

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.38216 of 2005 and 47200 of 2006
and W.P.M.P.No.40860 of 2005

Dr.M.Subramanian

.. Petitioner in
both WPs.

Vs.

The Secretary to Government
Health and Family Welfare I-2 Department
Fort. St. George, Chennai-9.

.. Respondent in
W.P.No.38216 of 2005

1.The Secretary to Government
Health and Family Welfare I-2 Department
Fort. St. George, Chennai-9.

2.The Director of Medical Education
Kilpauk, Chennai-10.

.. Respondents in
W.P.No.47200 of 2006

Prayer in W.P.No.38216 of 2005: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records of the respondent in connection with the impugned order passed by him in G.O.(D) No.457, Health and Family Welfare (I-2) Department, dated 17.06.2005 and quash the same.

Prayer in W.P.No.47200 of 2006: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to consider the claim of the petitioner for promotion as Senior Civil Surgeon without reference to the punishment imposed by the 1st respondent in G.O. (D) No.457, Health and Family Welfare (I-2) Department, dated 17.06.2005 and promote the petitioner as Senior Civil Surgeon with all consequential service and monetary benefits at par with the petitioner's junior.

In both WPs.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel for Mr.M.Muthappan

For Respondents : Ms.R.Janaki
Additional Govt. Pleader

C O M M O N O R D E R

W.P.No.38216 of 2005 is filed to issue a writ of Certiorari calling for the records of the respondent in connection with the impugned order passed by him in G.O.(D) No.457, Health and Family Welfare (I-2) Department, dated 17.06.2005 and quash the same.

W.P.No.47200 of 2006 is filed to issue a writ of Mandamus directing the respondents to consider the claim of the petitioner for promotion as Senior Civil Surgeon without reference to the punishment imposed by the 1st respondent in G.O. (D) No.457, Health and Family Welfare (I-2) Department, dated 17.06.2005 and promote the petitioner as Senior Civil Surgeon with all consequential service and monetary benefits at par with the petitioner's junior.

2.The petitioner in both the writ petitions is one and the same and both the writ petitions are disposed of by this common order based on the common facts.

3(i).The petitioner after completing M.B.B.S. course in December 1997, joined the service through the selection conducted by Tamil Nadu Public Service Commission during the year 1982. Thereafter, the petitioner obtained his Masters Degree in Dermatology. During the year 1990, the petitioner has served as Assistant Professor of Dermatology in Government Stanley Hospital. During that time, the Dean, Government Stanley Hospital has issued a circular stating that only for the admitted in-patients, CT scan will have to be taken after obtaining signature from the concerned doctors. When the petitioner was working as Assistant Professor, his wife developed symptoms of sinusitis chronic headache. E.N.T. Surgeon who examined the petitioner's wife, advised her to take CT scan. The petitioner took his wife to CT scan Department and he was advised to fill up a requisition form for taking CT scan. The petitioner hesitated to sign the said form. But the Radiologist, who was present there asked the petitioner to sign the form on behalf of the Head of the Department concerned. After the

petitioner signed the form, CT scan for his wife was taken. There was no misuse of CT scan form and the petitioner has not signed for some unknown patient. The petitioner was served with a memo directing him to submit his explanation. The petitioner has explained the same. By the proceedings dated 16.08.1999, the Director of Medical Education directed to recover a sum of Rs.1,200/- from the salary of the petitioner towards cost of CT scan. After two days, the petitioner was served with a charge memo dated 18.08.1999 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3(ii). The petitioner gave explanation denying the charges. The petitioner pleaded ignorance of the circular dated 08.08.2000 issued by the Dean, Government Stanley Hospital and submitted that CT scan was taken for his wife and not for any other stranger. The Unit Chief was not available and therefore, the petitioner has signed the requisition form. After a lapse of long time, Dr.K.Chellappan, Dean, Madras Medical College was appointed as Enquiry Officer to conduct oral enquiry against the petitioner. The enquiry was conducted on 22.06.2000. No witness was examined in the enquiry and the petitioner admitted that CT scan was taken only for his wife. The Enquiry Officer in his report dated 22.06.2000 has held that fixing sole responsibility on the doctor, who has signed the requisition form is not fair, but without any valid reason held that charges 1 and 2 are partly proved. The copy of the Enquiry Officer's report was served on the petitioner through a memo dated 14.03.2001. The petitioner submitted a detailed further representation for the report on 18.04.2001. The respondent imposed punishment of stoppage of increment for six months without cumulative effect by the impugned order dated 17.06.2005 after four years of petitioner submitting his explanation. The petitioner filed W.P.No.38216 of 2005 challenging the said order.

