

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.7478 OF 2019

AND

W.M.P.NO.8138 OF 2019

Dr.A.Chandra

.. Petitioner

..Vs..

1. Secretary to Government,
Health and Family Welfare (A-1) Department,
Secretariat,
Chennai-600 009.

2. Director of Medical Examination (DME),
Kilpauk,
Chennai-600 010.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring the counseling for the post of Associate Professor scheduled on 28.2.2019 and the consequent Government Order in G.O.(2D) No.56, Health and Family Welfare (A1) Department, dated 8.3.2019 passed by the first respondent herein as illegal and void.

For Petitioner : Mrs.Vijayalakshmi K.Rajaratnam.

For Respondent-1 : Mr.A.N.Thambidurai,
Special Government Pleader.

For Respondent-2 : Mr.V.Kadhirvelu,
Special Government Pleader.

O R D E R

The transfer and posting orders issued by the Government in G.O.(2D) No.56, Health and Family Welfare (A1) Department, dated 8.3.2019, is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the writ petitioner is holding the post of Assistant Professor and expressed her willingness to participate in the counseling for the post of Associate Professor in various specialties.

3. The learned counsel relying on the Circular, issued by the Directorate of Medical Education in proceedings dated 27.2.2019, states that the name of the writ petitioner was listed in Annexure-III, namely list of Associate Professors, who have to attend the Transfer Counseling on 28.2.2019. The name of the writ petitioner is found place in the list of Associate Professors in Annexure-III at Serial No.73. Thus, it is contended that as per the Circular, the listed candidates must be given first preference and thereafter, the non-listed candidates may be permitted to participate in the counseling.

4. The grievance of the writ petitioner is that six persons were given the preference for transfer and posting in the Department of Physiology. Out of six persons, Serial Nos.4 and 5 are the listed persons in Annexure-III to the Circular and the remaining four persons were not included in the Annexure-III to the Circular dated 15.2.2019. Thus, the writ petitioner was denied of her opportunity to exercise her option in the matter of transfer and posting.

5. Undoubtedly, transfer is an incidental to service, more-so, a condition of service. Transfer can never be claimed as a matter of legal right. Transfer counseling is provided only to facilitate the employees to get their choice of place or post. However, such a choice can never be claimed as a matter of legal right. The Circular issued by the respondents in paragraphs 3 and 4 are extracted hereunder:-

"3. The Medical Officers whose names are not found in the enclosed list may also participate in the said transfer counseling. They are permitted only after transfer counseling of abovesaid Medical Officers.

4. The Head of the Institutions are requested to issue Service Particulars to all the Medical Officers found in Annexure III and also to issue service particulars to the Medical Officers who are willing to participate in the said transfer counseling, as per the enclosed Format in the Annexure II, as on date and to vouch for its bonafide. The certified Service

Particulars has to be handed over to the Medical Officer concerned who is attending the transfer counseling. The format necessarily need to be signed by the Medical Officer and shall be certified for its veracity by the personnel of the Office (Assistant, Office Superintendent, Junior Administrative Officer/Administrative Officer) and by the Dean/Head of the Institution concerned."

6. Relying on the paragraph-3 of the Circular, the learned counsel for the writ petitioner states that those candidates whose names were not listed in the Circular and are permitted only after transfer counseling of the abovesaid Medical Officers. Therefore, the respondents are bound to follow the list in Annexure-III at the first instance and thereafter provide an opportunity to the non-listed candidates.

7. This Court is of the considered opinion that once the non-listed candidates are also given the option to express their willingness to participate in the transfer counseling, as per Annexure-II which states that format-service particulars for transfer counseling for Associate Professors, they are also to be construed as listed candidates for the purpose of participating in the transfer counseling. There are three Annexures to the Circular. Annexure-I speaks about the re-schedule for transfer counseling for the post of Associate Professors in DME Institutions, Annexure-II provides format-service particulars for transfer counseling for Associate Professors and Annexure-III enumerates the list of Associate Professors, who have to attend the transfer counseling on 28.2.2019.

8. Thus, the very purpose and the object of the Annexures are enabling the Associate Professors to avail the benefit of transfer counseling for the purpose of opting for a post or place. Once the persons, who have given their option before issuance of the Circular or on earlier occasions, their names were already listed in Annexure-III. The Circular provides for options for the persons whose names were not listed in the Annexure, so that all such persons can express their willingness to fill up the Annexure-II and get their names included in the Annexure-III for the purpose of attending transfer counseling on 28.2.2019.

