



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DELIVERED ON : 20.09.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.3523 of 2017 and W.M.P(MD)Nos.6376, 6377 and 6638 of 2017

AND

W.P(MD)No.10257 of 2017 and W.M.P(MD)No.7848 of 2017

W.P(MD)No.3523 of 2017:

Dr.S.Revwathy

... Petitioner

Vs.

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.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the first respondent to promote the petitioner as the Director of Medical Education in the light of the judgment made in W.A(MD)No.1304 of 2016, dated 09.11.2016 based on the representations made by the petitioner, dated 04.03.2016, 31.03.2016, 14.11.2016, 25.11.2016 and 20.02.2017 forthwith.

For Petitioner

: Mr.S.Alagarsamy

For Respondents

: Mr.B.Pugalendhi,
Additional Advocate General
assisted by
Mr.N.S.Karthikeyan
Additional Government Pleader



W.P(MD)No.10257 of 2017:

Dr.S.Revwathy

... Petitioner

Vs.

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.Dr.A.Edwin Joe

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records of the first 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 and quash the same and consequently, direct the first respondent to promote and appoint the petitioner in the post of Director of Medical Education forthwith.

For Petitioner

: Mr.S.Alagarsamy

For Respondents

: Mr.B.Pugalendhi,

Additional Advocate General
assisted by

Mr.N.S.Karthikeyan

Additional Government Pleader for R.1 & R.2

Mr.AR.L.Sundaresan

Senior Counsel for

Mr.R.Murali for R.3

COMMON ORDER

W.P(MD)No.3523 of 2017 has been filed seeking a writ of Mandamus directing the first respondent to promote the petitioner as the Director of Medical Education in the light of the judgment made in W.A(MD)No.1304 of 2016, dated 09.11.2016 based on the representations made by the petitioner, dated 04.03.2016, 31.03.2016, 14.11.2016, 25.11.2016 and 20.02.2017 forthwith.

<https://hcservices.ecourts.gov.in/hcservices/> W.P(MD)No.10257 of 2017 has been filed seeking a writ of Certiorarified Mandamus to call for the records of the first 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 and quash the same and consequently, direct the first respondent to promote and appoint the petitioner in the post of Director of Medical Education forthwith.

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3. Since the issue involved in these writ petitions, is one and the same, both the writ petitions are taken up together for hearing and disposed of by this common order.

4. Facts-in-nutshell, necessary for the disposal of these writ petitions, are as follows:

4.1. The petitioner, after completing M.B.B.S., Degree, joined the Tamil Nadu Government Medical Service in 1987 and rendered service as a Medical Officer in the Government Primary Health Centre till 1988. Thereafter, she completed Doctor of Medicine (O.G) in the year 1988-1990 at Madurai Medical College and passed with University rank in 1990. She continued as a Medical Officer at Poolathur Primary Health Centre at Kodaikkanal, Dindigul District. Later, she worked under the Director of Medical and Rural Health Services at Ayakudi Government Hospital, Dindigul District, from June 1990 to December 1990. She also worked at Peripheral Hospital, Balarengapuram attached to Madurai Medical College from December 1990 to April 2002. After completion of Post Graduate Degree in Obstetrics and Gynecology, the petitioner served in all ranks in the Department of Obstetrics and Gynecology at different Medical Colleges from 1990 to 2013.

4.2. Thereafter, the petitioner worked as Assistant Professor from 1990 to 2009 and was promoted as an Associate Professor and as a Professor in Tirunelveli, Theni and Madurai Medical Colleges from 2009 to 2013 in the Department of Obstetrics and Gynecology. From March 2013 to November 2015, the petitioner worked at Kanyakumari, Coimbatore and Madurai Medical Colleges. Now, the petitioner is working as a Dean/Special Officer at Karur Medical College, Karur.

4.3. According to the petitioner, the post of Director of Medical Education fell vacant on 28.12.2015, when Dr.Geethalakshmi was deputed as Vice Chancellor of Dr.M.G.R.Medical University and the said Dr.Geethalakshmi handed over the charges to Dr.R.Vimala, Dean, Madras Medical College, who is also the In-charge of the Director of Medical Education.

