

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 03.01.2020
Pronouncing orders on : 08.01.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.14219 and 14220 of 2019
W.M.P.Nos.14302, 14304 & 14305 of 2019

Dr.S.Senthilkumaran ...Petitioner
in W.P.No.14219 of 2019

Dr.C.Shanmuga Velayutham ...Petitioner
in W.P.No.14220 of 2019

vs.

1. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Public Health
and Preventive Medicine,
Teynampet, Chennai - 600 006.
3. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
4. The Deputy Director of Medical Education A & R),
Kilpauk, Chennai - 600 010.
5. The Dean,
Government Dharmapuri Medical College, Dharmapuri.
6. Dr.M.Kavitha ...Respondents
in W.P.No.14219 of 2019

1. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3. I.Devarajan Respondents
in W.P.No.14220 of 2019

[R3 impleaded vide this Court Order dated 03.01.2010
made in W.M.P.No.16964 of 2019 in W.P.No.14220 of 2019]

PRAYER in W.P.No.14219 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent culminating in his impugned Circular bearing Ref.No.24281/E1/5/2019 dated 07.05.2019 issued in respect of promotion counseling for the post of Associate Professors to be held on 09.05.2019 and 10.05.2019 or any other date, quash the same insofar as it relates to the Department of ENT and placing of the 6th respondent above the petitioner, and direct the 3rd and 4th respondents to conduct the promotion counseling for the year 2018-2019 with the crucial date of 15.03.2018 first and thereafter conduct the promotion counseling for the year 2019-2020 with the crucial date of 15.03.2019.

PRAYER in W.P.No.14220 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned circular issued by the 2nd respondent in Ref.No.24281/E1/5/2019 dated 07.05.2019 and to quash the same in so far as conducting counseling for promotion to the post of Associate Professor in Vascular Surgery is concerned and consequently directing the respondents to conduct promotion counseling to the post of Associate Professor in Vascular Surgery by drawing year wise panel for the year 2018 and 2019 and to consider the petitioner for promotion to the post of Associate Professor in Vascular Surgery on that basis.

For Petitioner : Mr.N.L.Raja
in W.P.No.14219 of 2019 Senior Counsel for
M/s.Arun Anbudurai
For Respondents : Mr.V.Kadhirvel
in W.P.No.14219 of 2019 Special Government Pleader
For R1 to R5

: M/s.Richardson Wilson for R6

For Petitioner : Mr.G.Sankaran
in W.P.No.14220 of 2019

For Respondents : Mr.V.Kadhirvel
in W.P.No.14220 of 2019 Special Government Pleader
For R1 & R2

: Mr.K.V.Dhanapalan for R3

C O M M O N O R D E R

A common issue is involved in both the above writ petitions. Therefore, both the writ petitions are taken up together and a common judgment is passed.

2.The subject matter of challenge in W.P.No.14219 of 2019 is the promotion counseling for the post of Associate Professor in ENT and in W.P.No.14220 of 2019, the challenge is the promotion counseling for the post of Associate Professor in Vascular Surgery. In both the writ petitions, the petitioners have made a consequential prayer for a direction to the respondents to draw an year wise panel for the year 2018 and 2019 and conduct the promotion counseling in accordance with the relevant rules.

3.Both the petitioners are working as Assistant Professor in the concerned Medical Colleges and both of them are qualified and eligible to be considered for promotion to the post of Associate Professor. In both writ petitions, the inter se merits between the petitioners and the selected candidates was also seriously canvassed and this Court does not want to go into the said dispute since, the candidates have already joined their respective places after counseling and the decision to be rendered in both these cases will ultimately involve drawing up of year wise panel and consequential promotion counseling at which point of time, the authorities themselves can undertake the process of determining the inter se merits/seniority of the candidates and take a decision accordingly. This Court will mainly focus on considering the relevant provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (herein after called as Act) and decide as to whether such preparation of year wise panel is mandatory and if so give appropriate directions to the respondents to prepare year wise panel and conduct the promotion counseling.