9. This apart, these are all the procedures to provide the equal opportunity to all the Associate Professors in the counseling in the order of their respective CML seniority. The option for transfer and post are to be done strictly in

accordance with CML seniority and the choice must be given in the order of seniority. As per the general counseling rules issued by the Government, the Circular was issued by the Directorate of Medical Education based on G.O.(4D) No.2, Health and Family Welfare Department, dated 15.2.2019.

10. The counseling for transfer and posting are to be done strictly in the order of seniority of the employees in the particular cadre. Thus at the time of counseling, the list of persons, who participated must be given preference in the order of seniority. In respect of persons, who have subsequently expressed their willingness and fill up the format in Annexure-II, their names are also to be listed along with other candidates at the time of transfer counseling.

11. This being the very purpose and object of the transfer counseling, the transfer and posting are to be granted only in accordance with the seniority at the time of conducting the counseling proceedings.

12. This apart, the Position Note filed by the learned Special Government Pleader, which is signed by the Directorate of Medication Education states as follows:-

"1. It is submitted the petitioner was selected by TNPSC for the post of Assistant Surgeon. She has been appointed as Assistant Surgeon and posted to Government Primary Health Centre, Kilpennathur and joined duty there on the Forenoon of 4.7.2002 under the administrative control of the Director of Public Health and Preventive Medicine Chennai. She had undergone Post Graduate Course in MD (Physiology) at Kilpauk Medical College, Chennai as a service candidate from 30.6.2006 to 26.3.2009. On completion of Post Graduate Course she was posted as Assistant Professor of Physiology, Government Stanley Medical College, Chennai. Accordingly, she has joined duty as Assistant Professor on the Forenoon of 27.3.2009 and served till 30.3.2015.

2. It is further submitted that she was promoted as Associate Professor of Physiology and posted to Government Tirunelveli Medical College, Tirunelveli. She joined in Government Tirunelveli Medical College, Tirunelveli on the Forenoon of 31.3.2015 and served there till 31.10.2015. Thereafter she

was transferred and posted as Associate Professor of Physiology at Government KAP Viswanatham medical College, Trichy and worked there till 11.1.2017. Now, the petitioner is working as Associate Professor of Physiology, Government Villupuram Medical College, Villupuram w.e.f. 12.1.2017.

3. It is also submitted that the first respondent in their G.O.(4D) No.2, Health and Family Welfare dated 15.2.2019 have sanctioned Department wise and College wise teaching post to the various Medical College and Hospital in Director of Medical Education side as per the Medical Council of India norms by supersession of the earlier orders of teaching posts sanctioned in Government Medical College and other allied institution.

4. It is submitted that as per the said Government Order few posts already sanctioned in certain specialties in some Medical Colleges were found in excess of Medical Council of India (MCI) norms and some Medical Colleges were deficient of Medical Officers to hold newly sanctioned posts in same specialties. Hence it has been decided that to identify the Medical Officers holding excess posts and transfer them to Medical Colleges wherever there is deficiency of Medical Officers to ensure that specialists are distributed all Medical Colleges throughout the State and Specialty Medical Services are available all over the State.

5. It is further submitted that in the said G.O, the first respondent among others has sanctioned only one Professor and one Associate Professor post to the Department Physiology at Government Villupuram Medical College, Villupuram, whereas Dr.R.Shanthi Malar CML Senior and Dr.A.Chandra CML Junior were worked as Associate Professor in the specialty of Physiology at Government Villupuram Medical College, Villupuram. Therefore, the second respondent has identified the petitioner namely Dr.A.Chandra as excess Medical Officer as she is CML Junior.

6. It is also submitted that while identifying the excess person in particular post in the said Medical College the Medical Officer who is junior most in CML seniority has been found as excess and called for counseling by the second respondent to take the post available in some other Medical College. If the Senior Medical Officer express their willingness to move away from the said Medical College instead of CML Juniors, they have given priority to participate in the counseling according to their CML seniority.

7. It is submitted that in order to implement the G.O.(4D) No.2, Health and Family Welfare Department, dated 15.2.2019, the second respondent has conducted transfer counseling for the post of Associate Professor of various specialties in this Directorate on 28.2.2019 and 1.3.2019. In the specialty of Physiology the transfer counseling was conducted in this Directorate on 28.2.2019. In letter No.8321/E1/5/2019 dated 27.2.2019, the second respondent has issued a circular duly identifying the excess Medical Officer specialty wise and Institution wise with instructions that they should attend the transfer counseling without fail. Further it is also informed that the Medical Officers whose names are not found in the enclosed list may also participate in the said transfer counseling.

