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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2018

Pronounced on : 04.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P (MD) Nos. 23354 of 2015 & 7779, 10454 of 2016
and
WMP (MD) No. 6437, 8123 and 8148 of 2016
&
MP (MD) No. 1 of 2015

Dr.A.Rathinavel

... Petitioner in all cases

Vs.

1. The State of Tamil Nadu,
Rep.by its Principal Secretary,
Department of Health & Family
Welfare,
Fort St.George, Chennai - 600 009.

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

3. The Dean,
Madurai Medical College,
Madurai - 625 020,
Madurai District.

4. Dr.G.Josephraj

... 1 to 4 respondents
in WP (MD) Nos. 23354 of 2015 &
WP (MD) No. 7779 of 2016
and 3 to 6 respondents in
WP (MD) No. 10454 of 2016.

5. The Union of India,
Rep.by its Secretary,
Ministry of Health and Family
Welfare Department of
Health and Family Welfare,
Nirman Bhavan,
Maulana Azad Road,
New Delhi - 110 011.



6. The Medical Council of India (MCI),
Rep.by its Secretary,
Pocket - 14, Sector - 8,
Dwarka, New Delhi - 110 077.

... Respondents 1 and 2
in WP (MD) No.10454/2016

(Respondents 5 and 6 were impleaded
as first and second respondents in
WP (MD) No.10454 of 2016 vide
court order dated 08.11.2016
in WMP (MD) No.8755 of 2016)

Prayer in WP (MD) No.23354 of 2015 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned proceeding issued by the third respondent Dean in Ref.No.10774/E1/1/2015 dated 09.11.2015, quash the same insofar as it contains the rider to the effect that the petitioner should hold the position as the Professor & Head of the Department of Cardio-Thoracic Surgery in the Madurai Medical College, Madurai only until the fourth respondent Dr.G.Josephraj (Associate Professor) gets re-designated as Professor.

Prayer in WP (MD) No.7779 of 2016 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned proceeding issued by the third respondent Dean in Ref.No.3351/E1/1/2016 dated 18.04.2016, quash the same.

Prayer in WP (MD) No.10454 of 2016 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Quo Warranto against the respondents 3 to 5 to show cause under what authority the sixth respondent Dr.Josephraj holds that the office of the Professor in the Department of Cardio-Thoracic Surgery at the fifth respondent Madurai Medical College, Madurai.

For Petitioner
all cases

: Mr.Isaac Mohanlal,
Senior Counsel for
Mr.T.Cibi Chakraborty

For Respondents
In WP (MD) Nos.23354 of 2015 and 7779 of 2016 :

: Mrs.S.Srimathy,
Spl.,Govt.Pleader for R1 to R3
Mr.T.Lajapathi Roy for R4



For Respondents
in WP(MD)No.10454 of 2016 :

: Mr.P.Mahendran for R1 & R2

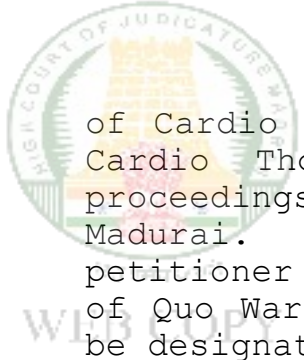
: Mrs.S.Srimathy,
Spl.,Govt.Pleader for R3 to R5
Mr.T.Lajapathi Roy for R6

COMMON ORDER

Dr.A.Rathinavel is the petitioner in all these writ petitions. He joined the Tamil Nadu Medical Services as Assistant Surgeon on 21.06.1991. He obtained post graduate qualification (M.S. In General Surgery). He was therefore appointed as a Tutor/Senior Resident on 01.07.1996 by way of transfer. He also successfully completed post graduate super speciality degree course (M.Ch. in Cardio-Thoracic Surgery) on 01.04.2004. He was designated as Senior Assistant Professor in Cardio-Thoracic Surgery on 12.05.2005. He was promoted as Associate Professor in Cardio -Thoracic Surgery on 12.05.2007. He became a Professor in Cardio-Thoracic Surgery on 12.05.2011. He was transferred to Thanjavur Medical College, Thanjavur on 24.09.2011. He functioned there as Professor cum Head of the Department. He was transferred to Madurai Medical College, Madurai on 27.10.2015.

