year must be as a Dean of Medical College and (4) He has one year left over service prior to date of retirement.

3.11.The Learned Additional Advocate General for the Appellants contends that in terms of Rule 3(a)(3) of the Tamil Nadu Medical Service Special Rules, Section 21 Part I, the third Respondent is more experienced in the field of administration and considered as meritorious and immensely suitable for being promoted as the Director of Medical Education.

3.12.The Learned Additional Advocate General for the Appellants also pleads a plea that an administrative experience in the post of Dean also an important criteria and as per Rule 8(e) of the Special Rule, the required qualification must be available

Appellant
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3.17.The Learned Additional Advocate General for the Appellants submits that the First Respondent/Writ Petitioner is challenging the appointment of the appointed person only on the ground that she is senior as per Civil Medical List (CML) number and in fact, she has not disputed the qualification of the appointed person. In this connection, the Learned Additional Advocate General for the Appellants refers to the observation made by the Hon'ble Chief Justice in W.P.(MD)No.2775 of 2008, dated 09.06.2010, wherein at paragraph No.12, it is mentioned as under:-



"12. On a perusal of the letter dated 21.05.2008 sent by the Health & Family Welfare Department, produced by the Learned Counsel for the petitioner, under the Right to Information Act, I find that the Special Rules of Tamil Nadu Medical Service could be applied only upto the cadre of Civil Surgeon and the criteria for future promotion to the next higher category is as per panel seniority or date of promotion and not based on the Civil Medical List seniority. The relevant particulars in the said letter reads thus:

"(i) As per Rule 12 of the Special Rules for Tamil Nadu Medical Service, the seniority upto the cadre of Civil Surgeons shall be determined with reference to their CML Number.

(ii) Panel seniority or date of promotion is the criteria for future promotion to the next higher cadre and not the CML seniority".

(4). Submissions of First Respondent/Writ Petitioner:-

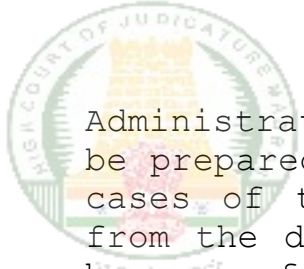
4.1. The Learned Counsel for the First Respondent/Writ Petitioner contends that a vacancy arose to the post of Director of Medical Education consequent to the retirement of Dr. R. Vimala on 31.10.2016 and that the promotion to the post of Director of Medical Education is governed by Rule 124 of the Tamil Nadu Medical Service Special Rules. Moreover, it is represented on behalf of the First Respondent that Rule 124 of the Tamil Nadu Medical Service Special Rules, does not anywhere mentioned that the post of Director of Medical Education is a selection post.

4.2. Advancing his arguments, the Learned Counsel for the First Respondent submits that even if it is considered as selection post, where the promotion is based on merit and ability, the G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993 clearly defines 'Merit' and 'Ability' and if the merit and ability are considered as equal without any charges or punishment in previous five years, the Civil Medical List Seniority alone is considered as basis for promotion.

4.3. The Learned Counsel for the First Respondent adds to point out that the crucial date for the post of promotion to the 'Director of Medical Education' is not mentioned as 15th March of that year and it is the date on which previous incumbent retires as it is a single post and Head of Department post of Non-IAS cadre, as clarified in G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993.

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

4.4. The Learned Counsel for the First Respondent contends that as per instructions prescribed in G.O. Ms. No. 368, Personnel and



Administrative Reforms Department, dated 18.10.1993, a panel is to be prepared three months in advance and this is to ensure that the cases of those persons, who have a minimum service of one year from the date of retirement of previous incumbent are not omitted because of an administrative delay.

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4.5.The Learned Counsel for the First Respondent brings it to the notice of this Court that G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 and G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990 had clearly mentioned about the preparation of panel eligibility and the Special Rules pertaining to the posts. Apart from that, the G.O.Ms.No.124, Health and Family Welfare Department, dated 10.06.2003, speaks of amendment to the Tamil Nadu Medical Service Special Rules in regard to the post of Director of Medical Education.

4.6.The Learned Counsel for the First Respondent points out that 'Civil Medical List Seniority' holds good for all promotions in Medical Service and all panels are drawn, as per Civil Medical List Seniority. In fact, G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017 is the only panel for appointment of Director of Medical Education, where no 'Civil Medical List' is mentioned and this is to hide the First Respondent/Writ Petitioner's Seniority.

4.7.The Learned Counsel for the First Respondent submits that the Seniority as per Civil Medical List is as under:-

Name	CML-2005	CML-2010	Retirement
Dr.S.Revwathy	4018	1888	Feb - 2018
Dr.Shanthimalar	4171	2033	June - 2021
Dr.AL.Meenakshi Sundaram	4220	2082	Aug - 2021
Dr.Narayanababu	4233	2094	Oct - 2020
Dr.A.Edwin Joe	4821	2666	July - 2019

4.8.The Learned Counsel for the First Respondent takes a plea that G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 clearly says that "For all higher posts and posts in common pool, Civil Medical List Seniority is the basis for promotion". Also that, it is projected on the side of the First Respondent that even for the post of Head of the Department in any Medical College, G.O.Ms.No.226, Health and Family Welfare (A1) Department, dated 10.10.2013 clearly mentions that 'senior most Medical Officer as per Civil Medical List seniority in the concerned Speciality of the Medical College shall be considered for the Headship/Head of the Department subject to the condition



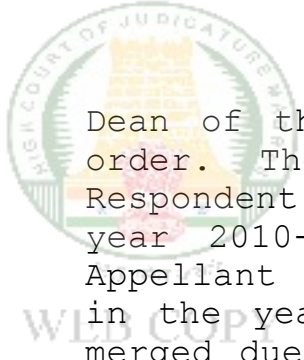
that he/she should not have lost his/her seniority as a result of relinquishment of right for promotion or as a result of any punishment imposed on him/her.

4.9. The Learned Counsel for the First Respondent projects an argument that an entry into Medical service in the State of Tamil Nadu was "Single Window" - "Tamil Nadu Public Service Commission" and further that the 'Civil Medical List' has 'Legal Sanction'. Besides these, it is represented on behalf of the First Respondent that the post of graduation may be done at any time and clinical specialties in 1980 - 90s have to do Diploma Course and then only Degree Course, whereas the non-clinical specialties do not have Diploma.

4.10. The Learned Counsel for the First Respondent refers to the Chart in respect of the First Respondent and the Appellant in W.A. (MD) No.1301 of 2017, which runs as under:-

	Respondent	Appellant in W.A. (MD) No.1301 of 2017
Joined M.B.B.S.	1976	1978
Completed M.B.B.S.	1981	1984
Diploma DGO	1984-1986	- - -
M.D.	1988-2000	1986-1989
Selection in TNPSC	1984-Batch	1987-Batch
Joined Tamil Nadu Medical Service	1986	1989
Civil Medical List Number	1888/2010	2665/2010
Dean Promotion (by willingness)	2012 panel	2010 panel
Retirement	Feb - 2018	July - 2019

4.11. The Learned Counsel for the First Respondent/Petitioner submits that the First Respondent/Petitioner became eligible and had submitted her willingness for 'Dean' promotion in the year 2010. However, as per G.O.Ms.No.39, Health and Family Welfare Department (A1) Department, dated 16.02.2010, the creation of 15 posts of Medical Superintendent was made to the 15 medical college hospitals in Pay Band - IV with Grade Pay of Rs.8,700/- by redesignation and redevelopment of one post of Professor of Anatomy of the respective Medical Institution in the same scale of pay. Further, it was mentioned in the said Government Order that duties and responsibilities so far exercised by the Dean of Government Medical College and Hospital will be shared by the Medical Superintendent of the Medical College Hospital and the



Dean of the Medical College, as defined in Annexure II to this order. Therefore, it is submitted on behalf of the First Respondent that all the non-clinical professors became Dean in the year 2010-2011 and that is reason why, her junior viz., the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwin Joe) became Dean in the year 2010. Apart from that, once again these posts were merged due to hardship in administration and as a result, in the year 2011, all the Medical Superintendents became Deans. Moreover, from the year 2012 panel, all senior clinical side Teachers became Deans and this is evident from G.O.(D)No.1305, Health and Family Welfare (A1) Department, dated 28.11.2013, which relates to the panel for the post of Dean of Medical College for the year 2013-2014.

4.12.The Learned Counsel for the First Respondent comes out with a plea that the First Respondent/Writ Petitioner joined in Primary Health Centre in the year 1987 and rendered rural service till the year 1990 and after completion of post graduation, also served rural public in Aayakudi. Thereafter, she entered the teaching side and from the year 1991 till 2013 served in the O & G Department.

4.13.The Learned Counsel for the First Respondent points out that the Appellant in W.A(MD)No.1301 of 2017 after Post Graduation joined in the Forensic Medical Department and served only in the College and had not served any rural service and not connected with direct patient care. Apart from that, the Learned Counsel for the First Respondent contends that the First Respondent was given the best academician award by the students and by the Tamil Nadu Medical Council during the year 2013.

4.14.The core stand taken on behalf of the First Respondent/petitioner is that she is senior to the Appellant in W.A.(MD)No.1301 of 2017 and this is established from seniority list of Medical Officers for the post of Director of Medical Education for the panel year 2015-2016 sent by Dr.R.Vimala dated 20.10.2015 wherein the First Respondent was mentioned as 'eligible for Director of Medical Education' in Serial No.21 and the Appellant in W.A.(MD)No.1301 of 2017 mentioned as 'eligible' in Serial No.38. In this connection, it is represented on behalf of the First Respondent/petitioner that the seniority is arrived at as per 'Civil Medical List' only, as per G.O.Ms.No.353, dated 23.10.2009.

4.15.The Learned Counsel for the First Respondent draws the attention of this Court to G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, which clearly states that the estimated vacancy is to be proposed atleast three months in advance and panel must be prepared by the Head of the Department, failing which, by the Secretary himself three months in advance, the panel must be intimated to all in the panel by the



registered post for any objection to be raised within two months and the third month must be utilised for finalisation, so that, the next person will take over from the previous incumbent.

4.16. The Learned Counsel for the First Respondent contends that one Dr. Geethalakshmi retired on 31.01.2016 and that Dr. R. Vimala had a left over service of nine months (31.10.2016) and the First Respondent/petitioner who was the next senior in Civil Medical List to Dr. R. Vimala had two years, one month left over service as on 31.01.2016. To accommodate Dr. R. Vimala, G.O. Ms. Nos. 446 and 447, Health and Family Welfare (A1) Department, dated 18.03.2016 were passed without a panel relaxing the Rules, which was highlighted in the Judgment of this Court, dated 09.11.2016 in W.A. (MD) No. 1304 of 2016.

4.17. The Learned Counsel for the First Respondent submits that Dr. R. Vimala retired on 31.10.2016 and that the First Respondent/Petitioner is the senior most with left over service on 1 year and four months, as she is to retire on 28.02.2018. The Learned Counsel for the First Respondent points out that the Junior viz., Dr. Narayanababu was given Director of Medical Education incharge from 01.11.2016 and that no panel was prepared and he was placed in full additional charge as Director of Medical Education and worked as Dean, Kilpauk Medical College till 25.04.2017.

4.18. The Learned Counsel for the First Respondent proceeds to point that willingness for Director of Medical Education post from eligible candidates was called for on 19.12.2015 in Ref. No. 83241/E1/1/2015 and again in Ref. No. 52744/E1/1/2016, dated 08.07.2016 and that the eligible candidates with willingness as per seniority should have been sent by the Director of Medical Education on 29.07.2016 in the same reference number, but this list is not produced by the Appellants in W.A. (MD) No. 1300 of 2017 with a mala fide intention to hide the First Respondent's seniority. Further, it is represented on behalf of the First Respondent that the list would be the same, as the one already sent by the same Director of Medical Education viz., Dr. R. Vimala on 31.12.2015 and 29.07.2016, as there is no senior person in Dean cadre with full eligibility for Director of Medical Education to intervene between (1) Dr. R. Vimala, in Serial No. 18; (2) Dr. S. Revathy, in Serial No. 21; (3) Dr. AL. Meenaskhi Sundaram, in Serial No. 27; and Dr. A. Edwin Joe, in Serial No. 38.

