



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.07.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.A.[MD].No.1397 of 2013
and
M.P.[MD]No.2 of 2013

A.Viruthagriswaran

... Appellant

Vs.

1.The Principal Secretary and Director,
of Indian Medicine and Homeopathy,
Arumbakkam, Chennai - 106

2.The Principal Incharge,
Government Homeopathy Medical
College & Hospital,
Thirumangalam, Madurai District.

3.The Director,
Directorate of Medicine and Rural
Health Services,
Chennai -6.

... Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent to allow the writ appeal by setting aside the order in W.P.(MD).No.10671 of 2013, dated 04.07.2013.

Prayer in WP(MD). 10671/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 3rd respondent to include the petitioner's name in the approved promotion list for the post of Office Superintendent for the year 2011-2012 within stipulated time limit on the basis of the petitioner s representation dated 01.02.2012, 23.11.2012 and 27.12.2012 and pass such further or other orders.

For Appellant : Mr.M.Kannan

For Respondents : Mr.T.S.Mohamed Mohideen,
Additional Government Pleader.

**JUDGMENT**

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

The unsuccessful writ petitioner is on appeal, challenging the dismissal of W.P(MD).No.10671 of 2013 filed by him.

2.The writ petitioner was aggrieved by the non inclusion of his name in the approved promotion list for the post of Office Superintendent for the year 2011-12. He had submitted representations on various dates in this regard. Since his representations were not considered, he filed the said writ petition seeking a direction for directing the third respondent to include his name in the said list.

3.The contention raised by the writ petitioner was that the crucial date for the drawal of the approved list of Office Superintendent is 15 March, 2011. He contended that on the crucial date, he was not facing any disciplinary proceedings. The charge memo that was served on him on 19 January 2012 is dated 10 January, 2012.

4.According to the writ petitioner, what has to be considered is the position obtaining on the crucial date. The contention raised by the writ petitioner did not find favour with the learned single Judge. The learned single Judge dismissed the writ petition on the ground that he was placed under suspension from 07 May 2011 onwards. He continued to be under suspension on the date of publication of the promotion panel, dated 30 December, 2011 for the post of Office Superintendent. Even though a Government servant may satisfy the qualification prescribed for a higher post, he cannot have the right to be considered for inclusion in the temporary or final panel prepared for the promotional post, if he was under suspension during the relevant period.

5.The writ petitioner was admittedly under suspension when the impugned panel was prepared. Therefore, his case was rightly rejected by the learned single Judge and we see no ground to interfere with the said order. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar



To

1. The Principal Secretary and Director,
of Indian Medicine and Homeopathy,
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2. The Principal Incharge,
Government Homeopathy Medical
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Thirumangalam, Madurai District.

3. The Director,
Directorate of Medicine and Rural
Health Services,
Chennai -6.

+1 cc to Mr.M.Kannan , Advocate in SR.No. 63808

arul / skm

AE/MR KKR/SAR1/19.07.2017/3P/5C

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and
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