3(iii). The petitioner also filed W.P.No.47200 of 2006 for issuing a direction to the respondents to consider the claim of the petitioner for promotion as Senior Civil Surgeon without reference to the punishment imposed by the 1st respondent in the impugned order dated 17.06.2005 and promote the petitioner as Senior Civil Surgeon with all consequential service and monetary benefits on par with the petitioner's junior.

3(iv). According to the petitioner, he was fully qualified to be promoted as Reader in Dermatology Department in the year 2003 itself. The letters were issued to the doctors for the counselling proposed to be held on 11.02.2003. In the said letter, the petitioner's name was included in Sl.No.6 in the Speciality of Dermatology, but his claim for promotion was not considered because of pendency of disciplinary proceedings. His junior Dr.Arunadevi was considered for promotion, but due to

personal reasons, she did not opt for promotion. The next junior Dr.Jayakumari Jeevan was promoted as Reader in Dermatology in Tanjore Medical College. Again, another counseling was conducted during April 2003 and another junior by name Dr.Arshad Victor was considered in the counseling that was held on 06.05.2003 and was promoted as a Reader.

3(v). In both the counselling, the petitioner's name was not considered for promotion as disciplinary proceedings was pending against him. The disciplinary proceedings was commenced and concluded with an inordinate delay. The punishment was imposed by the order dated 17.06.2005 for no fault of the petitioner. The delay is not due to the fault of the petitioner. The Enquiry Officer has held that the charges are partly proved. The petitioner's claim for promotion was deferred continuously from the year 2003. The petitioner gave a representation on 10.03.2006 and filed W.P.No.8155 of 2006 for issuance of writ of Mandamus to consider his claim for promotion without reference to the punishment dated 17.06.2005, promote him as a Senior Civil Surgeon and to grant him all consequential service and monetary benefits. This Court by the order dated 23.03.2006 directed the respondent to consider the representation of the petitioner dated 10.03.2006 for promotion and pass orders. In spite of the order of this Court, the petitioner was not promoted. The punishment imposed was concluded on 17.12.2005. Even after a lapse of 11 months, the claim of the petitioner was not considered and in the counselling conducted on 15.06.2006, his junior was promoted as Reader in Dermatology. In the said circumstances, the petitioner filed W.P.No.47200 of 2006 for a mandamus directing the respondents to consider the claim of the petitioner for promotion as Senior Civil Surgeon without reference to the punishment imposed by the 1st respondent in G.O. (D) No.457, Health and Family Welfare (I-2) Department, dated 17.06.2005.

4. The learned Senior Counsel appearing for the petitioner contended that the petitioner was not aware of the circular dated 08.08.1990 issued by the Dean, Government Stanley Hospital. Further the petitioner did not sign the requisition form for any stranger, but has signed for taking CT scan for his wife as advised by ENT surgeon. Apart from one solitary incident, the petitioner has not signed any form for other person. The Enquiry Officer having held that the requisition form may be misused and Doctor who signed the requisition form cannot be solely responsible for signing the requisition form, erroneously held that the charges 1 and 2 are partly proved. The Enquiry Officer as well as the respondents failed to see that the petitioner has signed the requisition form only for taking CT scan for his wife. The incident has occurred in the year 1999

and after considerable delay of six years, the punishment was imposed without properly appreciating the materials available on record. The respondents on erroneous consideration that the disciplinary proceedings was pending against the petitioner, did not consider him for promotion from the year 2003 and promoted his juniors even though the petitioner is fully qualified for promotion. Even after expiry of punishment period, the respondents did not consider the petitioner for promotion and prayed for allowing both the writ petitions.

5.The respondents have not filed any counter affidavit. The learned Additional Government Pleader appearing for the respondents contended that the petitioner has committed a misconduct by signing a requisition form for a person who was not an in-patient or patient in any of the hospitals and the same is contrary to the circular issued by the Dean, Government Stanley Hospital, dated 08.08.1990. The Enquiry Officer after considering all the materials has held that the charges are proved. The punishment imposed on the petitioner is inconsonance with the misconduct committed by the petitioner and he was rightly not considered for promotion as disciplinary proceedings were pending against him and prayed for dismissal of both the writ petitions.

