

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Cont P No.782 of 2020
And Rev.Appln.No.35 of 2020 and WMP No.5221 of 2020
in WP No.14219 of 2019

Cont P No.782 of 2020

Dr.S.Senthil Kumaran.,M.B.B.S., M.S.(ENT) Petitioner

Vs.

1. Mr.J.Radhakrishnan, IAS.,
Principal Secretary to Government,
Health and Family Welfare Department,
Fort st. George, Chennai 600 009.

2. Dr.R.Narayanababu, M.D., D.C.H
The Director of Medical Education i/c,
Directorate of medical Education,
Kilpauk, Chennai 600 010.

...Respondents

Prayer:- Contempt petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents 1 and 2 above named for wilful disobedience and deliberate non-compliance of the order dated 08.01.2020 passed in writ petition no.14219 of 2019.

Rev.Apl.No.35 of 2020

1. State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009. ...Petitioner/1st Respondent
2. Director of Public Health
and Preventive Medicine,
Teynampet, Chennai 600 006. ...Petitioner/2nd Respondent
3. Director of Medical Education,
Kilpauk,
Chennai 600 010. ...Petitioner/3rd Respondent
4. Deputy Director of Medical Education(A&R),
Kilpauk, Chennai 600 010. ...Petitioner/4th Respondent
5. Dean,
Government Dharmapuri Medical College,
Dharmapuri. ...Petitioner/5th Respondent

Vs

1. Dr.S.Senthil Kumaran,
S/o. Mr.Sivaprakasam,
No.47A2, 3rd Main Cross,
EB Colony,
Bharathipuram II,
Dharmapuri 636 705. ...Respondent/Petitioner

2. Dr.M.Kavitha,
Asst. Professor Department of ENT,
Government Dharmapuri Medical College,
Dharmapuri ...Respondent/6th Respondent

Review Petition has been filed under order 47 Rule 1 and 2 R/W Section 114 of CPC to review the order passed by this Hon'ble Court in Writ Petition No.14219 of 2019 dated 08.01.2020.

For Petitioner : Mr.Arun Anbumani
For Respondents : Mr.P.H.Arvind Pandian
learned Additional Advocate General
assisted by
Mr.E.Manoharan, Special G.P.

ORDER

This Contempt petition has been filed on the ground of willful disobedience of the orders passed by this Court on 8.01. 2020 in W.P No. 14219 of 2019.

2. The Review petitions have been filed by the State in order to get more clarity on the implementation of the orders passed by this Court in WP Nos. 14219 and 14220 of 2019, dated 08.01.2020 and WP No. 33369 of 2019 dated 09.01.2020.

3. The orders passed by this Court in WP Nos. 14219 and 14220 of 2019 prescribes the method of preparation of a panel for

considering a candidate for promotion. For proper appreciation, para 26 of the order is extracted hereunder:

(a) The Director of Medical Education, Kilpauk, Chennai

is directed to prepare an year wise promotion panel, henceforth, for filling all the posts, strictly in accordance with Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 read with Schedule XI appended to the Act.

(a) The Director of Medical Education, Kilpauk, Chennai

is directed to prepare a promotion panel for the post of Associate Professors in various specialties for the year 2018 by fixing the cut-off/crucial date as 15.03.2018 and enlist the names of all those eligible candidates who fulfill the qualifications as prescribed in the Special rules of Tamil Nadu Medical Services which follows the MCI Guidelines, based on their CML seniority. On such preparation, the promotion counseling to the post of Associate Professors shall

take place in all the specialties, strictly in accordance with the guidelines given by the Committee and which was accepted by this Court in W.P.No.15215 etc., of 2019, dated 14.08.2019.

(a) Likewise, the Director of Medical Education, Kilpauk, Chennai is directed to prepare a promotion panel for the post of Associate Professors in various specialties for the year 2019 by fixing the cut-off/crucial date as 15.03.2019 and enlist the names of all those eligible candidates who fulfill the qualifications as prescribed in the Special rules of Tamil Nadu Medical Services which follows the MCI Guidelines, based on their CML seniority. On such preparation, the promotion counseling to the post of Associate Professors shall take place in all the specialties, strictly in accordance with the guidelines given by the Committee and which was accepted by this Court in W.P.No.15215 etc., of 2019, dated 14.08.2019.

(b) This exercise shall be completed within a period of three months from the date of receipt of copy of this order.

(c) The present status quo with regard to the transfer and postings which had already taken place pursuant to the counseling held in accordance with Circular dated 07.05.2019, shall be maintained till the process as directed in clauses (b), (c) and (d) are completed, with in the time stipulated.

4. The above directions issued by this Court will form the basis for the preparation of the panel and promoting the candidates in line with their seniority.

5. The orders passed by this Court in WP 33369 of 2019 pertains to the claim made by 11 petitioners to the post of Associate professors based

on the promotion counsellings conducted on 10.05.2019. While disposing of this Writ Petition on 09.01.2020, this Court gave the following directions:

8.In the result, this writ petition is disposed of with a direction to the 2nd respondent to grant posting orders to the petitioners in the post of Associate Professor in ENT Specialty based on the promotion counseling conducted on 10.05.2019 and post the petitioners in the Medical Colleges and Hospitals to which they have exercised their option. It is made clear that the posting orders of the petitioners shall take effect from 20.06.2019 since the petitioners were selected even at that point of time and for no fault on the petitioners, the promotion order was kept pending. The same should not be put against the petitioner and they must be given promotion from the date on which they were found to be entitled to be promoted to the post of Associate Professors. This exercise shall be completed within a period of four weeks from the date of receipt of copy of this order and appropriate orders shall be passed. No Costs.

