

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 28091 of 2012

S.Deivasigamani

... Petitioner

-vs-

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. The Director of Medical and Rural
Health Services,
Chennai - 600 006.

3. The Director of Medical Education,
Kilpauk, Chennai - 10.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to consider the petitioner's representation dated 03.05.2010 and give promotion to the petitioner as Administrative Officer with effect from 15.10.1996 and pay back all the service benefits to the petitioner.

For Petitioner : Ms.J.Lakshmi Narayanan

For Respondents : Mr.K.Mahesh
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 03.05.2010 and give promotion to the petitioner as Administrative Officer with effect from 15.10.1996 and pay back all the service benefits to the petitioner.

2. The petitioner was working as JAO at the respondents' department in the Government General Hospital, Madras from 1994 to 1995 and thereafter, he was transferred to Trichy and was working from 1995 to 1999.

3. When he was working, as such, a panel of JAOs, fit for promotion for Administrative Officer, was prepared by the Director of Medical and Rural Health Services. Even though, the petitioner is the eligible candidate to be considered from the JAO cadre, his name was not considered as on 30.09.1995, which is the crucial date.

4. Therefore, in this regard, the petitioner seems to have given some representations to the respondents and those representations have not been considered and lastly on 03.05.2010, had given another representation, that was also not considered. Therefore, seeking indulgence of this Court, to issue a mandamus as prayed for, the present Writ Petition has been filed.

5. Heard Ms.J.Lakshmi Narayanan, learned counsel appearing for the petitioner who would submit that, on the crucial date, i.e., on 30.09.1995, there was no charge or disciplinary proceedings pending against the petitioner. Therefore, there could not be any impediment for the respondents to include the name of the petitioner in the said panel.

6. Even according to the petitioner, subsequently, two disciplinary proceedings were initiated and the same were ended in the year 2010 and 2016. Therefore, at no point of time, there was any impediment to include the name of the petitioner in the panel fit for promotion for Administrative Officer for the year 1995-1996. Hence, the prayer sought for in this Writ Petition has to be considered and mandamus be issued, he contended.

7. However, the learned Special Government Pleader appearing for the respondents, by relying upon the counter affidavit filed in this regard, would submit that, there were two disciplinary proceedings pending against the petitioner. Both the disciplinary proceedings were not pending on the crucial date for the year 1995-1996. Anyhow, since those disciplinary proceedings ended in the year 2010 and 2016, certainly the request of the petitioner would be considered and accordingly, his name can be included in the panel for promotion.

8. I have considered the said submissions made by the parties and have perused the materials placed before this Court.

9. The stand of the respondents with regard to the plea raised by the petitioner has been stated at para Nos. 17&18 of the counter affidavit filed by the respondents which reads thus:

"17. With reference to the averments made in para 10 of the affidavit, it is submitted that the name of the petitioner has not been included

in the temporary list for the post of Administrative Officer for the year 1995-1996 as he was facing disciplinary action at the time of consideration for the temporary promotion, even though he was free of any disciplinary proceedings on the crucial date. Now the two disciplinary proceedings have been finalized : one in the year 2010 and the other in the 2016. Now the request of the petitioner is being considered and action is being taken by the respondents to include the name of the petitioner in 1995-1996 panel while regulating the temporary promotion.

18. With reference to the averments made in para 11 of the affidavit, it is submitted that even though the petitioner has represented the authorities concerned in the year 2010, the disciplinary action initiated against him has been finalized in the year 2016 and the prayer of the petitioner is considered by the respondents and action is being taken to include his name in the regular panel for the post of Administrative Officer for the year 1995-1996."

10. In view of the aforesaid stand taken by the respondents, it has become clear that, on the crucial date, i.e., on 30.09.1995, there was no disciplinary proceedings against the petitioner and hence, there could not be any impediment for the respondents to include the name of the petitioner in the panel of JAOs fit for promotion to the post of Administrative Officer for the year 1995-1996.

11. At any rate, the subsequent disciplinary proceedings may not stand in the way, to include the name of the petitioner in panel of JAO fit for promotion for Administrative Officer for the year 1995-1996.

12. Be that as it may, it has now become clear that, as both the disciplinary proceedings ended in favour of the petitioner in the year 2010 and 2016, without considering the petitioner candidature for the inclusion in the panel year 1995-1996 fit for promotion to the post of Administrative Officer. Since the same has now can be considered as per the stand taken by the respondents in para Nos. 17 & 18 in the counter, which has been quoted above, this Court feels that, the prayer sought for by the petitioner can be considered and granted. In view of the aforesaid discussion, this Court is inclined to dispose of this Writ Petition with the following orders:

"(i) That the respondents are hereby directed to consider the request of the petitioner dated 03.05.2010 and accordingly, do the needful by including his name in the panel of JAOs fit for promotion for the post of Administrative Officer for the year 1995-1996 and accordingly, do the needful to give him promotion, if he is otherwise qualified and entitled to the same.

(ii) The needful as indicated above shall be undertaken by the respondents within a period of three months from the date of receipt of a copy of this order."

13. Accordingly, this Writ Petition is disposed of. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vji
To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Director of Medical and Rural
Health Services,
Chennai - 600 006. सत्यमेव जयते
3. The Director of Medical Education,
Kilpauk, Chennai - 10.

+1 cc to Mr.Lakshmi Narayanan advocate sr8220
+1 cc to the Government Pleader sr8055

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