



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	01.11.2021
PRONOUNCED ON	29.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NOS.24404, 7540, 34090, 12734, 12996 & 24214 OF 2018
AND W.P.NOS.25487 & 26018 OF 2019 AND

W.P.NO.20211 OF 2020

AND

W.M.P.NOS.39616, 9530, 28219, 14922, 15263, 16738, 24663,
28220, 28221, 28419, 33193, 39608 & 39610 OF 2018 AND

W.M.P.NOS. 25010, 25011, 25013, 25015, 25420, 25422,
25425 & 25426 OF 2019 AND W.M.P.NOS.24978, 24981,

24984 OF 2020 AND W.M.P.NO.18251 OF 2021

(Through Video Conferencing)

DR.JAYAPRAKASH NARAYAN.K

... PETITIONER in W.P.No.24404 of 2018

1. DR.R.VEERAPANDIAN

2. DR.M.RAMESH

3. DR.S.AMUTHA

... PETITIONERS in W.P.No.7540 of 2018

DR.E.SUKANYA

... PETITIONER in W.P.No.34090 of 2018

DR.E.SUKANYA

... PETITIONER in W.P.No.12734 of 2018

DR.L.SHANMUGAVADIVU

... PETITIONER in W.P.No.12996 of 2018

1. DR.P.M.RAJA

2. DR.M.NATESAN

3. DR.M.KALYANASUNDARAM

4. DR.R.THAMILKOTHA

5. DR.S.SIVARAM KANNAN

... PETITIONERS in W.P.No.24214 of 2018



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1. DR.P.RAJAYAN
2. DR.A.SAKAYA STEPHEN RAJ
3. DR.R.SIVAKUMAR
4. DR.T.CHENTHIL SIVAMUTHU
5. DR.V.RAMASUBRAMANIAN
6. DR.RAJAGOPALA MARTHANDAN
7. DR.A.S.BABUKANDHAKUMAR
8. DR.R.MAHENDRAN
9. DR.V.THIRUNAVUKKARASU
10. DR.R.RAMESH
11. DR.R.ARAVAZHI
12. DR.K.RAMALATHA
13. DR.KRITHIGA THENMOZHI
14. DR.M.NATARAJAN

... PETITIONERS in W.P.No.25487 of 2019

1. DR.S.BALASHANKAR
(P1 WITHDRAWN VIDE ORDER DATED 24.08.2021
MADE IN W.P.NO.26018 OF 2019)

2. DR.M.RAMESH
3. DR.C.DHARMARAJ
4. DR.M.KALYANASUNDRAM
5. DR.M.NATARAJAN

... PETITIONERS in W.P.No.26018 of 2019

DR.T.GNANASEKARAN

... PETITIONER in W.P.No.20211 of 2020

Vs.



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1. The State of Tamil Nadu,
Rep. by the Secretary,
Health and Family Welfare (A1) Department,
Fort St.George,
Chennai - 600 009.

2. The Director of Medical Education,
No.162, Poonamallee High Road,
Opposite MJRC Clinic,
New Bupathy Nagar,
Chetpet, Chennai,
Tamil Nadu 600 031.

3. The Director of Medical and Rural
Health Services,
No.359, Anna Salai,
Teynampet, Chennai,
Tamil Nadu 600 006.

4. Dr.Frank Davis Daniel.S

5. Dr.Chengalvarayan.G

6. Dr.T.Gnanasekaran

(R6 impleaded vide order dated 06.08.2021
made in W.M.P.No.17361 of 2019 in
W.P.No.24404 of 2018)

... RESPONDENTS in W.P.No.24404 of 2018

1. THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
FORT ST. GEORGE, SECRETARIAT,
CHENNAI-9.

2. THE DIRECTOR OF MEDICAL AND
RURAL HEALTH SERVICES, DMS COMPOUND,
TEYNAMPET, CHENNAI 600 006.

3. THE DIRECTOR OF PUBLIC HEALTH
AND PREVENTIVE MEDICINE, DMS COMPOUND,
TEYNAMPET, CHENNAI 6.

4. THE DIRECTOR OF MEDICAL
EDUCATION, KILPAUK, CHENNAI 10.

... RESPONDENTS in W.P.No.7540 of 2018



1. THE STATE OF TAMIL NADU
REP BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
FORT.ST.GEORGE, CHENNAI-9.

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2. THE DIRECTOR OF MEDICAL
AND RURAL HEALTH SERVICES, RURAL HEALTH
SERVICES, DMS COMPLEX, CHENNAI-6.
3. THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
KILPAUK, CHENNAI-10.

... RESPONDENTS in W.P.No.34090 of 2018

1. THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY TO GOVT.,
HEALTH AND FAMILY WELFARE DEPARTMENT,
FORT ST. GEORGE, CHENNAI-600 009.
2. THE DIRECTOR OF MEDICAL AND RURAL HEALTH SERVICES,
RURAL HEALTH SERVICES,
DMS COMPLEX, CHENNAI-600 006.
3. DR.R.MANIMEGALAI
4. DR.A.ANITHA THAMARAISELVI

... RESPONDENTS in W.P.No.12734 of 2018

1. THE STATE OF TAMILNADU
REP BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
FORT ST. GEORGE, CHENNAI-009.
2. THE DIRECTOR OF MEDICAL
AND RURAL HEALTH SERVICES,
RURAL HEALTH SERVICES, DMS COMPLEX,
TEYNAMPET, CHENNAI-6.
3. THE DIRECTOR OF PUBLIC HEALTH
AND PREVENTIVE MEDICINE,
TEYNAMPET, CHENNAI-6.
4. THE DIRECTOR OF MEDICAL
EDUCATION, KILPAUK, CHENNAI-10.
5. DR.R.MANIMEGALAI
6. DR.ANITHA THAMARAISELVI A.

