



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **16.12.2021**

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P (MD)No.3832 of 2021

& WMP (MD)Nos.3050 & 3051 of 2021

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S.Thiyagarajan

... Petitioner

Vs.

1.The Director of Medical Education,
156, Poonthamalli Highways,
New Bupathy Nagar, Chetpet,
Chennai-600 031

2.The Medical Officer,
Government Hospital,
Thiruppuvanam, Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in Ref.no.20737/E5/2/2020-3 dated 17.02.2021 on the file of the first respondent and quash the same and further directing the respondents to issue a fresh Posting Order after conducting a general counselling among the employees concerned.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.V.Nirmal Kumar,
Government Advocate

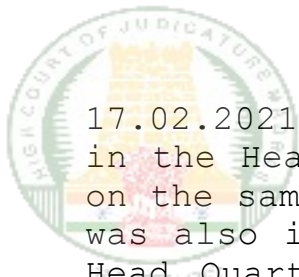
ORDER

Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner and Mr.V.Nirmal Kumar, learned Government Advocate appearing for the respondents.

2.This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records relating to the proceedings of the impugned order in Ref.no.20737/E5/2/2020-3 dated 17.02.2021 on the file of the first respondent and quash the same and further directing the respondents to issue a fresh Posting Order after conducting a general counselling among the employees concerned.

3.By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

<https://hcservices.equitydivs.in/Services/> 4. This Writ Petition has been filed as against the order dated



17.02.2021. The petitioner is working as Lab Technician Grade II in the Health Department. A panel was prepared on 17.02.2021 and on the same day Posting Orders have been issued and the petitioner was also issued with the posting order, posting him at Government Head Quarters Hospital at Ramanathapuram. The grievance of the petitioner is that without conducting counselling and without providing an opportunity of any objection for the panel, the impugned posting order dated 17.02.2021 has been passed by the 1st respondent. Aggrieved over the same, the present Writ Petition has been filed before this Court.

5.The learned counsel for the petitioner submits that as per Section 7 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act 14 of 2016), at the time of preparing panel, an opportunity must be provided to all the incumbents to raise their objections if any in regard to the panel, which was not done in this case. He pointed out that no counselling for transfer and promotion as contemplated in G.O.(2D) No.131, Health and Family Welfare(A1) Department dated 20.11.2007 was complied with.

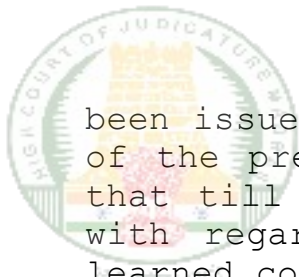
6. At the time of admission, this Court satisfied with the plea raised by the petitioner and has granted interim stay vide order dated 23.02.2021.

7. During the pendency of the Writ Petition, Lab Technicians Grade III have also filed applications, seeking to implead them as necessary parties in this Writ Petition on the ground that in view of the interim orders passed by this Court, their promotions have been affected.

8.A detailed counter affidavit has been filed by the learned Government Advocate appearing for the respondents. The learned Government Advocate by relying upon the counter affidavit would submit that it is only a temporary promotion and the guidelines framed in the said Government Order have not been scrupulously followed in view of the present Covid -19 situation.

9.This Court has paid its anxious consideration to the rival submissions made by the learned counsel on both sides and perused the entire materials placed on record.

10.Though the panel for appointment to the post of Lab Technician Grade I in Tamil Nadu Medical Subordinate Services was prepared only on 17.02.2021, as per Section 7 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act 14 of 2016), the aggrieved persons must be provided an opportunity of raising objections if any, with regard to the panel. However, in this case on the same date of panel, Posting Orders have also



been issued by the respondents and the same are the subject matter of the present Writ Petition. However, it is pertinent to note that till date, the respondents have not received any objections with regard to the panel and therefore, the contention of the learned counsel for the petitioner is not acceptable one.

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11. However, the Government has issued revised guidelines for conducting counselling for transfer and promotion in the Tamil Nadu Medical Subordinate Services vide G.O.(2D) No.131, Health and Family Welfare(A1) Department dated 20.11.2007, wherein, the relevant portion as regards 'the criteria and method of promotion/transfer as found in para 10 is extracted as under:

"10. Criteria and method for Promotion/Transfer:

10.1 No mutual transfers shall be considered.

10.2 Transfer Counselling should be completed on the same day before starting promotion counselling.

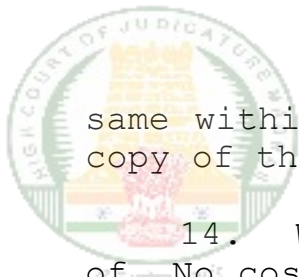
10.3 Promotion to the posts shall be made by counselling in the order of seniority. If the senior is not willing to take up the posts, he should relinquish his right for promotion in writing either temporarily or permanently at the time of counselling and the next eligible person may be promoted and posted in that vacancy.

10.4 If a person eligible for promotion does not relinquish his right, but chooses to absent himself on the day of Counselling, or if he attends the Counselling but fails to relinquish, it shall be deemed that he is willing to be considered for promotion and shall be promoted and posted to one of the vacancies at the discretion of the Director Government. If he does not join the new post, it will be viewed as an act of indiscipline disobedience and dereliction of duty entailing disciplinary action.

....."

12. Admittedly, these guidelines have not been followed at the time of Posting Orders. Even according to the respondents, it is only a temporary panel and the very purpose of filling up the promotional post of Laboratory Technician Grade-I is to handle the pandemic situation of Covid-19. Therefore, when such being the case and since it is only a temporary panel, the respondents ought to have set right the same after the normalcy of pandemic situation is restored in order to safeguard the interests of the senior most incumbents.

13. In the light of the above, the respondents are directed to conduct the counselling for transfer and promotion as per the revised guidelines issued in G.O.(2D) No.131, Health and Family Welfare(A1) Department dated 20.11.2007 and finalize the



same within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Director of Medical Education,
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New Bupathy Nagar, Chetpet,
Chennai-600 031

2.The Medical Officer,
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NSN (CO)
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