

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.28985 of 2019
and W.M.P.Nos.28746 & 28747 of 2019

Dr.K.Kalaiselvi

..Petitioner

vs

1.The Secretary
Government of Tamil Nadu
Department of Health and Family Welfare
Fort St. George, Chennai-9.

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

3.The Joint Director of Health Services
Race Course Road
Coimbatore.

4.Dr.E.Raja

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the issuance of posting order dated 20.09.2019 bearing Ref.No.57669/E3/1/2019-8 by the 2nd respondent in appointing the 4th respondent as Hospital Superintendent at Government Head Quarters Hospital, Pollachi, Coimbatore District and consequently, quash the impugned posting order of appointment and pursuant thereto, for a direction directing the 2nd respondent to appoint the petitioner as Hospital Superintendent at Government Head Quarters Hospital, Pollachi, Coimbatore District.

For Petitioner : Mr.C.P.Sivamohan

For R1 to R3 : Mr.A.N.Thambidurai
Special Government Pleader

For R4 : Mr.V.Vijay Shankar

O R D E R

Writ Petition is filed for issuance of Writ of Certiorarified Mandamus calling for the records relating to the issuance of posting order dated 20.09.2019 bearing Ref.No.57669/E3/1/2019-8 by the 2nd respondent in appointing the 4th respondent as Hospital Superintendent at Government Head Quarters Hospital, Pollachi, Coimbatore District and consequently, quash the impugned posting order of appointment and pursuant thereto, for a direction directing the 2nd respondent to appoint the petitioner as Hospital Superintendent at Government Head Quarters Hospital, Pollachi, Coimbatore District.

2. Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the 4th respondent.

3.The case of the petitioner is that she joined as Assistant Surgeon on 09.03.1996 and she is presently working as Chief Civil Surgeon (surgery) at Government Head Quarters Hospital at Pollachi from 07.01.2017 onwards. While so, after the post of Hospital Superintendent of Government Head Quarters Hospital, Pollachi, fell vacant on 30.06.2018, the petitioner was appointed as Hospital Superintendent in-charge on the ground that she is the senior most doctor. However without any counselling, the 4th respondent was appointed as Hospital Superintendent on 20.09.2019. Challenging the same, the present writ petition is filed.

4. Learned counsel appearing for the petitioner submitted that the petitioner is senior most Chief Civil Surgeon in the Government Head Quarters Hospital, Pollachi and was promoted in the year 2017 itself, whereas the 4th respondent, who is junior to the petitioner, was promoted to the particular post on 30.08.2019. Without considering the petitioner's seniority for the post of Hospital Superintendent, appointment of 4th respondent is illegal. Further, without giving opportunity to the petitioner for participating in the counselling, appointment made in favour of the 4th respondent is bad in law. Accordingly, prayed for allowing the writ petition.

5.Learned Special Government Pleader appearing for the respondents 1 to 3 submitted that on 19.09.2019 at 1.12 p.m., official communication for promotion counselling was sent to the respective hospitals through E-Mail fixing time for transfer and promotion counselling in respect of Chief Civil Surgeon at 11.00 a.m. and 2.00 p.m. respectively, on 20.09.2019. Since the

petitioner was not participated in the counselling and 4th respondent was participated, the post of Hospital Superintendent was given in favour of the 4th respondent.

6. Learned counsel appearing for the 4th respondent submitted that though the petitioner was promoted in the year 2017 as Chief Civil Surgeon and whereas 4th respondent, who is junior to the petitioner was promoted in the year 2019, however, since the petitioner has not participated in the counselling held on 20.09.2019, the promotion was granted in favour of the 4th respondent, who is the only senior most surgeon available in the Pollachi Government Hospital. He further submitted that apart from the official E-Mail communication to the petitioner, the petitioner was orally informed through phone. On the particular date, since the petitioner was not available in Pollachi, on her instructions, her service particulars were carried out by the 4th respondent to hand over to the petitioner. After reaching Chennai, when the 4th respondent called the petitioner over phone, she informed that she had gone back to Pollachi. Since the petitioner refused to participate in the counselling, promotion was given to the 4th respondent. Therefore, the impugned order of the 2nd respondent cannot be interfered with.

