

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.9373 of 2013

Dr.S.Saravanan

...Petitioner

Vs

1. The State of Tamil Nadu
rep. By the Secretary
Health & Family Welfare Department,
Fort St. George,
Chennai - 9.

2. The Director of Public Health
and Preventive Medicines,
DMS Compound,
Teynampet,
Chennai - 18.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari and Mandamus calling for the records relating to the 1st respondent's order made in letter No.33295/L2/2007-6, dated 12.10.2012 to quash the same and consequently direct the respondents to restore the petitioner's seniority in the post of Deputy Director of Public Health and Preventive Medicine at the appropriate place in the panel year 2001-2002 with all other benefits arising thereto.

For Petitioner: Mr.L.Chandrakumar

For Respondents: Mr.Akhil Akbar Ali,
Government Advocate.

ORDER

(This case has been heard through video conference)

The petitioner has come up with the present writ petition to quash the order of the 1st respondent made in letter No.33295/L2/2007-6, dated 12.10.2012 and consequently, direct the respondents to restore the petitioner's seniority in the post of Deputy Director of Public Health and Preventive Medicine at the appropriate place in the panel year 2001-2002 with all other benefits arising thereto.

2. The case of the petitioner is that he was appointed as Health Officer on 15.12.1993 and on completion of DPH course on 11.10.2000, his probation was declared on 12.10.2000. It is further averred that on completion of five years period of service as Health Officer, he was eligible for the next level of promotion as Deputy Director. Whiles, based on wrong calculation made by the respondents, they arrived at an estimated vacancies as 12 instead of 8 on the crucial date, i.e., 15th of February of the year 2000. It is the grievance of the petitioner that due to such over estimation coupled with the erroneous calculation of vacancy as on the crucial date, i.e., 15.2.2000, rights of very many eligible hands were defeated and they were deprived of promotion, which resulted in greatest infringement of service benefits of the petitioners and other similarly placed and his juniors were promoted earlier to him. It is the further case of the petitioner that he should ought to have been considered for promotion in the panel for the year 2001-2002 for which the crucial date was 15.2.2001. However, the wrongful calculation of vacancies in the panel drawn in the year 2000 resulted in the non-grant of promotion to the petitioner in the panel year 2001-2002. Though the petitioner took steps to have his legitimate grievance redressed, however, since the same did not yield any fruitful result, as the representation submitted by the petitioner was rejected by the first respondent vide letter dated 12.10.2012, the present writ petition has been filed.

3. Learned counsel for the petitioner submits that the error committed by the respondents while preparing the panel for promotion during the period 2000-2001 resulted in grave prejudice to the petitioner, as he was not considered for promotion during the next panel year, viz., 2001-2002. It is the submission of the learned counsel for the petitioner that inclusion of three vacancies in the estimation, which were not available during the consideration period, has denied the petitioner his opportunity for promotion. The proposal for the post of Deputy Director was submitted to the 1st respondent by the 2nd respondent on 16.11.2000 and the same was approved on 31.01.2001 and orders for promotions were issued by the 1st respondent on 20.03.2001. It is the submission of the learned counsel for the petitioner that three vacancies in the estimated vacancies, which were in anticipation of likely promotion of Joint Director of Public Health and Preventive Medicine as Additional Director and one leave vacancy, in all four, which were not available for consideration, has been wrongly included in the panel drawn for the year 2000-2001. The said vacancies fell for consideration only after the cut off date and for all purposes should be reckoned only in the next panel year and, therefore, inclusion of such vacancies with regard to the said

posts, cannot be taken into account while estimating the vacancies for the panel year 2000-2001. Had the estimation been arrived at properly, the case of the petitioner would have been considered for the panel year 2001-2002. The wrongful and erroneous estimation of vacancy leading to the drawal of promotion panel by the respondent and granting promotion has robbed the petitioner of his rightful promotion, which deserves quashment at the hands of this Court.