... RESPONDENTS in W.P.No.12996 of 2018



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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. THE DIRECTOR OF MEDICAL AND
RURAL HEALTH SERVICES, DMS COMPOUND,
TEYNAMPET, CHENNAI-600 006.

4. THE DIRECTOR OF PUBLIC HEALTH
AND PREVENTIVE MEDICINE, DMS COMPOUND,
TEYNAMPET, CHENNAI-600 006.

... RESPONDENTS in W.P.No.24214 of 2018

1. THE STATE OF TAMIL NADU
REP BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
SECRETARIAT, FORT ST. GEORGE, CHENNAI.

2. THE DIRECTOR OF MEDICAL EDUCATION,
KILPAUK, CHENNAI 600 010.

3. THE DIRECTOR OF MEDICAL
AND RURAL HEALTH SERVICES, DMS COMPOUND,
TEYNAMPET, CHENNAI 600 006.

4. THE DIRECTOR OF PUBLIC HEALTH
AND PREVENTIVE MEDICINE, DMS COMPOUND,
TEYNAMPET, CHENNAI 600 006.

... RESPONDENTS in W.P.No.25487 of 2019

1. THE STATE OF TAMILNADU
REP BY ITS PRINCIPAL SECRETARY TO GOVT.,
HEALTH AND FAMILY WELFARE DEPT., SECRETARIAT,
FORT ST.GEORGE, CHENNAI-600 009.

2. THE DIRECTOR OF MEDICAL EDUCATION,
KILPAUK, CHENNAI-600 010.

3. THE DIRECTOR OF MEDICAL AND
RURAL HEALTH SERVICES, DMS COMPOUND,
TEYNAMPET, CHENNAI-600 006.



4. THE DIRECTOR OF PUBLIC HEALTH
AND PREVENTIVE MEDICINE, DMS COMPOUND,
THEYNAMPET, CHENNAI-600 006.

... RESPONDENTS in W.P.No.26018 of 2019

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1. STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
FORT ST. GEORGE, CHENNAI 600 009.
2. THE DIRECTOR OF MEDICAL AND
RURAL HEALTH SERVICES, DMS COMPOUND,
THEYNAMPET, CHENNAI 600 006.
3. THE DIRECTOR OF PUBLIC HEALTH
AND PREVENTIVE MEDICINE,
THEYNAMPET, CHENNAI 600 006.
4. THE DIRECTOR OF MEDICAL EDUCATION
KILPAUK, CHENNAI 600 010.

... RESPONDENTS in W.P.No.20211 of 2020

Prayer in W.P.No.24404 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the first respondent's order dated 03.09.2018 in G.O.(D) No.1580 and quash the same and direct the first to third respondents to consider the petitioner for promotion to the post of associate professor of urology based on CML 2018 and the lawful seniority assigned to him as per the date of his joining service.

Prayer in W.P.No.7540 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, forbearing the respondents from proceeding any further as per Circular 2 issued in Ref. No.47575/E6/3/2013 dated 14.12.2017 by the 2nd respondent, in so far as revision of seniority of the petitioners is concerned in Tamil Nadu Medical Service and consequently direct the 2nd respondent to include the names of the petitioners in Civil Medical List (CML) 2017 as per seniority based on CML number allotted to the Petitioners in CML 2005 & CML 2010 with all consequential and other attendant benefits.



Prayer in W.P.No.34090 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to directing the respondents to forthwith implement the order of the 2nd respondent dated 27-6-2018 in REF.No.47575/E6/3/2013 AND consequently promote the petitioner and post the petitioner as Associated professor of obtetrics and gynaecology in the government mohan kumaramangalam medical college hospital salem.

Prayer in W.P.No.12734 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to include the name of the petitioner in the list of eligible Medical Officers for promotion to the Post of Associate Professors in the released G.O. (D) No.873, Health & Family Welfare (A1) Department dated 16.05.2018 and consequently to promote the petitioner as the Associate Professor in the Department of Obstetrics & Gynaecology by considering and passing orders on the representation of the petitioner dated 19.05.2018.

Prayer in W.P.No.12996 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 1st respondent dated 16.05.2018 in G.O.(D)No.873 Health and Family Welfare (A1) Department and quash the same only I so far as it relates to the placing of the respondents 5 and 6 above the petitioner and consequently to direct the respondents 1 to 4 to strictly follow the seniority in the post of Assistant Professors as per the provisions of Rule 4(e) of the Tamilnadu State and Subordinate Service Rules for promotion to the post of Associate Professor.

Prayer in W.P.No.24214 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 3rd respondent in Ref.No.47575/E6/3/2013 dated 27.06.2018 and to quash the same and consequently directing the respondents to include the name of the petitioners in Civil Medical List (CML) 2017 as per seniority based on CML number allotted to the



petitioners in CML-2005 & CML-2010 with all consequential and other attendant benefits.

Prayer in W.P.No.25487 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, call for the records relating to the impugned proceedings issued by the 3rd Respondent in Ref. No.47575/E6/3/2013 dated 27.06.2019 and to quash the same and consequently directing the Respondents to restore the seniority of the Petitioners based on Tamil Nadu Public Service Commission ranking as given in previous years Civil Medical Lists with all consequential and other attendant benefits.

