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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.25302 of 2015

and

M.P.No.1 of 2015

and

W.M.P.Nos.29030 of 2016 & 27075 of 2019

Dr.V.Harishnath

... Petitioner

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.

3. Dr.J.Gandhimathi

4. Dr.K.Subalakshmi

5. Dr.T.Jeyanthikumari

6. Dr.K.Usha

7. Dr.S.Vinayakam

... Respondents

[R3 to R7 are impleaded vide order dated 18.06.2019, made in
WMP.Nos.10684 & 13653 of 2019 in WP.No.25302 of 2015]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Respondents to draw the panel for promotion to the post of Reader/Associate Professor in Dental Surgery based on year wise panel from the year 2012-2013 onwards and to effect promotion with eligible persons included in the year wise panel and consequently include the name of the Petitioner in the panel for the year 2012-2013 and to promote him to the post of Reader/Associate Professor in Dental Surgery retrospectively from the date of relevant vacancy, based on his eligibility and



seniority with all consequential and other attendant benefits including arrears of salary by considering the representation submitted by the Petitioner dated 16.12.2014.

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For Petitioner : Mr.G.Sankaran
For R1 and R2 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
For R3 to R7 : Mr.R.Ramachandran

ORDER

The relief sought for in the present writ petition is to direct the respondents to draw the panel for promotion to the post of Reader / Associate professor in Dental Surgery based on the year wise panel from the year 2012-2013 onwards and to effect promotion with eligible persons included in the year wise panel and consequently, include the name of the petitioner in the panel for the year 2012-2013 and to promote him to the post of Reader / Associate Professor in Dental Surgery retrospectively from the date of relevant vacancy, based on his eligibility and seniority with all consequential and other attendant, benefits including arrears of salary by considering the representation submitted by the petitioner dated 16.12.2014.

2. The petitioner states that he was appointed as Assistant Surgeon (Dental) through Tamil Nadu Public Service commission (TNPSC) in Tamil Nadu Medical Services on 28.08.2000. His probation was declared and the services were regularized. The petitioner completed his MDS course on March 2007. Thereafter, continued his service as Tutor from 12.04.2007 and the post was re-designated as Assistant Professor Dental Surgery in the Department of Prosthodontics with effect from 12.04.2008. The petitioner was promoted to the post of Senior Assistant Professor in the year 2011, on completion of three years of service with Post Graduation qualification. The next avenue for promotion is to the post of Reader / Associate Professor in Dental Surgery. As per this Special Rules the qualification prescribed is Post Graduation Degree and teaching experience for a period of not less than four years in Dental Surgery in a Dental Institution. The petitioner states that he is fully qualified for promotion to the post of Reader / Associate Professor in Dental Surgery from the year 2012 onwards and as on the crucial date i.e., 15.03.2012 the petitioner was qualified for promotion to the post of Reader / Associate Professor in Dental Surgery.



3. The 2nd respondent prepared the panel for promotion to the post of Reader / Associate Professor in Dental Surgery for the year 2012-2013, in proceedings dated 09.05.2012. However, the panel was not acted upon and the petitioner was not promoted. Subsequently, the Government issued G.O.Ms.No.307 Health and Family Welfare Department dated 31.10.2012, by which 27 Dental teaching posts of various categories were created. The 2nd respondent again prepared a panel for the year 2012-2013 and in the said panel the name of the petitioner was included in S.No.5. However, the panel was not acted upon promotions were not granted.

4. Instead of preparing the regular panel for promotion the Government issued G.O(D).No.1289 Health and Family Welfare Department dated 25.11.2013, by which 25 posts of Associate Professors in the Government Dental Colleges and Hospitals filled up through temporary Doctors under Rule 39 (a) (i).

5. The learned counsel for the petitioner made a submission that when the regular panel was prepared for promotion to the post of Reader / Associate Professor in Dental Surgery and thereafter, by creating 25 posts of Associate Professors, the respondents have promoted certain unqualified persons under Rule 39 (a) (1). Such temporary promotions are granted in order to accommodate the unqualified persons by depriving the promotional opportunity of the qualified persons including the petitioner. Therefore, the petitioner is constrained to move the present writ petition.