4.Mr.N.L.Raja, learned Senior Counsel appearing on behalf of the petitioner in W.P.No.14219 of 2019 and Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner in W.P.No.14220 of 2019, made the following submissions:

- Section 7 of the Act read with Schedule XI provides for the manner in which the panel must be prepared for considering the promotion of approved candidates and it clearly provides for a separate list to be prepared every year by estimating the number of vacancies and inclusion of the names of candidates based on their merits, ability and other qualifications as prescribed in the rules, to be considered for promotion.
- The list of approved candidates so prepared shall be in force for a period of one year only and it shall lapse at the end of the year and the candidates whose names were included in the previous list, but were not appointed, shall be considered, if eligible, for inclusion in the list in the next year along with other eligible candidates for the concerned year.
- The vacancies and preparation of the panel in the year 2019 by fixing the cut off date as 15.03.2019 and clubbing both 2018 and 2019 together for the purpose of considering for promotion, is in violation of the provisions of the Act and it requires interference.
- Persons who have not fulfilled the qualifications in the year 2018 and who had later acquired the qualification have been included in the list above the petitioners and thereby the petitioners have been deprived of their rights and this anomaly could have been avoided if the year wise panel had been prepared as contemplated in the Act. It is a well settled principle of law that preparation of seniority list by clubbing the vacancies for various years, in violation of the Rules, is ex facie illegal and filling up through promotion counseling must be done in accordance with the year wise vacancies after considering the eligibility of the candidates during the concerned year. In order to substantiate the said submissions, the following judgments were relied upon:

(a) Jagdish Prasad vs. State of Rajasthan and others reported in (2011) 7 SCC 789

(b) The Engineer-in-Chief, WRO and others vs. C.L.Pasupathy reported in 2013 SCC Online Mad 592

(c) Union of India and Others vs. N.R.Banerjee and others reported in (1997) 9 SCC 287

(d)M.Muneer Ahamed and others vs. The Commissioner, Madurai Municipal Corporation, Madurai in W.P.(MD)Nos.4819 and 5883 of 2014, dated 24.09.2014

5.Per contra, Mr.V.Kadhirvel, learned Special Government Pleader appearing on behalf of the official respondents submitted that, during the year 2018 the Government of Tamil Nadu decided to streamline the teaching posts sanctioned in Government Medical Colleges and Hospitals under the control of Director of Medical Education and various Government orders were passed in that regard. As per G.O.Ms.No.387, dated 03.09.2018, the teaching posts were restructured in the following manner viz., Professor, Assistant Professor, Associate Professor, Tutor, Senior Residents and Junior Residents as per norms of the Medical Council of India, both College wise and Department wise, in order to pave way for better promotional avenues. Since, certain discrepancies were noticed, a subsequent Government order was issued in G.O.No.2, dated 15.02.2019 in supersession of the earlier orders. That apart, the Government also issued certain operational guidelines for effective and smooth implementation of the order.

6.The learned counsel submitted that in view of these developments, no promotion counseling for the post of Associate Professor was conducted in the panel year 2018. Hence it was decided to proceed further with the promotion counseling by fixing the crucial date as 15.03.2019. The learned counsel further submitted that insofar as the seniority is concerned, it is only the Civil Medical List (CML) which is taken into consideration insofar as the Associate Professors are concerned and with regard to the qualifications, the MCI norms are followed and the Special Rules under the Tamil Nadu Medical Services specifically provides for the qualification and experience.

7.The learned counsel further submitted that a Circular was issued by the Directorate in the month of May 2019 with regard to specialty transfer counseling for Medical Officers in various cadres and this counseling was scheduled to be held between 30.05.2019 to 06.06.2019. This became a subject matter of challenge before this Court and various writ petitions were filed. This Court, by an order dated 31.07.2017, directed the Principal Secretary to Government, Health and Family Welfare Department, to form a Committee to deal with the various grievances expressed by the candidates and to submit a report before the Court. A Committee was appointed and a report was also submitted before this Court. This Court accepted the

recommendations of the Committee and passed orders on 14.08.2019 and the Directorate has proceeded to follow the orders of this Court and carry out the transfer counseling accordingly.