Prayer in W.P.No.26018 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, call for the records relating to the impugned proceedings issued by the 3rd Respondent in Ref.No.47575/E6/3/2013 dated 27.06.2019 and to quash the same consequently directing the Respondents to restore the seniority of the Petitioners based on Tamil Nadu Public Service Commission ranking as given in previous years Civil Medical Lists with all consequential and other attendant benefits.

Prayer in W.P.No.20211 of 2020:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling the proceedings of the 4th respondent made in Ref.No.44790/E1/5/2020 - Pro dated 22/12/2020 and quash the same in so far as Urology Department and consequentially directing the respondents to conduct the counseling for the post of Professor in Urology Department after implementing the promotional counseling for the post of associate Professor in Urology Department.

For Petitioner in : Mr.R.Srinivas
W.P.No.24404/18

For Petitioner in : Mr.G.Sankaran
W.P.Nos.25487/19 & 7540/18



For Petitioner in
W.P.No.26018/19

: Mr.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

For Petitioner in
W.P.Nos.34090 & 12996/18

: Mr.R.Singaravelan,
Senior Counsel
for Mr.K.Selvaraj

For Petitioner in
W.P.No.12734/18

: Mr.R.Ramsundar

For Petitioner in
W.P.No.20211/20

: Mr.K.Govindarajan

For Petitioner in
W.P.No.24214/18

: Mr.P.Wilson
Senior Counsel
for Mr.A.Maheshnath

For R1 to R3 in
W.P.Nos.24404 & 34090/18
&
For R1 to R4 in
W.P.Nos.7540 12996 &
24214/18 and 25487/19 and
20211/20
&
For R1 to R2
in W.P.No.12734/18

: Mr.R.Shunmugasundaram
Advocate General
Assisted by
Mr.L.S.M.Hasan Fizal,
Government Advocate

&
For Respondents in
W.P.No.26018/19

For R4 in W.P.No.24404/18

: Mr.A.R.Nixon

For R5 in W.P.No.24404/18

: Mr.A.Mohamed Ismail

For R3 in W.P.No.12734/18 &
For R5 in W.P.No.12996/18

: Mr.S.Prabhakaran
Senior Counsel
for Mr.K.Balasubramanian

For R4 in W.P.No.12734/18 &
For R6 in W.P.No.12996/18

: Mr.Arun Anbumani



COMMON ORDER

By this common order, all the nine Writ Petitions are being disposed.

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2. There are three categories of petitioners and private respondents in these writ petitions. They are follows:-

- Category No.1: The petitioners in W.P.Nos.25487 & 26018 of 2019 and W.P.Nos.24214 & 7540 of 2018 and W.P.No.20211 of 2020;
- Category No.2: The petitioners in W.P.Nos.12734 & 34090 of 2018 and W.P.No.12996 of 2018;
- Category No.3: The petitioner in W.P.No.24404 of 2018.

3. I shall deal with the respective categories in-seriatim.

4. Category No.1: The petitioners [W.P.Nos.24214 & 7540 of 2018, W.P.Nos.25487 & 26018 of 2019 and W.P.No.20211 of 2020] appeared in the examination conducted by the Tamil Nadu Public Service Commission.

4.1. At the time, they were pursuing P.G. Medical Degree Course. These petitioners were selected. However, they could not join the Tamil Nadu Medical Service within the time prescribed under Rule 4(e) of the General Rules for State and Subordinate Service [Now Section 7(5) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016] as they were pursuing their PG Course.

4.2. Some of these petitioners approached the erstwhile Tamil Nadu Administrative Tribunal for extension of time to join the service and obtained a favourable order and thus joined services after completion of P.G. Medical Degree Course.

4.3. They pray for the Civil Medical List based on the ranking of the TNPSC Selection as per Rule 35(a) of General Rules for the Tamil Nadu State and Subordinate Services.

4.4. In W.P.No.7540 of 2018, the petitioners have prayed for issuance of a Writ of Mandamus to forbear the respondents from proceeding any further as per Circular No.2 issued in Ref.No.47575/E6/3/2013 dated 14.12.2017 by the second respondent Director of Medical and Rural Health Services, in so far as revision of seniority of the petitioners is concerned in Tamil Nadu Medical Service and consequently, direct the second



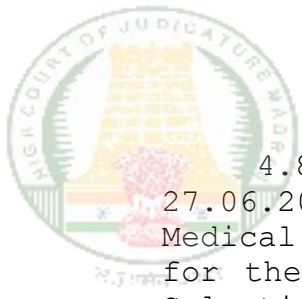
respondent Director of Medical and Rural Health Service to include the names of the petitioners in Civil Medical List (CML) 2017 as per the seniority based on CML Numbers allotted to the petitioner in CML 2005 & 2010 with all consequential and other attendant benefits.

4.5. By Circular No.2 bearing Ref.No.47575/E6/3/2013 dated 14.12.2017, the second respondent therein the Director of Medical and Rural Health Services has called for the following particulars from the officers in respect of the Medical Officers working under their control as mentioned in the list attached to the Circular immediately to the Directorate without fail, for the purpose of finalization of CML 2017:-

- i. Copy of the Appointment and Regularisation order issued to the Medical Officer.
- ii. Copy of the Service Register page in which entries regarding date of joining and regularisation have been made.
- iii. Copy of the permission letter (wherever applicable) in which the Medical Officer was granted extension of joining time for undergoing PG course (to be obtained from the Medical Officer and forwarded to this office).
- iv. Complete Service Particulars.
- v. Details of Court cases filed by any of the Medical Officers working under their control regarding Extension of Joining Time (EJT) along with a copy of Hon'ble TAT / Court Order if any issued.