4. Per contra, learned Government Advocate appearing for the respondents referring to G.O. 368 Schedule 12 - Annexure I - of the Tamil Nadu Government Servants (Conditions of Service) Rules, mandate the preparation of estimation and drawal of panel for promotion and the panel has been drawn by the respondents on the basis of the rules. Learned Government Advocate vehemently opposed the contention raised by the learned counsel for the petitioner and submitted that in the instant case, Clause (iii) of G.O. No.368 has to be followed and the estimation should cover a period of 12 months from the date following the crucial date.

5. Reiterating the counter affidavit filed, he submitted that the petitioner has to satisfy one of the primary conditions prescribed under the special rules for Tamil Nadu Public Health Service and that he has to qualify himself in Diploma in Public Health Course by the time when the panel is drawn. The petitioner having acquired the requisite qualification only on 11.10.2000, the crucial date for drawal of panel being 15.02.2000 for the vacancies that are likely to fall due between 16.2.2000 and 15.2.2001, the petitioner having not possessed of the requisite qualification on the crucial date, his name has been rightfully not considered. Hence, the impugned letter issued by the 1st respondent is based on the rules prescribed and is in order. Therefore, it is submitted that this Court may not interfere with the order impugned herein.

6. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

7. Admittedly, the posts of Deputy Director are to be filled up by promotion and that the crucial date for drawal of panel for the period 2000-2001 is 15.2.2001. It is not in dispute that the petitioner acquired the requisite qualification only on 11.10.2000 and, therefore, does not fall within the zone of consideration for the panel year 2000-2001. G.O. Ms. No.368, which prescribes the necessities for drawing the panel and which is relevant to the case on hand, more especially clause (iii), is extracted hereunder for better clarity :-

iii) Estimate of vacancies for post to be filled by recruitment by transfer /promotion where consultation with TNPSC is not necessary.

In respect of appointments by recruitment by transfer or by promotion to posts included in the State Services where consultation with the TNPSC is not necessary, the estimate should cover a period of 12 months from the date following the crucial date on which the candidates should possess the required qualification prescribed in the Special Rules / Adhoc Rules for appointment to the higher post, the Heads of Department should ensure that the proposals for fixing the estimate of vacancies are sent to the Government at least 2 months in advance of the crucial date.

iv) Ingredients for estimates and mode of preparation of estimates:-

The estimate of vacancies should be prepared taking into account the total number of permanent posts in a category, the number of temporary posts in existence, the anticipated sanction of new posts during the panel year, the provision for leave reserve (5 per cent of cadre strength) and unexpected contingencies, vacancies caused due to retirement, promotion, etc., as envisaged in the first proviso to General Rule 4(a). The estimate covering these ingredients should be sent to the Government by the Heads of Department in the format given in Annexure II-A to this order. Provision for unexpected contingencies should be made in accordance with the instructions contained in the Government Letter seventh read above. The percentage fixed for providing for unexpected contingencies is given in Annexure II.

However, vacancies which are likely to arise after the panel year should not be considered. Such vacancies should be reckoned only in the next panel year. Nevertheless, where a panel is prepared after the relevant panel year, only the actual number of vacancies which really arose should be reckoned."

8. A perusal of the above clearly reveals that for appointment by way of direct recruitment, permission of TNPSC has to be obtained for fixing the ranking, whereas in cases of appointment by way of transfer or promotion, such a permission is not required. True it is that the panel has to be drawn in the way as mandated under G.O.Ms No.368. G.O. No.368 prescribes that any vacancies that are likely to arise after the panel year, the said vacancies are to be reckoned only in the next panel year. However, in the instant case, likely promotional vacancies have been included in the present panel year, however,

