

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.7003 of 2019

A.Fareetha Banu

..Petitioner

vs

1.The Principal Secretary to Government
Health & Family Welfare Department
Fort St.George, Chennai - 600 009

2.The Director of Medical and Rural Health
Services (ESI)
Teynampet, Chennai - 600 006

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

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
to direct the respondents to dispose of the petitioner's
representation dated 14.11.2018.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.A.N.Thambidurai

Special Government Pleader

O R D E R

The relief sought for in the present writ petition is
for a direction to direct the respondents to dispose of the
petitioner's representation dated 14.11.2018.

2.On a perusal of the copy of the representation dated
14.11.2018, this Court is of an opinion that the writ
petitioner seeks inclusion of her name in the panel for
promotion.

3.It is needless to state that, while undertaking the
process of preparation of panel, the names of all the
eligible persons are to be included in the order of
seniority and with reference to the rules in force. If at
all, any dispute in the seniority list, the respective
employees are at liberty to approach the competent
authorities for redressal of their grievances by
specifically stating the grounds and the reasons for such

revision of seniority. However, certain broad facts stated for the purpose of including the name of an employee in the panel, cannot be considered by issuing a direction to consider the direction in view of the fact that it is a pre-condition to establish the legal right for the purpose of issuing any such directions. Even for a direction to dispose of the representation or appeal, the person, who approaches the Court, must establish a legal right. As far as the inclusion of the name of the writ petitioner in the panel and for promotion is concerned, the same is to be done strictly in accordance with the rules in force. If at all, the writ petitioner is aggrieved in the matter of fixation of seniority, then also, the petitioner has to approach the authorities with the correct facts and details. Contrarily, certain vague representations cannot be taken as a valid one for the purpose of issuing a direction to consider the representation under Article 226 of the Constitution of India.

4. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. Contrarily, issuing such directions would not solve the issues or to redress the grievances in respect of the litigants, who are approaching the Court of law. One writ petition provides cause for all subsequent writ petitions or such directions are sometimes sought for by filing writ petition in order to create a fresh cause of action in respect of lapsed issues. The Courts, without considering the delay and other legal issues, issuing directions to consider the representations. This provides a fresh cause of action for the litigants to again re-open the cases, which had already closed or settled long back. Judicial creation of cause of action by entertaining such prayers is certainly impermissible. Litigants shall not be permitted to seek such directions for the purpose of re-opening cause, which were already dead or the litigants slept over their rights.

5. Under these circumstances, even in a writ petition, where a direction to dispose of representation is sought for, the Court must be cautious and ascertain the facts and details and the circumstances, so as to issue such directions in a meaningful manner and keeping in mind that

the justice is done to the parties to the lis as a whole. Otherwise, it will be a mechanical exercise of judicial review without even considering or ascertaining the facts and circumstances and the issues involved.

6.This being the essential criterias and ingredients to be ascertained and followed by the Constitutional Courts, this Court is of an undoubted opinion that direction to consider the representation or dispose of the same, can never be granted in a routine manner or in a mechanical manner without ascertaining the facts, grievances, and other legal issues involved with reference to the prayer sought for. The Hon'ble High Court cannot be a cause for multiplication of litigations. The Hon'ble High Court would not pave way for the litigants to create future litigations. Every issue brought before the Hon'ble High Court must be settled with the legal principles and with reference to the facts and circumstances raised by the parties concerned.

7.Under these circumstances, the present case is one such case, where the representation itself is vague and not clear with reference to the relief sought for by the writ petitioner. If at all, the writ petitioner is aggrieved, the petitioner is at liberty to approach the authorities competent with clear details and with the specific facts and circumstances.

8.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs.

kak

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary to Government
Health & Family Welfare Department
Fort St.George, Chennai - 600 009

2.The Director of Medical and Rural Health
Services(ESI), Teynampet, Chennai - 600 006

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

+1 cc to Government Pleader SR.NO. 23593

+1cc to Mr.S.Ilamvaludhi , Advocate SR.No. 23804

W.P.No.7003 of 2019

A.SK(05/04/2019)