4.4. A panel for filling up the post of Director of Medical Education was called for by Dr.Geethalakshmi, during her tenure as Director of Medical Education vide Ref.No.83241/E1/1/2015, dated 19.12.2015. As per the existing Special Rules, one of the qualifications prescribed for the post of Director of Medical Education is that he/she should have a minimum of one year left in service prior to his/her date of retirement. Further, the eligibility criteria of 2 years experience as Dean and seniority in Civil Medical List are being considered for the promotion to



the post of Director of Medical Education. According to the petitioner, she is fully qualified and eligible to be considered for the promotion to the said post. The petitioner is due to retire on 28.02.2018.

4.5. It is further stated that the Government, vide G.O.(D) No.123, Health and Family Welfare (A) Department, dated 31.01.2014, appointed some Doctors as Officers on Special Duty (OSD), on the ground that they did not have one year left over service, however, it is contended by the petitioner that without any valid reasons, the said Rule has been relaxed and Dr.R.Vimala has been appointed as Director of Medical Education, which, amounts to violation of Article 14 of the Constitution of India.

4.6. Aggrieved thereby, the petitioner filed a writ petition in W.P(MD)No.6790 of 2016 before this Court and the same was dismissed on 01.09.2016, holding that since Dr.R.Vimala was senior to the petitioner, the Rules can be relaxed. Challenging the same, the petitioner filed W.A(MD)No.1304 of 2016 before this Court. The Honourable Division Bench of this Court, by judgment, dated 09.11.2016, observed as follows:

"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 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 strictly in accordance with law."

4.7. Seeking to consider her name for the promotion to the post of Director of Medical Education, in terms of the directions issued by the Honourable Division Bench of this Court, the petitioner filed W.P(MD)No.3523 of 2017.

4.8. Pendency of the said writ petition, the Government approved the panel for the post of Director of Medical Education for the period 2016 - 2017, vide G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017 and promoted Dr.A.Edwin Joe, Dean, Government Coimbatore Medical College, as Director of



Medical Education. Challenging the appointment of Dr.A.Edwin Joe, the petitioner filed another writ petition in W.P(MD)No.10257 of 2017.

5. Mr.S.Alagarsamy, learned Counsel for the petitioner, while reiterating the averments made in the affidavits filed in support of the writ petitions, made the following submissions:

5.1. The petitioner, after successfully completing M.B.B.S., Degree, joined the Tamil Nadu Government Medical Service on 08.06.1987 and rendered her services as Medical Officer in the Government Primary Health Centre till 1991;

5.2. She did her Doctor of Medicine (M.D., Degree) in Obstetrics & Gynecology, in the year 1988-1990 at Madurai Medical College and passed with University Rank in the year 1990 and thereafter, continued as Medical Officer at Poolathur Primary Health Centre, Kodaikkanal, Dindigul District and from June 1990 to December 1990, she worked under the Director of Medical and Rural Health Services Side at Ayakudi Government Hospital, Dindigul District and from December 1990 to April 2002, she worked in Periperal Hospital, Palarengapuram;

5.3. According to the petitioner, she served in all ranks in the Department of Obstetrics & Gynecology at different Medical Colleges from 1992 to 2009 and as an Assistant Professor from 1992 to 2009 and got her promotion as Associate Professor and further as a Professor and worked in that capacity in Tirunelveli, Theni and Madurai Medical Colleges between 2009 and 2013;

5.4. She had put in honest, sincere, dedicated and blemishless service. In the year 2013, she was promoted as Dean and as on that date, she was working as Dean/Special Officer, Karur Medical College;

5.5. The petitioner would further state that Dr.S.Geethalakshmi, Director of Medical Education, was appointed as Vice Chancellor of Dr.M.G.R.Medical University and joined the said post on 28.12.2015 and it has fallen vacant and if she would have continued as Director of Medical Education, she should retire on 31.01.2016;

5.6. As the post of Director of Medical Education fell vacant, the third respondent was appointed as In-Charge of Director of Medical Education;

5.7. While Dr.S.Geethalakshmi was the Director of Medical Education, she had drawn the panel as per the existing Special Rules, which inter alia, prescribes, that a candidate eligible to be considered for appointment to the post of Director of Medical Education, shall have a minimum of one year left over service prior to his/her date of retirement and she has sent the panel to the Secretary to the Government, Health and Family Welfare Department, containing the following names:

<https://hcservices.tn.gov.in/hcservices/> - 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.