8. It is further submitted that during the transfer counseling held on 28.2.2019 in the specialty of Physiology, the petitioner among other 11 Medical Officers i.e., excess Medical Officers identified by the second respondent in his Circular dated 27.2.2019 and also willing Medical Officers have attended and they were permitted to participate in the counseling according to their CML seniority. As Dr.R.Shanthi Malar, Associate Professor of Physiology, Government Villupuram Medical College, Villupuram and other 4 Medical Officers namely Dr.Ratna Manjushree Jeyaraman. Dr.C.Anita Mohan, Dr.Kanmani Karthikeyan, Dr.T.N.Vijayalakshmi are CML senior than the petitioner, they were

given priority and placed before the petitioner to participate in the transfer counseling. Accordingly, Dr.R.Shanthi Malar, Associate Professor of Physiology Government Villupuram Medical College, Villupuram CML senior has opted for transfer to Madras Medical College, Chennai. Since Dr.R.Shanthi Malar was moved from Government Villupuram Medical College, Villupuram in the said transfer counseling, the petitioner has expressed her willingness to stay in Government Villupuram Medical College, Villupuram. Based on their options, the first respondent in their G.O.(2D) No.56, Health and Family Welfare (A1) Department, dated 8.3.2019 have issued transfer and posting orders to the 6 (six) Medical Officers in the specialty of Physiology among others."

13. It is categorically stated that the writ petitioner has expressed her willingness to stay in Government Villupuram Medical College, Villupuram based on her option. When the writ petitioner herself expressed her willingness during the counseling that she is willing to stay in Government Villupuram Medical College, Villupuram, there is no point in now claiming that she was denied of her opportunity in the counseling proceedings.

14. However, the learned counsel for the writ petitioner disputes the position expressed by the Directorate Medical Education. But there is no substantial proof to establish such statements and therefore, this Court is not inclined to accept the submissions made by the learned counsel for the writ petitioner.

15. This being the factum, the writ petitioner has not established any acceptable ground in respect of the relief sought for in the present writ petition.

16. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn

To

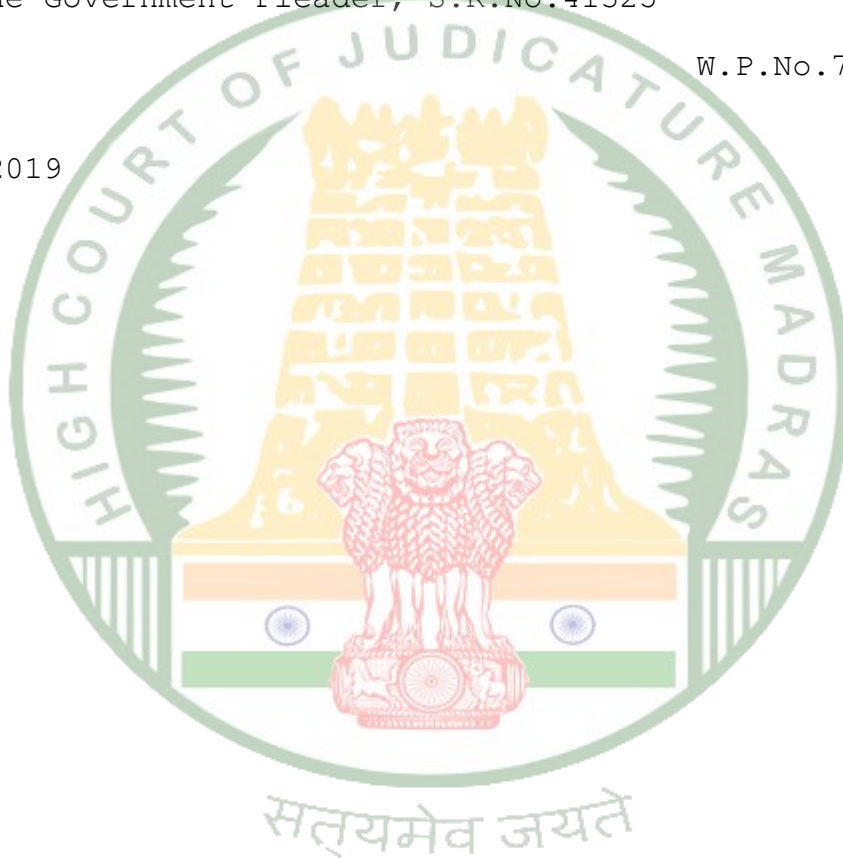
1. Secretary to Government,
Health and Family Welfare (A-1) Department,
Secretariat,
Chennai-600 009.

2. Director of Medical Examination (DME),
Kilpauk,
Chennai-600 010.

+1cc to Mrs.Vijayalakshmi K.Rajaratnam, Advocate, S.R.No.40100
+1cc to the Government Pleader, S.R.No.41325

W.P.No.7478 of 2019

GP (CO)
CS/20/05/2019



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