no details therefor have been provided. However, the impugned order reveals that the said posts were filled up only after the panel year, i.e., on 20.3.01. Except for a bald averment that the said promotional vacancies fell for consideration in the panel year 2000-2001, there is no materials placed by the respondents to substantiate the said fact. Further, it is to be pointed out that the respondents have also not stated as to whether the said promotional vacancies would fall within the first limb of the clause requiring approval of TNPSC or that it falls within the second limb of the clause, where no approval of TNPSC is required, but promotion can be made based on drawal of panel. However, bereft of the abovesaid particulars, the abovesaid vacancies have been taken into consideration during the panel year 2000-2001. In the absence of any details as to the arising of the said vacancies during the said panel year, viz., 2000-2001 and the nature of those vacancies, the estimation of vacancies arrived at by the respondents cannot be said to be correct. The prescription mandated under G.O.Ms.No.368 has been not followed scrupulously by the respondents, while arriving at the estimation. There being flagrant violation of the prescription mandated under G.O. Ms. No.368 and the letter issued in furtherance of the panel drawn not adhering to the said Government Order definitely deserves to be quashed. Accordingly, impugned letter No.33295/L2/2007-6, dated 12.10.2012 issued by the 1st respondent is hereby quashed.

9. In view of quashing of the impugned order, the respondents are hereby directed to prepare a panel in terms of G.O.Ms.No.368, strictly adhering to the prescriptions mandated therein by arriving at the vacancies and promote such persons, who fall within the zone of consideration during the relevant point of time, within a period of twelve weeks from the date of receipt of a copy of this order.

10. This writ petition stands allowed with the aforesaid observations and directions. However, there shall be no order as to costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

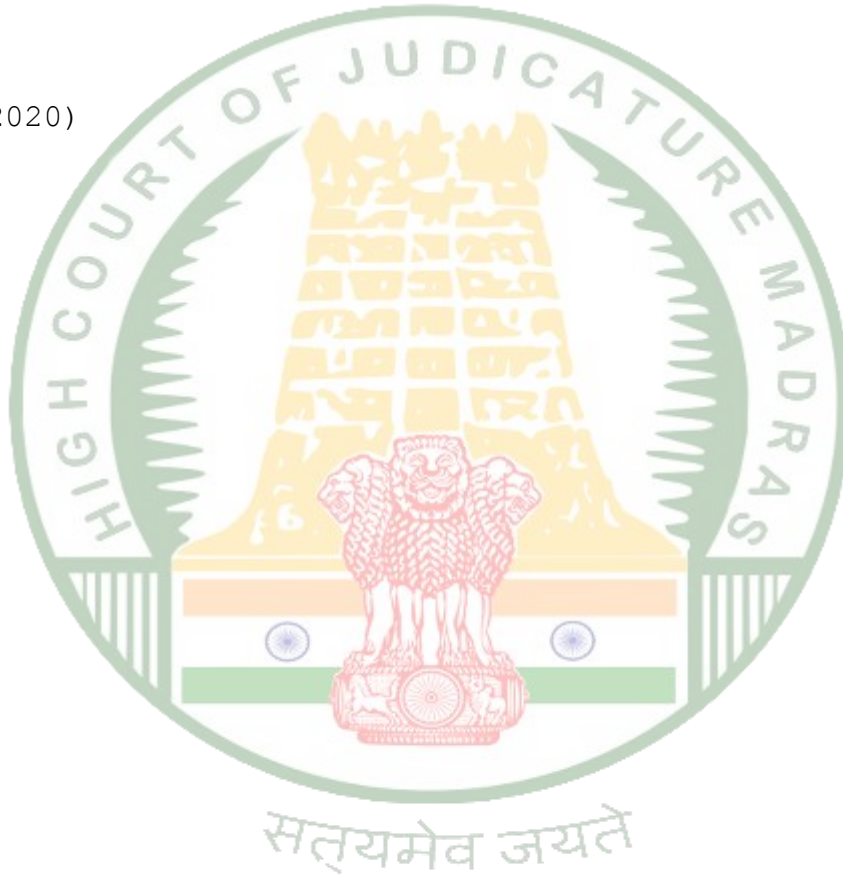
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+1 CC to Mr.L.Chandrakumar, Advocate sr 36529.
+1 CC to The Government Pleader sr 36944.

W.P.No.9373 of 2013

BR(CO)
SP(31/12/2020)



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