4.6. The name of the petitioner was included in the list (suspected list of candidates who joined 6 months later than their appointment) attached to this Circular.

4.7. In W.P.Nos.25487, 26018 of 2018 & W.P.No.24214 of 2019, the petitioners have prayed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent Director of Medical and Rural Health Services in Ref.No.47575/E6/3/2013 dated 27.06.2019 and to quash the same and consequently to direct the respondents to restore the seniority of the petitioners based on Tamil Nadu Public Service Commission ranking as given in previous years Civil Medical Lists with all consequential and other attendant benefits.



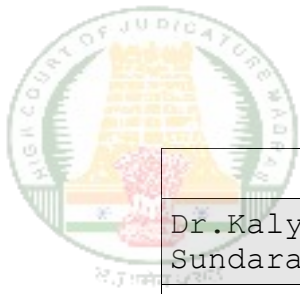
4.8. By the impugned Order Ref.No.47575/E6/3/2013 dated 27.06.2019, the third respondent therein, the Director of Medical and Rural Health Services has revised the CML Seniority for the Medical Officers who were selected prior to 1995 TNPSC Selection and joined belatedly six months from their appointment by implementing Rule 4(e) of General Rules for Tamil Nadu State and Subordinate Services now Section 7(5) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 as per various Court directions.

4.9. The petitioner in W.P.No.20211 of 2020 [Dr.T.Gnanasekaran] has filed this for issuance of a Writ of Certiorarified Mandamus, to call for the impugned Circular of the fourth respondent Director of Medical Education made in Ref.No.44790/E1/5/2020-Pro, dated 22.12.2020 and quash the same in so far as Urology Department and consequently direct the respondents to conduct the counseling for the post of Professor in Urology Department after implementing the promotional counseling for the post of Associate Professor in Urology Department

4.10. By the impugned Circular bearing Ref.No.44790/E1/5/2020-Pro, dated 22.12.2020, the fourth respondent therein the Director of Medical Education has informed the Heads of the Institutions that the promotion counseling of the Medical Officers who have been approved and included in the regular panel for the post of Professor for the year 2020-2021, for filling up of the vacant post of Professor is scheduled from 29.12.2020 to 31.12.2020.

4.11. Particulars of these petitioners are given below as culled out from the reading of the affidavit filed in support of these writ petitioners:-

W.P.No.26018 of 2019							
Name	Selection Batch	CML 2002	CML 2005	CML 2010	Tentative CML 2017	CML 2018	Date of Joining / Date of Regularization
Dr.Ramesh	1995 General	NA	7577	5384	2815	3430	08.03.1999
Dr.Dharma Raj C	1989/90	6549	5555	3376	1158	804	21.01.1993

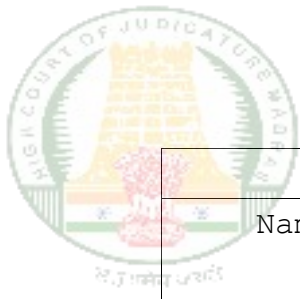


W.P.No.26018 of 2019

Dr.Kalyana Sundaram M	1995 General	NA	7554	5361	2793	3442	12.03.1999
Dr.Natarajan M	1989/90	4175	5388	3208	1007	656	18.01.1993

W.P.No.25487 of 2019

Name	Selecti on Batch	CML 2002	CML 2005	CML 2010	Tentat ive CML 2017	CML 2018	Date of Joining / Date of Regulariza tion
Dr.P.Rajayan	1989/90	NA	5725	3539	1300	937	16.02.1993
Dr.A.Sakaya Stephen Raj	1989/90	5929	5519	3340	1127	774	07.04.1993
Dr.R.Sivakumar	1989/90	NA	5369	3189	988	637	14.10.1991
Dr.T.Chenthil Sivamuthu	1991/92	7912	6907	4739	2329	1894	29.08.1996
Dr.V.Rama subramanian	1991/92	5510	6811	4644	2241	1809	29.08.1996
Dr.L.Rajagopal a Marthandan	1989/90	5040	5771	3584	1336	966	18.01.1993
Dr.A.S.Babukan dhakumar	1995 General	NA	7847	5649	3042	3644	21.08.1999
Dr.R.Mahendran	1989/90	6544	5550	3371	1175	801	02.06.1990
Dr.V.Thirunavu kkarasu	1991/92	NA	6801	4635	2232	1800	17.04.1995
Dr.R.Ramesh	1986/89	NA	4338	2196	NA	180	22.02.1989
Dr.R.Aravazhi	1998 General	NA	8980	6772	4091	4420	30.05.2001
Dr.K.Ramalatha	1991/92 R/L	5396	7018	4851	2428	1990	20.12.1993
Dr.Krithiga Thenmozhi	1991/92	NA	6989	4820	2401	1963	23.06.1993
Dr.M.Natarajan	1989/90	NA	5388	3208	1007	656	18.01.1993



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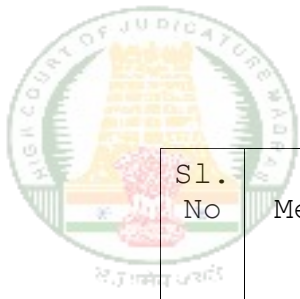
W.P.No.24214 of 2019							
Name	Selecti on Batch	CML 2002	CML 2005	CML 2010	Tentati ve CML 2017	CML 2018	Date of Joining / Date of Regulariza tion
Dr.P.M.Raja	1997 General	NA	8531	6330	3692	4424	01.06.2001
Dr.M.Natesan	1999 Main	NA	8260	6061	4630	4085	25.05.2000
Dr.M.Kalyanas undaram	1995 General	NA	7554	5361	2793	3442	12.03.1999
Dr.R. Thamilkothai	1997 General	NA	8215	6017	3397	4421	01.06.2001
Dr.S.Sivaram Kannan	1997 General	NA	8653	6450	3800	4434	25.06.2001