2.In the department of Cardio-Thoracic Surgery at Madurai Medical College during October 2015, the writ petitioner was the only Professor. Along with him, Dr.G.Josephraj was the Associate Professor and there were four Assistant Professors. When the petitioner was transferred to Madurai Medical College on 27.10.2015, Dr.G.Josephraj was functioning as Head of the Department (i/c). The writ petitioner wrote to the Dean requesting her to designate him as the Head of the Department. In turn, the Dean sent a letter to the Director of Medical Education on 03.11.2015 seeking clarification. Based on the clarification, the Dean issued proceedings dated 09.11.2015 posting the petitioner as Professor and Head of the Department of Cardio-Thoracic Surgery. However, in the said posting order there was a caveat stating that the petitioner shall occupy the said post only till the C.M.L (Civil Medical List) senior Dr.G.Josephraj gets re-designated as Professor. Aggrieved by this, WP(MD)No.23354 of 2015 came to be filed.

3. Thereafter, vide proceedings dated 08.04.2016, Dr.G.Josephraj was re-designated as Professor of Cardio Thoracic Surgery with effect from 10.08.2013. Following his re-designation as Professor



of Cardio Thoracic Surgery, he was posted as Professor and HOD of Cardio Thoracic Surgery, Maudrai Medical College, Madurai by proceedings dated 18.04.2016 by the Dean, Madurai Medical College, Madurai. This is assailed in WP(MD)No.7779 of 2016. The petitioner has also filed WP(MD)No.10454 of 2016 for issuing a Writ of Quo Warranto in respect of the eligibility of Dr.G.Josephraj to be designated as Professor in Cardio Thoracic Surgery.

4. Notice was issued and interim order was also granted in favour of the petitioner. In all these three writ petitions, the Government has been made as a party apart from the Director of Medical Education, Kilpauk, Chennai and the Dean, Madurai Medical College, Madurai. Of course, Dr.G.Josephraj figures as the contesting private respondent in all the three writ petitions. The official respondents as well as the private respondent have filed their respective counter affidavits and also have entered appearance.

5. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the private respondent and the learned Special Government Pleader appearing for the official respondents and also the learned counsel for the respondents 1 and 2 in WP(MD)No.10454 of 2016.

6. The primary contention urged by the learned Senior Counsel for the petitioner is that though Dr.G.Josephraj ranks Senior to Dr.A.Rathinavel in Civil Medical List, the fact remains that the petitioner completed his super speciality degree course (M.Ch in Cardio Thoracic Surgery) in 2004 itself. In fact, Dr.G.Josephraj was his student. The petitioner became as Assistant Professor and also Associate Professor earlier in point of time. He was appointed as Professor on 12.05.2011 and he continues to be so till date. He was also functioning as Head of the Department in Tanjore Medical College. When he entered the department of Cardio Thoracic Surgery in Madurai Medical College, he was the only Professor in the department. Therefore, incorporating the condition that he will hold the post of Head of the Department till the re-designation of Dr.G.Josephraj as Professor is patently unreasonable and arbitrary.

7. The submission of the learned Senior Counsel for the petitioner is that the official respondents have completely misconstrued the scope of G.O.Ms.No.226, Health and Family Welfare (A1) Department dated 10.10.2013. According to him, this Government order should be read as a whole. There was a context behind the issuance of the said G.O. It has been set out in Paragraph No.2 of the said G.O which reads as follows :



"2.The issue of identifying the senior most person in the concerned speciality of a Medical College to be designated as Head of the Department has been discussed. At present CML seniority is followed to decide the seniority for the Headship which is not a promotional post. The Medical Officer who is junior in CML Number claims the Headship on the ground that he/she got promotion as Associate Professor much earlier than his/her CML senior. In short some Medical Officers claim Headship as per CML seniority and others claim Headship as per panel seniority."

8.When the Government ordered that the senior most medical officer as per CML seniority in the concerned speciality of the medical college shall be considered for the headship/HOD, it was only resolving the issue highlighted in Paragraph No.2 of the G.O. Such a Government Order can never be applied when a person who was designated as Professor earlier in point of time is available. C.M.L seniority would be irrelevant when a senior professor is available in the department. C.M.L seniority will come into play only in the case of inter se dispute between the Associate Professors.

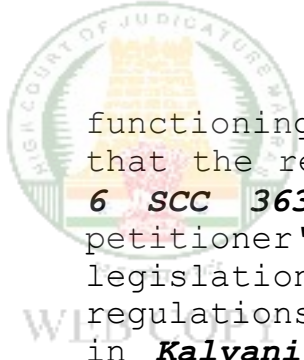
9.The petitioner's senior counsel also contended that Dr.G.Josephraj could not have been designated as a Professor. Because, he does not fulfil the eligibility requirements set out in the Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2009 w.e.f 15.12.2009.

10.As per the amended regulations, for being designated as a Professor one must not only possess the academic qualification of M.Ch.(General or Thoracic Surgery) but also have the following teaching / research experience.