6.Heard the learned Senior Counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

7.From the materials available on record, it is seen that while the petitioner was working in Stanley Medical College Hospital, ENT Surgeon who treated the petitioner's wife, suggested to take CT scan for his wife. In the Radiology department, the unit doctor was not present and at the instance of the radiologist present in the department, the petitioner signed the requisition slip. A sum of Rs.1,200/- being the charge for CT scan was deducted from the salary of the petitioner. A charge memo dated 18.08.1999 was issued to the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, containing charges, which read as follows:

"Charge No.1: that Dr.M.Subramanian, Assistant Professor of Dermatology, Government Stanley Hospital, Chennai, recommended scan to some persons who were not in-patients either in Stanley Hospital or in any other Government Medical Institutions, in violation of Circular of the Dean, Government Stanley Hospital, Chennai, dated

08.08.1990, which lead to misuse of CT scan during June 1995 and thereby caused loss of Rs.1,200/- and failed to maintain absolute integrity and devotion to duty.

Charge 2: by the above act, he has violated Rule 20 of the Government Servants Conduct Rules."

The petitioner gave explanation. Not being satisfied with the explanation given by the petitioner, the Enquiry Officer was appointed and enquiry was conducted on 22.06.2000. The Enquiry Officer submitted his report on the same day. In the enquiry, no witness was examined and in the enquiry report, the Enquiry Officer has stated that the doctor who signed the requisition form cannot be solely held responsible. In the enquiry, no witness was examined to show for how many persons the petitioner signed the requisition form for taking CT Scan as the charge is that the petitioner has recommended to take CT scan to some other patients who were not taking treatment as in-patients either in Stanley hospital or in other hospitals. The Enquiry Officer failed to properly consider the charges leveled against the petitioner and explanation of the petitioner and erroneously held that the charges are partly proved. The report of the Enquiry Officer is without any evidence, basis or perverse. The respondents without properly appreciating the nature of charges levelled against the petitioner and the petitioner has signed only one requisition form, that too for taking CT scan for his wife, imposed punishment of stoppage of increment for six months without cumulative effect. Charge memo was issued on 18.08.1999. The respondents have taken six years to complete the disciplinary proceedings, they have not explained the delay in appointing the Enquiry Officer and delay in concluding the disciplinary proceedings and imposing punishment. In view of the same, the impugned order of the 1st respondent dated 17.06.2005 is liable to be set aside and is hereby set aside. Accordingly, W.P.No.38216 of 2005 is allowed.

8. In W.P.No.47200 of 2006, the petitioner is seeking promotion without reference to the punishment imposed by the 1st respondent on 17.06.2005. The said impugned order is set aside in W.P.No.38216 of 2005. In view of the same, the petitioner is entitled for promotion in the year 2003 itself, when his junior was promoted. The petitioner has not approached this Court immediately and when he overlooked for promotion in the year 2003, he has approached this Court only in the year 2006 by filing W.P.No.8155 of 2006 seeking promotion without reference to the punishment dated 17.06.2005. In spite of order of this Court dated 23.03.2006, the respondents have not considered the case of the petitioner for promotion. It is pertinent to note that even after expiry of currency of punishment was over, the

petitioner's name was not considered for promotion in the counselling that was held on 15.06.2006. In view of the order of setting aside the punishment dated 17.06.2005 and allowing W.P.No.38216 of 2005, the petitioner is entitled to promotion when his junior Dr.Jayakumari was promoted in the counseling held on 11.02.2003. The petitioner is entitled to time scale of pay in the promoted post from the date when his junior was promoted as Reader in Dermatology. As the petitioner approached this Court only in the year 2006 and this Court by the order dated 23.03.2006 directed the respondents to consider the petitioner for promotion, the petitioner is entitled for monetary benefits in the promoted post only from 23.03.2006, the date of order of this Court in W.P.No.8155 of 2006.

9.In the result, both the writ petitions stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
Health and Family Welfare I-2 Department
Fort. St. George, Chennai-9.

2.The Director of Medical Education
Kilpauk, Chennai-10.

+2cc to Mr.M.Muthappan, Advocate SR.No.55387, 55388

+2cc to Government Pleader SR.No.55959, 55960

W.P.Nos.38216 of 2005 and 47200 of 2006
and W.P.M.P.No.40860 of 2005

NMI (CO)
GMY (13/08/2019)