8.The learned counsel concluded his arguments by submitting that there is no requirement to disturb the present status quo and in future, the year wise panel will be prepared for promotion and transfer counseling, in accordance with the recommendations of the Committee which was approved by this Court.

9.Mr.Richardson Wilson, learned counsel appearing on behalf of the 6th respondent in W.P.No.14219 of 2019 and Mr.K.V.Dhanapalan appearing on behalf of the impleaded respondents in W.P.No.14220 of 2019, submitted that even if the year wise panel is prepared separately for the years 2018 and 2019, the contesting respondents will have all the eligibility and seniority than the petitioners and therefore, there are absolutely no merits in the present writ petitions and the same are liable to be dismissed. The learned counsel submitted that the contesting respondents have already been transferred and posted and the said status quo should not be disturbed at this length of time. The learned counsel submitted that even in case where this Court wants to give a direction to the official respondents to prepare a year wise panel and proceed further with the promotion counseling, till a final list is prepared and counseling is conducted, in accordance with the Rules, the present status quo should be maintained, failing which it will cause a lot of confusion and hardship to the candidates.

10.This Court has carefully considered the submissions made on either side and also the materials available on record.

11.The counsel appearing on either side made elaborate submissions regarding the inter se merits of the candidates. As already mentioned, this Court does not want to undertake the exercise of deciding the inter se merits of the candidates since, it is clearly governed by the Rules and MCI regulations and it will be fit and proper to leave that exercise to the Directorate which is the most competent authority to undertake that exercise.

12.The Special Rules for Tamil Nadu Medical Services which was prepared as per MCI norms, prescribes the educational qualifications and teaching/research experience for various classes and categories of posts. The promotion to the post of Associate Professor (which is the subject matter of the present writ petitions) is based on teaching/research experience and also the CML seniority.

13.Section 7(1) of the Act read with Schedule XI clearly provides for the procedure for preparation of an approved promotional list year wise. For proper appreciation, Section 7 (1) (relevant portions alone) is extracted hereunder:

7.Approved candidates. - (1) All first appointments to any class or category or grade in any State Service or Subordinate Service, whether by direct recruitment or by recruitment by transfer or by promotion, shall be made by the appointing authority from a list of approved candidates. All appointments made by transfer, from one class to another class and from one category to another category, in the same service carrying identical scale of pay shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the manner as specified in Schedule-XI by the appointing authority or any other authority empowered in the special rules in that behalf and shall be displayed in the notice board in the office of the appointing authority. The list shall also be communicated to all persons concerned by registered post whose names are found in the list as well as to persons senior to the junior most person included in the list whose names have not been included in the list. Where the candidates in such list are arranged in their order of preference, appointments to the service shall be made in such order:

Provided that the list of approved candidates for appointment by promotion and by recruitment by transfer to all the categories of posts in the State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year. The estimate of vacancies shall be prepared taking into account the total number of permanent post in a category; the number of temporary posts in existence; the anticipated sanction of new posts in the next year;

the recruitment post of leave reserves; the anticipated vacancies due to retirement and promotion, etc., in the course of the year and the number of candidates already in position in that category. The list of approved candidates, so prepared, shall be in force for a period of one year only and shall lapse at the end of the year. The candidates whose names were included in the previous list, but were not appointed, shall be considered, if eligible for inclusion in the list of next year along with their seniors, if any, whose names were not included in the previous list either because they were found not suitable or because they were not technically qualified when the previous list was drawn up:

Provided further that, for preparing such lists to fill up vacancies, the names of the qualified candidates in the seniority list in a class, category or service shall be considered in the following proportions (rounding off fractions to the next whole number):

Number of vacancies	Number of qualified candidates to be considered.
1-20	200% of the actual number of estimated vacancies
21-80	175% of the actual number of estimated vacancies, subject to a minimum of 40
81 and above	150% of the actual number of estimated vacancies, subject to a above minimum of 140

Provided also that if the qualified candidates, after consideration of their claims, are found not suitable for the post, the names of the next qualified candidates, to the extent necessary, shall be considered:

14.It will also be useful to extract Explanation 1 appended to the said provision:

Explanation I: The period of one year validity for the list of approved candidates shall be reckoned from the date of approval of the panel by the competent authority.