6. The above order only recognized the right of the petitioners to get promotion to the post of Associate Professor. However, fitting them in the promotion panel will be subject to the guidelines issued by this Court in WP Nos. 14219 and 14220 of 2019. The directions issued by this Court in WP No. 33369 of 2019 cannot be independently implemented without taking note of and without complying with the guidelines given by this Court in the above writ petitions.

7. When this Court passed the order in WP No. 33369 of 2019 on 09.01.2020, this Court was well aware about the orders passed on the previous day i.e. on 08.01.2020. In fact, this Court orally observed that the order dated 09.01.2020 must be implemented in line with the earlier orders passed on 08.01.2020. In spite of this clarity given by this Court, if the respondents had any doubt in implementing the order, they could have sought for a clarification. Instead, they proceeded to issue a Government Order in G.O. (D). No. 221 dt. 24.02.2020.

8. When the matter came up for hearing on 16.10.2020, the following order was passed by this Court:

The learned counsel for the second respondent submitted that the first respondent has made a communication to the second respondent dated 16.10.2020 wherein the

Government order passed in G.O.(D).No.221, dated 24.02.2020 has been directed to be kept in abeyance till final orders are passed in the Review Applications in Rev.Appl.No.34 & 35 of 2020.

2. It was submitted that once a clarity is given by this Court in the review application, the same will be implemented by the respondents.

3. The Registry is directed to post the Review Applications in Rev.Appl.Nos.34 & 35 of 2020 along with this contempt petition on 06.11.2020 at 02.15 P.M.

9. Mr. P.H.Arvind Pandian, learned Additional Advocate General appearing on behalf of 1st respondent submitted that the respondents will implement the order passed by this Court, as clarified by this Court in the present order. The Learned Additional Advocate General submitted that there was no intentional disobedience of the orders passed by this Court and immediately after coming to know the mind of this Court, the Government Order was directed to be kept in abeyance till final orders are passed in the present petitions.

10. At the risk of repetition, it is again made clear that the guidelines issued by this Court in WP Nos. 14219 and 14220 of 2019, dt. 08.01.2020 shall be kept as the basis for preparation of the promotion panel.

The subsequent order passed by this Court in WP 33369 of 2019 dt.

09.01.2020 will be implemented in line with the guidelines given by this Court in the above Writ Petitions.

11. In view of the above, there shall be direction to the respondents to immediately withdraw the Government Order passed in G.O. (D) No. 221 dated 24.02.2020. The Respondents are directed to immediately complete the process of preparation of the promotion panel as per the guidelines given by this Court in WP Nos.14219 and 14220 of 2019, within a period of 8 weeks from the date of receipt of copy of this order. The implementation of the order passed by this Court in WP No. 33369 of 2019 will be in line with the above guidelines.

12. The Contempt petition and the Review petitions are disposed of accordingly. Consequently, the connected miscellaneous petition is also closed.

सत्यमेव जयते SD/-

ASSISTANT REGISTRAR(COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2020.

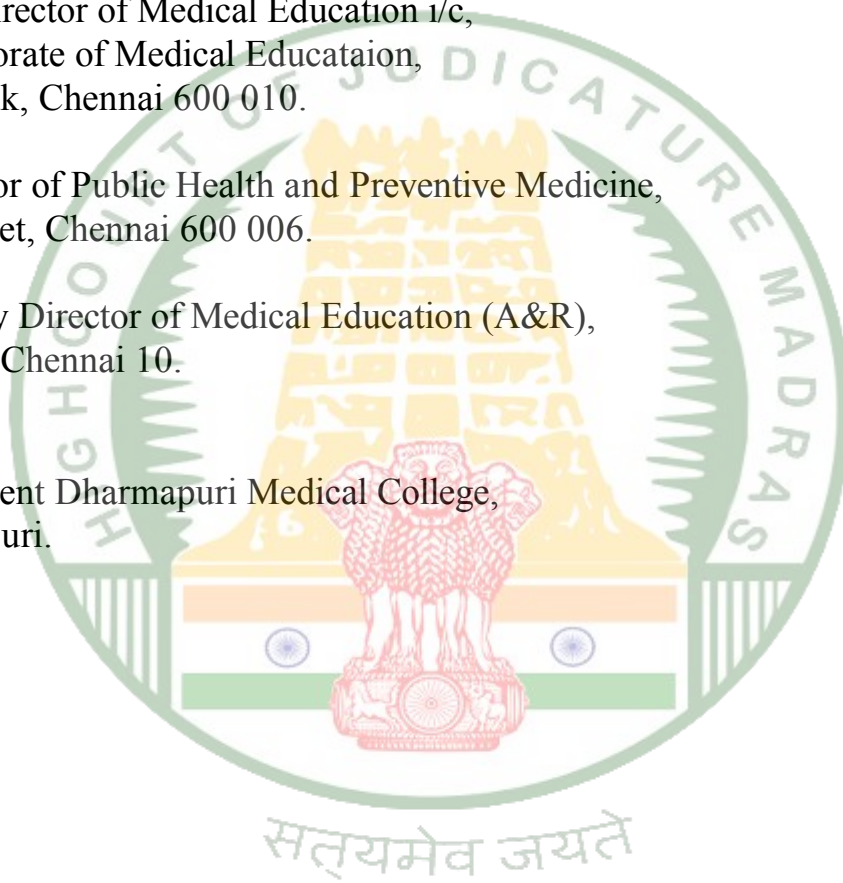
COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

SMI/28/12/2020

To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort st. George, Chennai 600 009.
2. The Director of Medical Education i/c,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.
3. Director of Public Health and Preventive Medicine,
Teynampet, Chennai 600 006.
4. Deputy Director of Medical Education (A&R),
Kilpauk, Chennai 10.
5. Dean,
Government Dharmapuri Medical College,
Dharmapuri.



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