

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.39488 OF 2018

ORDER:

This Writ Petition is filed seeking a writ of mandamus declaring the action of the respondents in not refusing the petitioner's seniority notionally in the cadre of MPHEO and in not considering his promotion as Community Health Officer following the revision of seniority of the petitioner in the cadre of MPHS (M) vide proceedings dated 18.04.2011, as arbitrary and illegal and consequently, to declare that the petitioner is entitled for promotion as MPHEO notionally from 27.09.2010 and consequential promotion as Community Health Officer (CHO) on par with the unofficial respondents with all consequential benefits.

Heard Sri M.R.Tagore, learned counsel for the petitioner and the learned Government Pleader for Medical and Health Department for the respondents.

It has been contended by the petitioner that he was initially appointed as MPHA (M) through District Selection Committee on 08.06.1989 and while he was working as MPHA (M), the respondents have issued a charge memo on 18.11.2004 and after regular departmental enquiry, punishment of stoppage of two annual grade increments without cumulative effect was imposed vide proceedings dated 14.02.2005. Thereafter, the petitioner preferred an appeal before the appellate authority on 04.11.2006. Vide orders dated 28.08.2010, the appellate authority had allowed the appeal and the order dated 14.02.2005 imposing punishment of stoppage of two annual grade increments without cumulative effect was set aside. It is further submitted that consequent upon

the appellate authority orders, the petitioner was given the benefit of notional fixation of seniority in the cadre of MPHS (M) from 09.01.2006 vide proceedings dated 18.04.2011. The grievance of the petitioner is that the unofficial respondents, who were juniors to the petitioner, were promoted as MPHA (M) cadre and also MPHS (M) cadre and the case of the petitioner could not be considered, as disciplinary proceedings were pending and subsequently, punishment was imposed by the disciplinary authority and that, with the intervention of the appellate authority, punishment orders were set aside and when the punishment orders were set aside, the petitioner was entitled to notional seniority on par with the unofficial respondents. The petitioner submitted a representation to the District Medical and Health Officer and also submitted proposals to the first respondent to consider his case for enclosing his name in the seniority list and also for considering his case notionally on par with his juniors. The said representation filed by the petitioner on 11.08.2018 is still pending with the first respondent. Almost eight years have elapsed after the appellate authority had set aside the orders of punishment.

Learned counsel for the petitioner contends that the petitioner is entitled to notional promotion on par with his juniors and appropriate direction be issued to the respondents to that effect. Learned Assistant Government Pleader for Services submits that since the petitioner has submitted a representation only in the month of August, 2018, appropriate action would be taken in the near future.

Upon hearing the rival submissions of the parties, this Court is of the considered view to dispose of the Writ Petition directing the respondents to pass appropriate orders on the petitioner's representation dated 11.08.2018 and consider the case of the petitioner for notional promotion on par with his juniors right from MPHEO and CHO cadres in accordance with law within a period of four (4) weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

2nd November 2018
RRB