4. Dr. Edwin Joe - Eligible.

5.8. Thereafter, the petitioner made a representation to the first respondent that she fulfils the necessary criteria and therefore, prayed for her appointment as the Director of Medical Education, however, the first respondent has relaxed the qualification as to the minimum of one year left over service and relaxed Rule 8(b)(iv) of the Special Rules for Tamil Nadu Medical Service without assigning any reason and appointed Dr. R. Vimala as the Director of Medical Education vide G.O.(D)No.446, Health and Family Welfare (A1) Department, dated 18.03.2016;

5.9. It is alleged by the petitioner that in that process, the mandatory guidelines given in G.O.(Ms)No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, were given a go-by and Dr. R. Vimala, being the In-Charge of the Director of Medical Education herself played a prominent role by recommending her own name to the first respondent in the letter in Ref.No.83241/E1(1)/2015, dated 30.12.2015;

5.10. As per G.O.(Ms.)No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, the entry into Director of Medical Education side against particular vacancy in any speciality should strictly be on the basis of the Civil Medical List seniority, provided the person is eligible otherwise;

5.11. A reference has also been made to G.O.(Ms.)No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, to point out that '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.'

5.12. The petitioner raised a ground that Dr. R. Vimala has been shown undue favouritism and consideration and the relative merits and demerits of the candidates who have been short listed which included the petitioner, have not been appraised and considered. Hence, she filed W.P(MD)No.6790 of 2016, to quash the impugned Government Order with a consequential direction, to the first respondent to appoint her in the post of Director of Medical Education. But, the said writ petition was dismissed on 01.09.2016, against which, W.A(MD)No.1304 of 2016 was filed and the Honourable Division Bench of this Court, by judgment, dated 09.11.2016, held thus:

"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 have no doubt that such exercise is to be done in a fair and transparent manner and strictly in accordance with law."



5.13. When Dr.R.Vimala got superannuation on 31.10.2016, the petitioner is the senior most candidate with left over service of 1 year 4 months as the petitioner is to retire on 28.02.2018;

5.14. It is the prime contention of the learned Counsel for the petitioner that the appointment of Dr.A.Edwin Joe as Director of Medical Education, is against the directions issued by the Honourable Division Bench of this Court for the reason that the first respondent failed to consider the eligibility criteria fulfilled by the petitioner while drawing a panel for the promotion to the post of Director of Medical Education;

5.15. According to the petitioner, she is senior to Dr.A.Edwin Joe in the Tamil Nadu Medical Service and also in the Civil Medical List. As on the date of drawal of panel for the seniority list of Medical Officers for the post of Director of Medical Education for 2015-2016, the petitioner has had 2 years 11 months and 13 days of left over service;

5.16. Despite her several representations, dated 14.11.2016, 25.12.2016, 07.02.2017, 13.02.2017 and 20.02.2017, the claim of the petitioner has not been considered in the light of the judgment passed by the Honourable Division Bench in W.A(MD) No.1304 of 2016, dated 09.11.2016;

5.17. It is also contended that the period of service as Dean by the Medical Officers is not taken as an eligibility criteria and the seniority in the Civil Medical List would be considered for promotion to the post of Director of Medical Education and Dr.Geethalakshmi, being senior in the Civil Medical List was appointed as Director of Medical Education vide G.O.(D) No.123, Health and Family Welfare (A) Department, dated 31.01.2014 and not based on her joining date as Dean. Hence, the reason for not considering the claim of the petitioner is baseless;

5.18. It is pointed out by the learned Counsel for the petitioner that the candidature of Dr.Geethalakshmi, who was senior in the Civil Medical List, was considered and promoted as Director of Medical Education, though she was appointed as a Dean in the month of November 2010, whereas Dr.Vimala and Dr.Edwin Joe were already appointed as Dean on 03.03.2010;

5.19. Dr.A.Edwin Joe - the third respondent herein is junior to the petitioner in the panel of seniority list of Director of Medical Education and hence, his appointment to the post of Director of Medical Education is in violation of principles of natural justice;

