

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. Nos.8228 of 2010 and 8826 of 2014

N.Pannerselvan Petitioner in both W.P.s

Versus

The Director of Medical and
Rural Health Services,
No.359, Anna Salai,
Chennai – 600 006.

... 1st respondent in W.P. No.8228 of 2010

The Director of Public Health
and preventive medicine,
No.359, Anna Salai,
Chennai – 600 006.

.... 2nd respondent in W.P. No.8228 of 2010
and 1st respondent in W.P. No.8826 of 2014

The Deputy Director of Health Services,
Formerly District Health Officer,
Udhagamandalam,
The Nilgiris District.

3rd respondent in W.P. No.8228 of 2010

The Government of Tamil Nadu
Rep. by its Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai – 600 009.

... 2nd respondent in W.P. No.8826 of 2014

***Prayer in W.P. No.8228 of 2010 :** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent No.2 on 29.7.2008 in his reference No.2797/E4/2008/S4 and quash the same to the extent it denies effect to the promotion of the petitioner till the date of assumption of charge as Junior Assistant and consequently places him at position No.295(a) in the seniority list from 20.11.1997 and direct the respondents, particularly respondent No.2 to give effect to the promotion of the petitioner as junior assistant for all purposes including monetary benefits and further promotions from 27.06.1992 itself.

(Prayer amended vide order of this Court in WMP No.30347 of 2019, dated 04.11.2020)

Prayer in W.P. No.8826 of 2014 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents particularly the first respondent to issue a correction to the seniority list placing the petitioner at Serial No.271, the appropriate position in the seniority list of Assistants in the Department dated 18.8.2013 in conformity with the order of this Court dated 27.9.2007 passed in W.P. No.36330 of 2004 and in pursuance of the proceedings of the first respondent in reference No.2797/E4/2008/S4, dated 29.07.2008.

For Petitioner in both WPs : Mr.P.K.Rajagopal

For Respondents in both Wps: Mr.S.Thangavel
Special Government Pleader

COMMON ORDER

As the issue involved in both these Writ Petitions is one and the same, the cases are taken up together for disposal by a common order.

2. According to the petitioner, he was initially appointed as Cook-cum-Waterman on 01.02.1982 at Government Dispensary, Thummanati. While so, proposals were called for to fill up the vacancies for the post of Junior Assistant, by way of transfer. That being so, one E.Manchaiyan, who is junior to the petitioner was promoted and posted as Junior Assistant. As the Respondents did not act upon his representations, the Petitioner filed O.A.No.1299 of 1983 before the Tribunal, which was dismissed. As there was an error apparent on the face of record in the order passed by the Tribunal, challenging the same, the Petitioner filed W.P. No.36330 of 2004, by virtue of G.O.Ms.No.43, dated 15.02.1994. Considering the facts and circumstances of the case, this Court allowed the said writ petition, but the respondents failed to effect promotion to the petitioner on par with his junior. Hence, the Petitioner was constrained to file a Contempt Petition, which was later closed, recording the order dated 29.07.2008 passed by the 1st respondent vide Ref.No.2797/E4/2008/S4.

3. It is the case of the Petitioner that, his seniority was positioned at S.No.295(a) and deemed promotion to the post of Junior Assistant was effected to him from 27.06.1992 with monetary benefits from the date of assumption of charge in the said post. However, he was actually promoted and his seniority was reckoned only on 16.04.2003. As the representations made to the Respondents in respect of his grievance did not yield any response, the Petitioner has come up with the present Writ Petition.

4. Learned counsel for the petitioner submitted that, consequent to the deemed promotion granted to the petitioner, he passed Departmental examination in the year 1992 itself and as such, he is eligible for next level of promotion as Assistant, whereas, his junior E.Manchaiyan was promoted on 10.01.2000. It is his contention that, in spite of directions issued by this Court to effect promotion to the petitioner on par with his junior E.Manchaiyan, the respondents failed to do so. Hence, by issuance of letter dated 29.07.2008, effecting notional promotion, the petitioner has suffered monetary loss as well as deprived from future promotions on par with his

junior. Thus, according to the learned counsel, the impugned order is unsustainable and is liable to be quashed and as such, he prays for a consequential direction to regularise and re-fix the Petitioner's seniority on par with his junior viz. E.Manchiyan, based on the order passed by this Court in W.P. No.36330 of 2004.