4.19. The Learned Counsel for the First Respondent submits that G.O. (D) No. 1210, dated 07.09.2016 which estimated the vacancy for the post of 'Director of Medical Education' arising on 31.10.2016, as shows in G.O. (D) No. 948, Health and Family Welfare (A1) Department, dated 25.04.2017 itself, no panel was prepared from 31.10.2016 to 25.04.2017 and on the date of estimated vacancy also, the First Respondent has a left over service of more than one year.



4.20. The Learned Counsel for the First Respondent refers to the Judgment of this Court in W.A.(MD)No.1304 of 2016, dated 09.11.2016, wherein at paragraph No.27, it was observed as under:-

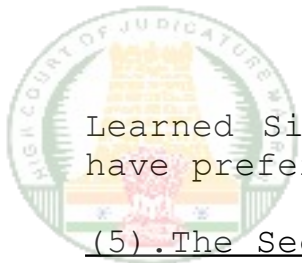
"Since the post of the Director of Medical Education has fallen vacant, the First Respondent is under a statutory obligation to draw a panel for the appointment to the post of the Director of Medical Education and consider the short listed candidates, strictly in accordance with the sub-clause (a) to Clause 4 in Part II of Section 21 of the Tamil Nadu Medical Service. We hope and trust such exercise is to be done in a fair and transparent manner and strictly in accordance with law."

and submits that the said observation has not been followed by the Appellants in W.A.(MD)No.1300 of 2017.

4.21. The Learned Counsel for the First Respondent strenuously contends that the First Respondent/Writ Petitioner's representations together with the Judgements of this Court in W.A.(MD)No.1304 of 2016, dated 09.11.2016, from 14.11.2016 onwards addressed to the Principal Secretary, Health and Family Welfare Department and even to the Chief Secretary, Government of Tamil Nadu on 14.11.2016, 25.12.2016, 13.02.2017 and 20.02.2017 had not met with any response and hence, the First Respondent filed W.P.(MD)No.3523 of 2017 in the light of the Judgment in W.A.(MD)No.1304 of 2016 praying for passing of an order by this Court to direct the Appellants in W.A.(MD)No.1300 of 2017 to appoint her as the Director of Medical Education forthwith.

4.22. The Learned Counsel for the First Respondent submits that the Appellants in W.A.(MD)No.1300 of 2017 have completely violated the G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 and G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009. The Learned Counsel for the First Respondent contends that the First Respondent had a left over service of one year and four months on the date of retirement of previous incumbent Dr.R.Vimala and because of the deliberate administrative delay, six months was evaded to prepare a wrong panel which is in pure violation of G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 and G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 and as against the Judgment passed in W.A.(MD)No.1304 of 2016.

4.23. The Learned Counsel for the First Respondent submits that with a view to elongate the promotion and appointment of the First Respondent as 'Director of Medical Education' and without complying with the Judgment of this Court in W.A.(MD)No.1304 of 2016, dated 09.11.2016, as well as the impugned order of the



Learned Single Judge passed in the writ petition, the Appellants have preferred the present writ appeals before this Court.

(5).The Second Respondent's Pleas:-

5.1.The Learned Counsel for the Second Respondent submits that the Second Respondent (Impleaded petitioner) was appointed as Medical Officer in Tamil Nadu Medical Service in the year 1986, with a qualification of Post Graduate Degree M.D., (Anaesthesiology) in the year 1994 and was promoted as Professor in Anaesthesiology in the year 2004. It is represented on behalf of the Second Respondent that the Second Respondent based on his seniority and eligibility, was promoted to the post of Dean on 18.03.2013.

5.2.The Learned Counsel for the Second Respondent takes a stand that the Second Respondent is one of the eligible persons included in the panel for promotion to the post of Director of Medical Education prepared as on the vacancy arose on 28.12.2015 consequent to the orders passed by this Court in W.A.(MD)No.1304 of 2016, dated 09.11.2016.

5.3.The Learned Counsel for the Second Respondent proceeds to point that that the Second Respondent is the most meritorious candidate with reference to merit and ability for selection to the post of Director of Medical Education, since he had received appreciation award from the Chief Secretary to Government of Tamil Nadu for his participation in resuscitation of building collapse victims at Moulivakam, Chennai during 2004 while working as 'Dean of Stanley Medical College'. Also that the Second Respondent had received a 'Certificate of Merit' from the District Collector, Thiruvarur during Independence Day Celebrations, 2015 for securing five years recognition for the Government Thiruvarur Medical College and for establishing Corneal Transplantation Surgeries and also for improving the facilities in Intensive Care Unit and Obstetrics and Gynaecology Department. Besides these, it is the plea of the Second Respondent that he had received 'Certificate of Merit' during Republic Day Celebrations in the year 2006 for establishing an Emergency Help line and maintaining an Emergency Help line (which is first of its kind) in the State of Tamil Nadu and also for arranging Medical Camp for the entire judicial employees of Thiruvarur District.

5.4.The Learned Counsel for the Second Respondent submits that the Second Respondent had received the 'Best Teacher Award' from the Tamil Nadu DR.M.G.R. Medical University. Moreover, the Second Respondent was nominated for the 'Best Practices Award 2015', as per proceedings of the First Respondent, dated 27.07.2016. As such, it is the contention of the Learned Counsel for the Second Respondent that the Second Respondent's services were appreciated by the Department and the State Government through out his career.



5.5.The Learned Counsel for the Second Respondent vehemently projects an argument that in W.P.(MD)No.10257 of 2017 filed by the First Respondent, this Court, found that the draft order in G.O.(D)No.948, dated 25.04.2017 was manipulated by deleting the words 'Merit and Ability of the Medical Officers are equal' and by inserting the words 'Merit wise Dr.A.Edwin Joe is the most meritorious among the candidate in the panel (The Appellant in W.A.(MD)No.1301 of 2017) '.

5.6.The Learned Counsel for the Second Respondent contends that the Second Respondent is very much aggrieved against the finding in the common order dated 20.09.2017, in W.P.(MD)No.3523 of 2017 and W.P.(MD)No.10257 of 2017, wherein at paragraph Nos.12.2 and 12.3, an assertion was made that 'CML Seniority' is the basis for and appointment of Director of Medical Education.

5.7.The Learned Counsel for the Second Respondent submits that the post of Director of Medical Education comes under Special clause, sub clause (3) of the Tamil Nadu Medical Service Special Rules and as per Rule 3, the post of Director of Medical Education to be filled up by promotion from among the Officer holding the post of Dean of Medical College and other equivalent posts. Moreover, as per Rule 4(a), promotion to the post of Director of Medical Education shall be made on the ground of merit and ability, seniority being considered only when merit and ability are approximately equal.

5.8.The Learned Counsel for the Second Respondent contends that Rule 8(b) of the Tamil Nadu Medical Service Special Rules, prescribes qualification for the post of Director of Medical Education, which prescribes educational qualification and service qualification, which include administrative experience for a period of not less than 2 years in one or more of the post set out therein, out of which one year must be as a 'Dean of Medical College'.

5.9.The Learned Counsel for the Second Respondent comes out with an argument that Rule 12 of the Tamil Nadu Medical Service Special Rules prescribes seniority and appointment as full member in the category of Civil Surgeons wherein it is directed that appointment as a full member of the service in the post stated therein including the post of Dean of Medical Colleges, borne on the cadre of Civil Surgeons, shall be made with reference to the date of regular appointment or promotion to the particular category.

5.10.The Learned Counsel for the Second Respondent submits <https://hcs.ecs.gov.in/hcsr/Rules> Rule 12 of the Tamil Nadu Medical Service Special Rules, a person becomes a full member of service in the post of the Dean of Medical College only from the date of first regular



appointment or promotion to the post and thereby the seniority can be counted only by reckoning the date of appointment /promotion to the post of the Medical College and not otherwise.

5.11.The Learned Counsel for the Second Respondent brings it to the notice of this Court that as per Rule 3 of the Tamil Nadu Medical Service Special Rules, the post of Clinical Associate Professor and non-clinical Associate Professor can be filled up either by promotion or by direct recruitment, if no qualified member is available and therefore, once the post of Associate Professor to be filled up with either by promotion or by direct recruitment, the question of reckoning the seniority based on CML seniority beyond the post of Associate Professor does not arise, as it will offend the right of directly recruited Associate Professors, who are not assigned with CML number in the post of Assistant Surgeon (entry level post). Therefore, it is the stand of the Second Respondent that after the post of Associate Professor, any further promotion to be made must be based on 'Panel Seniority'.

5.12.The Learned Counsel for the Second Respondent refers to Rule 4(c) of Tamil Nadu Medical Service Special Rules (including first explanation and proviso to the Rules) and contends that 'CML Seniority' is not the basis for promotion to the higher post and the Service Rules framed under Article 309 of Constitution of India clearly prescribes that the panel seniority is the basis for promotion to the post of Director of Medical Education.

5.13.The Learned Counsel for the Second Respondent submits that G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 relied on in the impugned common order dated 20.09.2017 of the W.P.(MD)No.3523 of 2017 and W.P.(MD)No.10257 of 2017, to follow 'CML Seniority' was subsequently reviewed and clarificatory amendment order in G.O.Ms.No.245, dated 30.10.2013 was issued, as per which in clause (9) of the Government Order, the CML seniority will be taken into account as and when preparing the panel for the post of Senior Assistant Surgeon/Civil Surgeon/Senior Civil Surgeon/Chief Civil Surgeon, the Director of Medical and Rural Health Side and Associate Professor/Professor in the Director of Medical Education Side. Accordingly, upto the Associate Professor/Professor in DME side alone, the CML seniority will be followed and in short, G.O.Ms.No.354, dated 23.10.2009 cannot be relied upon, when the same was subsequently amended as per G.O.Ms.No.245, dated 30.10.2013.

5.14.The Learned Counsel for the Second Respondent contends that the Second Respondent was appointed as Dean on 18.03.2013, but the First Respondent/Writ Petitioner was appointed as Dean on 21.03.2013. Therefore, it is contended on behalf of the Second Respondent that the First Respondent is the senior to the First Respondent in the 'Panel Seniority' in the post of Dean to be considered for promotion to the post of District Medical Officer following panel seniority.



5.15. Furthermore, it is the stand of the Second Respondent that even as per performance in medical service, he is the most meritorious candidate that can be borne out of records. That apart, it is the contention of the Second Respondent that the Learned Single Judge in the impugned common order of the W.P.(MD) No.3523 of 2017 and W.P.(MD)No.10257 of 2017, dated 20.09.2017, gave a positive direction to appoint the First Respondent/Writ Petitioner, which affects the right of the Second Respondent, who is senior to the First Respondent, as per seniority in the post of Dean.

5.16. The Learned Counsel for the Second Respondent contends that the Learned Single Judge had arrived at subjective satisfaction of the records with reference to serious discrepancy committed in the process of selection and rendered a finding that the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwin Joe) was positively recommended for promotion to the post of Director of Medical Education, though merit and ability of the First Respondent/Writ Petitioner and other Medical Officers are stated to be equal.

5.17. The Learned Counsel for the Second Respondent submits that when once the selection is vitiated due to manipulation/discrepancy committed in the process of selection, the Appellants should have been directed by the Learned Single Judge to conduct the selection to the post of Director of Medical Education afresh in accordance with Rules. Added further, it is the plea of the Second Respondent that there cannot be any positive direction being issued to appoint the First Respondent/Writ Petitioner as Director of Medical Education, when the selection is based on 5 panellists, which include the Second Respondent without assessment of comparative merit and ability, particularly, when the Second Respondent being senior to the First Respondent/Writ Petitioner in the panel seniority.

5.18. The Learned Counsel for the Second Respondent contends that once it is made clear that the selection is not in accordance with Rule 4(a) of Tamil Nadu Medical Service Special Rules, the matter is to be remanded back to the Respondents to redo the selection in accordance with Service Rules based on comparative merit and ability of the panellists in accordance with law.

5.19. The Learned Counsel for the Second Respondent points out that when this Court in W.A(MD)No.1304 of 2016, on 09.11.2016, had directed the Respondent therein to draw a panel for appointment to the post of Director of Medical Education and considering the short listed candidates strictly in accordance with Rule 4(a) of Tamil Nadu Medical Service Special Rules, this Court, while passing the orders in W.P(MD)No.10257 of 2017, should have directed the Respondents therein (The Appellants in W.A.(MD)



No.1300 of 2017) to comply the legal requirement, as per Rule 4(a) of Tamil Nadu Medical Service Special Rules by conducting selection afresh, instead of issuing positive direction to appoint the First Respondent/Writ Petitioner, usurping the powers of the Appointing Authority.

