

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.127 of 2020

Dr.E.Raja

.. Appellant

Vs

1. Dr.K.Kalaiselvi

2. The Secretary

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

3. The Director of Medical and Rural Health Services
Teynampet, Chennai - 6.

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

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 12.11.2019 passed by the learned Single Judge in W.P.No.28985 of 2019.

WP.No.28985 of 2019:Petition 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 20.9.19 bearing REF.NO 57669/E3/1/2019-8 by the 2nd Respondent in Appointing the 4th Respondent as Hospital Superintendent at Govt 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 Govt Head quarters Hospital Pollachi Coimbatore District.

For Appellant : Mr.V.Vijayashankar

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

Heard learned counsel for the appellant.

2. The upshot of the entire argument of the learned counsel is that the private respondent, in spite of having full and complete knowledge about the date and time fixed for transfer counselling, i.e., 20.9.2019, had absented herself and, therefore, it was the appellant's turn, who was rightly offered the post of Hospital Superintendent in the Government Headquarters Hospital, Pollachi.

3. There is no dispute on facts that the private respondent was admittedly senior to the appellant. It is also not in dispute that the official communication, which was despatched through email, had reached the hospital at Pollachi. It is also not in dispute that on that day, the private respondent was at Chennai and was not at Pollachi.

4. The private respondent filed a writ petition contending that without affording any opportunity to her to avail the counselling procedure, the appellant, who was junior to her, has been granted the benefit of counselling and promoted to the said post, thereby prejudicing her right to occupy the same.

5. The Government filed a counter affidavit in the writ petition stating therein that the official email had been despatched and that the private respondent herself had come to Chennai and attended the office of the third respondent, where she was orally informed about the counselling on 20.9.2019. It is also stated in the counter affidavit that private respondent had moved a representation before the third respondent, which was nothing else but pressing her request for occupying the said post.

6. It is the case of the appellant that the private respondent herself had intimated about the counselling and that

her service records and documents were carried by the appellant and another Dr.Vanaja to Chennai, to be produced for the counselling purposes and handed over to her. It is, therefore, the contention of the appellant that not only the third respondent, but the appellant and his colleague Dr.Vanaja had informed the private respondent about the arrival of papers in Chennai. It is the case of the appellant that the private respondent herself went back from Chennai to Pollachi and, therefore, the entire episode clearly indicates that she was not interested in the post and hence, she did not attend counselling.

7. From the records, we find that the private respondent reached this Court promptly and filed the writ petition contending that she had no information with regard to the status of the counselling and, therefore, she was prevented from appearing in the same and consequently, her writ petition came to be allowed by the learned Single Judge giving her the said opportunity and setting aside the promotion of the appellant.

8. We have considered the same and we find on the basis of what has transpired and had been transacted that the appellant is claiming there to be a voluntary relinquishment by the private respondent. It appears that this is being impliedly inferred from the allegations and counter allegations that are on record. The Government has not filed an appeal questioning the impugned judgment. There is no evidence of any direct relinquishment or expression of having relinquished interest in the post by the private respondent. It is, therefore, difficult to assume that the private respondent was not interested in the post, in spite of the fact that she was senior to the appellant and otherwise eligible to occupy the said post.

9. In the background aforesaid, once the learned Single Judge has exercised discretion under Article 226 of the Constitution of India, we do not find it to be perverse enough to interfere with the same in this intra-court appeal, when the Government has not questioned the impugned judgment.

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10. The impugned judgment is not only equitable, but also sustainable and, therefore, the appeal fails and is hereby dismissed. Consequently, C.M.P.No.1781 of 2020 is closed.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

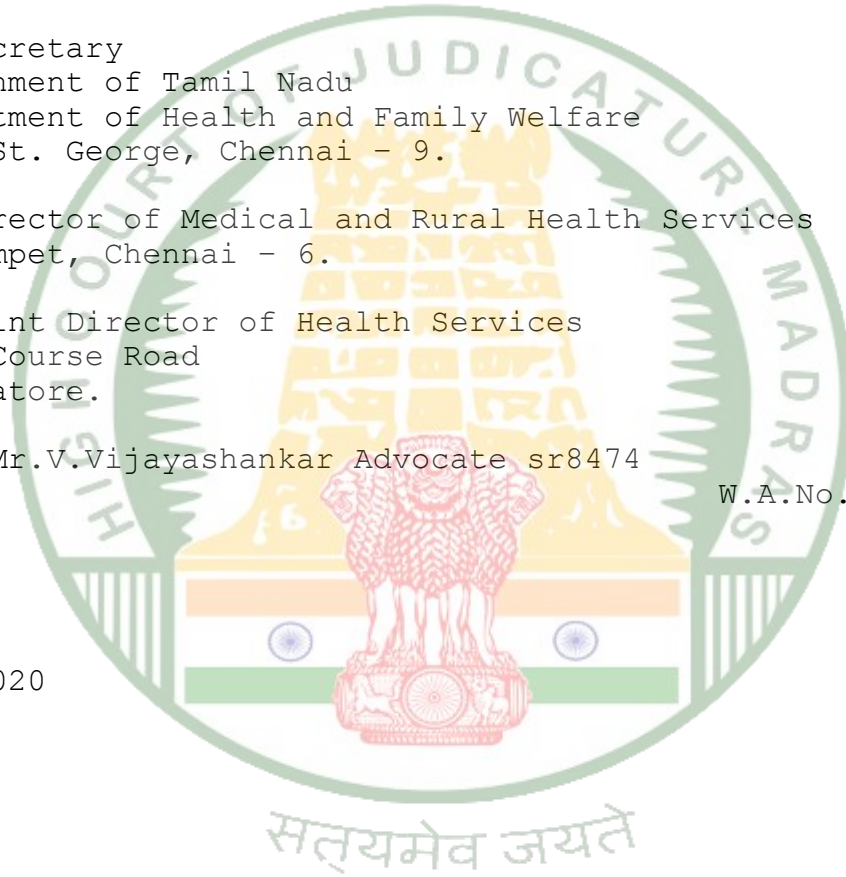
sasi
To:

1. The Secretary
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+1 cc to Mr.V.Vijayashankar Advocate sr8474

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