5.20. The impugned Government Orders appointing Dr.A.Edwin Joe as Director of Medical Education, are vitiated on the ground that though the petitioner is senior to the third respondent in the Civil Medical List, the third respondent has been appointed giving a go-by to the directions issued by the Honourable Division Bench of this Court in W.A(MD)No.1304 of 2016, dated 09.11.2016;

<https://hcservices.ecourts.gov.in/hcservices> 5.21. The petitioner is also holding the post of Dean for more than one year and hence, she is also equally eligible to be considered for the promotion to the post of the Director of

Medical Education, but, her claim was arbitrarily negated by the first respondent;

5.22. The learned Counsel for the petitioner also relied on a judgment of the Honourable Division Bench of this Court in *G.Rani v. Government of Tamil Nadu* [W.A.No.160 of 2017, decided on 23.06.2017] and contended that the petitioner should have been considered for the promotion to the post of the Director of Medical Education as she had the left over service of more than one year as on the date of drawing of panel for the said post; and

5.23. Thus, the learned Counsel for the petitioner prays for allowing both the writ petitions.

6. Per contra, Mr.B.Pugalenth, learned Additional Advocate General assisted by Mr.N.S.Karthikeyan, learned Additional Government Pleader appearing for the State, among other things, contended that the comparative merit of all eligible candidates has been considered and scrutinised objectively and a fair decision has been taken to appoint the third respondent as the Director of Medical Education as he had put in more service as Dean than that of the petitioner and accordingly, the impugned orders came to be passed and in the light of the above facts and circumstances of the case, they cannot be faulted with and therefore, he prays for the dismissal of these writ petitions.

7. Whereas Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of Mr.R.Murali, learned Counsel for the third respondent in W.P(MD)No.10257 of 2017, made the following submissions:

7.1. The post of Director of Medical Education is governed by the Special Rules, namely, Tamil Nadu Medical Services Rules and the promotion to the post of Director of Medical Education shall be made on the basis of merit and ability;

7.2. The seniority in the Civil Medical List will be considered only when the merit and eligibility of the candidates are approximately equal and hence, the contention of the petitioner that the appointment of the third respondent as Director of Medical Education is in violation of principles of natural justice, is not sustainable;

7.3. Rule 8(b) of the Tamil Nadu Medical Service Rules prescribes special qualifications for the promotion to the post of Director of Medical Education, of which, a minimum of one year left over service prior to the date of retirement of a candidate is a mandatory one;

7.4. The third respondent having fulfilled the eligible criteria as per the Rule 8(b) of the Special Rules, is appointed as Director of Medical Education and hence, the claim of the petitioner is untenable;

7.5. The third respondent joined the Tamil Nadu Medical Services as an Assistant Surgeon with the Post Graduate Degree on 03.11.1989 and became an Assistant Professor on 21.12.1989;



7.6. The petitioner was promoted as Dean only on 21.03.2013, whereas the third respondent was promoted as Dean on 03.03.2010;

7.7. The post of Dean is the feeder category for the promotion to the post of Director of Medical Education and thus, the petitioner is not a senior to the third respondent in the post of Dean and hence, the contention of the petitioner lacks merit;

7.8. According to the third respondent, the Civil Medical List seniority has no relevance at all while considering for the promotion to the post of the Director of Medical Education and hence, the case of the petitioner falls to the ground;

7.9. In the earlier round of litigation, the Honourable Division Bench of this Court had not given any positive direction in favour of the petitioner and thus, she cannot claim that she alone is eligible to be considered for the promotion to the post of the Director of Medical Education;

7.10. Further, the Honourable Division Bench of this Court has not rendered any finding that the Civil Medical List seniority is also a criteria for the promotion to the post of the Director of Medical Education;

7.11. The Government has been directed to follow Rule 4(a) of the Tamil Nadu Medical Services Rules strictly at the time of filling up the post of the Director of Medical Education and there is no violation of the said Rule while appointing the third respondent as the Director of Medical Education and hence, this writ petition lacks merit; and

7.12. Therefore, the learned Senior Counsel appearing for the third respondent prays for the dismissal of this writ petition.

