



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.12.2019**

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P(MD)NO.11654 OF 2016

Dr.S.M.Durai Pandian

:Petitioner

.vs.

1.The Principal Secretary to
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George,
Chennai - 600 009.

2.The Director,
Medical and Rural Health Services,
DMS Campus, Teynampet,
Chennai -6.

3.The Deputy Director of Health Service,
Samathanapuram,
Palayamkottai,
Tirunelveli -2.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent made in Letter No.17411/A2/2016-I, dated 27.5.2016 and to quash the same as illegal and consequently to direct the first respondent to promote the Petitioner as Senior Civil surgeon and grant all monetary benefits to him as per G.O (Ms)No.7, dated 4.1.2012, Health and Family Welfare(B2) Department.

For Petitioner

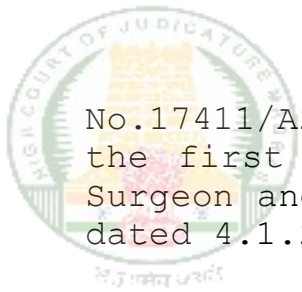
:Mr.D.Venkatesh

For Respondents

:Mr.M.Jeyakumar
Addl.Govt.Pleader

O R D E R

This Writ Petition has been filed seeking to quash the
<https://hcservices.apnorte.gov.in/hcservices/> of the first respondent made in Letter



No.17411/A2/2016-I, dated 27.5.2016 and consequently to direct the first respondent to promote the Petitioner as Senior Civil Surgeon and grant all monetary benefits to him as per G.O(Ms)No.7, dated 4.1.2012, Health and Family Welfare(B2) Department.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The brief facts of the case are that the Petitioner herein had joined as Medical Officer in the Panchayat Union Dispensary, Kayathar on 9.6.1975. Pending his service, certain charges under Rule 17(b) of Tamil Nadu Civil Services(Discipline and Appeal) Rules was framed against him and disciplinary proceedings was initiated against the Petitioner. On finalization of the disciplinary proceedings, the punishment of stoppage of increment for a period of three years with cumulative effect was initially imposed on the Petitioner for the pecuniary loss sustained by claiming false Honorarium and fixed travelling allowances, through the order, dated 29.4.1998. The order came to be challenged by the Petitioner before the Tamil Nadu Administrative Tribunal in O.A.No.7960 of 1998, by which, punishment came to be modified by the Tribunal on 5.11.2003 by imposing punishment of stoppage of increment for a period of three years without cumulative effect.

4. The Petitioner herein had sent a letter on 10.12.2003 to the first respondent herein accepting the modified punishment and requested that the order of the Tribunal be implemented immediately. Though the first respondent had received the request of the Petitioner, no further action was taken on the same.

5. In the meantime, the Petitioner had reached the age of superannuation on 28.2.2006 and by G.O(D)No.167, Health and Family Welfare(D-2)Department, dated 28.2.2006, the original punishment imposed on 29.4.1998 came to be set aside. However, there was a direction that the disciplinary proceedings against the Petitioner should be proceeded as deemed proceedings under Rule 9 of the Tamil Nadu Pension Rules, 1978.

6. Later, G.O.Ms.No.7, Health and Family Welfare Department, dated 4.1.2012 came to be issued by virtue of which Medical Officers of Panchayat Union Dispensaries who were absorbed into Tamil Nadu Medical Service, were directly recruited as Assistant Surgeons from the date of their initial appointment in Panchayat Union Dispensaries and to fix their seniority accordingly. The Petitioner's proposal, though was initially forwarded, was rejected on 27.5.2016, stating that since the disciplinary action initiated against him on 26.6.1995 was pending till his date of retirement, he was not eligible for promotion or monetary



benefits. Challenging the same, the present Writ Petition has been filed.

7.The learned counsel for the Petitioner would submit that in view of G.O.Ms. No.7, Health and Family Welfare Department, dated 4.1.2012, the Petitioner is entitled to be promoted as Senior Civil Surgeon and since he had accepted the modified punishment of stoppage of increment for a period of three years without cumulative effect and also requested the respondents immediately to implement the said punishment, the inaction on the part of the respondents should not be put against him.

8.The learned Additional Government Pleader appearing for the respondents would submit that under G.O(Ms)No.22, Personnel and Administrative Reforms(S)Department, dated 24.2.2014, the Government servants are not entitled for any promotion when he is undergoing punishment. In the instant case, the Petitioner was undergoing punishment till the date of his retirement and therefore, he would not be entitled for the relief as sought for in the Writ Petition.

9.I have carefully considered the rival submissions made by the respective counsels.

10.The only reason on which the respondents have rejected the Petitioner's request for retrospective promotion is on the ground that as on the date of his retirement, the disciplinary action initiated against the Petitioner was pending. When the Tamil Nadu Administrative Tribunal had originally modified the Petitioner's punishment on 5.11.2003 by imposing the punishment of stoppage of increment for a period of three years without cumulative effect, the Petitioner had chosen to accept the order of the Tribunal and had immediately requested the respondents on 10.12.2003 itself seeking for implementation of the orders of the Tribunal.

11.The respondents have also filed a counter affidavit before this Court stating that on the opinion of the Government Pleader, they had chosen not to file any appeal against the order of the Tamil Nadu Administrative Tribunal. Thus the said order had attained its finality.

12.While that being so, there was a duty cast on the respondents to immediately implement the order of the Tribunal and not to wait till the date when the Petitioner attains the age of superannuation. The reason assigned by the respondents for non-consideration of the Petitioner's request for implementation of the Tribunal's order is on account of administrative reasons. Such a bald statement for delay of more than 2 ½ years is un-



sustainable. The very basis on which the present request of the Petitioner has been rejected through impugned order is the pendency of the disciplinary proceedings as on the date of the Petitioner's retirement. Had the respondents acceded to the request of the Petitioner to implement the order of the Tribunal in the year 2003 itself, all these complications could have been avoided and a situation for relying on G.O.(Ms)No.22, Personnel and Administrative Reforms(S)Department, dated 24.2.2014 would not have arisen. Hence, such an inaction on the part of the respondents in not considering the Petitioner's request at the earlier point of time, should not be put against the Petitioner and this dereliction of duty on the part of the respondents itself would be a sufficient ground to set aside the impugned order.

13.For all the above reasons, the impugned order passed by the first respondent in Letter No.17411/A2/2016-I, dated 27.5.2016 is set aside. Consequently, the first respondent herein is directed to notionally promote the Petitioner as Senior Civil Surgeon and grant him all the monetary benefits to which he would be eligible in accordance with the prevailing regulations. Such disbursement shall be done as expeditiously as possible, in any event, within a period of eight weeks from the date of receipt of a copy of this order.

14.The Writ Petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

Sub Assistant Registrar(CS)

vsn

To

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

2.The Director,
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Chennai -6.



3.The Deputy Director of Health Service,
Samathanapuram,
Palayamkottai,
Tirunelveli -2.

+1 CC to MR.SPL GP (SR-103289[F] dated 04/12/2019)

+1 CC to MR.D.VENKATESH, Advocate (SR-103214[F] dated
04/12/2019)

ORDER MADE IN
W.P(MD)NO.11654 of 2016
03.12.2019

KM/(20.12.2019) 5P 6C