6. The learned counsel for the petitioner contended that the petitioner was fully qualified for promotion to the post of Reader / Associate Professor in Dental Surgery and his name was included in the panel for the year 2012-2013 and the panel was not acted upon. While so, what prompted the official respondents to promote the persons temporarily under Rule 39 (a) (i) has not been established and therefore, the petitioner was entitled for retrospective promotion based on the panel for the year 2012-2013 for promotion to the post of Reader / Associate Professor in Dental Surgery.

7. The learned counsel for the petitioner relied on the panel of the year 2012-2013, wherein, the details of the eligible persons for promotion to the post of Associate Professor has been called for. The name of the petitioner was included in the S.No.5 for the year 2012-2013 dated 24.01.2013. However, a decision was taken to promote 25 Assistant Professors to the post of Reader / Associate Professor in Dental Surgery under Rule 39 (a) (i) of the Tamil Nadu State and Subordinates Service Rules and accordingly, the temporary promotions were granted to those persons. The learned counsel for the petitioner



states that the juniors to the petitioner were also granted such temporary promotions. Again the panel for the year 2014-2015 was prepared in proceedings dated 21.08.2014, in which the name of the writ petitioner was included in S.No15 and the said panel, was also not acted upon. Thus, the petitioner has filed the present writ petition.

8. The petitioner filed an application under Right to Information Act, seeking information and the reply sent by the Government dated 17.03.2017, states that the persons promoted under Rule 39 (a) (i) on temporary posts are eligible and qualified.

9. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 opposed the contentions raised by the petitioner by stating that the panel was prepared however, not acted upon. Mere preparation of a panel including the name of the writ petitioner would not be a ground to seek a direction to promote him to the post of Reader / Associate Professor in Dental Surgery. The petitioner has not reached the zone of consideration for promotion to the post of Reader / Associate Professor in Dental Surgery. His name was not considered on account of the fact that he has not reached the seniority and therefore, not in the zone of consideration for promotion. Even the temporary promotions under Rule 39 (a) (i) of the General Rules were accorded only to the senior persons, and all those persons promoted are seniors to the petitioner and the said factum can be verified from the proceedings itself.

10. No doubt, as per G.O.Ms.No.307 dated 31.10.2012, speciality posts were created. Due to the urgency and fulfil the norms of Dental Council of India, ten Medical Officers were qualified as per the Special Rules for Tamil Nadu Medical Services for the post of Reader in Dental Surgery have been temporarily promoted as Associate Professor in their specialties on availability of vacancies based on their CDL (Civil Dental List) seniority, under rule 39 (a)(i) of the General Rules for Tamil Nadu State and Subordinate Services vide G.O(4D).No.5, Health and Family Welfare (B1) Department, dated 08.02.2013. Though the particulars have been called for by the second respondent including the name of the petitioner and he was eligible for promotion as Reader in Dental Surgery during the year 2012-2013, seniority No.(193/2005) was not turned up for promotion due to non-availability of vacancies in the speciality of Prosthodontics and his seniors Dr.J.Bharani Krishnan, Government Coimbatore Medical College, Coimbatore (CDL No.154/2005), and Dr.K.Ramkumar, Tamil Nadu Dental College and Hospital, Chennai (CDL No.155/2005) have been temporarily promoted as Associate Professor of Dental Surgery in the Speciality of Prosthodontics.

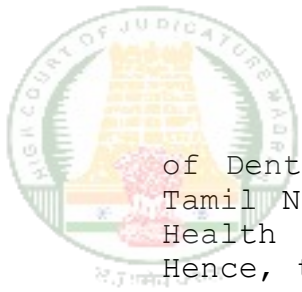


11. The respondents 1 and 2 state that the Medical Officers, who were promoted and appointed as Associate Professor of Dental Surgery at Tamil Nadu Government Dental College and Hospital, in G.O.(4D).No.5, Health and Family Welfare (B1) Department, dated 08.02.2013 have not fulfilled the norms of Dental Council of India. Hence, the Government have partially modified the orders issued in the above said Government order, as the promotion orders issued to the 10 Assistant Professors as Associate Professor of Dental Surgery was cancelled due to administrative reasons and the Medical Officers were restored to their original position (i.e.) Assistant Professor vide G.O(4D).No.7, Health and Family Welfare (B1) Department, dated 13.02.2013. Due to the said reasons, neither the promotion counselling conducted for the post of Associate Professor of Dental Surgery nor the said post has been filled up during the year 2012-2013 was given effect to.