8. I have considered the rival submissions and perused the materials available on record.

9. The first respondent, vide G.O.Ms.No.124, Health and Family Welfare (A1) Department, dated 10.06.2003, had brought forth amendments to the Special Rules for the Tamil Nadu Medical Services, in Section 21 in Volume II of the Tamil Nadu Service Manual, 1969 and also indicated that it shall be given effect from 15.03.2003. It is relevant to extract the same hereinbelow:

"AMENDMENT

In the said Special Rules, in Part II, in 'Branch I Medical', in rule 8, for sub-rule (b), the following shall be substituted, namely:-

"(b) No person shall be eligible for appointment to the post of Director of Medical Education, unless:-

(i) he possess a Post Graduate degree in a Medical faculty or any other qualification approved by Medical Council of India to be treated on par with MD/MS awarded by Indian University.

(ii) 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 of teaching experience as Reader/Professor.

(iii) 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 a Medical College.

(iv) he has a minimum of one year left over service prior to date of retirement."

10. The first respondent, vide G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, had taken into consideration the demand made by the Tamil Nadu Government Doctors Association and constituted a committee and based on the recommendation made, had issued the above said Government Order and it is relevant to extract hereunder the following paragraphs:

"II. Director of Medical Education side:-

(i) *****

(ii) *****

(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 the specialist seniority list which would operate as illustrated in the annexure to this order.



(v) For higher level posts and posts in common pool, the Civil Medical List seniority will be the basis for promotion.

(vi) *****

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(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."

(emphasis supplied.)

11. Considering the seriousness of the issue involved in these writ petitions, this Court, by order dated 16.08.2017, directed the respondents to produce the original files regarding the promotion to the post of Director of Medical Education and accordingly, the same has been circulated to this Court.

12. A deep scrutiny of the original files circulated to this Court, would reveal the following:

12.1. Dr.R.Vimala, Director of Medical Education, vide Ref.No.52744/E1/1/2016, dated 27.09.2016, sent a communication to the Principal Secretary to the Government, Health and Family Welfare Department, Secretariat, Chennai - 600 009, requesting to draw a panel for the post of Director of Medical Education and to appoint and post any one of the Senior Most Medical Officers among them as Director of Medical Education, Chennai, but, despite the fact that the petitioner is the senior most Medical Officer, the third respondent was placed in Sl.No.1 in the panel.

12.2. It is relevant to point out that in the seniority list of Medical Officers for the post of Director of Medical Education for the panel year 2016 - 2017 (Annexure-I to the said communication dated 27.09.2016), the CML Number of the petitioner was shown as 4018, whereas the CML Number of the third respondent was shown as 4821 only. Thus, it is apparently clear that the petitioner is the senior most Medical Officer to be considered for the promotion to the post of the Director of Medical Education,



however, the third respondent was given promotion to the said post, which, in the opinion of this Court, is not in accordance with the Rules.

12.3. It is also appropriate to recall that the petitioner joined in the Tamil Nadu Medical Services on 08.06.1987, whereas the third respondent joined in the services on 03.11.1989. Therefore, it could be seen that the petitioner is the senior to the third respondent and the period of service as Dean could not be taken as seniority while considering promotion to the post of the Director of Medical Education, but, the said vital aspect has not been properly considered by the first respondent;

12.4. In G.O.(D)No.948, Health and Family Welfare (A1) Department, dated 25.04.2017, it is observed as follows:

"... The Government have again examined the merit and ability of the above five Medical Officers and found that 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. Hence, the Government have considered the seniority of the Medical Officers in the cadre of Dean. According to the seniority in the cadre of Dean and as well as meritorious, Dr.A.Edwin Joe is the senior most Medical Officer among the five Medical Officers."

(emphasis supplied.)

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.