Post	Academic Qualification	Teaching /Research Experience
Professor	M.Ch (Cardio Vascular & Thoracic Surgery)	(i) As Reader/Associate Professor in Cardio Vascular & Thoracic Surgery/Cardiac Surgery / Vascular Surgery / Thoracic Surgery for three years in a recognized medical college. (ii) Minimum of four Research Publications indexed in Indexed/National Journals Provided that these research publications are published/ accepted for publication in the journals by the National Associations/ Societies of the respective specialities as the 1st Author. Further provided that the requirement of four research publications for promotion to the post of professor should be taken on cumulative basis with the minimum of two research publications must be published during the tenure of the Associate Professor* For the transitory period of 4 years w.e.f 24th July 2009, the appointment / promotion can be made by the institutes in accordance with the "Minimum Qualification for teachers in Medical Institutions, 1998" as prevailing before notification of Minimum Qualifications for teachers in Medical Institutions (Amendment) Act, 2009* *Amended vide Minimum Qualifications for teachers in Medical Institutions (Amendment) Act, 2009 which came into effect from 15.12.2009.

11. The transitory period of four years from 24.07.2009 came to end on 23.07.2013. Dr.G.Josephraj came to be appointed as Professor with effect from 10.08.2013. The specific allegation made by the petitioner is that Dr.G.Josephraj does not have a single research publication to his credit. Placing reliance on the decisions of the Hon'ble Supreme Court reported in 1998 (6) SCC 131, 1999 (7) SCC 120 and 2012 (8) SCC 80, the learned Senior Counsel for the petitioner contended that the MCI Regulations are mandatory and that they have statutory force and since the appointment to Dr.G.Josephraj in violation of the said statutory provisions, his



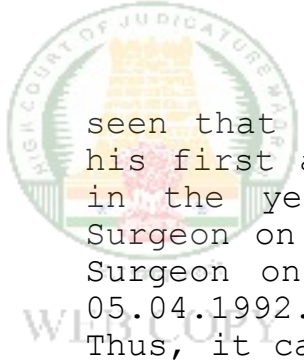
functioning as a Professor should be declared as void. Anticipating that the respondents would refer to the decision reported in **(2015) 6 SCC 363 (Kalyani Mathivanan vs. K.V.Jeyaraj & Others)**, the petitioner's senior counsel pointed out that there is no plenary legislation in the State of Tamil Nadu that runs counter to M.C.I regulations. He would therefore contend that the ratio laid down in **Kalyani Mathivanan's** case cannot be applied to the facts of the present case. He also submitted that the office of Professor is a public office and that therefore a Writ of Quo Warranto is very much maintainable. Again anticipating that the respondents would invoke the Full Bench Judgment reported in **AIR 1975 Del 66**, the learned Senior Counsel for the petitioner submitted that the same has no relevance as the law is now well settled that the crucial time for qualification is the time of appointment and not a later date after the appointment.

12. There are two issues to be adjudicated in these three writ petitions. The first issue is whether Dr.G.Josephraj is entitled to be posted as Head of the Department of Cardio Thoracic Surgery by virtue of being CML Senior to Dr.A.Rathinavel. The second issue is whether this Court should issue a Writ of Quo Warranto holding that Dr.G.Josephraj is not eligible to hold the office of the Professor in the department of Cardio Thoracic Surgery at Madurai Medical College, Madurai.

13. The first issue can be answered very easily by referring to G.O.Ms.No.354, Health and Family Welfare (B2) Department dated 23.10.2009 and G.O.Ms.No.226, Health and Family Welfare (A1) Department dated 10.10.2013. Clause II(v) of the G.O.Ms.No.354 dated 23.10.2009 reads that for higher level posts and posts in common pool, the Civil Medical List seniority will be the basis for promotion. What clinches the issue in favour of Dr.G.Josephraj is G.O.Ms.No.226, dated 10.10.2013. The operative portion of the said G.O reads as under :

"The Government have examined the issue in detail and after examination order that the senior most Medical Officer as per CML 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 seniority as a result of relinquishment of right for promotion or as a result of any punishment imposed on him / her."

14. It is not the case of the petitioner that Dr.G.Josephraj had relinquished his right for promotion or that he suffered any punishment. The Government has categorically ordered that the senior most medical officer as per C.M.L seniority in the concerned speciality of the Medical College shall be considered for headship/HOD. In this case, the petitioner himself admits that Dr.G.Josephraj is senior to him in the civil medical list. It is



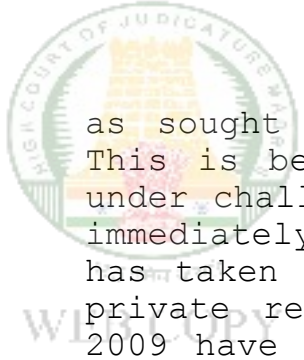
seen that Dr.G.Josephraj completed his M.B.B.S in the year 1988 in his first attempt. But, Dr.A.Rathinavel completed his M.B.B.S only in the year 1989. Dr.G.Josephraj was appointed as Assistant Surgeon on 06.04.1990. Dr.A.Rathinavel was appointed as Assistant Surgeon on 21.06.1991. Dr.G.Josephraj completed his probation on 05.04.1992. Dr.A.Rathinavel completed his probation on 06.07.1993. Thus, it can be seen that there is a clear gap of one year and three months between the two. C.M.L Seniority of Dr.G.Josephraj is 5881/2005 and 3692/2010 whereas Dr.A.Rathinavel C.M.L Seniority No.5953/2005 and 3761 of 2010.

