

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3232 of 2021 and
W.M.P.No.s.3669 & 3672 of 2021

Dr.P.Sankar

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai-600 009.

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

3.Dr.S.Lalitha

4.Dr.N.Thilakavathi

... Respondents

Prayer: Petition is filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus, for the records relating to the impugned order issued by the 1st Respondent in G.O.(D).No. 1082 dated 05.11.2020 approving the panel of medical officers fit for promotion to the post of Professor of Microbiology for the year 2020 -21 and quash the same and consequently conduct re-counselling by including the name of the Petitioner in the panel of medical officers (Associate Professors) fit for promotion to the post of Professor of Microbiology for the year 2020 -21.

For Petitioner : Dr.R.Maheswari

For R1 : Mr.A.Arul Doss
Govt. Advocate

For R2 : Mr.S.Karthikeibalan
Govt. Advocate

O R D E R

The petitioner has filed this writ petition, challenging the order dated 05.11.2020 made in G.O.(D).No. 1082, by which a panel of medical officers fit for promotion to the post of Professor of Microbiology for the year 2020-2021 was approved. The petitioner also sought a direction to the respondents to conduct re-counselling by including the name of the Petitioner in the panel of medical officers (Associate Professors) fit for promotion to the post of Professor of Microbiology for the year 2020-2021.

2. Mr.A.Arul Doss, learned Government Advocate takes notice for R1 and Mr.S.Karthikeibalan, learned Government Advocate for R2. Notice to R3 and R4 is dispensed with, as no adverse order is going to be passed against them. By consent on either side, the Writ Petition itself is taken up for final disposal at the admission stage itself.

3. According to the petitioner, he initially joined the Tamil Nadu Medical Service as Assistant Surgeon in Primary Health Centre at Dharmapuri in the year 1996 and thereafter, was posted as Tutor in Microbiology on 30.03.2007 in Coimbatore Medical College & Hospital. On 31.05.2007, he was re-designated as Assistant Professor and subsequently, as Associate Professor on 26.10.2012. It is the case of the petitioner that on 22.02.2019, a circular was issued by the 2nd Respondent, in which the name of the petitioner was included in the panel of Medical Officer for promotion and four Medical Colleges were shown for the promotion counselling for posting as Professor in Microbiology. Since the petitioner was not interested to choose any of the Colleges in the counselling held on 05.03.2019, he had given up his promotion, by duly giving the option of relinquishment. It is further case of the petitioner that his name was not included in the panel for counselling for the vacancies that arose in the Madras Medical College and Government Theni Medical College on 30.04.2019 and 31.05.2019 respectively. Though the names of two juniors were included in the panel, the petitioner has been deprived of the opportunity to choose either of the Colleges and therefore, the action of the respondents in discriminating the petitioner is unsustainable and on that ground, the impugned order is liable to be quashed.

4. Learned counsel for petitioner drew the attention of this Court to the Government Order passed in G.O.(D) No.1082 dated

05.11.2020 to state that one Dr.P.Gnanaguru was sought to be accommodated in the panel of the year 2020-2021, who was found to be fit for promotion and his name has been shown as Sr.No.1 in the said Government Order. Learned counsel for the Petitioner submitted that when Dr.P.Gnanaguru was not eligible on 05.03.2019, his name has been included in the panel by Government Order dated 05.11.2020 for promoting him as Professor.

5. Mr.S.Karthikeibalan, learned Government Advocate has contended that it was the petitioner, who relinquished his promotion to the post of Professor and the petitioner had also given his Temporary Relinquishment on 05.03.2019 as required under the Government Order dated 09.08.1992. He further contended that when the said relinquishment was in force for three years, in the interregnum period, his name cannot be considered for promotion and therefore, the Writ Petition is liable to be dismissed.