12. During the year 2013-2014, the 2nd respondent herein has sent the proposal for filling up of the vacant posts of Associate Professor of Dental Surgery in various specialties in the Government Medical Colleges. Pending framing of rules for the specialties in the post of Associate Professor of Dental Surgery, the Government have temporarily promoted 25 Assistant Professors as Associate Professor, who were qualified as per DCI norms as on the date of consideration. Under Rule 39(a) (i) of the General Rules for Tamil Nadu State and Subordinate Services vide G.O.(D).No.1289, Health and Family Welfare (A1) Department, dated 25.11.2013. As per the temporary promotion list, the vacancies in the particular specialties have been filled up through promotion counselling.

13. Though the particulars have been called for from the petitioner herein for promotion to the post of Associate Professor of Dental Surgery, two (2) vacancies only exist during the year 2013-14 and his name did not come under the zone of consideration. During the year 2014-15, the vacancy for the post of Associate Professor of Dental Surgery in the speciality of Prosthodontics was 'Nil'. Hence, the name of the petitioner herein has not been considered for promotion to the post of Associate Professor of Dental Surgery during the year 2014-2015.

14. Though, there are nine (9) specialties exist in Dental Surgery side, that specialties have not been incorporated in the Special Rules for Tamil Nadu Medical Service so far. Hence, the Government have decided to fill up the vacant posts in the post of Associate Professor of Dental Surgery on temporary basis, for providing best health care to the public. Accordingly, 25 Assistant Professors, who were qualified as per DCI norms as on the date of consideration, were promoted as Associate Professor



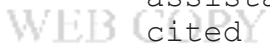
of Dental Surgery under Rule 39(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services vide G.O.(D) No.1289, Health and Family Welfare (A1) Department, dated 25.11.2013. Hence, the contention of the petitioner herein is unacceptable.

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15. The principles on promotion are settled by the Constitutional Courts across the Country. Promotion per se can never be claimed as absolute right. All promotions are to be granted strictly in accordance with the rules in force and by considering the seniority. However, consideration of the name for promotion is the fundamental right of an employee. Thus, in the event of taking an administrative decision to fill up the promotional course, the competent authority is bound to consider the names of all the eligible employees, who are all aspiring to secure promotion based on their eligibility. Mere inclusion of the name of a person in the panel would not confer any right for promotion. Consideration or inclusion of the names in the panel is a part of preparation for promotion and such preparations need not confer any right, unless the promotions are granted. Thus, based on the inclusion of the name in the panel an employee cannot seek direction to promote him to the higher post.

16. The rights in respect of promotion have been considered by the Honourable Supreme Court in the recent decision in Union of India (UOI) and Others Vs. Manpreet Singh Poonam and Others, reported in MANU/SC/0280/2022, wherein the Apex Court of India in unequivocal terms held that as there is no vested or accrued right over a promotional post, in the absence of any vacancies actually in existence for the year 2009, the migration of the other officers of the Indian Administrative Service (IAS) cadre took place only in the year 2011. The Apex Court again reiterated that consideration for promotion is a fundamental right as per the decision of the Apex Court in the case of Ajit Singh Vs. State of Punjab, reported in (1999) 7 SCC 209. Thus, the rights of the employee are restricted only if an administrative decision is taken by the Authorities Competent to prepare a panel while considering the eligible candidates for promotion.