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5.20.The Learned Counsel for the Second Respondent also strenuously takes a stand that the Learned Single Judge in the common order dated 20.09.2017 in W.P.(MD)No.3523 of 2017 and W.P.(MD)No.10257 of 2017, at paragraph No.20, had clearly observed that the First Respondent (The First Appellant in W.A.(MD)No.1300 of 2017) had failed to record the reasons much less plausible reason objectively as to the comparative merit and ability of the Medical Officers and also as to the seniority of the Medical Officer when their merit and ability approximately equal, then it is for the Hon'ble Court to remand the matter back to the Appellants in W.A.(MD)No.1300 of 2017 to re-do the selection in accordance with law by fulfilling all the requisite legal requirements with reference to the assessment of comparative merit and seniority etc.

(6).The Second Respondent's Citations:-

6.1.The Learned Counsel for the Second Respondent relies the decision of the Hon'ble Supreme Court in K.KUPPUSAMY AND ANOTHER v. STATE OF TAMIL NADU AND OTHERS reported in (1998) 8 SCC, 469, wherein at paragraph No.3, it is observed and held as follows:-

"The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule."

6.2.The Learned Counsel for the Second Respondent cites the decision of the Hon'ble Supreme Court in STATE OF ORISSA AND OTHERS v. PRASANA KUMAR SAHOO reported in (2007) 15 SCC 129, wherein it is observed as follows:-



"The State is bound by the constitutional scheme to treat all persons equally in the matter of grant of public employment as envisaged under Articles 14 and 16 of the Constitution. Policy decision taken by the State in exercise of its jurisdiction under Article 162 would be subservient to the recruitment rules framed by the State either in terms of a legislative Act or the proviso to Article 309. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions."

6.3. The Learned Counsel for the Second Respondent seeks in aid of the decision of the Hon'ble Supreme Court in *STATE BANK OF INDIA v. MOHD. MYNUDDIN* reported in AIR 1987 SC 1889 and 1890, wherein it is laid down as under:-

"Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials. If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. This Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds - scientific, technical, financial, industrial, commercial, administrative, educational etc. The method of evaluation of abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be done by the individual or a committee consisting of persons who have the knowledge of the requirement of a given post to be nominated by the



employer. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstances other considerations will arise. Writ Appeal No.1027 of 1986, D/- 25.09.1986 (Andh Pra), Reversed. AIR 1968 SC 1113, Foll."

6.4. The Learned Counsel for the Second Respondent draws the attention of this Court to the decision of the Hon'ble Supreme Court in AJAYKUMAR DAS v. STATE OF ORISSA AND OTHERS reported in 2011 (11) SCC 136, at special page 139, wherein at paragraph No.14, it is observed as under:-

"Neither the Circular dated 18.06.1982 nor the subsequent Circular dated 19.03.1983 modifying the earlier Circular dated 18.06.1982 can override the statutory provision contained in Rule 74(b) of the Code if it results in reduction of pay of the employee on promotion. That Orissa Service Code has been framed under Article 309 of the Constitution of India is not in dispute. It is well settled that Statutory Rules framed under Article 309 of the Constitution can be amended only by a Rule or Notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the Executive Orders or Circulars or Instructions, Statutory Rules cannot be altered or amended by such Executive Orders or Circulars or Instructions nor can they replace the Statutory Rules. The Rules made under Article 309 of the Constitution cannot be tinkered by the administrative Instructions or Circulars."

W.A. (MD) No.1301 of 2017:

(7). The Appellant's Submissions:-

7.1. The Learned Senior Counsel for the Appellant contends that the Learned Single Judge should have dismissed the writ petition on the basis that the First Respondent/Writ Petitioner is not having one year left over service, which is a mandatory condition, as per Rule 8(b) (iv) of Tamil Nadu Medical Service Special Rules. Further, it is the stand of the Appellant that in the earlier round of litigation, the Division Bench of this Court made a specific observation that there should not be any appointment by violating the Tamil Nadu Medical Service Special Rules, especially, Rule 8(b) (iv) and Rule 4.

7.2. The Learned Senior Counsel for the Appellant takes a plea that the Learned Single Judge should have dismissed the W.P. (MD) No.10257 of 2017 on the ground that the Second Respondent/Government by properly following the Tamil Nadu Medical Service Special Rules and upon considering the merit and ability, has appointed the Appellant as 'Director of Medical Education'. As such, there is no illegality in the impugned order assailed in the Writ petition.

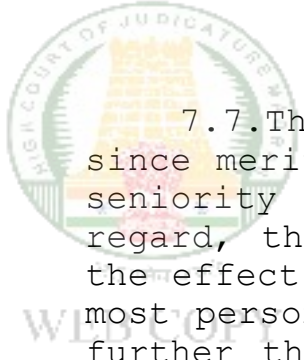


7.3.The Learned Senior Counsel for the Appellant points out that the Learned Single Judge should have considered that the claim made by the First Respondent/Writ Petitioner seeking positive direction to appoint her in the post of Director of Medical Education in the earlier round of litigation viz., in W.P. (MD)No.6790 of 2016, was rejected by the Learned Single Judge as well as by the Hon'ble Division Bench, in W.A.(MD)No.1304 of 2016. Therefore, the positive direction given by the Learned Single Judge is not proper one and liable to be interfered with by this Court.

7.4.According to the Learned Senior Counsel for the Appellant, the First Respondent/Writ Petitioner claiming the 'Civil Medical List Seniority', is not having any statutory force for an appointment to the post of Director of Medical Education and therefore, the order of the Learned Single Judge requires interference.

7.5.The Learned Senior Counsel for the Appellant takes a stand that the Learned Single Judge should have considered that as per Rule 3 of the Tamil Nadu Medical Service Special Rules, the post of Dean is one of the Feeder Category to the post of Director of Medical Education and further, as per Rule 8(b), the administrative experience in the post of Dean is also prescribed as requirement. Therefore, it is represented on behalf of the Appellant that having more experience 'in the Cadre of Dean' was rightly considered by the Government towards the merit and ability of the Appellant and consequently appointed the Appellant as 'Director of Medical Education', which is the proper one. The Learned Senior Counsel for the Appellant submits that as per Service Rules, 15th March of the year, is the cut off date for preparing the panel and in fact, the First Respondent/Writ Petitioner is not possessing one year left over service with reference to the cut off date and thereby not eligible to be considered for the post of Director of Medical Education.

7.6.It is represented on behalf of the Appellant that this Court in W.A(MD)No.1304 of 2016, dated 09.11.2016 had categorically held that there should not be any violation of Rules while appointing a person to the post of Director of Medical Education and thereby made it clear that the one year left over service is one of the main criteria, which cannot be diluted to and in favour of the First Respondent/Writ Petitioner. Moreover, it is the plea of the Appellant that the Learned Single Judge in paragraph No.13 of the Judgment in the common order dated 20.09.2017 of the W.P. (MD)No.3523 of 2017 and W.P. (MD)No.10257 had rightly found that the Appellant is having experience ahead of the First Respondent/Writ Petitioner and therefore, the allowing of the writ petition is not a proper one.



7.7. The Learned Senior Counsel for the Appellant contends that since merit and ability alone are the deciding factor and not the seniority based on the date of original appointment, in this regard, the conclusion arrived at by the Learned Single Judge to the effect that the First Respondent/Writ Petitioner is the senior most person based on the panel prepared by Dr.S.Geethalakshmi and further that the appointment of Appellant as Director of Medical Education is not proper, requires interference, in the hands of this Court. The Learned Senior Counsel for the Appellant submits that there are no materials placed before the Learned Single Judge to arrive at a conclusion that the First Respondent/Writ Petitioner is having more merit and ability over and above the Appellant and in the absence of the same, the Learned Single Judge should not have allowed the writ petition filed by the First Respondent.

7.8. The Learned Senior Counsel for the Appellant contends that 'note files' have no scope over the final decision and the Learned Single Judge ought not to decide the issue in question based on the observations made in the note file. Also that, it is the plea of the Appellant that before arriving at a conclusion, the Learned Single Judge had not heard any one of the parties.

(8).The Appellant's Decisions:-

8.1. The Learned Senior Counsel for the Appellant cites the decision of the Hon'ble Supreme Court in STATE OF MYSORE AND ANOTHER v. SYED MAHMOOD AND OTHERS reported in AIR 1968 SC 1113 at special page 1114, wherein at paragraph No.2, it is observed as under:-

"2. Promotion to the posts of senior statistical assistants is made from the cadre of junior statistical assistants and progress assistants. Rules 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 requires such promotions to be made by selection on the basis of seniority-cum-merit, that is seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion. In 1959 the seniority of junior statistical assistants was governed by the seniority list published on January 16, 1958. Syed Mahmood and Bhao Rao were junior statistical assistants. While making selections for promotion to the posts of senior statistical assistants from the cadre of junior statistical assistants in 1959, the State Government was under a duty to consider whether having regard to their seniority and fitness they should be promoted. But without considering their case at all, the State Government promoted junior statistical assistants ranking below them in seniority. The promotions were irregularly made and they were, therefore, entitled to ask the State Government to reconsider their case. In the circumstances,



the High Court could issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness they should have been promoted on the relevant dates when officers junior to them were promoted. Instead of issuing such a writ, the High Court wrongly issued writs directing the State Government to promote them with retrospective effect. The High Court ought not to have issued such writs without giving the State Government an opportunity in the first instance to consider their fitness for promotion in 1959."

8.2. The Learned Senior Counsel for the Appellant relies on the decision of the Hon'ble Supreme Court in STATE OF BIHAR v. KRIPALU SHANKAR reported in AIR 1987 SC 1554, at special page 1555, wherein it is observed as under:-

"It would be dangerous to find an action for contempt, for the views expressed in the notes file, on the discovery of unpleasant or unsavoury notes, on a perusal of the notes file by the Court, after getting them summoned. This would impair the independent functioning of the civil service essential to democracy. This would cause impediments in the fearless expression of opinion by the officers of the Government. The notings on files differ from officer to officer. It may well be that the notes made by a particular officer, in some cases, technically speaking is in disobedience in an order of the Court or may be in violation of such order but a more experienced officer sitting above him can always correct him. To rely upon the notings in a file for the purpose of initiating contempt, in our view, therefore, would be to put the functioning of the Government out of gear. We must guard against being over sensitive, when we come across, objectionable notings made by officers, sometimes out of inexperience, sometimes out of over zealousness and sometimes out of ignorance of the nuances of the question of law involved."

8.3. The Learned Senior Counsel for the Appellant refers to the Judgment of the Hon'ble Supreme Court in STATE BANK OF INDIA AND OTHERS v. MOHD. MYNUDDIN reported in AIR 1987 SC 1889 and 1890, whereby and where under, it is observed as follows:-

"Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of doing his duties satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is



the duty of the management to consider the case of the officer concerned on the basis of the relevant materials. If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. This Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds - scientific, technical, financial, industrial, commercial, administrative, educational etc. The method of evaluation of abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirement of a given post to be nominated by the employer. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstances other considerations will arise. Writ Appeal No.1027 of 1986, D/- 25.09.1986 (Andh Pra), Reversed. AIR 1968 SC 1113, Foll."

8.4.The Learned Senior Counsel for the Appellant seeks in aid of the decision of the Hon'ble Supreme Court in M.V.THIMMAIAH AND OTHERS v. UNION PUBLIC SERVICE COMMISSION AND OTHERS reported in 2008 (2) SCC 119, at special page 124, wherein it is held as under:-

"Provisions have been made for special reports and in administrative jurisprudence special reports can be sought for in respect of any officer whenever his case comes for consideration and if the Selection Committee wants to have an up-to-date report of that incumbent. It is an established practice to call for such kind of special reports. The idea is that for not reporting the annual confidential reports of the incumbent, why the incumbent should be made to suffer. Therefore, the Selection Committee or the authority concerned can always ask for annual confidential reports which were not written for a particular year by the reporting authority or by the



reviewing authority or in some cases it can also seek a special report. Such practice cannot be said to be unusual practice in administrative jurisprudence. In the present case, it appears that a special report in respect of officer KRN was obtained and that was considered by the Selection Committee. Therefore, this procedure adopted by the Selection Committee cannot be found to be arbitrary or in any way discriminatory."