15. Schedule XI (Part-A) gives a detailed procedure for preparation of the approved list and makes it clear that it shall be prepared based on the estimate of the vacancies arrived and the list shall be prepared on the basis of the merit, ability and other qualifications as prescribed in the Special Rules and also the seniority of the members of service.

16. A careful reading of the above provisions along with Schedule makes it very clear that there is a mandate for the Directorate to prepare a year wise panel against the estimated number of vacancies expected to arise during the course of the year. This list will be in force for a period of one year and it will lapse at the end of the year. The candidates whose names are included in the list and are not appointed, are eligible for inclusion of their names in the list prepared for the next year along with their seniors whose names were not included in the previous list either because they were not found suitable or because they were not technically qualified with the previous list that was drawn up.

17. It becomes important to draw up yearly panel, since, the candidates who fulfill all the prescribed qualifications till the cut-off date, will be considered and they will be fitted according to seniority. It is possible that a senior candidate may not find his name in the list because of not fulfilling the qualifications. Under such circumstances, his junior takes a march over him by virtue of fulfilling the qualifications as on the due date. If the year wise panel is not followed and various years are clubbed, it is possible that a candidate will acquire the qualification at a later point of time and by virtue of his seniority will get placed above the candidate who acquired the qualification much before him. This situation causes a lot of confusion and heart burn among the candidates. This also causes an anomaly wherein candidates who qualified at the earliest point of time, as on the due date, are pushed down by the candidates who acquire the qualification at a much later point of time and in spite of it take a march over them, only by virtue of seniority.

18. In this regard, it will be useful to refer to the judgments cited by the learned counsel appearing on behalf of the petitioners.

19. The Hon'ble Supreme Court in Jagdish Prasad vs. State of Rajasthan and others reported in (2011) 7 SCC 789 has held as follows:

30. It is a matter of concern that any rule of good governance that an obligation is imposed upon the State to select the best candidates to higher posts and not to frustrate rules which prescribe merit as this is essential to the process of selection. It is painful to note that the Government has put forward such a flimsy excuse for its inaction and unfortunately the same has weighed with the High Court to some extent, though it has dismissed the appeal of the State. We have no hesitation in observing that the Government has no justification whatsoever in not holding the qualifying test for a long period of ten years and this is a matter which the hierarchy of the State Government needs to examine and fix responsibility.

31. Even after 1993-94, the process of selection adopted by the State Government cannot be accepted. The preparation of seniority list, method of selection and clubbing of vacancies are apparently in violation of the statutory Rules as afore-noticed. The Tribunal, in its judgment, has noticed Rule 24(ii) of the 1979 Rules and observed that even if the DPC held together vacancies of several years, yet the vacancy of each year should be determined and also filled up separately. In this regard the reference was also made to the judgment of this Court in the case of Vinod Kumar Sangal v. Union of India [(1995) 4 SCC 246].

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34. We also cannot ignore the fact that a Government servant gets a right, (though not indefeasible right), to be considered for promotion to the appropriate post to which he is eligible and entitled, in accordance with law. In the case of Union of India and Another v. Hemraj Singh Chauhan and others [(2010) 4 SCC 290] this Court while dealing with somewhat similar situation held as under:

"35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

35. It is equally true that the rule of fairness in Government action is an essential feature. However, such fairness has to be founded on reasons. Usually, the providing of Reasons demonstrates the concept of reasonableness but where the statutory rules provide the circumstances and criteria, ambit and methods by which the selection should be governed, they would become the yardstick of fairness. In the case of Manager Government Branch Press and Anr. v. D.B. Belliappa [(1979) 1 SCC 477], this Court held that the essence of the guarantee under Articles 14 and 16 of the Constitution is 'fairness founded on reasons'.

20. The Division Bench of this Court in The Engineer-in-Chief, WRO and others vs. C.L.Pasupathy reported in 2013 SCC Online Mad 592 has held as follows:

9. As already stated, action of the appellants in not preparing the panel every year, and in particular for the year 1981, has caused this anomaly and he was denied promotion as Assistant at the appropriate time and was not promoted as Superintendent. Petitioner, even though was eligible to be promoted in the year 1981 as Assistant, was given promotion only with effect from 10.8.1983.

