

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 27141 of 2013
and
M.P.No. 2 of 2013

Dr.P.Nellaiappar

... Petitioner

- Vs -

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

2.The Director of Medical and Rural Health Services,
D.M.S. Compound, Chennai 600 006.

3.The Director of Medical Education,
Kilpauk, Chennai 600 010.

4.Tmt. Dr.Y.Shanthi Nambi, (CML 5359)
Department of child Psychiatry,
Institute of Child Health,
Egmore, Chennai 8

5.Dr.M.K.Rajendran

6.Dr.S.Sridevi

... Respondents

(R5 & R6 are impleaded as per
order dated 256.02.2015
in MP.NO.1/2015)

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 relating to the proceedings of the 1st respondent dated 12.09.2013 issued in G.O.(D) No.987 Health and Family Welfare (A1) Department and quash the same and consequently to direct the 1 to 3 respondents to include the petitioner in the appropriate place in the regular fresh panel fit for appointment to the post of Associate Professor of Plastic Surgery department for the year 2013-2014 by considering the directions dated 23.09.2010 issued in W.P.No.21737/2010 and the yardsticks applied in the case of M.Sridharan as per the

final order dated 06.07.2010 issued in W.P.No.41500/2006 and to award all eligible service and monetary benefits to the petitioner on par with his immediate junior.

For Petitioner : M/s.P.H.Thirumoorthy

For Respondents: Mr.S.Thangavel, Spl.G.P.

ORDER

The claim of the petitioner is that his absorption into the Tamil Nadu Medical Service should be from the date of his initial appointment in the Local Body Service and not from the date of provincialisation.

2. By G.O.Ms.No.109, Health Department, dated 12.01.1989, the Government of Tamil Nadu took a policy decision to upgrade the existing Panchayat Union Dispensaries as Government Primary Health Centers and on upgradation, the administrative control of the establishment fell under the Director of Primary Health Centres from the Commissioner of Rural Development. By G.O.Ms.No.572, Health Department, dated 29.03.1990, 41 Panchayat Union Dispensaries were taken over from the administrative control of Commissioner of Rural Development to the Director of Primary Health Centres on "as is where is basis" for conversion into Primary Health Centres. The conversion of Panchayat Union Dispensaries into Primary Health Centres was subject to the condition that the staff of all those 41 Panchayat Union Dispensaries were to be absorbed into the services of Primary Health Centres in consultation with the Tamil Nadu Public Service Commission. Pursuant to the said proceedings, the petitioner joined as Assistant Surgeon on temporary basis in the Primary Health Centre in the year 1990 and and he was absorbed as Assistant Surgeon through TNPSC in the year 1991 and he had completed two years Probation period in the same category and his service was regularized with effect from the date of his initial appointment. While being so, when he was working, in the year 2006 CML 2005 was published for making promotions, only based on the absorption in the year 1991 through TNPSC by creation of panel for appointment to the post of Associate Professor of Plastic Surgery for the year 2013-14, ignoring the service of the petitioner from 04.04.1990. Hence the present writ petition has been filed challenging the said panel.

3.Learned counsel appearing for the petitioner submitted that the petitioner filed the writ petition challenging the impugned order in G.O.(D) No.987 Health and Family Welfare (A1) Department , dated 12.09.2013 and further requesting to direct the 1 to 3 respondents to include the petitioner in the

appropriate place in the regular fresh panel fit for appointment to the post of Associate Professor of Plastic Surgery department for the year 2013-2014 by considering the directions dated 23.09.2010 issued in W.P.No.21737/2010 and in compliance of the same, the petitioner was placed in the appropriate place in the regular panel. Hence the first portion of the prayer stood complied with and, therefore, this writ petition has become infructuous. However he prayed that liberty may be granted to the petitioner to make a representation to get the benefits, as is granted to one M.Sridharan by this Court in W.P.No.41500/2006 , dated 06.07.2010.

4. On the above contention, this Court heard the learned Special Government Pleader appearing for the respondents, who has no serious objections to such a direction being passed.

5. A perusal of the order passed in W.P.No.41500/2006, dated 06.07.2010. [Dr.R.N.Krishnamoorthy and others Vs. The state of Tamil Nadu] reveals that the issue therein is similar to the issue on hand. It is clear that the issue in the present case is squarely covered by the decision in the above case, wherein, this Court observed as under:

"28. Accordingly, para 4 of G.O.Ms.No.464, Health and Family Welfare Department, dated 29.10.1999 depriving the benefit of services rendered by the Medical Officers in Panchayat Union Dispensaries is quashed. Likewise, G.O. (2D) No.5, Health and Family Welfare (B2) Department, dated 08.02.2002 treating the Medical Officers absorbed from Panchayat Union Dispensaries into Primary Health Centres as Juniors to the Assistant Surgeons and the consequential letter dated 12.08.2002 are quashed. A direction is issued to the respondents to count the services of the Medical Officers rendered in Panchayat Union Dispensaries i.e. Local Body service on their absorption into Primary Health Centres i.e. Tamil Nadu Medical Service as Assistant Surgeons, for all purposes including seniority, promotion etc. The Medical Officers should be placed below the directly recruited Assistant Surgeons of the year in which those Medical Officers were appointed in the Panchayat Union Dispensaries. That is, it is made clear that if a Medical Officer was recruited to Local Body service in a particular year and an Assistant Surgeon was recruited to Tamil Nadu Medical service in the same year, the Medical Officer absorbed into the Tamil Nadu Medical service

could be treated as juniors to those Assistant Surgeons who were recruited in the same year in which those Medical Officers were recruited by the Local Body service. "

6. In the light of the above stated facts, this petition is disposed of with a direction to the respondents to consider the case of the petitioner in the light of the decision rendered by this Court in W.P.No.41500/2006, dated 06.07.2010 and after verifying his service records and other qualifications, the respondents shall issue appropriate orders in accordance with law, within a period of 3 months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government of Tamil Nadu,
Health & Family Welfare Department,
Fort St., George, Chennai 600 009.
- 2.The Director of Medical and Rural Health Services,
D.M.S. Compound, Chennai 600 006.
- 3.The Director of Medical Education,
Kilpauk, Chennai 600 010.

+1cc to M/s.P.I.Thirumoorthy, Advocate Sr.25544
+1cc to the Government Pleader Sr.25389

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W.P. NO.27141 OF 2013

vsn II[co]
srg 17/08/2020