8.5.The Learned Senior Counsel for the Appellant invites the attention of this Court to the decision of the Hon'ble Supreme Court in SHANTI SPORTS CLUB AND ANOTHER v. UNION OF INDIA AND OTHERS reported in (2009) 15 SCC 705, at special page 708, wherein it is laid down as follows:-

"The concept of equality enshrined in Article 14 is a positive concept. Article 14 said article cannot be invoked for perpetuating irregularities or illegalities. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities."

8.6.The Learned Senior Counsel for the Appellant cites the decision of the Hon'ble Supreme Court in JASBIR SINGH CHHABRA AND OTHERS v. STATE OF PUNJAB AND OTHERS reported in (2010) 4 SCC 192, at special pages 193 and 194, wherein it is observed as under:-

"It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of mala fides is always on the person who moves the Court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to mala fides and the courts should resist the temptation of drawing dubious inferences of mala fides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the Court should insist upon furnishing of some tangible evidence by the petitioner in support of his/her allegations.

<https://hcservices.ecourts.gov.in/hcservices> In a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are



required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations. The Court is duty bound to carefully take note of the same."

8.7.The Learned Senior Counsel for the Appellant relies on the decision of the Division Bench of this Court in D.JAGANNATHAN, IAS DISTRICT COLLECTOR NAMAKKAL DISTRICT v. S.SATTNATHAN AND FIVE OTHERS reported in 2013 (6) CTC 129 and 130, wherein it is held as follows:-

"A combined reading of the above said provisions would show that the powers of the Central Administrative Tribunal are governed and controlled by the enactment. It cannot be a substitute to the powers of the High Court in its exercise under Article 226 of the Constitution of India. That is the reason why this writ petition is filed before us seeking to invoke the said power under the Constitution. Therefore, the Tribunal constituted under the Act has to exercise its statutory functions and powers accordingly. In other words, such a power, which is circumscribed by the enactment, cannot be allowed to be exercised beyond it."

8.8.The Learned Senior Counsel for the Appellant points out the decision of the Hon'ble Supreme Court in UNION OF INDIA AND ANOTHER v. ASHOK KUMAR AGGARWAL reported in 2013 (15) JT 200, wherein at paragraph Nos.16 to 18, it is observed as under:-

"16. The instant case is required to be considered in light of the aforesaid settled legal propositions, statutory provisions, circulars etc. The Tribunal inter alia had placed reliance on notings of the file. The issue as to whether the notings on the file can be relied upon is no more res integra.

In Shanti Sports Club v. Union of India MANU/SC/1505/2009 : (2009) 15 SCC 705, this Court considered the provisions of Articles 77(2), 77(3) and 166(2) of the Constitution and held that unless an order is expressed in the name of the President or the Governor and authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government. The Court further held:



"43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."

Similarly, while dealing with the issue, this Court in *Sethi Auto Service Station v. DDA* MANU/SC/8127/2008 : AIR 2009 SC 904 held:

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

17. In *Jasbir Singh Chhabra v. State of Punjab* MANU/SC/0152/2010 : (2010) 4 SCC 192, this Court held:

"35..... However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations...."

18. Thus, in view of the above, it is evident that the notings in the files could not be relied upon by the



Tribunal and Court. However, the issue of paramount importance remains as what could be the effect of judgment and order of the Tribunal dated 16.12.2011 wherein the Tribunal had directed the Appellants to reconsider the whole case taking into account various issues inter-alia as what would be the effect of quashing of the charge sheet by the Tribunal against the Respondent; the report/recommendation of the Law Ministry to revoke the sanction; the effect of affidavit filed by the then Finance Minister after remand of the sanction matter by the High Court to the effect that though the competent authority had accorded sanction, the entire relevant matter had not been placed before him; the directions passed by the High Court against the officers of the CBI in the cases of Shri Vijay Aggarwal and Shri S.R. Saini; and the duration of pendency of criminal trial against the Respondent and, particularly, taking note of the stage/status of the criminal proceedings, in view of the fact that the Respondent is on bail since 2000 and since the investigation is completed, whether there is any possibility of tampering with the evidence."

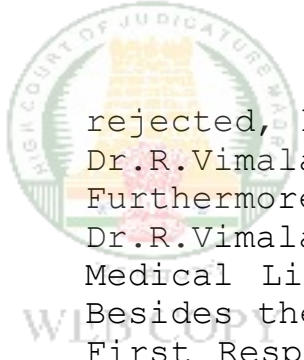
(9).The First Respondent/Writ Petitioner's Contentions:-

9.1.The Learned Counsel for the First Respondent/Writ Petitioner submits that one Dr.Narayana Babu, a junior in service from 01.11.2016, was posted as Director of Medical Education in-charge with full additional charge. Further, it is represented on behalf of the First Respondent that on 01.11.2016, the First Respondent had the more than one year of left over service and this administrative delay cannot reduce her claim of having left over service of more than one year.

9.2.The Learned Counsel for the First Respondent/Writ Petitioner projects an argument that the impugned order was shown to be prepared on 27.09.2016, as per Letter No.52744/E1/1/2016 for the post of Director of Medical Education and on that date viz., 27.09.2016 also, the First Respondent had more than one year of left over service and this is mentioned in the Judgment of this Court in W.P.(MD).No.10257 of 2017 in Paragraph 12 - 12(1) and 12 (2).

9.3.The Learned Counsel for the First Respondent/Writ Petitioner forcibly contends that the words "'merits and ability of the Medical Officers are equal'" are deleted and the words "'Dr.A.Edwin Joe is more meritorious'" are inserted, which proves the mala fide intention to avoid the First Respondent, who is the senior and more meritorious and to accommodate Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017).

<https://hcservices.ecourts.gov.in/hcservices/> 9.4.The Learned Counsel for the First Respondent/Writ Petitioner brings it to the notice of this Court in earlier W.P. (MD)No.6790 of 2016, the First Respondent's claim was not



rejected, but the writ petition was dismissed with an opinion 'as Dr.R.Vimala is senior, there is no harm in relaxing the Rule.' Furthermore, it is the stand of the First Respondent that Dr.R.Vimala was senior in Civil Medical List only with Civil Medical List No.3948, but her Civil Medical List number is 4018. Besides these, it is the submission of the Learned Counsel for the First Respondent that Dr.R.Vimala retired on 31.10.2016, and this Court had hoped and trusted that the next panel will be prepared, as per Law and in a transparent manner. In short, it is the plea of the First Respondent that in W.A.(MD).No.1304 of 2016, the First Respondent's claim was not dismissed at all.

9.5.The Learned Counsel for the First Respondent/Writ Petitioner comes out with an argument that G.O.Ms.No.354, dated 26.10.2009 is meant for a dynamic assured career progression and to mitigate the stagnation in promotion and the said Governance Orders states that 'In the Director of Medical Education side 5(b) for higher level posts and posts in common pool, the Civil Medical List seniority will be the basis for promotion' and this is mentioned in the orders passed by this Court in W.A.(MD).No.1304 of 2016 and orders in W.P.(MD).No.10257 of 2017.

9.6.The Learned Counsel for the First Respondent/Writ Petitioner submits that 'Dean' is one of the 'Feeder Category' and Dean for two years and directors with Dean for one year is the required fulfillment to be eligible for the post of Director of Medical Education, as per the G.O.Ms.No.124, dated 10.06.2003. Also that, it is the contention of the First Respondent/Writ Petitioner that a longer period cannot be considered as merit and minimum two years as 'Dean' is only a prerequisite to become eligible for the post of Director of Medical Education.

9.7.The grievance of the First Respondent/Writ Petitioner is that she had more than one year left over service on 31.10.2016 i.e. the date of retirement of Dr.R.Vimala and originally she should have been promoted and appointed as Director of Medical Education on 01.02.2015 itself when Dr.S.Geethalakshmi retired. In fact, on 01.02.2015, the First Respondent/Writ Petitioner had two years of left over service. The Learned Counsel for the First Respondent/Writ Petitioner contends that the Tamil Nadu Public Service Commission being the single entry for Tamil Nadu Medical Service, the First Respondent/Writ Petitioner was selected in the year 1984 batch, whereas the Appellant belongs to 1986 batch and in reality, the Appellant is junior to her in two batches. The Learned Counsel for the First Respondent/Writ Petitioner strenuously submits that the First Respondent/Writ Petitioner is not only senior, but also more meritorious than the Appellant and therefore, as per Government Order in G.O.Ms.No.368, Personnel and Administrative Services Department, dated 18.10.1993 and G.O.Ms.No.124, dated 10.06.2003 and G.O.Ms.No.354, dated 23.10.2009, the First Respondent is entitled for promotion and



rightly eligible to be appointed to the post of Director of Medical Education from the date of retirement of Dr.Geethalakshmi i.e. on 31.01.2015.

(10).Weighing the Pros and Cons:-

10.1.At the out set, this Court, points out that G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, speaks of 'Public Service Preparation of Panel for appointment by promotion/by recruitment by transfer' and in this regard, the Government had issued detailed instructions. Furthermore, paragraph No.2 (viii) (1) of the aforesaid G.O.(Ms) No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, under the head 'Filling up of posts of Heads of Department', reads as under:-

"To fill up a single vacancy in respect of Head of Department, the claims of the first 5 qualified candidates in the seniority list should be considered and a panel of atleast two names should be got approved in order to meet any contingency. According to the orders issued in the Government Order fifth read above, to be eligible for promotion as Head of Department, an Officer should have not less than one year's service left before retirement. Those who do not have such a minimum period of left over service but are otherwise found to be fully qualified, and are fit for promotion as Head of Department and deserve recognition on the crucial date of preparation of panel, should be compensated by appointing them as officers on Special duty with a specific assignment and with the same scale of pay as that of the Head of Department."

10.2.Besides the above, the afore stated G.O.(Ms)No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, at paragraph No.2(vii)(2) specifies as follows:-

"Proposals to fill up the posts of Heads of Department (non-IAS) will have to be initiated by the Secretaries to Government themselves 3 months in advance of the prospective date of retirement of the existing incumbent, as all the relevant particulars would be available in the Secretariat. If the initiative to send proposals is left with the Heads of Department themselves there are found to be delays caused by subjective considerations. Such promotion proposals will have to be suitably monitored by the Secretaries to Government themselves so that orders are issued before the retirement of the existing incumbent and the cases of those who have a minimum service of one year from the date of retirement of the previous incumbent are not omitted because of administrative delay."

<https://hcservices.courts.gov.in/services> 10.3.The Appellants in W.A.(MD)No.1300 of 2017/Respondent Nos.2 and 3 in W.A.(MD)No.1301 of 2017 have taken a stand before this Court that a 'Civil Medical List' number in regard to the



appointment of 'Director of Medical Education', has no relevance to the post of 'Director of Medical Education', as per the Service Rules. It is also the case of the Appellants (W.A.(MD)No.1300 of 2017/Respondent Nos.2 and 3 in W.A.(MD)No.1301 of 2017) that the 'Civil Medical List' number has no role for the promotions beyond Associate Professor, as per the ingredients of paragraph No.2(vii) of the aforesaid Government Order and in fact, G.O.(Ms).No.245, Health and Family Welfare (A2) Department, dated 30.10.2013, at paragraph No.4, under the caption 'Director of Medical Education side', and paragraph Nos.5 to 9, enjoins as under:-

"4)DIRECTOR OF MEDICAL EDUCATION SIDE:

i. In Director of Medical Education side, posts sanctioned in G.O.Ms.No.684, Health and Family Welfare Department, dated 18.12.1998 and thereafter from time to time will continue to exist for future promotions as per the norms of Medical Council of India.

ii. The posts of Professors will be created in Pay Band-IV (Rs.37400 - 67000/- + Grade Pay Rs.8700) in all departments and colleges as per the norms of Medical Council of India.

iii. The eligibility for promotion will be as per the norms of Medical Council of India. However, the promotion will be subject to availability of vacancies based on the sanctioned posts. Since some of them might be eligible for promotion as per the norms of Medical Council of India, which may be earlier than the State Government's proposed time bound promotion, their earlier promotion, will be subject to availability of vacancies, fulfilling the qualifications as per the norms of Medical Council of India / rules governing the post and empanelment for such posts. However, it is made very clear that automatic promotions will not be given to Medical Officers, based on the norms of Medical Council of India. For those who have got into Pay Band-IV much earlier than the promotion, their promotion will be protected subject to availability of sanctioned posts.