10. The mandatory duty on the part of the Government in considering the promotion of Government

servants at the relevant time was held to be a fundamental right guaranteed under Article 16 of the Constitution of India. The Supreme Court in the decision reported in (2010) 4 SCC 290 (Union of India v. Hemraj Singh Chauhan) in paragraphs 35 and 36 held as follows:

"35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution." (Emphasis Supplied)

11. The duty cast upon the Government to make promotion for year-wise vacancies was also emphasised by the Hon'ble Supreme Court in the decision reported in 2011 AIR SCW 4449 : (2011) 7 SCC 789 (Jagdish Prasad v. State of Rajasthan). Not holding examinations for more than ten years for giving promotion to 50% quota of Motor Vehicles Sub-Inspectors on the basis of seniority-cum-merit was condemned by the Hon'ble Supreme Court. In paragraphs 28 to 30 (in SCC) the Hon'ble Supreme Court held thus,

"28. Rule 24(6) of the Rules, 1979 mandates that selection for promotion to all other higher posts or higher categories of posts in the service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50. In other words, 50% vacancies are to be filled up on the basis of merit while the remaining 50% vacancies in the promotion quota are to be filled up by seniority-

cum-merit. The persons have to be within the appropriate position in the seniority list before they can be considered for promotion under the latter category. Eligibility requirements have been specified under the Rules, 1979 which candidates must satisfy to be considered under the seniority-cum-merit category. The other persons who are to be promoted to the post of DTO are on the basis of merit alone. Even if Schedule II of the Rules, 1979 does not exist, it is obligatory on the part of the respondent to evolve a methodology to make promotions purely on merit. Once the framers of the Rules have intended to provide merit as the sole criterion of promotion, the appointing authority is not vested with the jurisdiction to waive the same or completely wipe out the same, on a flimsy excuse such as the one proposed in the present case.

29. In light of this, we now come to the conduct of the Government which we cannot but help to comment upon. Right from 1983-1984 till 1993-1994 no examination has been conducted by the appropriate authority despite the fact that they also issued notifications for holding exams on a few of these occasions. If there was a representation from the Rajasthan Transport Inspectors Union, it cannot be considered as a sufficient cause or reason for not holding the examinations for more than ten years and causing serious prejudice to the candidates who might have been sufficiently meritorious to qualify in the exams and be considered for promotion to 50% of the posts under the promotion quota. It is a matter of regret that a Government can take such a stand before a court of law and expects the Court to accept such a submission. It is ex facie untenable. Once the rules stand clear, the authority concerned is expected to act in accordance with law and not to defeat the law. One who defeats the law by his unjustifiable and unsustainable acts is liable for the consequences of such default. We fail to understand why the Government and its entire hierarchy had shut its eyes to this gross violation of statutory rules over such a long period.

30. It is a matter of concern that any rule of good governance that an obligation is imposed upon the State to select the best candidates to higher posts and not to frustrate rules which prescribe merit as this is essential to the process of selection. It is painful to note that the Government has put forward such a flimsy excuse for its inaction and unfortunately the same has weighed with the High Court to some extent, though it has dismissed the appeal of the State. We have no hesitation in observing that the Government has no justification whatsoever in not holding the qualifying test for a long period of ten years and this is a matter which the hierarchy of the State Government needs to examine and fix responsibility." (Emphasis Supplied)

21. The Hon'ble Supreme Court in Union of India and Others vs. N.R. Banerjee and others reported in (1997) 9 SCC 287 has held as follows:

11. It would thus be seen that the claims of the candidates eligible have to be considered for promotion objectively and dispassionately, with a sense of achieving many-fold purpose (1) affording an opportunity to an incumbent to improve excellence, honesty, integrity, devotion to public duty; (2) inculcating discipline in service; (3) afford opportunity to every eligible officer within zone of consideration for promotion to higher post or officer; and (4) ensuring that the Committee regularly meets and considers their claim objectively, impartially with high sense of responsibility in accordance with the procedure and finalisation of the list in advance so as to fill up vacancies arising in the year from the approved panel without any undue delay. They are the salutary principles, purpose and the policy behind the above rules and the Government should follow them.