4.12. Particulars of the petitioners in W.P.No.7540 of 2018 are given below as culled out from the reading of the affidavit filed in support of these writ petitions:-

Name	Selecti on Batch	CML 2002	CML 2005	CML 2010	Tentati ve CML 2017	CML 2018	Date of Joining / Date of Regularizati on
Dr.R.Veerap andian	1997 General	NA	8338	6139	3513	3465	05.04.1999
Dr.M.Ramesh	1990/91	7044A	6044	3866	1556	1189	06.07.1994
Dr.S.Amutha	1995 General	NA	7577	5384	2815	3430	08.03.1999

4.13. The grievance of the petitioner in W.P.No.20211 of 2020 [Dr.T.Gnanasekaran] is that CML seniority of the petitioner was wrongly assigned below the two other doctors namely, Dr.Chengalvarayan and Dr.S.N.Rajakumari who joined the duty after the petitioner joined the duty.

4.14. Particulars of the petitioners and said Dr.Chengalvarayan and Dr.S.N.Rajakumari as culled out from the reading of the affidavit filed in support of the writ petition are as follows:-



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Sl. No	Name of the Medical Officer	Seniority No. as per Tentative CML 2017	Revised Seniority No. in Tentative CML 2017 as on 01.01.2017	Seniority No. as per CML 2018	Date of Joining
1	Dr.T.Gnanasekaran (Petitioner in W.P.No.20211 of 2020)	3353	3353	2805	20.11.97
2	Dr.G.Chengalvarayan	2751	4008A2	3440	12.03.99
3	Dr.S.N.Rajakumar	2799	3920A	3335	01.03.99

4.15. It is submitted that the petitioners have been assigned with Civil Medical List (CML) Number based on the rank assigned to them by the Tamil Nadu Public Service Commission under Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and therefore the CML Number allotted to the petitioners notified in CML 2002, 2005 and 2010 and their seniority have been settled based on CML Number assigned to them.

4.16. It is the case of the petitioners in W.P.No.7540 of 2018 that the second respondent Director of Medical and Rural Health Service has issued the impugned Circular dated 14.12.2017 enclosing with Tentative CML as on 01.01.2017, wherein, the names of the petitioners have been deleted stating that they are coming under "suspected list of candidates who joined 6 months later than their appointment - particulars called for" and the impugned Circular dated 14.12.2017 has been issued against the law and contrary to the orders of this Court already passed in this regard.

4.17. It is submitted that prior to the issuance of the impugned Circular dated 14.12.2017, the second respondent had already issued Tentative CML-2017 in the month of August 2017 vide Ref.No.47575/E6/3/2013 dated 31.08.2017 including the names of the petitioners based on CML-2010 seniority. Therefore, the impugned Circular dated 14.12.2017 is liable to be quashed.

4.18. It is further submitted that Government issued G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 to create better promotional opportunity to the Government Doctors and other related issues, as per which, CML seniority was to be strictly followed for entry into Director of



Medical Education side against particular vacancy in any specialty.

4.19. It is submitted further submitted that the CML would continue to decide the specialty specific seniority. It has also been reiterated by this Court vide order dated 02.02.2011 in W.P.No.26180 of 2010 etc. case that the seniority gained by way of CML ranking by the candidates who later acquired specialty specific seniority and service under Director of Medical Education would be definitely taken as a criteria while considering the aspect of promotion from Assistant Professor to Associate Professor level.

4.20. It is further submitted that the objections raised in the year 2010 in respect of revision of seniority were rejected by the respondent referring to Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services which become final.

4.21. It is further submitted that as per Rule 35(f) of Rules, there cannot be any revision of seniority beyond the period of three years from the date of appointment or from the date of order fixing the seniority, as the case may be and therefore in such event, in respect of appointments made prior to 2005 and the seniority assigned and finalized in CML-2002, CML-2005 and CML-2010 and steps for revision of seniority vide impugned Circular dated 14.12.2017 is liable to be quashed.

4.22. It is therefore prayed that the impugned Circular be quashed and for a direction to the second respondent Director of Medical and Rural Health Services to include the names of the petitioners in CML 2017 as per the seniority based on CML Number allotted to them in CML 2005 & CML 2010 with consequential benefits.

4.23. Per contra, in the counter affidavit filed by second respondent Director of Medical and Rural Health Services, it has been stated that the petitioners joined belatedly after completion their P.G. Course and that the temporary services of the petitioners have been regularized with a clear indication that their seniority will be placed below the junior most Assistant Surgeon at the time of their joining duty as per Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules [Now Section 7(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016]. However, the same has not been followed and the Civil Medical List Number was assigned as per Tamil Nadu Public Service Commission Seniority by following the Rule 35(a) of the Tamil nadu State and Subordinate Service Rules [Now



Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016].

4.24. It is also submitted that moreover, the third petitioner in W.P.No.7540 of 2018 namely, Dr.Amutha was sponsored by the TamilNadu Pubic Service Commission 1990-91 Batch belatedly with an intimation that name and other particulars of her will be communicated later and on verification of records of the third petitioner in W.P.No.7540 of 2018 namely, Dr.Amutha, it is found that she has acquired the qualification of Diploma in Dermatology Venerology & Leprosy (DDVL) during the year 2006, i.e. after her joining in the Tamil Nadu Medial Services on 06.07.1994.