5)Designation and scales in Director of Medical Education side will be same as in Director of Medical and Rural Health Services side. Additional designation as Assistant Professor / Senior Assistant Professor / Associate Professor / Professor would be depending on Medical Council of India norms.

6)Promotion will not be given during pending disciplinary proceedings or during currency of punishment as per the existing Disciplinary Proceedings rule. The Medical Officer will be considered from the next day after completion of the currency of punishment.

7)The relinquishment of right for promotion will be given to the Medical Officer, till the Medical Officer completes 3 years and will get his due benefit from the next day.



8) After getting the promotion, the right to relinquish is still be available, but it will be restricted to administrative post only.

9) The CML seniority will be taken into account as and when preparing the panel for the post of Senior Assistant Surgeon / Civil Surgeon / Senior Civil Surgeon / Chief Civil Surgeon in the Director of Medical and Rural Health Services side and Associate Professor / Professor in the Director of Medical Education side."

10.4. The Appellants (W.A.(MD)No.1300 of 2017/Respondent Nos.2 and 3 in W.A.(MD)No.1301 of 2017) refers to Rule 3-Recruitment-(a)-Appointment to the various classes shall be made as follows, which specific reference to Rule 3(a)(3) of the Tamil Nadu Medical Service Special Rules Section 21 Part I, which runs as under:-

"(1). ...

(2). ...

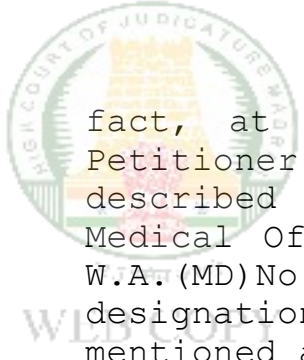
(3). Director of Medical Education,

Promotion from among the officers holding the posts of Deans of Medical Colleges, Director, King Institute, Guindy and Directors of Upgraded Institutes:

Provided that if no qualified and suitable officer is available for promotion from among the above categories, by promotion from among Civil Surgeons holding the posts of clinical Professors/ Associate Professors and Non-Clinical Professors / Associate Professors."

10.5. The Appellants (W.A.(MD)No.1300 of 2017/Respondent Nos.2 and 3 in W.A.(MD)No.1301 of 2017) points out that as on the crucial date for consideration, i.e. on 15th March of the year, in terms of Rule 8 under the caption 'Special Qualifications' (e) of the Tamil Nadu Medical Service Special Rules, the First Respondent/Writ Petitioner is not eligible for promotion to the post of Director of Medical Education, due to less than one year left over service. Also, the Appellants (W.A.(MD)No.1300 of 2017/Respondent Nos.2 and 3 in W.A.(MD)No.1301 of 2017) case is that the Appellant in W.A.(MD)No.1301 of 2017 was appointed as Dean in the year 2010 itself, but the First Respondent/Writ Petitioner was appointed as Dean only in the year 2013.

10.6. It is seen from the communication of the then Director of Medical Education (R.Vimala), Chennai-10, in the Reference No.83241/E1(1)2015, dated 30.12.2015, addressed to the Secretary to Government, Health and Family Welfare Department, Chennai-9, wherein the service particulars and proforma 1 and 2 particulars were enclosed showing the list of Medical Officers for drawing a panel from among the Deans for the post of 'Director of Medical Education' in respect of the panel year, 2015-2016. In the said list of Medical Officers, at Serial No.18, the present designation of Dr.Vimala.R was mentioned as Dean and the Institution was described as 'Madras Medical College, Chennai'. In



fact, at Serial No.21, the name of the First Respondent/Writ Petitioner (Dr.Revwathy) was shown and her designation was described as Dean-cum-Special Officer. In the Seniority List of Medical Officers, at Serial No.38, the name of the Appellant in W.A.(MD)No.1301 of 2017 (Dr.Edwin Joe.A) was found and his present designation was mentioned as Dean and the Institution's name was mentioned as Coimbatore Medical College, Coimbatore.

10.7.In this regard, it is to be pointed out by this Court that it is the stand of the First Respondent/Writ Petitioner that the Seniority list of Medical Officers' is arrived at as per 'Civil Medical List' only as per G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009. In this connection, this Court, significantly points out that in the G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, under the caption 'II.Director of Medical Education Side', it is mentioned as under:-

"II. Director of Medical Education side:-

(i) The Medical Officers working in the Medical College Hospitals, Institutions and dispensaries under the control of Directorate of Medical Education shall come under the Director of Medical Education unit.

(ii) The Director of Medical Education will maintain the seniority list of the doctors in this unit and will effect the promotions.

(iii) The Director of Medical Education unit's seniority list will be of two categories (1).General seniority- for all those doctors with MBBS and diploma degree. (2).Specialist seniority- Speciality wise seniority for those with master degree and or super speciality degree.

(iv) Both the general seniority and speciality seniority will be based on their seniority in Civil Medical List. After getting the seniority in their speciality, their future promotions would be based on the speciality specific seniority and they would not have further lien on their seniority in Civil Medical List for the purpose of promotion. However seniority in Civil Medical List would be relevant only for the limited purpose of fixing inter-se seniority relative to those joining their speciality in the Director of Medical Education side. No equivalent promotion can be claimed by any specialist based on inter-se Civil Medical List seniority on account of doctors in some other speciality. Civil Medical List seniority would after that be relevant only to fix the seniority in the speciality specific seniority list, and after that, it is that seniority list which would operate as illustrated in the annexure to this order.

<https://hcservices.ecourts.gov.in/hcservices/> higher level posts and posts in common pool, the Civil Medical List seniority will be the basis for promotion.



(vi) Entry into Director of Medical Education side against particular vacancy in any speciality should strictly be on the basis of Civil Medical List seniority, provided the person is eligible otherwise.

(vii) Once a person joins any speciality under Director of Medical Education, his inter-se seniority in the speciality would depend on the person's seniority in the Civil Medical List. The Civil Medical List would continue to decide the speciality specific seniority, till the Associate Professor level. However, any person getting promoted under any speciality would not entitle other persons in other specialities to be promoted similarly, if they are senior in the Civil Medical List to such a person. Similarly, any person in any speciality would not be entitled to get a promotion, based on a junior in the same speciality having got such a promotion in the Director of Medical and Rural Health Services, Director of Medical and Rural Health Services, (ESI) and Director of Public Health and Preventive Medicine side.

(viii) A new grade viz., 'Senior Assistant Professor' equivalent to Civil Surgeon (CS) shall be created and a Medical Officer should have spent at least three years as Assistant Professor to become a Senior Assistant Professor.

(ix) The combined grade of Associate Professor / Professor is split into two, namely, Associate Professor and Professor corresponding to Senior Civil Surgeon and Chief Civil Surgeon on Director of Medical and Rural Health Services, Director of Public Health and Preventive Medicine side, respectively. Thus, Assistant Professor, Senior Assistant Professor, Associate Professor and Professor would be in the Pay band and Grade Pays laid down in the G.O.(Ms). No. 234 Finance (Pay Cell) Department. Dated 1.06.2009, corresponding to the pre-revised scales of Rs. 9100/-, Rs.10000/-, Rs. 12000/- and Rs.14300/- respectively."

10.8. It comes to be known that when Dr. Geethalakshmi retired on 31.10.2016, Dr. R. Vimala, the then Director of Medical Education, had a left over service of nine months (31.10.2016) and the First Respondent/Writ Petitioner, who was the next senior in Civil Medical List to Dr. R. Vimala, had two years one month left over service as on 31.01.2016. Indeed, as per G.O.(MD)No.446, Health and Family Welfare (A1) Department, dated 18.03.2016, the Government based on the estimate of vacancies, approved by it in G.O.(D)No.1605, Health and Family Welfare (A1) Department, dated 14.12.2015, had approved a regular panel consisting the name of Dr. R. Vimala (Medical Officer), by relaxing Rule 8(b)(iv) of the Special Rules for Tamil Nadu Medical Services in favour of an individual. It is to be borne in mind that when Dr. R. Vimala, retired on 31.10.2016, the First Respondent/Writ Petitioner had one year and four months left over service and she is to retire on 28.02.2018.



10.9. According to the First Respondent/Writ Petitioner, the G.O.(D)No.1210, dated 07.09.2016, which estimated the vacancy for the post of 'Director of Medical Education' assigning on 31.10.2016, as one mentioned in G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, the fact of the matter is that notwithstanding the fact that vacancy was estimated, no panel was prepared from 31.10.2016 to 25.04.2017 and even on the date of estimated vacancy, the First Respondent/Writ Petitioner had a left over service of more than one year.

10.10. At this juncture, this Court, worth recalls and recollects the Division Bench Judgement of this Court, dated 09.11.2016, in W.A.(MD)No.1304 of 2016 filed by the First Respondent/Writ Petitioner (As an Appellant), wherein at paragraph Nos.25 to 27, it is observed as under:-

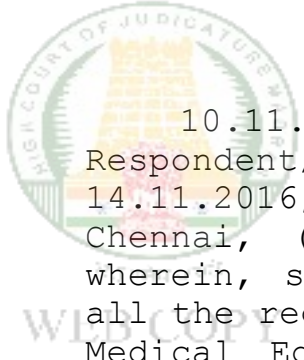
"25. The First Respondent has also put up a Note to the Secretary to the Government, Health and Family Welfare Department, in C.No.51354/A1/2015, for relaxation of the relevant Rules in favour of the third Respondent as she does not have a minimum period of left over service before her retirement. The Secretary to the Government has noted/expressed his opinion, which reads as follows:

"Already Dr.Vimala is the senior most. More importantly, in view of merit, Dr.Vimala may be considered."

and as already pointed out, the impugned orders relaxing the Rule 8(b)(iv) of the Special Rules for Tamil Nadu Medical Service and appointing her as the Director of Medical Education came to be passed on 18.03.2016 by two separate Government Orders.

26. This Court after carefully scanning through the above records and on a careful analysis of the materials available on record, is of the considered opinion that while appointing the third Respondent, the Sub-clause (a) to Clause 4 in Part II of Section 21 of the Tamil Nadu Medical Service has not been complied with. However, it is brought to the knowledge of this Court that the third Respondent retired from service on 31.10.2016 and therefore, the subject matter of challenge no longer survives.

27. Since the post of the Director of Medical Education has fallen vacant, the First Respondent is under a statutory obligation to draw a panel for the appointment to the post of the Director of Medical Education and consider the short listed candidates, strictly in accordance with the Sub-clause (a) to Clause 4 in Part II of Section 21 of the Tamil Nadu Medical Service. We hope and trust that such exercise is to be done in a fair and transparent manner and



10.11. In the instant case, it transpires that the First Respondent/Writ Petitioner had addressed a communication dated 14.11.2016, to the Principal Secretary-Health and Family Welfare, Chennai, (Through the Director of Medical Education, Chennai), wherein, she had stated that she is the senior most Dean having all the required qualifications to fill up the post of Director of Medical Education, which is vacant now etc. In fact, she had mentioned in the said representation that she must be posted as 'Director of Medical Education' and also she mentioned that 'she had 29 years of unblemished service'. Also, she had mentioned that she joined in the Tamil Nadu Medical Service in the year 1987 (1984 TNPSC selection) and her Civil Medical List number is 4018 (2005).

10.12. The First Respondent/Writ Petitioner submitted another representation, dated 25.12.2016, addressed to the Chief Secretary, Government of Tamil Nadu, Chennai (Through proper channel), wherein she had referred to the earlier representation, dated 14.11.2016, addressed to the Health Secretary to the Tamil Nadu Government. In reality, the First Respondent/Writ Petitioner had averred in her afore stated second representation, dated 25.12.2016, to the effect that she was promoted as Dean in March 2013 and worked in 'Kanyakumari, Coimbatore and Madurai Medical Colleges as 'Dean' and now working as Dean, Karur Medical College, Karur'.

