

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.33369 of 2019

1.Dr.K.Semmanaselvan
2.Dr.K.Athiyaman
3.Dr.M.Kavidha
4.Dr.K.R.Radhakrishnan
5.Dr.K.M.Elango
6.Dr.D.Senthamarai Kannan
7.Dr.G.Soundara Rajan
8.Dr.S.Mary Nirmala
9.Dr.D.Ranjit Kumar
10.Dr.T.Sivasubramanian
11.Dr.D.Rajkamal Pandian

Petitioners

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 Medical Education,
Kilpauk, Chennai - 600 010.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to grant posting order to the petitioners in the post of Associate Professor in ENT Speciality based on the promotion counselling conducted on 10.05.2019 as per circular issued by the 2nd respondent in Ref.No.24281/E1/5/2019 dated 07.05.2019, with effect from 20.06.2019 on par with Medical Officers given promotion in other Speciality Departments, with all consequential and other attendant benefits, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents: Mrs.Narmadha Sampath
Additional Advocate General
assisted by

Mr.V.Kadhirvel
Special Government Pleader

O R D E R

This writ petition has been filed for issuance of writ of mandamus directing the respondents to grant posting order to the petitioners in the post of Associate Professor in the ENT Specialty based on the promotion counseling that was conducted on 10.05.2019.

2.The case of the petitioners is that the 2nd respondent issued a Circular, dated 07.05.2019 to conduct promotion counseling for the post of Associate Processor in various specialties including ENT and the promotion counseling was scheduled for 10.05.2019. The names of the petitioners were included as eligible persons for promotion to the post of Associate Professors in ENT Specialty. The petitioners also participated in the said selection.

3.The petitioners were allotted with placements for the post of Associate Professors in ENT Specialty in different Medical Colleges and Hospitals based on the option that was exercised by them. Consequent to the promotion counseling, an order of promotion was also issued to all the other Medical Officers and they have also joined their services in June 2019. The grievance of the petitioners is that they have not been issued with the promotion orders to the post of Associate Professors in ENT specialty and the same were kept pending. The petitioners approached this Court and filed WP.No.15215 of 2019 etc. This writ petition was clubbed with the other connected cases and final orders were passed by this Court on 14.08.2019. However, consequent orders were not passed in the said writ petition. Therefore, again the promotion order was not issued to the petitioners. Left with no other option, the present writ petition has been filed seeking for appropriate directions.

4.Heard Mr.G.Sankaran, learned counsel appearing on behalf of the petitioners and Mrs.Narmatha Sampath, learned Additional Advocate General assisted by Mr.V.Kadhirvel, learned Special Government pleader appearing on behalf of the respondents.

5.Only stand that has been taken by the 1st and 2nd respondents in their counter is that this Court passed an interim order in W.P.No.14215 of 2019 and by virtue of this interim order, no further promotion orders were passed by the respondents. For proper appreciation, the interim order passed by this Court on 09.05.2019 is extracted hereunder:

3. Let the counselling can go on and if any promotion is made, the same will be subject to the result of the writ petition. In case the case of the petitioners is accepted, the promotees who were drawing higher pay, will have to refund the amounts to the respondents/employer and the Government need not pay to the promotees. The promotees cannot contend later that for having worked in the higher post, they are entitled to higher wages. All the promotees must be informed by the department about the pendency of the present writ petition. During the pendency of the writ petition, they should be made as parties to the writ petition by impleading them in the writ petition. If they are impleaded in the writ petition, later they cannot content that they are not the parties to the writ petition and hence, the order being passed, will not bind on them. The petitioner is directed to implead all the promotees as parties to the writ petition and the details of the promotees shall be furnished by the contesting respondent. If there is wrong promotion, the officials who are responsible for the same shall be demoted and posted in a non-sensitive post. This will ensure proper administration without partiality and favouritism.

6. A careful reading of the above interim order shows that this Court did not create any bar for the respondents to grant promotion to the eligible candidates. This Court only said that, if ultimately the candidates are not found to be eligible, then they should be made to refund the extra benefits which they enjoyed by virtue of the wrong promotion. This order cannot be construed as if a total ban has been imposed on the respondents to issue any promotion order if the candidates are otherwise found to be eligible.

7. In the considered view of this Court, the 2nd respondent ought to have granted the posting order to the petitioners to the post of Associate Professor and as on date, the promotion of the petitioners has not been challenged and there is no bar in granting promotion orders in favor of the petitioners.

8. In the result, this writ petition is disposed of with the 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.

s/d-
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 Medical Education,
Kilpauk, Chennai - 600 010.
 3. The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr.G.Sankaran, Advocate sr 2588.

W.P No.33369 of 2019

MR(CO)
SP(25/02/2020)

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