4.25. It is submitted that Civil Medical List was published for the years 1985, 1996, 2002, 2005 and 2010 following the Rule 35(a) of the Tamil nadu State and Subordinate Service Rules [Now Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016].

As the particulars called for were not received completely from all HODs, the DMRHS, it was decided to prepare Tentative CML 2017 as on 01.01.2017 with the available particulars and hosted in the website on 07.09.2017 along with the Circular with instructions to the Medical Officers that "in case of discrepancies if any found in the columns 5 to 16 against their names (i.e. Details of the Medical Officers such as Name, Gender, Qualification, Institution, Date of Birth, Date of Appointment and Date of Regularisation), they are requested to sent the details which have to be updated / corrected / included through proper channel along with relevant records on or before 22.09.2017.

4.26. It is submitted that the Medical Officers were further requested to approach the Director of Medical and Rural Health Services as a first step for their remedies regarding CML Seniority since Tentative Civil Medical List 2017 was prepared based on the particulars received by respective the Directorate of the Medical Institutions.

4.27. It is submitted that since the particulars in the prescribed format in respect of the first and second petitioners namely, Dr.R.Verapandian and Dr.M.Ramesh, have been received vide Letter dated 16.10.2017 of Dean, Madurai Medical College, Madurai Letter and updated accordingly, their names have not been appeared in the "Circular 1-Not Updated List". But, at the same time, the name of the third respondent namely, Dr.S.Amutha has been appeared in the Circular 1 since the particulars of Dr.S.Amutha has not been received.



4.28. It is also submitted that the annexure enclosed with Circular 1 is not a final Civil Medical List 2017 and it is only an extract of Tentative CML as on 01.01.2017 hosted in the website on 07.09.2017.

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4.29. It is further submitted that the petitioners have misinterpreted the fact that their names have been deleted from the list assuming that this was the final seniority list. It is submitted that the names of the petitioner were not deleted from the Tentative Civil Medical List 2017 and their names are still in the Tentative CML 2017 with the seniority numbers as follows:-

Sl. No.	Name of the Petitioner	CML 2010	Tentative CML 2017
1	Dr.R.Veerapandian	6022	3513
2	Dr.M.Ramesh	5267	2815
3	Dr.S.Amutha	3760	1556

4.30. It is submitted that the prayers of the Medical Officers of both the sides, i.e. those who are requesting for implementation of Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules on the seniority of the belatedly joined Medical Officers and those Medical Officers whose seniority is likely to be revised as per Rule 4(e) are requesting to reject the aforesaid prayers as per Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules.

4.31. It is submitted that both the Rules 4(e) and 35(f) of the Tamil Nadu State and Subordinate Service Rules were under the review of the Department. It is therefore prayed for a dismissal of the present Writ Petition.

5. I shall now refer to the case of the petitioners in Category No.2.

6. Category No.2:- The prayers in the writ petitions in this Category are as under:-

- i. W.P.No.12734 of 2018 (Dr.E.Suganya): For issuance of a Writ of Mandamus to direct the first and second respondents namely, the Principal Secretary, Health and Family Welfare Department and the Director of Medical and Rural Health Services, to include the name of the petitioner in the eligible Medical Officers for promotion to the post of Associate Professors in the released G.O.(D) No.873, Health and Family Welfare (A1)



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Department, dated 16.05.2018 and consequently to promote the petitioner as the Associate Professor in the Department of Obstetrics & Gynecology by considering and passing the orders on the representation of the petitioner dated 19.05.2018;

ii.W.P.No.34090 of 2018 (Dr.E.Suganya): For issuance of a Writ of Mandamus, to direct the respondents to forthwith implement the order dated 27.06.2018 of the second respondent namely, the Director of Medical and Rural Health Services, in Ref.No.47575/E6/3/2013 and consequently to promote the petitioner and post the petitioner as Associate Professor of Obstetrics and Gynecology in the Government Mohan Kumaramangalam Medical College Hospital, Salem.;

iii.W.P.No.12996 of 2018 (Dr.Shanmugavadivu): For issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent dated 16.05.2018 in G.O.(D) No.873, Health and Family Welfare (A1) Department, quash the impugned order only in so far as it relates to the placing of the fifth and sixth respondents above the petitioner, and direct the first to fourth respondents to strictly follow the seniority in the post of Assistant Professors as per the provisions of Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules for promotion to the post of Associate Professor.

6.1. By the impugned order dated 16.05.2018 in G.O.(D) No.873, Health and Family Welfare (A1) Department, the first respondent Principal Secretary, Health and Family Welfare Department has released the list of Medical Officers for promotion to the post of Associate Professor.

6.2. As per order dated 27.06.2018, the third respondent therein, the Director of Medical and Rural Health Services, in Ref.No.47575/E6/3/2013 has revised the CML Seniority for the Medical Officers who were selected prior to 1995 TNPSC Selection and joined belatedly six months from their appointment by implementing Rule 4(e) of General Rules for Tamil Nadu State and Subordinate Services now Section 7(5) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 as per various Court directions.