12.6. Therefore, it is crystal clear that the name of Dr.A.Edwin Joe has been positively recommended for the promotion to the post of the Director of Medical Education, though the merit and ability of the petitioner and other Medical Officers are stated to be equal. The stand taken by the first respondent that Dr.A.Edwin Joe is the senior most Dean than the other Medical Officers and hence, his name was considered for the promotion to the post of the Director of Medical Education, could not be countenanced for the reason that the period of service as Dean does not matter while considering the promotion to the said post and what matters is that the Medical Officer concerned shall have experience of one year as Dean alone and the petitioner had the



13. In the considered opinion of this Court, when the merit and ability of the Medical Officers concerned are equal and they are equally eligible to be considered for the promotion to the post of the Director of Medical Education, a positive recommendation has been made in favour of the third respondent for promotion to the said post. The so-called grounds, on which, the name of the third respondent, has been positively considered for the promotion to the said post, are as follows:

(i) The petitioner completed her Post Graduate Degree during March 1990, whereas the third respondent completed his Post Graduate Degree even prior to that;

(ii) The petitioner was promoted as Dean only on 21.03.2013, whereas the third respondent was promoted as Dean even on 03.03.2010;

(iii) Claiming that the third respondent has more experience as Dean, the petitioner was not considered for the promotion to the post of Director of Medical Education.

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.

15. The Honourable Division Bench of this Court, in paragraph 27 of the judgment dated 09.11.2016, has categorically held that "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 strictly in accordance with law."

16. As per Sub-Clause (a) to Clause 4 in Part II of Section 21 of the Tamil Nadu Medical Service, the promotion to the post of the 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." In the case on hand, the first respondent has taken into consideration the date of promotion as Dean for considering the seniority among the eligible Medical Officers, but, this Court opines that if the seniority in the cadre of Dean is considered, then, the CML seniority has also to be taken into account while considering promotion to the post of the Director of Medical Education. In such an event, the petitioner is the senior most than that of the third respondent and the case of the petitioner ought to have been positively considered.



17. 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.

18. The fact also remains that Dr.Geethalakshmi, Director of Medical Education, as she then was, has sent the panel for the promotion to the post of the Director of Medical Education, to the Secretary to the Government, Health and Family Welfare Department, containing the following names:

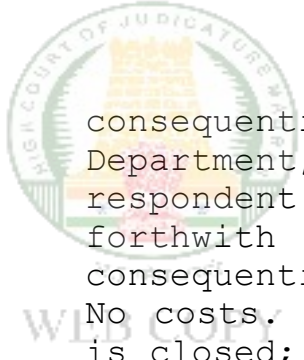
- 1.Dr.R.Vimala - one year left over service not available. Officer on Special Duty (OSD) can be given.
- 2.Dr.S.Revathy - senior most Civil Medical List eligible.
- 3.Dr.AL.Meenakshi Sundaram - Eligible.
- 4.Dr.Edwin Joe - Eligible.

19. A close reading of the above panel would make it clear that the name of the petitioner was already considered being the senior most Civil Medical List candidate, in the earlier panel drawn for the promotion to the post of Director of Medical Education and thus, it is apparently evident that the petitioner is senior to the third respondent in the Civil Medical List. However, the first respondent failed to consider the seniority of the petitioner in the Civil Medical List, however, made a positive recommendation to the third respondent and accordingly, he has been appointed as the Director of Medical Education, which, in the eye of law, is untenable.

20. 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 objectively 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.

<https://hcservices.ecourts.gov.in/hcservices> 21. In the result,

(i) W.P(MD)No.10257 of 2017 is allowed and 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 are quashed. Accordingly, the first respondent is directed to grant promotion to the petitioner forthwith as the Director of Medical Education with all consequential benefits, as she is due to retire in February 2018. No costs. Consequently, the connected writ miscellaneous petition is closed; and

(ii) In view of the order passed in W.P(MD)No.10257 of 2017, W.P(MD)No.3523 of 2017 is closed. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

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

2.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.

+3ccs to M/S.S.Alagarsamy, Advocate SR.No. 79768
+1cc to M/S.R.Murali, Advocate SR.No. 79799
+1cc to Special Government Pleader, SR.No. 80043

COMMON ORDER MADE IN
W.P(MD)No.3523 of 2017
and W.M.P(MD)Nos.6376, 6377 and 6638 of 2017
AND
W.P(MD)No.10257 of 2017
and W.M.P(MD)No.7848 of 2017
20.09.2017

rsb
JM/SKN RSK/SAR 2/20.09.2017/15P/8C