10.13. The First Respondent/Writ Petitioner gave a third representation, dated 25.12.2016 addressed to the Principal Secretary-Health and Family Welfare, Chennai (Through the Director of Medical Education, Chennai), wherein she had made a request that 'she must be posted as Director of Medical Education'. The First Respondent/Writ Petitioner had addressed a communication, dated 13.02.2017, addressed to the Chief Secretary, Government of Tamil Nadu, Chennai, wherein she had mentioned about her earlier representations, dated 14.11.2016, 25.12.2016, and 07.02.2017 and also stated that she is the eligible senior most and meritorious candidate and requested to consider her representation, apart from seeking personal interview, wherein she may be allowed to present the facts.

10.14. The First Respondent/Writ Petitioner had addressed a letter in reference No.499/E/17, dated 20.02.2017 (Through the Director of Medical Education, Chennai) addressed to the Principal Secretary, Health and Family Welfare, Government of Tamil Nadu, Chennai, whereby and where under, she had categorically mentioned that she had made four representations i.e. on 14.11.2016, 25.12.2016, 07.02.2017 and 13.02.2017 and also stated that as there was no positive response, she was subjected to much physical



10.15. It is not out of place for this Court to make a pertinent mention that Rule 4(a) to (c) of Part II of Section 21 of Tamil Nadu Medical Service Special Rules, speaks of 'promotion' and the same runs as under:-

"4.Promotion - (a) Promotion to the following posts shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal:

Director of Medical and Rural Health Services.

Director of Family Welfare.

Director of Medical Education.

Civil Surgeons in hospitals or in Stations; Personal Assistant to the Director of Medical and Rural Health services, Medical Officer to the Chennai City Police, Director of King Institute, Guindy and Deputy Directors, King Institute, Guindy.

Principal, School of Indigenous Medicine.

Clinical and Non-Clinical Associate Professors.

Woman State Family Planning Officer.

State leprosy Officer.

Assistant State Drugs Controller.

Senior Drugs Inspector.

State Tuberculosis Officer.

Deputy Assistant Director, King Institute, Guindy.

Civil Surgeon Specialists.

Joint Directors of Medical and Rural Health Services and Joint Director of Services.

Superintendent, Government Tuberculosis Hospital, Nagercoil.

Additional Director of Medical and Rural Health Services (Family Welfare).

(b) Members of the service holding posts, substantively or in an officiating capacity, in the category of Non-Clinical Lecturers, Tutor/ Assistant Professors (including officiating Non-clinical Professors) or Clinical Lecturers, Senior Residents / Assistant Professors (including officiating clinical Professors) or Assistant Surgeons in the King Institute, Guindy or Assistant Surgeons holding posts in Specialist Departments in which it is considered necessary to retain them in the interests of continuity and of the public may be promoted a supernumerary Civil Surgeons and for that purpose the posts which they hold in the said categories shall be raised to the status of supernumerary Civil Surgeons in Category 1 of Class 1 either permanently or temporarily. The Government may decide, from time to time, the period or periods for which the posts should be raised to the status of supernumerary Civil Surgeons. So

<https://hcservices.mca.gov.in/hcservices> members hold the said supernumerary posts of Civil Surgeons, the cadre of Category 1 of Class 1 shall be deemed to have been increased and the cadre of the category



of Non-Clinical Lecturers, Tutors / Assistant Professors, Clinical Lecturers or Clinical Tutors or Assistants or Assistant Surgeons in the King Institute, Guindy or Assistant Surgeons in the General Line shall be deemed to have been reduced by the number of posts of supernumerary Civil Surgeons so held.

(c) Notwithstanding anything contained in rule 12, if a Medical Officer, who is senior to another Medical Officer in the cadre of Assistant Surgeons possesses the post-graduate qualification prescribed for the post of Associate Professor (either Clinical or Non-Clinical) in a particular speciality, but does not possess the teaching experience for the period prescribed in that speciality anywhere, the Junior Medical Officer possesses both the Post-Graduate qualification and the prescribed teaching experience in the speciality, the Junior may be appointed temporarily in any future of existing vacancy in that speciality, and continued till the senior acquires the prescribed teaching experience. On acquiring such teaching experience, the senior Medical Officer shall, subject to sub-rule (a), be appointed as Reader in the place of the junior or in any other existing vacancy and for purposes of seniority in the cadre of Associate Professor, the Senior Medical Officer shall be the senior.

Explanation - For the removal of doubts, it is hereby declared that the rule shall apply to all Medical Officers who may be on deputation for training or higher service in India or abroad or who have been posted in corporate institutions:

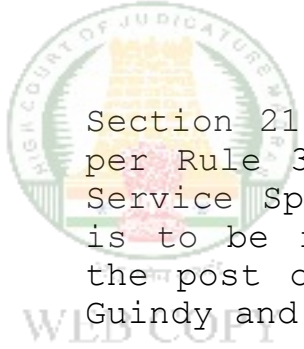
Provided that a Junior Medical Officer in the cadre of Assistant Surgeons shall be the senior in the category of Reader in the particular speciality as against the senior Medical Officer, if at the time of promotions of the junior Medical Officer as Reader, the senior Medical Officer does not possess the post-graduate qualification.

Explanation - A Person shall be deemed to have acquired the post-graduate qualification in a speciality on the next date of last examination (which may include oral, written or practical examination"

10.16. It is to be noted that the Second Respondent (In W.A. (MD) No.1300 of 2017) was appointed as Dean on 18.03.2013, but the First Respondent/Writ Petitioner was appointed as Dean on 21.03.2013. Therefore, the Second Respondent claims that he is senior to the First Respondent/Writ Petitioner in the panel seniority, in the post of Dean to be considered for promotion to the post of Director of Medical Education following the panel seniority.

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

10.17. There is no two opinion of a prime fact that the post of 'Director of Medical Education' comes under Rule 3(a) (3) of



Section 21 Part I of Tamil Nadu Medical Service Special Rules. As per Rule 3(a)(3) of Part I Section 21 of the Tamil Nadu Medical Service Special Rules, the post of Director of Medical Education is to be filled up by promotion from among the officers holding the post of Deans of Medical Colleges, Director, King Institute, Guindy and Directors of Upgraded Institutes etc.

10.18. In terms of Rule 4 of Section 21 Part I of Special Rules for Tamil Nadu Medical Service under the head 'Promotion', the promotion to the post of Director of Medical Education shall be made on the basis of merit and ability, seniority being considered only when merit and ability are approximately equal. Rule 8-'Special Qualifications' of Section 21 Part I of Tamil Nadu Medical Service Special Rules, specifies qualifications for the post of Director of Medical Education, which enjoins educational qualifications and service qualifications, which includes administrative experience for not less than two years period in one or more of the posts mentioned therein, out of which, one year must be as a Dean of Medical College.

10.19. Rule 12 (a) to (d) of Section 21 Part I of Tamil Nadu Medical Service Special Rules, deals with 'Seniority and Appointment as full member in the cadre of Civil Surgeon' and the same runs as follows:-

"12. Seniority and appointment as full member in the cadre of Civil Surgeons - (A) Notwithstanding anything contained in General rule 35, the seniority of Civil Surgeons shall be determined with reference to their rank in the cadre of Assistant Surgeons. However, appointment as a full member of the service in the following posts borne on the cadre of Civil Surgeons shall be made with reference to the date of first regular appointment or promotion to the particular category.

Director, Tuberculosis Institute and Tuberculosis Clinics and Professor of Tuberculosis, Medical College, Chennai.

Director, King Institute, Guindy.

Deputy Director, King Institute, Guindy.

Non-Clinical Associate Professors.

Clinical Associate Professors.

The Deans of the Medical Colleges.

The Directors of Upgraded Institutes.

State Leprosy Officer.

State Tuberculosis Officer

Joint Director of Medical and Rural Health Services and Joint Director of Health Services.

Additional Director of Medical and Rural Health Services (Family Welfare).

(b) In case a member of the service referred to in sub-rule (b) of rule 4 is promoted as a Supernumerary in an officiating Capacity, he shall, on the expiry of the period for which he was so promoted, revert to the category from which he was promoted.



(c) No person shall be eligible for appointment as a full member of the service in any of the posts of Supernumerary Civil Surgeons referred to in sub-rule (b) of rule 4 unless his turn for such appointment arises in accordance with his rank in the cadre of Assistant Surgeons.

(d) In case any Director of the Upgraded Institute, who does not attain the age of 55 years before expiry of his existing term, he shall be confirmed only when he is granted extension of service in the post of Director up to the age of 55 years, or beyond. Such confirmation shall be with retrospective effect."

10.20. In regard to the aspect of 'Civil Medical List Seniority' is concerned, a clarificatory Government Order in G.O.Ms.No.245, Health and Family Welfare (A2) Department, dated 30.10.2013, was issued by the State Government in respect of Tamil Nadu Medical Service and Rule 4 (a) of the said clarificatory Government Order, in a crystalline fashion, points out that the Civil Medical List Seniority will be taken into account, as and when preparing the panel for the post of Senior Assistant Surgeon/Civil Surgeon/Senior Civil Surgeon/Chief Civil Surgeon, in the Director of Medical and Rural Health Services side and Associate Professor/Professor in the Director of Medical Education side and as such, one cannot press into service the ingredients of G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, in the considered opinion of this Court. Moreover, even as per Clause 7 of G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, the Civil Medical List number has no sanctity beyond the post of 'Associate Professor Level'.

10.21. It is to be pointed out that the term 'Seniority' in simple English means a longer life than of another thing or person taken for comparison. Insofar as the Government servant is concerned, it means 'the length of service', if the service of an individual is longer than that of another person, the first named is called 'Senior to the other'. An employee must belong to the same stream before he can claim seniority vis-a-vis.

10.22. It is to be remembered that 'Seniority' is a comparative concept between 'Employees', who are equally circumstanced. The question of 'Seniority' is to be determined with reference to the Rules in force on the date of appointment to the service, as per decision of the Hon'ble Supreme Court in UNION OF INDIA v. S.S.UPPAL reported in 1996 (2) SCC 168.

10.23. At this stage, this Court, cites the decision of the Hon'ble Supreme Court in H.V.PARDASANI v. U*SION OF INDIA, reported in AIR 1995 SC 781, wherein it is observed that there is no dispute that in the absence of any special provisions, regulating the determination of seniority, length of continuous



service in any particular grade would be the basis for determining seniority in that grade etc.

10.24. In determining 'Inter se' seniority, of employees, the length of actual service rendered in the same cadre or grade would be generally accepted criterion. Furthermore, 'Seniority' can be a determinative factor in consideration for promotion and it becomes an integral part of Art.16(1) of the Constitution of India.

10.25. It cannot be forgotten that in the decision of Hon'ble Supreme Court in RAJBIR SINGH v. STATE OF HARYANA reported in 'JUDGMENT TODAY' 1996 (1) SC 222, wherein it is observed that 'Persons who might be affected must be made a party'. Continuing further, it is to be pointed out that 'Gradation List' has to be prepared in accordance with the 'Principles of Seniority' laid down either statutory or by instructions or Rules and normally, the validity of such a list is required to be judged with reference to such 'Principles of Seniority' as per decision of Hon'ble Supreme Court in UNION OF INDIA v. H.R.PATANKAR reported in AIR 1984 SC 1587.

10.26. Apart from the above, it is to be pointed out that prior to the publication of 'Gradation List', certain formalities are required to be adhered. In this regard, 'Draft Gradation List' is to be prepared and then circulated to the concerned employees, so as to invite representations/objections from them. Thereafter, the concerned authority is to consider the objections raised by the aggrieved individuals, ultimately, the approved 'Gradation List' is to be published. Ordinarily, no reliance can be placed on a 'Gradation List', unless it is circulated for the purpose of inviting objections from the affected persons and this springs from the 'Principles of Natural Justice'.

10.27. In fact, 'Redrawing of a Seniority' or 'Gradation List', without any reason was held to be an ordinary one, as per decision of the Hon'ble Supreme Court in SUSHMA MUTREJA v. UNION OF INDIA reported in AIR 2001 SC 2452.