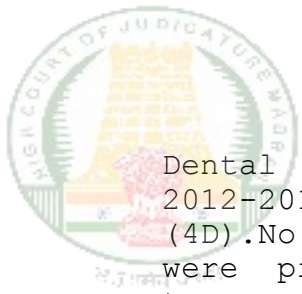
17. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of Union of India and Others Vs. N.R.Banerjee and Others reported in (1997) 9 Supreme Court Cases 287, wherein the Hon'ble Supreme Court of India made an observation that the filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right on him/her to appointment. It is not incumbent that all posts may be filled up. But the authority



18. The above general principles would not provide any assistance for the case of the writ petitioner. Even in the case cited by the petitioner, the Hon'ble Supreme Court of India reiterated that mere inclusion of one's name in the list does not confer any right to appointment. Therefore, the preparation of panel, including the name of a person would not confer any right to seek promotion.

20. The name of the writ petitioner was considered and his name was included in the panel of the year 2012-2013, and in the panel of the year 2014-2015. It is an admitted fact that the CDL seniority of the writ petitioner is (193-2005). Due to non-availability of vacancies in the Speciality of Prosthodontics, the case of the writ petitioner was not considered for promotion during the relevant point of time. Furthermore, the panel of the year 2012-2013 was not at all acted upon and it was dropped. Therefore, the persons included in the panel for the year 2012-2013 including the petitioner have no right to seek any promotion, in view of the principles enumerated in the above mentioned paragraphs. The petitioner was not considered for non-availability of vacancy in the Speciality of Prosthodontics. However, the seniors to the writ petitioner Dr.J.Bharani Krishnan, (CDL No.154/2005) and Dr.K.Ram Kumar (CDL No.155/2005) had been promoted temporarily as Associate Professor of Dental Surgery in the Speciality of Prosthodontics.

<https://hcservices.ecourts.gov.in/hcservices/>



Dental Surgery nor was the said posts filled up during the year 2012-2013. The writ petitioner has not referred the above G.O. (4D).No.7 dated 13.02.2013. Therefore, no unqualified Doctors were promoted during the relevant point of time, even on temporary basis. All the persons promoted on temporary basis were qualified and especially in the Speciality of Prosthodontics, two seniors to the writ petitioner were promoted. Thus, the seniority of the petitioner was not overlooked. The petitioner was not within the Zone of consideration and therefore, his name was not considered for promotion.

22. The above fact has been categorically stated in paragraph 10 of the counter that for promotion to the post of Associate Professor of Dental Surgery, two vacancies existed during the year 2013-2014 and the name of the writ petitioner did not come under the zone of considering. During the year 2014-2015 the vacancy for the post of Associate Professors of Dental Surgery in the Speciality of Prosthodontics was 'Nil'. Thus, the name of the petitioner was not considered for promotion to the post of Associate Professor of Dental Surgery during the year 2014-2015.

23. The respondents have narrated the facts and circumstances, which establish that the case of the writ petitioner was considered even in the subsequent panel and the petitioner was not within the zone of consideration and his seniors as per CDL list alone were promoted. Thus, this Court do not find any infirmity or perversity with reference to the procedures followed by the respondents 1 and 2 for considering the names of the eligible persons for inclusion of their name in the panel, and for grant of temporary promotions during the relevant point of time under Rule 39 (a) (i) of the General Rules for Tamil Nadu State and Subordinate Services Rules.

24. That apart, the very relief sought for in the present writ petition is to direct the respondents to include the name of the writ petitioner in the panel of the year 2012-2013 and to promote him in fact the name of the writ petitioner was included in the panel of the year 2012-2013 and thereafter, in the year 2014-2015 and he was not promoted, since he was not falling within the zone consideration especially to the post of Associate Professor of Dental Surgery in the Speciality of Prosthodontics. Thus, the relief as such sought for deserves no merit consideration as the petitioner has failed to establish any acceptable ground.



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25. Thus, the Writ Petition is devoid of merits and stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Jeni

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai - 600 010.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.40498

+5ccs to Mr.R.Ramachandran, Advocate, S.R.No.40550

+1cc to the Government Pleader, S.R.No.41424

W.P.No.25302 of 2015

PM(CO)
UMA(08/07/2022)