5. Mr.S.Thangavel, learned Special Government Pleader appearing for the respondents, reiterating paragraphs 5 to 9 of the counter Affidavit submitted that, the respondents took steps to fill up Junior Assistant vacancies from the feeder category in the year 1989, and the said posts were filled up on temporary basis through Employment Exchange. Following due procedures, five candidates were shortlisted for the post of Junior Assistant and consequent to issuance of orders, one E.Manchaiyan was promoted and he reported for duty on the forenoon of 27.06.1992 at Primary Health Centre, Pandalur. As such for want of vacancy, Service Registers of the remaining four candidates were returned. He went on to state that, the action of effecting promotion to E.Manchaiyan is itself illegal, and subsequently, he expired on 26.09.2006, and hence, they could not

revert the promotion to the said individual. Accordingly, the claim of the petitioner cannot be entertained on par with his junior, and the same is impermissible. Thus, the order impugned herein may not call for any interference by this Court. However, a direction may be issued to the respondents to consider the petitioner's representation on merits and in accordance with law, within a reasonable time.

6. Heard the learned counsel on either side and perused the materials placed on record.

7. It is seen that, the petitioner joined as Cook-cum-Waterman in the respondent Health Department, whereas his junior E.Manchiayyan joined as Office Assistant. In the light of the order dated 27.09.2007 passed by this Court in W.P.No.36330 of 2004, the impugned order dated 29.07.2008 was passed by the 1st respondent and the petitioner was notionally promoted and monetary benefits were ordered to be effected from the date of assumption of charge. Hence, this Court is of the view that the petitioner is entitled for service benefits from the date of effect of his

notional promotion. Accordingly, the petitioner is directed to submit a fresh representation to the respondents within a period of **two weeks from the date of receipt of a copy of this order** and on receipt of the same, the respondents are directed to consider the same and pass appropriate orders on merits and in accordance with law, within a period of **twelve weeks**.

8. With the aforesaid directions, **W.P.No.8228 of 2010 stands disposed of.** As the prayer sought for in **W.P.No.8826 of 2014 is for a consequential direction, the said Writ Petition also stands disposed of.** No costs. Consequently, connected Miscellaneous Petition is closed.

07.12.2020

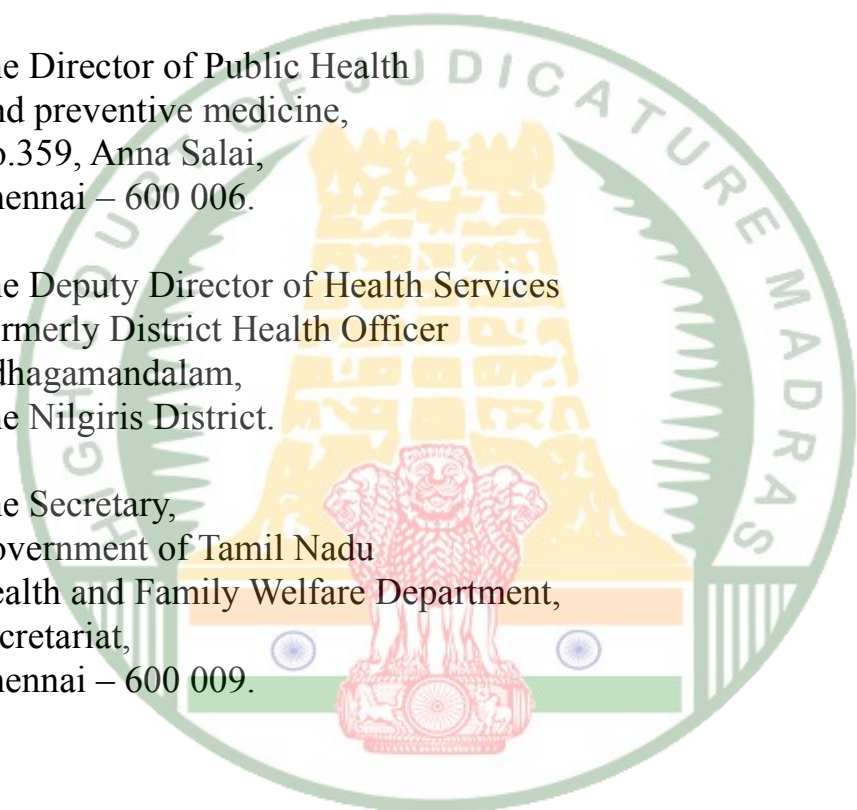
Index : Yes / No
Speaking Order : Yes / No

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सत्यमेव जयते
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To

1. The Director of Medical and Rural Health Services,
No.359, Anna Salai,
Chennai – 600 006.
2. The Director of Public Health and preventive medicine,
No.359, Anna Salai,
Chennai – 600 006.
3. The Deputy Director of Health Services
Formerly District Health Officer
Udhagamandalam,
The Nilgiris District.
4. The Secretary,
Government of Tamil Nadu
Health and Family Welfare Department,
Secretariat,
Chennai – 600 009.

The seal of the Tamil Nadu Legislative Assembly is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The gopuram is set against a green background with a white border. The words "TAMIL NADU LEGISLATIVE ASSEMBLY" are written in a circular path around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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M.DHANDAPANI, J.

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