12. Considered from that perspective, the question arises: whether the view taken by the Tribunal is justified in law? It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all

posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary. In *Shankarasan Dash v. Union of India* [(1991) 2 SCR 567], the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even though the State acts in arbitrary manner. In *Babita Prasad & Ors. v. State of Bihar & Ors.* [(1993) Supp. 3 SCC 268] it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In *Union Territory of Chandigarh v. Dilbagh Singh & Ors.* [(1993) 1 SCC 154] it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In *State of Bihar & Ors. v. Secretariat Assistant Successful Examinees Union 1986 & Ors.* [(1994) 1 SCC 126] it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary. However, in the light of the above principles and in the light of the clear rules extracted hereinbefore, it is seen that the exercise of preparation of the panels is undertaken well in advance to fill up the clear vacancies of anticipated vacancies. The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable reason, yearwise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith. In *Nagar Mahapalika, Kanpur v. Vinod Kumar Srivastava* [AIR 1987 SC 847], this Court had pointed

out with respect to the prescription of the limitation of one year of the waiting list thus:

"The reason underlying the limitation of the period of list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the post in the succeeding year and being selected for appointment."

22.The learned Single Judge of this Court has also considered the importance of preparing year wise panel in the case of M.Muneer Ahamed and others vs. The Commissioner, Madurai Municipal Corporation, Madurai in W.P.(MD)Nos.4819 and 5883 of 2014, dated 24.09.2014 and has held as follows:

19. The failure on the part of Madurai Municipal Corporation to prepare the panel every year for promotion appears to be the primary reason for this sorry state of affairs. In case the Corporation has prepared a panel every year, only those who have passed the test during the said year before First April, alone would have been included for promotion to the post of Assistant Executive Engineer. The Corporation waited for years together to prepare a panel and by the time, most of the employees have passed the test by seeking extension of period of probation. Such delay should not cause prejudice to the employees, who have already passed the test. The Corporation should prepare a separate panel every year, in view of Rule 24.

20. The petitioners in W.P.(MD)No.4819 of 2014 wanted the Corporation to prepare a panel for promotion. The panel should be prepared yearwise, taking into account the vacancies for the relevant panel year.

21. The Madurai City Municipal Corporation failed to prepare a panel yearwise. The order impugned in W.P.(MD)No.5883 of 2014 does not contain any indication that yearwise panel was drawn and particulars were called for accordingly. Therefore, I am of the view that the matter requires fresh consideration by the Madurai City Municipal Corporation.

DISPOSITION:

22. The impugned proceedings dated 15 February, 2014 is set aside. The Madurai City Municipal Corporation is directed to prepare separate panels, taking into account the vacancies for the relevant year. The names of those Assistant Engineers, who have passed the test before First April of the panel year, should be included in the panel. Thereafter, promotion should be made. In short, pass in the mandatory departmental test before the cut-off date should be the yardstick for inclusion in the yearwise panel. Such exercise shall be completed, within a period of four months from today.

23. It is clear from all the above judgments that where the relevant Act or Rules prescribe for preparation of a panel every year, it is mandatory on the part of the Government/Department to prepare the panel every year since, it is a fundamental right of every Government servant to be considered for promotion at the relevant point of time. The guarantee of a fair consideration in the matters of promotion under Article 16 of the Constitution of India flows from the guarantee of equality under Article 14 of the Constitution.

24. The learned counsel appearing on behalf of the petitioners while replying to the submissions made by the learned Special Government Pleader, categorically submitted that they do not want this Court to pass any orders in these writ petitions which will impact the recommendations of the Committee and which was also accepted by this Court. The learned counsel only insisted that the recommendations of the Committee along with the prescribed qualifications under the Special Rule should be taken into consideration and an year wise panel must be prepared separately for the year 2018 and 2019 by fixing cut-off dates and the promotion/transfer counseling must take place. The learned counsel submitted that any subsequent Government order providing for the operational guidelines for an effective and smooth implementation, cannot override the mandate prescribed under Section 7 of the Act read with Schedule XI. The said submission has a lot of force and this Court is completely in agreement with the same. This Court cannot allow clubbing of panel for more than one year since, it will violate the specific mandate under the Act and it will also deprive the fundamental right of a candidate who is eligible to be considered for promotion at the relevant point of time.

