

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.29391 of 2010 &

M.P.No.1 of 2010

Dr.Balasubramanian

... Petitioner

Vs.

1. The Secretary to Government,
Health & Family Welfare A1 Department,
Fort St.George, Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
3. Dr.K.Balakumar
Director & Professor,
Institute of Oto Rhino Laryngology,
Madras Medical College, Chennai. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus, to call for the records of the respondent in connection with the impugned Orders passed by him in G.O. (D) No.1280 Health & Family Welfare (A1) Department dated 07.12.2009 and quash the same and direct the respondents to promote the petitioner notionally as Director & Profession, Institute of Oto Rhino Laryngology, Madras Medical College, Chennai for the year 2009-10 and grant him all consequential service and monetary benefits.

For Petitioner : Mr.M.Muthappan

For Respondents: Ms.R.Janaki

Additional Government Pleader - R1 & R2
R3 served - No appearance

O R D E R

The petitioner was appointed as an Assistant Professor in the Medical Department under the Director of Medical Education on 22.07.1982 and he was promoted as an Associate Professor on 22.07.1983 and Professor with effect from 22.07.1991 and he was functioning as the Head of the Department of Tanjavore Medical College with effect from 01.07.2009 and attained the age of superannuation on 31.03.2010. When he was serving as a

Professor of ENT, the second respondent has given a circular for filling up of the post of Director Professor in the Institute of Oto Rhino Laryngology, in Madras Medical College, Chennai by proceedings No.28687/E1/3/09 dated 21.04.2009. In that Order he has recommended two names namely One Dr.Jesintha Chelliah and the writ petitioner. Later by G.O.D.No.1280, Health and Family Welfare (A-1) Department, dated 07.12.2009, the third respondent was appointed as a Director and Professor of the said institute at Madras Medical College. Aggrieved over the same, the petitioner made a representation, but it was not favourably considered by the respondents. Hence, the writ petitioner is before this Court.

2. The first and second respondents filed a counter stating that as per Rule 4 (a) of the Special Rules for the Tamilnadu Medical Services, the merit and ability are criteria for considering the persons for promotion to the post of Director. Since, the third respondent had got more teaching experience in the Post Graduate as well as administration experience in the large institute, he was preferred and appointed as the Director. The learned Government Advocate would further contend that the Rule 4(a) was followed and since the third respondent had better teaching experience and administrative experience in large institution, he was appointed and that the example cited by the petitioner that seniority is given preference in the case of Dr.Prgna Balubai Dolia and Revathi Jayakumar cannot be cited as an example. Therefore, she seeks dismissal of the writ petition.

3. I have considered the submissions.

4. A comparative chart of the aspirants to the post of Director and Head of the Department of Oto Rhino Laryngology Institute at Madras Medical College, will be beneficial.

No. of Details	(1)	(2)	(3)
Qualification & Experience	Dr.K.Balasubramanian (CML 1680)	Dr.Balakumar (CML 1550)	Dr.Jasinth Chelliah (CML 1222)
M.B.B.S.	1976	1976	1976
DLO	1979	1983	1980
MS.ENT	1982	Oct' 1986	March 1992
Senior Resident	22/07/1982 - 21/07/1983	1987	1993
Assistant Professor	22/07/1983 - 21/8/1987	1989	1994
Asso Professor of ENT	22/07/1987 - 21/07/1991	1995	Mar' 2000
Professor of ENT	22/07/1991 - 30/06/2009	Oct' 2002 (Addl. Professor	Mar' 2002 at Trichy

No. of Details	(1)	(2)	(3)
Professor & HOD of ENT	01/07/2009 - 31/03/2010	-	2008

5. From the above chart, it is seen that the petitioner has acquired Ph.D qualification in the year 1982. Whereas, the third respondent qualified himself as Ph.D degree holder, only in the year 1986. From the beginning, i.e. from 1983 the petitioner was working as an Assistant Professor in Thanjavur Medical College. He continued to work as Associate Professor and Professor of ENT in the same institute till 2009. Whereas, the third respondent was appointed only in the year 1989, i.e., 6 years later than the petitioner and he was 11 years junior to the petitioner as Professor of ENT. The third respondent has reached only to the level of Additional Professor, whereas, the petitioner is a Professor from 1991 onwards. The petitioner was promoted as Professor and Head of the Department of ENT in the year 2009. Whereas, the third respondent remained Additional Professor till the date of his appointment as Director.

6. A comparative reading of the qualifications and experience of both the petitioner and the third respondent clearly show that the petitioner is better qualified, who is far more senior in teaching experience. The next comparison comes under the ground of administrative experience in a large institution. The third respondent served in Madras Medical College. The writ petitioner served in Thanjavur Medical College. In terms of size and circumstances, both the Thanjavur Medical College and Madras Medical College are equal and should be considered as large institutions. The only advantage is that the Madras Medical College is situated in the State Head Quarters and Thanjavur Medical College is situate in the District Head Quarters. Other than this, on the administration side, in the considered opinion of this Court, the petitioner has functioned as the Head of the Department, Medical College, having more experience than the third respondent. To sum up, the petitioner is better qualified in the light of his rich teaching experience and seniority and in administration as the Head of the Department.

7. Be that as it may. A reading of the impugned Order shows that the Government had an occasion to consider the panel consisting of single medical officer, namely the third respondent. It is surprising to note that when the proposal was initiated two names namely the petitioner and one Jesinth Chelliah, recommended for consideration to the post, the communication has been called for from the other aspirant. From the counter, it is seen that the panel consists of three persons namely the petitioner, the third respondent Dr.Jesinth Chellaiah as candidates. But the affidavit filed by the Joint Secretary appears to be false. As per the impugned Order, the consideration was about the third respondent as single member panel and the petitioner as well as Dr.Jesinth Chelliah were not at all considered and there is no comparative assessment

made by the Government. That itself shows that malafide is writ large in the action of the Government. Therefore, I have no hesitation to hold that the impugned Order in G.O. (D) No.1280 Health & Family Welfare (A1) Department dated 07.12.2009 as malafide and not sustainable. But unfortunately both the petitioner and the third respondent have attained the age of superannuation in the year 2010 itself. Therefore, the injustice done to the petitioner cannot be undone. However, the respondent can consider the petitioner for notional promotion as Director and Professor of Institute of Oto Rhino Laryngology at Madras Medical College which will be a consolation that he gets the status for the long years of service rendered to the institution.

8. Therefore, a direction is given to the first respondent to consider the notional promotion to the petitioner in the light of comparative merit and pass appropriate Orders within a period of 12 weeks from the date of receipt of a copy of this Order. Even though I find that the Affidavit sworn by the Joint Secretary to Health and Family Welfare Department is misleading, I do not propose to impose any cost for the same.

9. This Writ Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Health & Family Welfare A1 Department,
Fort St.George, Chennai - 600 009.

2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.

+1 cc to Mr.M.Muthappan, Advocate,sr.15903.

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