10.28. One cannot brush aside a pivotal fact that 'Assigning of Seniority' arises only in relation to employees, who are similarly placed i.e. where they are functioning in the same rank, grade or cadre, beyond doubt, 'Seniority' is a comparative or a relevant concept, in the earnest opinion of this Court. Even in case of 'Selection Post', the 'Seniority' in the 'Feeder Grade', from which, the selection is to be made, can be an important factor, because employees of a given seniority are treated in the zone of consideration while granting promotion to the selection posts, as per decision of Hon'ble Supreme Court in D.D.SHARMA (2001) 1 SCC 100 reported in 1993 (1) SLR 584 (Delhi).

<https://hccs.ecourts.gov.in/ncs/ncs/>

10.29. No wonder, the purpose of assigning seniority is to enable the filling up of promotional posts. Although, under many



statutory Rules or administrative instructions, 'Seniority' is not a prime factor, in granting promotion, e.g. when the Rules speak of Seniority-cum-Merit or Merit-cum-Seniority, yet it is hard to find rules or instructions, which completely ignore seniority in relation to 'Promotion'.

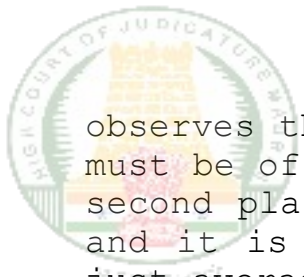
10.30. It is to be pointed out that an 'Executive Order' is to be passed in conformity with the 'Rules'. In fact, the State Government's power to issue Executive instructions is limited to filling up of the gaps or reaching the area, which otherwise is not covered by the existing Rules. The Executive power of the State, if it does not violate the Provision(s) of the Constitution of India or any Law, it cannot be circumscribed.

10.31. As a matter of fact, 'Duty to act Judicially' will arise from the very nature of function intended to be performed. If there is power to decide and determine to the prejudice of an individual, 'Duty to act Judicially' is very much implicit in exercise of such power. Furthermore, the 'Power of Judicial Review' is exercised to ensure that a person receives a fair treatment and not to ensure that the conclusion with the authority reaches is necessarily correct, in the eye of the Court.

10.32. It may be out of place for this Court to make a significant mention that as per G.O.(Ms)No.99, Personnel and Administrative Reforms (A) Department, dated 21.09.2015, the grievance petition should be redressed within a maximum period of one month of its receipt and it should be with a 'Speaking Order' in the event of a redressal or rejection, if found necessary. Besides this, in the afore stated Government Order, there is a reference to W.P.No.20527 of 2014, dated 01.08.2014, wherein a direction was issued to issue the Government Order directing all the concerned authorities to redress the grievance petition within a maximum period of 30 days from the receipt of grievance petition with a 'Speaking Order', in case for some reason, additional time is required, the person who has made the representation would be informed in writing for the extended period of time.

10.33. It is to be pointed out that a power of relaxation cannot be utilised to give general exemption for compliance with regulations regardless of Justice and Equity to make unqualified persons eligible for promotion, as per decision in LAKSHMAN v. ANDHRA PRADESH STATE ELECTRICITY BOARD reported in 1998 LAB IC 927 (AP). The power of relaxation to be exercised in public interest in a given case and there cannot be any whole sale relaxation, as per decision of Hon'ble Supreme Court in P.SADAGOPAN v. FOOD CORPORATION OF INDIA reported in AIR 1997 SC 2700.

<https://hcservices.courts.gov.in/hcservices> 10.34. In fact, in the decision of Hon'ble Supreme Court in JANKI PRASAD PARIMOO v. STATE OF JAMMU AND KASHMIR reported in AIR 1973 SC 930, the Constitutional Bench of the Hon'ble Supreme Court



observes that 'Selection means that the man selected for promotion must be of merit. Where promotion is by seniority, merit takes the second place, but when it is a selection, merit takes first place and it is implicit in such a selection that the man must not be just average'.

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10.35. It is well known that promotion to a 'Selection Post' is not a matter of right, which can be claimed merely by seniority, ordinarily in considering the question of a public servant's claim for promotion to a Selection Post, his seniority and merit will have to be considered. Where the criterion is 'Merit-cum-Suitability' and after consideration and evaluation merit and suitability of a junior are found to be superior, it was held that 'Seniority' has no role to play, as per decision of the Hon'ble Supreme Court in *Sarat Kumar Dash & Ors v. Biswajit Patnaik & Ors* reported in 1995 SCC, Supl. (1) 434.

10.36. In the decision of Hon'ble Supreme Court in *NIRANJAN PRASAD SINHA v. UNION OF INDIA*, reported in AIR 2001 SC 2269, it is held that 'Seniority among persons holding similar posts in the same cadre has to be determined on the basis of length of service, and not other fortuitous circumstance'.

10.37. At this stage, this Court, pertinently points out that 'if there is any omission to adhere to the procedure for making promotion, then the promotion granted is liable to be cancelled, as per decision in *KAMESHWAR PRASAD v. STATE OF BIHAR*, reported in 1995 (6) SCC 44.

10.38. A mere glance of the impugned common order of the Learned Single Judge dated 20.09.2017, in W.P.(MD)No.3523 of 2017 and W.P.(MD)No.10257 of 2017, wherein at paragraph No.17, it is observed as under:-

"This Court, prima facie, is of the view that the directions issued by the Honourable Division Bench in the aforesaid judgment have not at all been adhered to by the First Respondent strictly in accordance with law, as the First Respondent has given a go-by to the same while considering the third Respondent for the promotion to the post of the Director of Medical Education."

10.39. Also, in the aforesaid impugned common order in W.P. (MD)Nos.3523 and 10257 of 2017, dated 20.09.2017, at paragraph No.20, it is mentioned as follows:-

"Further, this Court holds that the First Respondent while considering the name of the third Respondent for the promotion to the post of the Director of Medical Education, failed to record reasons much less plausible reasons as to the comparative merit and ability of the Medical Officers and also as to the seniority of the Medical Officers, when their merit and ability are



approximately equal, based on which, the third Respondent has been appointed to the said post. Moreover, as on the crucial date, the petitioner was having the left over service of more than one year and the administrative delay in preparing the panel cannot deprive the petitioner of her promotion to the post of the Director of Medical Education. Therefore, the impugned Government Orders require to be interfered with by this Court in exercise of the powers under Article 226 of the Constitution of India."

10.40. In fact, in the common order dated 20.09.2017, in W.P. (MD)Nos.3523 and 10257 of 2017 at paragraph No.12.5 and 14, it is observed as follows:-

"12.5. However, on perusal of the draft order in G.O. (D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, this Court finds that the words 'the merit and ability of the Medical Officers are equal', are deleted and the words 'Dr.A.Edwin Joe is the senior most Dean and senior of all promotional level. Further, he was the first to complete more than 10 years of teaching experience. Merit wise also he is the most meritorious among the candidates in the panel.' are inserted.

14. However, this Court finds that the above grounds on which, the third Respondent has been positively considered for the promotion to the post of the Director of Medical Education, are not in accordance with Sub-Clause (a) to Clause 4 in Part II of Section 21 of the Tamil Nadu Medical Service. Upon consideration of the relevant materials placed on record, this Court holds that the date on which a candidate was appointed as a Dean, has no relevance at all, while considering his/her name for the promotion to the post of the Director of Medical Education."

10.41. Insofar as the observation made in G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, to the effect that 'among five Medical Officers, disciplinary action has been initiated against Dr.A.L.Meenakshi Sundaram under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules', however, against charge memo, the above Medical Officer has filed W.P.No.42367 of 2016 before the High Court of Madras. In its interim order, dated 02.12.2017, the Hon'ble High Court of Madras had directed the Respondents to consider the name of Dr.A.L.Meenakshi Sundaram for promotion to the post of Director of Medical Education based on inclusion of the name in the panel, which has reference to the impugned charge memo, the Appellants' stand in W.A.(MD)No.1300 of 2017, is that the Government had considered the eligibility of the Second Respondent (Dr.A.L.Meenakshi Sundaram) without reference to the disciplinary action initiated against him and ultimately, the Appellant in W.A. (MD)No.1301 of 2017 (Dr.A.Edwon Joe), was found meritorious among



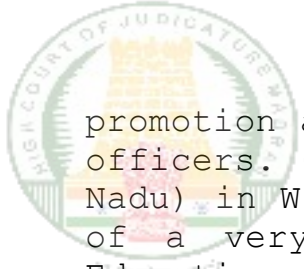
the candidates in the panel and as per seniority in the cadre of Dean as well as meritorious, he was appointed and posted as Director of Medical Education, as per G.O.(D)No.950, Health and Family Welfare (A1) Department, dated 25.04.2017.

10.42. In the instant case, the First Respondent/Writ Petitioner has taken a stand that the period of service as Dean by the Medical Officers was not taken as an eligible criteria and the seniority in the Civil Medical List is to be considered for promotion to the post of Director of Medical Education and Dr.S.Geethalakshmi, Senior in the Civil Medical List was appointed as Director of Medical Education, as per G.O.(D)No.123, Health and Family Welfare (A) Department, dated 31.01.2010 and not based on her joining date as Dean.

10.43. But the Second Respondent (In W.A.(MD)No.1300 of 2017), claims that he is senior to the First Respondent/Writ Petitioner in the panel seniority in the post of Dean to be considered for promotion to the post of Director of Medical Education following the panel seniority, besides he being a meritorious candidate even as per performance in Medical service. But the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwon Joe), takes a plea that as per Sub Rule 8(b) of Section 21 of the Tamil Nadu Medical Service Special Rules, Part I, under the caption 'Special Qualifications' to the post of Director of Medical Education, the administrative experience in the post of Dean is very much relevant and apart from that, eligibility of one year left over service prior to the date of retirement is must for the selection to the said post. Furthermore, it is the contention of the Appellant (In W.A.(MD) No.1301 of 2017) that the date of retirement of the First Respondent/Writ Petitioner is 28.02.2018 and thereby she is not having one year left over service as on the date of selection and appointment viz., on 25.04.2017.

10.44. In regard to the stand taken on behalf of the First Respondent/Writ Petitioner that a panel of atleast two names should be got approved as per G.O.(Ms.).No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, it is the plea of the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwin Joe), that 'two candidates' to be selected is only to meet the 'Contingency' and just because one candidate was selected, it is not an illegal one.

10.45. At this stage, this Court, relevantly points out that in terms of Sub clause (a) to clause 4 in Part II of Section 21 of the Tamil Nadu Medical Service Special Rules, promotion to the post of Director of Medical Education, shall be made on the grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. However, the First Appellant/First Respondent (The Government of Tamil Nadu) in W.A.(MD)No.1300 of 2017, took into consideration the date of

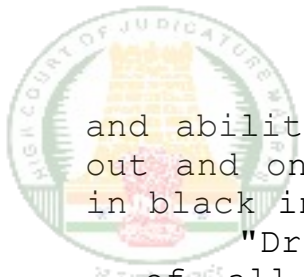


promotion as Dean for considering the seniority among the eligible officers. Obviously, the First Appellant (The Government of Tamil Nadu) in W.A.(MD)NO.1300 of 2017, had not taken into consideration of a very primordial fact that the then Director of Medical Education (Dr.S.Geethalakshmi) sent a panel for promotion to the post of Director of Medical Education to the Secretary to Government, Health and Family Welfare Department, mentioning the names of (1) Dr.R.Vimala - one year left over service not available. Officer on Special Duty (OSD) can be given; (2) Dr.S.Revathy - senior most Civil Medical List eligible; (3) Dr.AL.Meenakshi Sundaram - Eligible; and (4) Dr.Edwin Joe - Eligible. In fact, the then Director of Medical Education had clearly mentioned that the First Respondent/Writ Petitioner is the senior most in the Civil Medical List etc.

10.46. Admittedly, before the Learned Single Judge, in W.P. (MD)No.3523 of 2017 (filed by Dr.S.Revwathy as Writ Petitioner-First Respondent in W.A.(MD)No.1300 of 2017), the Second Respondent in W.A.(MD)No.1300 of 2017 (Dr.A.L.Meenakshi Sundaram) was not a party to the proceedings. Likewise, the said Dr.A.L.Meenakshi Sundaram was not arrayed as party to the proceedings in W.P.(MD)No.10257 of 2017.