25.This Court does not want to interfere with the transfer orders that have been passed pursuant to the promotion counseling that took place for the post of Associate Professor in various specialties following the Circular dated 07.05.2019, at this length of time. This Court is also taking into consideration the recommendations of the Committee that was submitted before this Court on 07.08.2019 and also the order passed by this Court in W.P.No.15215 etc., of 2019, dated 14.08.2019 accepting the recommendations of the Committee.

26.In view of the above discussion, these writ petitions are disposed of with the following directions:

- (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.
- (b)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.
- (c)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.

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

(e) 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.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Public Health
and Preventive Medicine,
Teynampet, Chennai - 600 006.
3. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
4. The Deputy Director of Medical Education A & R),
Kilpauk, Chennai - 600 010.

5. The Dean,
Government Dharmapuri Medical College, Dharmapuri.

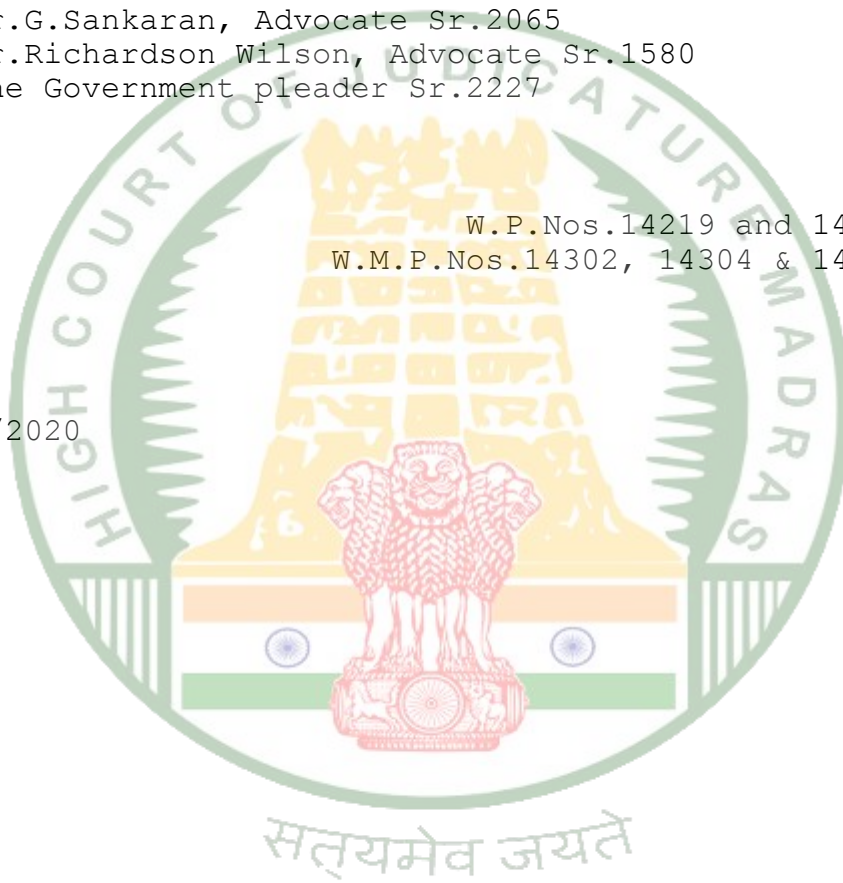
6. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.T.Fenn Walter Associates, Advocate Sr.2846
+1cc to Mr.G.Sankaran, Advocate Sr.2065
+1cc to Mr.Richardson Wilson, Advocate Sr.1580
+1cc to the Government pleader Sr.2227

W.P.Nos.14219 and 14220 of 2019
W.M.P.Nos.14302, 14304 & 14305 of 2019

BS (CO)

srg 12/03/2020



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