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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A(MD)No.1958 of 2021

and

C.M.P(MD)No.8826 of 2021

1.The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
4th Floor, Fort St. George,
Secretariat,
Chennai-600 009.

2.The Director of Medical Education,
No.156, Poonamallee High Road,
New Bupathy Nagar,
Chetpat, Chennai-31.

... Appellants/Respondents

Vs.

Dr.P.Sudha

... Respondent/Writ Petitioner

PRAYER: The Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order passed by this Court in W.P.(MD)No.10163 of 2020, dated 23.09.2020.

Prayer in WP(MD). 10163/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records in connection with the order passed by the 2nd respondent in Ref.no.5189/E1/4/2020 dt 20.3.2020 and quash the same as illegal, incompetent, without jurisdiction and further direct the respondents to promote the petitioner in the post of Professor of Pharmacology with effect from the date of promotion given to her batchmates and juniors with all monetary and service benefits within a time



For Appellants : Mr.R.Baskaran
Additional Advocate General
For Respondent : Mr.R.Singaravelan
Senior Counsel

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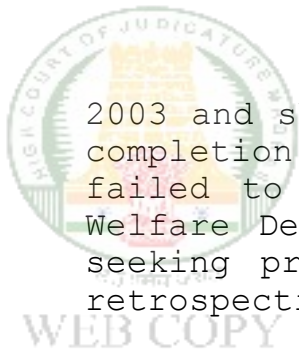
JUDGMENT

S. VAIDYANATHAN, J.
and
DR. G. JAYACHANDRAN, J.

The Writ Appeal has been filed by the State challenging the order passed by this Court in W.P.(MD)No.10163 of 2020, dated 23.09.2020 allowing the writ petition seeking issuance of Writ of Certiorarified Mandamus to quash the impugned order of the Director of Medical Education, dated 20.03.2020 and direct the respondents to promote the petitioner in the post of Professor of Pharmacology with effect from the date of promotion given to her batchmates and juniors with all monetary and service benefits within a time stipulated by this Court.

2. The appeal has been filed by the State on the ground that the learned Single Judge has not considered the Government Order in G.O(Ms)No.66, Health and Family Welfare Department, dated 19.02.2016 and the proposal of the Government to sanction the teaching posts in all the Government Medical Colleges so as to give promotion to the Medical Officers, who are fulfilled the norms of the Medical Council of India, and subject to availability of the vacancies and the Government Order in G.O(4D) 2, Health and Family Welfare Department, dated 15.02.2019 issued by the Government. It is also pleaded in the appeal that the restructuring and sanctioning of the teaching posts in the Medical Colleges as per the norms of Medical Council of India both College-wise and Departmental-wise subject to certain conditions were not taken into consideration by the learned Single Judge, while passing the impugned order.

3. It is contended that the writ petitioner to claim the post of Professorship ought to have published four publications in the index journals. She has not published four publications in the index journals till 15.03.2019. Therefore, she is not entitled for any promotion as Professor without making 4 publications, which is a mandate, as per the Medical Council of India norms. It is also contended that as per G.O(Ms)No.354, Health and Family Welfare Department, dated 23.10.2009 the redesignation of Medical Officers, as Professor, will be applicable only to those, who have completed 20 years of service in the Tamil Nadu Medical Service. Whereas, the writ petitioner in this case joined in the service only in the year



2003 and she will be eligible for the post of Professorship only on completion of 20 years of service, whereas, the learned Single Judge failed to note the spirit of G.O.(MD)No.354, Health and Family Welfare Department, dated 23.10.2009 had allowed the writ petition seeking promotion to the post of Professor as on 16.12.2013 with retrospective effect with all monetary benefits.

4. The learned Additional Advocate General Mr.R.Baskaran appearing for the appellants had produced the file and took all efforts to convince this Court to substantiate the plea of the Government in the appeal that the order of the learned Single Judge is erroneous and liable to be set aside.

5. This Court heard the learned Additional Advocate General Mr.R.Baskaran appearing for the appellants and the learned Senior Counsel Mr.R.Singaravelan appearing for the respondent. Perused the original records furnished by the Additional Advocate General.

6. After hearing the counsel and perusing the record at length, this Court finds no error in the order of the learned Single Judge except to add our finding to reinforce the Single Judge order. The case of the writ petitioner is that she was promoted temporarily as Associate Professor of Pharmacology vide G.O(D)No.1138, Health and Family Welfare (A1) Department, dated 20.10.2009 under Rule 39 (a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services along with three other Assistant Professors while one among them namely Dr.Thirukarthikeyan later expired. The other two Assistant Professors, who have promoted along with the writ petitioner, as Associate Professors on 20.10.2009, were promoted as Professor of Pharmacology vide order of the Director of Medical Education, dated 03.12.2013, whereas, the petitioner was singularly discriminated from not extending the same benefit of promotion.

7. Further, it is brought to the notice of this Court by the learned Senior counsel for the respondent/writ petitioner that the second respondent in the writ petition vide order dated 10.04.2015 in Ref.No.14142/E1/1/14 referring G.O.Ms.No.354/Fin.(PC) Department dated 23.04.2009 has passed an order redesignating the writ petitioner/respondent as Professor of Pharmacology, K.A.P.Viswanatham Government Medical College, Trichy with effect from 16.02.2013 F.N., While so, having redesignated the writ petitioner as Professor of Pharmacology with effect from 16.02.2013 through this writ appeal an attempt is made to project as if the writ petitioner is not qualified to be promoted as Professor, since she did not publish four publications in the index journals, as per the Medical Council of India norms and not completed 20 years of service as Medical Officer.