10.47. In fact, the then Director of Medical Education, Kilpauk, Chennai in the communication addressed to the Principal Secretary to Government, Health and Family Welfare Department, Secretariat, Chennai, dated 27.09.2016, had mentioned in Serial No.1, the name of Dr.A.Edwin Joe, Coimbatore Medical College, Coimbatore (The Appellant in W.A.(MD)No.1301 of 2017), as Civil Medical List No.2005, as 4821 and stated that he was promoted as Dean in the panel year 2009-2010. As a matter of fact, the First Respondent/Writ Petitioner (Dr.S.Revwathy, Dean cum Special Officer-Karur Medical College, Karur) was shown as serial No.2005, as '4018' and mentioned the panel year, in which she was promoted as Dean as 20.12.2013. Indeed, the Second Respondent in W.A.(MD)No.1300 of 2017 (Dr.A.L.Meenakshi Sundaram, Dean, Thiruvarur Medical College, Thiruvarur) was mentioned as Civil Medical List-2005 '4220' and the panel year, in which, he was promoted was mentioned as 20.12.2013. In the annexure-I of the said communication, the date of joining as Dean in respect of the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwin Joe) was mentioned as 03.03.2010 and the First Respondent/Writ Petitioner (Dr.S.Revwathy) was mentioned as 21.03.2013 and the Second Respondent in W.A.(MD)No.1300 of 2017 viz., Dr.A.L.Meenakshi Sundaram was mentioned as 18.03.2013.

10.48. A perusal of the draft Order-1, in respect of G.O.(D) No.948, Health and Family Welfare (A1) Department, dated 25.06.2017, in the High Court, at page 579 of the file, shows that after the words, 'the Government have again examined merit and ability of the above five Medical Officers and found that the words 'merit



and ability of the Medical Officers are equal', had been scored out and on the left hand side of C.No.29643/A1/16, it is written in black ink as under:-

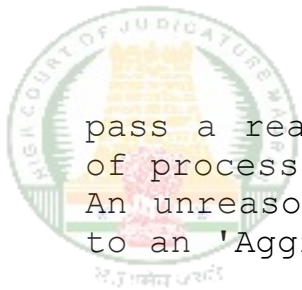
"Dr.A.Edwin Joe is the senior most Dean and senior of all promotional level. Further, he was first to complete more

10 years than / teaching experience. Merit wise also, he is the meritorious among the candidates in the panel."

10.49. Further, at page No.579, in C.No.29643/A1/16, this Court, on perusal, finds that after the words 'according to the seniority in the cadre of Dean, the words 'and as well as meritorious' (written in black ink), it is mentioned as Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) is the senior most medical officer among the five Medical Officers. Even though, the aforesaid scoring out of the words 'merit and ability of the Medical Officers are equal', do find a place in the draft order in G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, at page 579 of the file in C.No.29643/A1/16 and notwithstanding the fact that on the left hand side margin of the said file, the words beginning from Dr.A.Edwin Joe is the senior most Dean etc., as afore stated, were written in black ink, they are clearly an interpolation and significantly, even in the draft G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, no signature of the official who made that scoring of or writing of the words as afore stated, is seen and the absence of even the short initial or signature of the concerned person/official, who had made correction, as described above, clearly creates a simmering doubt in the mind of this Court and to put it succinctly, the scoring out of the words beginning from 'the merit and ability of the Medical Officers are equal' and the inserted writings made on the left hand side margin of the page No.579 in C.No.29643/A1/16, to say the least, does not inspire the confidence of this Court. Therefore, this Court, comes to an irresistible and inescapable conclusion that the words 'Dr.A.Edwin Joe is the senior most Dean and senior of all promotional level etc.' are clearly interpolated and the same cannot be brushed aside in a lighter fashion.

10.50. In view of the forgoing discussions and reasons, this Court, opines that the name of Dr.A.Edwin Joe (The Appellant in W.A.(MD)No.1301 of 2017) was positively recommended for promotion to the post of Director of Medical Education and the same is not legally tenable, in the considered opinion of this Court.

10.51. On the crucial date, the First Respondent/Writ Petitioner was having a left over service of more than one year and the administrative delay in preparing the panel cannot act as a detriment in denying the chances of her promotion to the post of Director of Medical Education. Apart from that, an authority must



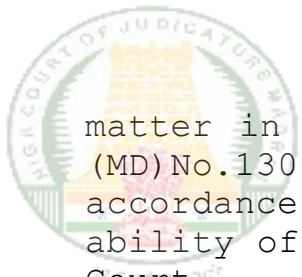
pass a reasoned order and definitely, there must be an out line of process of reasoning, which will have an appearance of justice. An unreasoned order may be a just, but may not appear to be so, to an 'Aggrieved Person'.

10.52. Insofar as the present case is concerned, Rule 4(a) of Part II of Section 21 of the Tamil Nadu Medical Service Special Rules, viz., 'the promotion to the post of Director of Medical Education shall be made on the ground of merit and ability, seniority being considered only where merit and ability are approximately equal' were not considered in proper real perspective by the First Appellant in W.A.(MD)No.1300 of 2017/First Respondent and in fact, the First Appellant/First Respondent had considered the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwin Joe) positively for promotion to the post of Director of Medical Education, which is not in accordance with the afore stated Rule 4(a) in Part II of Section 21 of the Tamil Nadu Medical Service Special Rules.

10.53. Furthermore, the impugned G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, does not spell out tangible reasons in a qualitative, quantitative and an objective fashion, in regard to the consideration of comparative merit and ability of the Medical Officers and also as to the seniority of Medical Officers, when their merit and ability are approximately equal. As a matter of fact, the impugned G.O.(D) No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, does not speak about the aspect of the First Respondent/Writ Petitioner having left over service of more than one year on the crucial date, viz., 15th March of the year, in which, the selection for appointment is made, as per Sub Rule 8(e) of Section 21 of the Tamil Nadu Medical Service Special Rules. Moreover, in regard to the filling up of post of Head of Department, to fill up a single vacancy in respect of Head of Department, the claims of the first five qualified candidates in the seniority list should be considered and a panel of atleast two names should be got approved in order to meet any contingency, as per G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993.

10.54. In the present case, the spirit and tenor of approving the panel of atleast two names in order to meet any contingency, as per requirement of G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, was not addressed to and merely the Appellant in W.A.(MD)No.1301 of 2017 (Dr.A.Edwin Joe) was selected, which is nothing but a procedural irregularity, which vitiates the selection.

10.55. Where the selection is not in accordance with Rule 4(a) of Section 21 of the Tamil Nadu Medical Service Special Rules, then, this Court is of the considered view that the entire subject



matter in issue is to be remitted back to the Appellants in W.A. (MD)No.1300 of 2017, for carrying out the selection de novo in accordance with service rules based on comparative merit and ability of the panelists in accordance with law, as opined by this Court.

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10.56. Turning now to the plea that a Court of Law cannot issue any positive direction of promotion being given to the concerned person, at this stage, this Court, relevantly points out the decision of the Hon'ble Supreme Court in STATE OF MYSORE VS C. R. SESHADRI & ORS reported in AIR 1974 SC 460, wherein it is observed that 'In our constitutional scheme, a broad three-fold division exists. The power to promote an officer belongs to the Executive and the judicial power may control or review government action, but cannot extend to acting, as if, it were the Executive. The Court may issue directions, but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials, but may demolish a bad order of Government or order reconsideration on correct principles.'

10.57. It is to be pointed out that the proper course for a Court of Law to adopt is to direct the authorities concerned that the case of an individual be considered afresh by the selection committee based on Rules and Regulations and in accordance with law. In short, in exercising its power of judicial review, the High Court cannot give direction to the authorities, in regard to the method for selection or promotion. To put it differently, if a promotion is denied wrongfully, then a Court of Law will not only direct re-consideration of the case, but may issue necessary directions.

10.58. It is not out of place for this Court to make a pertinent mention that even if a Court of Law or Tribunal comes to a conclusion that denial of promotion to a individual was unjustified, since it was passed on the basis of adverse remarks, which were vague or not sufficient, it is not competent to direct the authorities to grant promotion to the concerned employee, but can give directions for reconsideration of the case in accordance with law, as per the decision of the Hon'ble Supreme Court in STATE OF MADHYA PRADESH VS SRIKANT CHAPHEKAR reported in AIR 1993 SC (WEEKLY) 129. 11.Conclusion:-

Be that as it may, on a careful consideration of respective contentions and on an over all assessment of the surrounding facts and circumstances of the instant case, in a cumulative manner, this Court, comes to an irresistible conclusion that the G.O.(D) No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, had not weighed the pros and cons of comparative merit and when the First Respondent in W.A.(MD)Nos.1300 and 1301 of 2017/Writ Petitioner pleads that she is senior to the Second



Respondent in W.A.(MD)No.1300 of 2017 and the Appellant in W.P.(MD)No.1301 of 2017, the same was not reflected in a qualitative and quantitative terms in the aforesaid Government Order and besides that, when the Second Respondent in W.A.(MD)No.1300 of 2017 has come before this Court to take stand that he is the most meritorious candidate that can be borne out of records; when the Appellant in W.A.(MD)No.1301 of 2017, contends that his appointment is made on merit and ability, the seniority has no priority; further that the administrative experience in the post of Dean, is not relevant to the post of Director of Medical Education, which is contrary to Service Rule 12(8)(b)(iii); also that in the note file bearing C.No.29643/A1/16 at page 579, certain insertions made in black ink etc., do not inspire the confidence of this Court; when the Appellant in W.A.(MD)No.1301 of 2017, comes out with a plea that he is senior to the First Respondent in W.A.(MD)Nos.1300 and 1301 of 2017/Writ Petitioner; in short, when the Appellant in W.A.(MD)No.1301 of 2017, was mentioned by name, as the senior most Dean and senior of all promotional level in the note file in C.No.29643/A1/16 at page 579, as afore stated etc., by scoring out the words 'merit and ability of the Medical Officers are equal' and when the words 'meritorious also the Appellant in W.A.(MD)No.1301 of 2017 was mentioned as he is the senior most meritorious among the candidates in the panel' by way of interpolation/insertion, this Court, based on equity, fair play, justice and good conscience and even as a matter of prudence, sets aside the G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017 and the consequential G.O.(D)No.950, Health and Family Welfare (A1) Department, dated 25.04.2017, to prevent an aberration of justice and to promote substantial cause of justice. Further, this Court, directs the First Appellant in W.A.(MD)No.1300 of 2017/First Respondent, to re-consider the case of the First Respondent in W.A.(MD)Nos.1300 and 1301 of 2017/Writ Petitioner, the Second Respondent in W.A.(MD)No.1300 of 2017 and the Appellant in W.A.(MD)No.1301 of 2017 afresh for promotion to the post of Director of Medical Education, in a 'Fair', 'Free',

'Just', 'Impartial', 'Unbiased', 'Dispassionate manner' and that too with an open mind, and to pass necessary qualitative, quantitative and tangible reasons by evaluating the comparative merit, ability and seniority etc., ofcourse, in accordance with Law/Rules and Regulations, within a period of six weeks from the date of receipt of a copy of this Judgment. Insofar as the observation of the Learned Single Judge in issuing positive direction in W.P.(MD)No.10257 of 2017, dated 20.09.2017, to the First Respondent (i.e. The Government of Tamil Nadu, Rep. by its Principal Secretary, Health and Family Welfare Department - The Services Appeal in W.A.(MD)No.1300 of 2017) to grant promotion to the First Respondent/Writ Petitioner, as Director of Medical Education with all consequential benefits, as she is due to retire



in February, 2018, are held to be incorrect, in the eye of Law and accordingly, they are set aside to prevent an aberration of Justice.

12. With the aforesaid Direction(s) and Observation(s), these Writ Appeals stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To:

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
3. The Dean,
Government Tiruvarur Medical College and Hospital,
Tiruvarur.

+3cc to M/S.S.ALAGARSAMY, Advocate SR.No. 92551, 92162
+1cc to M/S.S.VENKATESAN, Advocate SR.No. 92312
+1cc to M/S.R.MURALI, Advocate SR.No. 92132
+1cc to Special Government Pleader, SR.No. 92660

Pre-Delivery Judgment made in
W.A.(MD) Nos.1300 and 1301 of 2017
and
C.M.P.(MD) Nos.9020 and 9021 of 2017
12.12.2017

RJ2

JM/SKN RSK/SAR /14.12.2017/50P/10C