

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 3908 TO 3910 OF 2013

T.E.Jeevanandam .. Petitioner in WP 3908/13

M.Haribabu .. Petitioner in WP 3909/13

C.P.Prince .. Petitioner in WP 3910/13

- Vs -

1. Union of India, rep. By the Secretary to Government Dept. of Higher & Technical Education Government of Puducherry Puducherry.
2. Mother Theresa Post Graduate and Research Institute of Health Sciences, rep. By its Chairman, Puducherry.
3. The Vice Chairman- cum- Chief Secretary to Government Mother Theresa Post Graduate and Research Institute of Health Sciences, Puducherry.
4. The Dean Mother Theresa Post Graduate and Research Institute of Health, Puducherry. ..Respondents in all the writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents to grant notional promotion to the petitioner as Reader with effect from 23.2.07 and consequently to redesignate the petitioner as Associate Professor and place in the scale of pay of Rs.37,400-67000 with AGP of Rs.9000 with effect from 23.2.10 and grant all arrears of salary with all seniority , service and other benefits.

For Petitioners: Ms. Gopika Nambiar, for Mr. Kamalakumar

For Respondents: Mr. Nambiselvan

COMMON ORDER

It is the case of the petitioners in the respective petitions that they were initially appointed in the post of Assistant Professor (Lecturer) on various dates. Subsequently, the 2nd respondent created four posts of Reader by resolution dated 15.11.06 and rules and regulations were framed for considering persons for the above posts. It is the case of the respective petitioner that they were fully eligible for being promoted on the said date when the rules and regulations came into force.

2. It is the further case of the petitioners that in the year 2007, the Department Promotion Committee (for short 'DPC') was convened, which considered the eligible candidates for promotion to various disciplines and promoted them, however, to the exclusion of Anatomy, Physiology and Microbiology. The DPC had raised a query as to whether persons, who had been appointed on part-time basis could be considered. It is the averment of the petitioners that the DPC was not vested with any power to raise any query.

3. It is the further case of the petitioners that many persons, who were identically placed like the petitioners were promoted to the next higher post of Associate-Professor and further promoted as Professor. It is the case of the petitioners that for no fault of their, due to error of judgment committed by the DPC, they have been deprived of their promotion. It is the case of the petitioner that another DPC was convened in the year 2011 for considering the case of a single aspirant and his case was favourably considered to the detriment of the petitioners. Therefore, the petitioners approached this Court by filing W.P. Nos.19609/11, etc., and this Court, by order dated 16.12.11, directed the respondents to consider the representation of the petitioner in accordance with law and pass orders. The respondents, on the basis of the order, promoted the petitioners to the next higher post of Reader, but no subsequent promotions, as sought for by the petitioners were granted as their representations have not been considered in proper perspective. Due to the fault of the respondents, more especially the DPC, much prejudice has been caused to the petitioners and, therefore, the petitioners are before this Court filing the present petitions.

4. Learned counsel appearing for the petitioners, while reiterated the contentions and averments raised in the grounds filed in support of the writ petitions, submitted, that the petitioners, were due for promotion even during the earlier DPC during 2007 during which time many persons, identically placed like the petitioners were considered and promoted. However, on

the query raised by the DPC, the promotions of the petitioners were stalled. It is the submission of the learned counsel for the petitioners that the DPC was not vested with any power to raise query, but merely to consider the case of the eligible candidates for promotion. However, the DPC totally lost sight of its obligation and raised the query, which has caused much prejudice to the petitioners. Further, the representations submitted by the petitioners have not also been considered in proper perspective on the basis of the order passed by this Court and, therefore, the injustice meted out to the petitioners should be set right by this Court in exercise of its inherent jurisdiction.

5. This Court heard the learned counsel appearing for the respondents on the above contentions and perused the materials placed on record.

6. The facts in issue are not in dispute. So also the conduct of DPC during the year 2007 and the subsequent DPC during the year 2011. It is the admitted case of the petitioners that even during the first DPC, when query was raised by the DPC, which prevented the promotion of the petitioners, the petitioners had not taken any steps to question the said DPC. In the year 2011, when a single person was promoted on the basis of the recommendation of the DPC, only thereafter, the petitioners woke up and submitted representation and non-consideration of the same made the petitioners to come before this Court with the earlier round of litigation.

7. The averments in the affidavit filed in support of the petitions clearly reveal that all along, the petitioners were aware of the whole proceedings before the DPC. Even the petitioners were aware of the recommendations made to the other disciplines excluding Anatomy, Physiology and Microbiology. The petitioners have averred that the DPC is not vested with any power to raise any query but to make recommendation on the basis of the rules and regulations. Knowing fully well the limitations of the DPC and knowing fully well that DPC has crossed its limitation, yet the petitioners kept silent and only later in point of time, when the second DPC was convened and even at that point the case of the petitioners having not been considered the petitioners have filed representations and non-consideration of the same, the petitioners filed petitions before this Court to direct the respondents to consider their representations. However, curiously, till date, the petitioners have not chosen to challenge the resolution of the DPC which was convened in the year 2007 and by their own action, they have allowed the resolutions passed in the DPC to remain on record. In such circumstances, at this distant point of time, it is not open to the petitioners to come before this Court and submit

that the resolution passed in the earlier DPC was arbitrary and illegal and for the commission of such an illegality, the petitioners cannot be made to suffer.

8. The petitioners knowing fully well the resolution passed in the earlier DPC did not question the same even till the next DPC and the petitioners have not also outlined the steps taken by them between 2007 and 2011 to ventilate their grievance. The petitioners simply retired themselves to the resolution of the earlier DPC and by their own act of not challenging the resolution of the earlier DPC held in 2007, they are estopped from claiming retrospective promotion with all consequential benefits.

9. For the reasons aforesaid, this Court is not inclined to grant any relief as prayed for by the petitioners. Accordingly, these writ petitions fail and the same are dismissed. However, it is open to the petitioners to work out their remedy in a manner known to law. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Dept. of Higher & Technical Education
Government of Puducherry
Puducherry.
2. The Chairman
Mother Theresa Post Graduate and Research
Institute of Health Sciences, Puducherry.
3. The Vice Chairman-cum- chief- Secretary to Government
Mother Theresa Post Graduate and Research
Institute of Health Sciences, Puducherry.
4. The Dean
Mother Theresa Post Graduate and Research
Institute of Health, Puducherry.

W.P. NOS.3908 TO 3910 OF 2013

KK (CO)

RMP (02/09/2020)