15.The writ petitioner has not questioned G.O.Ms.No.226, Health and Family Welfare (A1) Department dated 10.10.2013. It is very much holding the field. Therefore, the issue as to who is to be appointed as Head of the Department can be determined only with reference to the said Government Order. The said Government Order unambiguously states that the person who is CML Senior will be entitled to hold the post of Head of the Department. If the said Government Order is strictly applied, whether Dr.G.Josephraj is Associate Professor or Professor the same would not make any difference. He would have to be designated as Head of the Department by virtue of being the senior most candidate as per the civil medical list.

16.Elaborate submissions were made on the side of the petitioner for issuing a Writ of Quo Warranto. A number of case laws were cited. But, this Court is of the view that the issue on hand can be disposed of on a short point. The fact remains that Dr.G.Josephraj is today possessing the requisite qualifications for the post of Professor even as per the M.C.I Regulations, 2009.

17.At the very outset, the Government of Tamil Nadu is a party to these three writ petitions. The Government has filed its counter affidavit supporting re-designation of Dr.G.Josephraj as a Professor. The Division Bench of Madras High Court in the decision reported in **(1991) 1 MLJ 451 (Dr.S.Balasundaram vs. Dr.S.Mahadevan)** held that a Court may refuse to issue a writ of quo warranto if it is found that the person whose appointment is under challenge could be re-appointed under the law in force at the time of the issuance of the writ or on account of his becoming qualified for such appointment on that day. The Hon'ble Division Bench had followed the Full Bench decision of the Delhi High Court reported in **AIR 1975 Del 66**.

18.WP(MD)No.10454 of 2016 was filed on 10.06.2016. The writ petition was taken up for hearing only on 09.02.2018. During the intervening period, Dr.G.Josephraj had published research publications and therefore even as per the 2009 MCI Regulations, he became qualified to be designated as Professor in Cardio Thoracic Surgery. Respectfully following the Hon'ble Division Bench decision reported in **(1991) 1 MLJ 451, (Dr.S.Balasundaram vs. Dr.S.Mahadevan)**, this Court declines to issue a Writ of Quo Warranto



as sought for on the ground that it would be a futile exercise. This is because, Dr.G.Josephraj whose designation as Professor is under challenge can be re-designated as Professor by the Government immediately even if this Writ Petition is allowed. The Government has taken a stand in his favour. The Government as well as the private respondent have also contended that the MCI Regulations, 2009 have not been adopted by the State Government till date, and only by virtue of G.O.Ms.No.77, Health and Family Welfare (A1) Department dated 23.02.2016 the qualifications set out in the amended rules have been sought to be incorporated pending amendment to the Special Rules for Tamil Nadu Medical Services. It is mentioned that G.O.Ms.No.77, dated 23.02.2016 will come into force with effect from the panel year 2017-18. But, since this Court has already taken the view that it would be a futile exercise to issue a Writ of Quo Warranto, these contentions are not gone into.

19.In this view of the matter, the order dated 18.04.2016 which is impugned in WP(MD)No.7779 of 2016 is very much sustainable. It is accordingly sustained. In view of the passing of the order dated 18.04.2016, WP(MD)No.23354 of 2015 had become infructuous. It is accordingly dismissed as infructuous. Therefore, while dismissing WP(MD)No.23354 of 2015 as infructuous, this Court dismisses WP(MD)No.7779 of 2016 on merits. WP(MD)No.10454 of 2016 is also dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Department of Health & Family Welfare,
Fort St.George,
Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
3. The Dean,
Madurai Medical College,
Madurai - 625 020,
Madurai District.



4. The Secretary, Union of India,
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5. The Secretary,
The Medical Council of India (MCI),
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Dwarka, New Delhi - 110 077.

+ 1 CC TO Mr.T.CIBI CHAKRABORTHY, ADVOCATE IN SR No. 66825
+ 2 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 66693 & 66691
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 66954

SKM

TE/SKN-RSK/SAR-2 : 11/06/2018 : 10P/10C

Order in
W.P(MD)Nos.23354 of 2015
& 7779, 10454 of 2016 and
WMP(MD)No.6437, 8123 and 8148 of 2016 &
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