6. At the first blush, though the submission of the petitioner looks sound, when seen in depth, it could be realized that on the crucial date of counselling, namely, 05.03.2019, admittedly, Dr.P.Gnanaguru was not eligible, as he had not submitted his research paper at that time and though the petitioner's name was found place in Sl.No.4, he was not willing to accept the promotion. Therefore, as rightly pointed out by the learned Government Advocate for R2, pursuant to the temporary relinquishment opted by the petitioner, the decision to accommodate Juniors of the petitioner against subsequent vacancies in the promotional post, cannot be faulted with and he may have a chance after a period of three years and not before that.

7. Moreover, though Dr.P.Gnanaguru was senior to the petitioner even in the panel published on 05.03.2019, his name was not considered for non-submission of research paper. In addition to the above, the petitioner has also not questioned the order issued to Dr.P.Gnanaguru and therefore, there is no substance in the argument of the petitioner. The petitioner, having relinquished his promotion temporarily and such relinquishment would be valid for three years as per the existing Government Order, cannot now seek for inclusion of his name in the present panel. The promotion cannot be granted to the petitioner, as and when demanded by him, irrespective of the temporary relinquishment and he cannot also wait till the place of his choice is declared as vacant for promotion. The foremost duty of the Doctor is to serve for the poor / public, wherever he is posted.

8. In view of what is stated herein-above, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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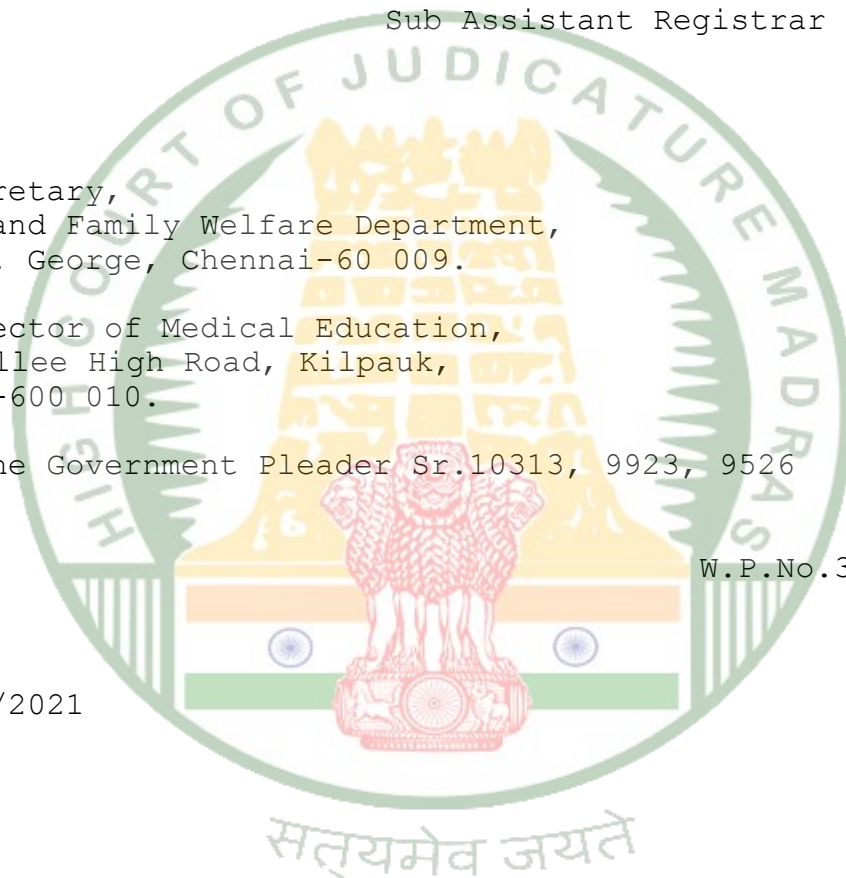
1.The Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai-60 009.

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

+1cc to the Government Pleader Sr.10313, 9923, 9526

W.P.No.3232 of 2021

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