7. Considering the facts and circumstances of the case along with the submissions made on either side, official communication through E-Mail was sent to the respective hospitals on 19.09.2019. Admittedly, the petitioner was not available in the station and she was in Chennai. Without giving any opportunity for participating in the counselling, taking decision promoting the 4th respondent is unsustainable. Under such circumstance, this Court is inclined to set aside the impugned order of the 2nd respondent dated 20.09.2019 and accordingly, impugned order dated 20.09.2019 is set aside with liberty granted to the respondents 1 to 3 to conduct a promotion counselling once again and to permit all the eligible candidates to participate in the counselling in respect of Pollachi alone. The said exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary
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Department of Health and Family Welfare
Fort St. George, Chennai-9.

2.The Director of Medical and
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Teynampet, Chennai-600 006.

3.The Joint Director of Health Services
Race Course Road
Coimbatore.

+1cc to Mr.V.Vijay Shankar, Advocate SR.94051

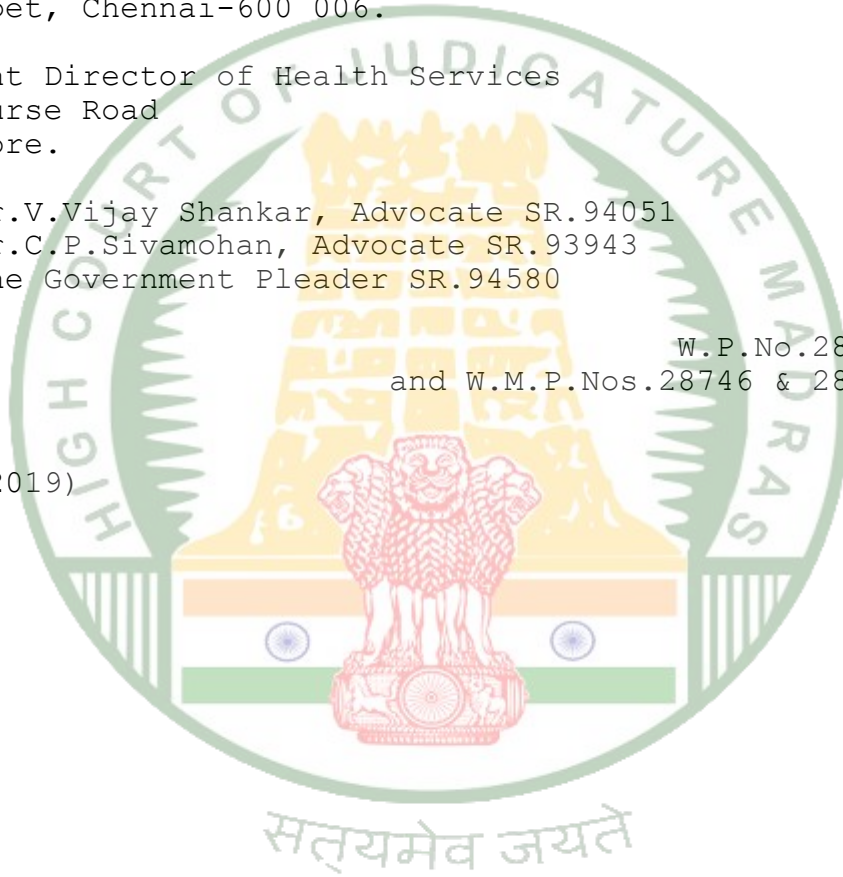
+1cc to Mr.C.P.Sivamohan, Advocate SR.93943

+1cc to the Government Pleader SR.94580

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PVS (CO)
CB(30/12/2019)



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