8. This Court, on perusing the records finds that both the reasons for rejecting her request are inconsistent with each other and also contrary to the Government Order. As per the rules and the Government Orders prevailed on the date of her representation, the writ petitioner was redesignated and promoted as Professor, that apart, the other Professors namely, Dr.R.Sarojini and Dr.L.Madhan, who were promoted as Associate Professor along with the writ petitioner, were further promoted as Professors without any hesitation by the Government.

9. This Court wish to point out that when other two Medical Officers have been promoted as Professors, there is no reasonable justification given by the Government for not promoting the petitioner alone as Professor by quoting the subsequent amendment of Medical Council of India norms. The act of discrimination cited. Government Order not directly relevant to the writ petitioner and the inconsistent Policy of the Government, does not auger well to the understanding of this Court.

10. This Court wish to record that G.O(Ms)No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, which is heavily relied on by the Additional Advocate General for depriving the promotion to the writ petitioner on the ground she has not completed 20 years of service as Assistant Professor in fact does not speak about the Associate Professors. This Government Order is in respect of the Medical Officers, who are at the level of Assistant Professor got stagnated for more than 20 years without any promotion after entering into Tamil Nadu Medical Service. This Government Order in G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, is intended to give one time promotion to the Assistant Professor in the Tamil Nadu Medical Service, who have put in 20 years of continuous service without any promotion and stagnated in the same post for more than 20 years. Thus, the Government Order, which is meant for Assistant Professor, stagnated in the same post for more than 20 years, is not applicable to the writ petitioner, as she was already promoted as Associate Professor on 20.10.2009, few days prior to the issuance of G.O(Ms)No.354, Health and Family Welfare (B2) Department, dated 23.10.2009.

11. Looking at any angle, the writ petitioner herein, who possessed PG degree and 5 years service of Assistant Professor and 4 years service of Associate Professor, cannot be deprived of her next promotion as Professor after redesignated her as Professor with effect from 16.02.2013. More particularly, when equally placed persons have already been promoted as Professors.



12. The learned Additional Advocate General assails the Single Judge Order on the ground that G.O.Ms.No.77, Health and Family Welfare (A1) Department, dated 23.02.2016 and G.O.(4D)No.2, dated 15.02.2019 was overlooked. At the outset, it is to be pointed that these two proceedings are much later to redesignating the writ petitioner as Professor and promoting two of her panel-mates as Professors. The additional qualifications prescribed to hold the post of professor in Government Order in G.O(Ms)No.77, Health and Family Welfare (A1) Department, dated 23.02.2016, which was not available on the date, when the petitioner and two other persons [mentioned supra] came eligible for considering them as Professor. When the Government has granted relaxation to Dr.Sarojini and Dr.L.Madhan, who were promoted as Associate Professor on 20.10.2009 along with the writ petitioner and subsequently, promoted as Professor and the promotion order of Dr.Sarojini, dated 03.12.2013 alone has been produced and that there is no dispute with regard to the proceedings regarding the promotion of Dr.L.Madhan as Professor. A reading of the proceedings would make it very clear that Sarojini was also not completed 20 years of service, but became eligible to be appointed as Professor. When there is a relaxation to the same set of candidates barring the writ petitioner would amount to clear discrimination and violation of Article 14 of the Constitution of India.

13. That apart, the Government will have to identify every year vacancy and permit the promotions. It is no doubt, though the same procedural difficulties and administrative reasons, which has been extracted in G.O.Ms.No.387, Health and Family Welfare (A1) Department, dated 03.09.2018, this difficulty was available when the benefits of promotion have been extended to Dr.Sarojini and Dr.L.Madhan, the Government cannot say that the difficulties will be relaxed only to two persons and they will stick on to the conditions that no relaxation will be granted with regard to the writ petitioner.

14. Insofar as G.O(4D)No.2, dated 15.02.2019 it is nothing but a consolidated order to restructure the cadre strength in view of revised Medical Council of India norms and to remove the discrepancies noticed in the earlier Government Orders issued by the Government from time to time. This Government Order speaks about the operational guidelines. After issuing order redesignating the writ petitioner as Professor of Pharmacology with effect from 16.02.2013, instead of honouring the same in letter and spirit, it is unfortunate, the State retracts and refuses promotion to the writ petitioner, citing Government Orders which are not applicable to her and the Government Orders, which were issued subsequent to promoting her equals discriminatory and isolating her without any reasonable classification.



15. We are of the view that the order passed by the learned Single Judge is perfectly in order and the writ petitioner is entitled to the relief sought for in the writ petition and we find no justifiable ground in the writ appeal to interfere.

16. Accordingly, the writ appeal is dismissed and the order of the learned Single Judge in W.P(MD)No.10163 of 2020, dated 23.09.2020 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

am

TO:

1.The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
4th Floor, Fort St. George,
Secretariat,
Chennai-600 009.

2.The Director of Medical Education,
No.156, Poonamallee High Road,
New Bupathy Nagar,
Chetpat, Chennai-31.

+1 CC to M/s.D. SELVANAYAGAM, Advocate (SR-36105[F] dated 26/11/2021)

+1 CC to M/s.SPL GP (SR-36520[F] dated 30/11/2021)

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26.11.2021

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