

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14216 of 2013

K.Mahendran

... Petitioner

Vs.

1.Director of Medical Education,
O/o.Director of Medical Education,
Kilpauk, Chennai - 600 010.

2.The Dean,
Coimbatore Medical College Hospital,
Coimbatore - 641 018.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records from the file of the 1st respondent made in Ref No.60501/E5/2/2012 dated 14.3.2013 and quash the same in so far as non inclusion of the petitioner's name is concerned and further direct the 1st respondent to promote the petitioner as Chief Pharmacist for the year 2013-2014 as accordance with the state seniority list of Pharmacists List.

For Petitioner : Mr.Su.Srinivasan

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records from the file of the first respondent made in Ref No.60501/E5/2/2012 dated 14.03.2013 and to quash the same in so far as non inclusion of the petitioner's name is concerned and to further direct the first respondent to promote the petitioner as Chief Pharmacist for the year 2013-2014 as accordance with the state seniority list of Pharmacists List.

2.The case of the petitioner is that the petitioner is working as Pharmacist at Government Medical College and Hospital at Coimbatore. The Director of Medical Education (FAC) provisionally sanctioned the tender quoted by INOX AIR PRODUCTS for supply of oxygen nitrous oxide and nitrogen gases etc., for the period from 01.04.2008 to 31.03.2009. The said company

never recorded the opening balance of cylinders available with the second respondent, however, vide communication dated 22.08.2008, the said company informed the second respondent about the non return of 76 oxygen cylinders and 1 nitrogen cylinder. Thereafter an enquiry was conducted and a sum of Rs.3,34,880/- was ordered to be recovered from the petitioner and one Mahendran.

3.It is the further case of the petitioner that aggrieved by the same, the petitioner filed W.P.No.6493 of 2010 before this Court challenging the enquiry proceedings dated 01.04.2009. This Court after observing 'though the loss of revenue to the State can be treated as a minor misconduct and orders can be made for recovery, after giving show cause notice, but when once serious objections are raised with reference to fixing the responsibility, it is incumbent on the part of the respondent to conduct proper enquiry and after affording reasonable opportunity to decide the issue on the question of responsibility for the loss as well as the quantum of loss fixed, the petitioner has to bear', vide order dated 15.09.2011 allowed the writ petition and remanded the matter back to the second respondent for conducting a full-fledged enquiry.

4.It is the further case of the petitioner that even after the order of this Court dated 15.09.2011, once again, without conducting proper enquiry, an order of recovery was passed. Aggrieved by the same, the petitioner filed W.P.No.24823 of 2012 before this Court and this Court vide order dated 12.09.2012 granted an order of interim stay. However, the second respondent continue to recover the amount.

5.It is the further case of the petitioner that the second respondent has, in the guise of recovery, decided to conduct counselling for the post of Chief Pharmacist, without considering the petitioner for the said post. Thereafter, the promotional panel dated 14.03.2013 was released on 10.05.2013 excluding the name of the petitioner. Aggrieved by the same, the petitioner has filed this writ petition.

6.The learned counsel appearing for the petitioner would submit that the writ petition in W.P.No.24823 of 2012 was allowed on 12.07.2019. He would further submit that during the pendency of W.P.No.24823 of 2012 and this writ petition, the petitioner was given promotion during the year 2015, however, the petitioner ought to have been promoted during the year 2013. He would further submit that the petitioner is further entitled to consequential promotion from the feeder category of Chief Pharmacist.

7.The learned counsel appearing for the petitioner would further submit that since the writ petition in W.P.No.24823 of

2012 was allowed on 12.07.2019, this Court may permit the petitioner to make representation to the competent Authority for promotion during the year 2013 and may issue direction to the respondents to consider the said representation within a reasonable time frame.

8.Considering the submissions made by the learned counsel appearing for the petitioner and since the writ petition in W.P.No.24823 of 2012 was allowed on 12.07.2019, this Court permits the petitioner to make representation to the competent Authority seeking promotion during the year 2013 and if any such representation is received, the Authority concerned shall consider the same, on merits and in accordance with law and dispose of the same, within a period of three months from the date of receipt of the said representation.

9.With the above observation, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

- 1.The Director of Medical Education,
O/o.Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 2.The Dean,
Coimbatore Medical College Hospital,
Coimbatore - 641 018.

W.P.No.14216 of 2013

VBA(CO)
GMV(03/11/2020)