6.3. W.P.No.12734 of 2018 and W.P.No.34090 of 2018 has been filed by the same person.

6.4. The petitioner in W.P.No.12734 of 2018 and W.P.No.34090 of 2018 was appointed as an Assistant Professor and joined in the Tamil Nadu Medical Services as detailed in the chart below:-

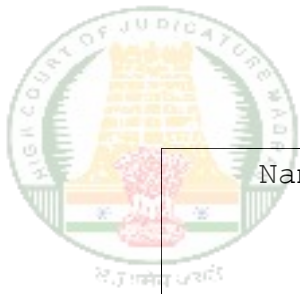
Name	Selection Batch	CML 2002	CML 2005	CML 2010	Tentative CML 2017	CML 2018	Date of Joining / Date of Regularization
Dr.E.Suganya	1999 Main	NA	9214	7005	4302	3758	19.04.2000

6.5. The Civil Medical List (CML) was prepared in the year 2005, the petitioner was at Sl.No.9214 and thereafter, in the Civil Medical List (CML) that was prepared in the year 2010, the petitioner was at Sl.No.7005. In the tentative list that was prepared in 2017, the petitioner was at Sl.No.4302 and in 2018, the petitioner was at 3758.

6.6. The complaint of the petitioner in W.P.No.12734 of 2018 was that the third and fourth respondents namely, Dr.R.Manimegalai and Dr.A.Anitha Thamaraiselvi, joined the Medical Service on 11.06.2001 and 13.06.2001 respectively, i.e. one year and two months after the petitioner joined in the Medical services, have been included in the panel for promotion to the post of Associate Professor, whereas, the petitioner who joined on 19.04.2000 has not been included.

6.7. It is the case of the petitioner in W.P.No.12996 of 2018 that while serving as an Assistant Surgeon during July 2003, the petitioner was selected to undergo the Post-Graduation in Doctor of Medicine with service benefits. Particulars of the petitioner and the fifth and sixth respondents are given below:-

Name	Selection Batch	CML 2002	CML 2005	CML 2010	Tentative CML 2017	CML 2018	Date of Joining / Date of Regularization
Dr.Shanmuga vadivu (petitioner)	1999 Main	NA	9147	6938	4237	3693	24.04.2000



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Name	Selection Batch	CML 2002	CML 2005	CML 2010	Tentative CML 2017	CML 2018	Date of Joining / Date of Regularization
Dr.Manimegali (fifth respondent)	1997 General	NA	NA	5971A	3465	4422	01.06.2001
Dr.Anitha Thamaraiselvi (sixth respondent)	1998 R/L	NA	9112	6903	4209	4432	13.06.2001

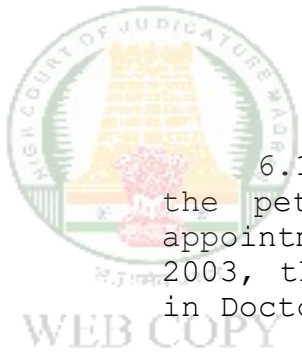
6.8. It is further case of the petitioner that the petitioner completed the Post-Graduation during October 2006 at the Madras Medical College, Chennai and thereafter, the petitioner was posted at Government Mohan Kumaramangalam Medical College Hospital, Salem as Tutor (Assistant Professor) during October 2006.

6.9. The petitioner was thereafter promoted as Senior Assistant Professor during March 2010. The petitioner's grievance in this Writ Petition is that the petitioner is a senior to the fifth and sixth private respondents in the said Writ Petition (third and fourth respondents in W.P.No.12734 of 2018) namely, Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi. A and therefore preference given to the said Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi while preparing tentative CML List was improper.

6.10. The petitioner in W.P.No.12996 of 2018 (Dr.Shanmugavadivu) completed M.B.B.S Degree in the year 1999 and appeared in the competitive exam conducted by the Tamil Nadu Public Service Commission inviting applications to the post of Assistant Surgeon during April 2000.

6.11. The petitioner was selected and appointed as an Assistant Surgeon by the proceedings of the third respondent Director of Public Health and Preventive Medicine on 17.04.2000.

6.12. However, the petitioner appears to have joined the Tamil Nadu Government Medical Service on 24.04.2000 as Assistant Surgeon only in the forenoon and reported the duty at Vellore, Erode District.



6.13. It is case of the petitioner that the services of the petitioner were later regularized from the date of her appointment. While serving as Assistant Surgeon during July 2003, the petitioner was selected to undergo the Post-Graduation in Doctor of Medicine with service benefits.

6.14. It is further case of the petitioner that the petitioner completed the Post-Graduation during October 2006 at the Madras Medical College, Chennai and was thereafter posted at the Government Mohan Kumaramangalam Medical College Hospital, Salem as a Tutor (Assistant Professor) during October 2006.

6.15. The petitioner was thereafter promoted as Senior Assistant Professor during March 2010. The petitioner's grievance in this Writ Petition is that the petitioner is a senior to the fifth respondent (Dr.R.Manimegala) and sixth private respondent (Dr.Anitha Thamaraiselvi).

6.16. These respondents are third and fourth respondents in W.P.No.12734 of 2018 filed by Dr.E.Sukanya. It is the case of the petitioner that preference given to Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi while preparing tentative CML List was improper.

6.17. The petitioner had earlier filed W.P.No.27551 of 2017 for issuance of a Writ of Mandamus. The said Writ Petition was disposed by an order 27.10.2017. A direction was issued to the second respondent Director of Medical and Rural Health Service to consider the representation of the petitioner on merits with regard to re-fixation of seniority.

6.18. It is submitted that though the above order dated 27.10.2017 was passed, the said representation has not been considered the same till the date of filing of this Writ Petition.

6.19. The Writ Petition filed by the petitioner is resisted by the official respondents, namely the Principal Secretary of Health and Family Welfare Department, the Director of Medical and Rural Health Services, the Director of Public Health and Preventive Medicine and the Director of Medical Education, and the private respondents, namely Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi.

6.20. It is submitted by the official respondents that when a Medical Officer has been selected by the Tamil Nadu Public Service Commission and appointed in Tamil Nadu Medical Services, the Civil Medical List (CML) number is assigned based on the



marks obtained in the TNPSC Examination and other reservations including communal reservation.

6.21. It is submitted that in Tamil Nadu Medical Service, the Civil Medical List (CML) is maintained for the Tamil Nadu Government Doctors for the purpose of their further promotions and it is the vital seniority list for them.

6.22. The Civil Medical List (CML) consists of the details of doctors working in Tamil Nadu Medical Service comprising Director of Medical and Rural Health Services / Director of Medical Education / Director of Public Health and Preventive Medicine / Director of Medical and Rural Health Services (ESI) and Director of Medical and Rural Health Service is the unit officer as a whole for the Civil Medical List.

6.23. It is further submitted that when the Medical Officers entered into Tamil Nadu Medical Service as Assistant Surgeons, the Civil Medical List number was stamped based on the rank assigned by the Tamil Nadu Public Service Commission and based on their qualifications and teaching experience, further promotion will be given to them.

6.24. The data given by the Tamil Nadu Public Service Commission is adopted in the Civil Medical List without any changes. Therefore, the Civil Medical Lists updated for the year 2010 and assigned to the Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi and the petitioner are 5971A/2010, 6903/2010 and 6938/2010 respectively.

6.25. It is submitted by the official respondents that after the above order 27.10.2017 was passed in W.P.No.27551 of 2017 and several other orders were passed by this Court in similar cases of the persons like the petitioner to consider their representations, the second respondent namely, the Director of Medical and Rural Health Services formed a Committee consisting of Head of Departments viz., Director of Medical Education, Director of Public Health and Preventive Medicine and the Director of Medical and Rural Health Services (the official respondents in this Writ Petition).

6.26. The said Committee has taken a unanimous decision to fix the seniority in accordance with law. Based on the said decision, Civil Medical List (CML) for the year 2018 was issued in terms of Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules [presently Section 7(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016] vide Proceedings No.47575/E6/3/13 dated 27.06.2018.



6.27. It is further submitted that vide Letter dated 02.03.2018, the fourth respondent Director of Medical Education had sent a necessary proposal to the first respondent Government to fill up 13 vacant posts of Associate Professor of Obstetrics and Gynecology in Government Medical Colleges before finalizing the Civil Medical List for the year 2017, along with the list of 26 Medical Officers belonging to the Obstetrics and Gynecology according to their Civil Medical List number assigned to them for the year 2010.

6.28. The Civil Medical List of Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi (fifth and sixth respondents in W.P.No.12996 of 2018) and the petitioner for the year 2010 reads as under:-

Sl. No.	Name of the Medical Officer	CML No.
xxx	xxx	xxx
11	Dr.R.Manimegalai (5 th respondent)	5971A/2010
12	Dr.Anitha Thamaraiselvi (6 th respondent)	6903/2010
xxx	xxx	xxx
19	Dr.L.Shanmugavadivu (petitioner)	6938/2010

6.29. It is the contention of the official respondents that the petitioner joined as the junior most Medical Officer in the Civil Medical List for the year 2010 and hence, the petitioner's name was not in the zone of consideration for promoting the petitioner as the Associate Professors of Obstetrics and Gynecology.

6.30. The petitioner also filed W.M.P.No.15263 of 2018 in this Writ Petition to grant an order of interim injunction restraining the official respondent for promoting the Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi (fifth and sixth respondents in W.P.No.12996 of 2018).

6.31. This Court by an interim order dated 30.05.2018 stayed posting orders of Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi (fifth and sixth respondents in W.P.No.12996 of 2018).

6.32. It is further submitted that the Government has also issued posting orders to 13 Medical Officers as Associate Professor of Obstetrics and Gynecology vide G.O.(D) No.1000,



Health and Family Welfare Department, dated 02.06.2018 and the 13 Medical Officers joined duty on 02.06.2018 except Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi (fifth and sixth respondents in W.P.No.12996 of 2018) pursuant to the interim order dated 30.05.2018. They were not allowed to join in the promotional post as Associate Professor of Obstetrics and Gynecology.

6.33. It is submitted that thereafter, the said interim order dated 30.05.2018 was modified by another interim order dated 12.06.2018, permitting the Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi (fifth and sixth respondents in W.P.No.12996 of 2018) to join the duty in the promotional post inasmuch as the petitioner has already joined in the promotional post.

6.34. The official respondent submits that the Government has issued the list of Medical Officers for promotion to the post of Associate Professor of Obstetrics and Gynecology based on the Civil Medical List for the year 2010 vide G.O.(D) No.873, Health and Family Welfare Department, dated 16.05.2018. It is submitted that after issue of promotion and posting orders to the eligible Medical Officers including the Dr.R.Manimegalai and Dr.Anitha Thamaraiselvi (fifth and sixth respondents in W.P.No.12996 of 2018), the second respondent Director of Medical and Rural Health Services has issued a revised Civil Medical List vide Proceedings No.47575/E6/3/2013 dated 27.06.2018.

6.35. Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 / third respondent in W.P.No.12734 of 2018) submits that she completed MBBS Degree in the year 1996 and appeared in the competitive exam conducted by the Tamil Nadu Public Service Commission in the year 1997 for the post of Assistant Surgeon.

6.36. It is submitted that since the results were delayed, Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/ third respondent in W.P.No.12734 of 2018) joined Diploma in Obstetrics and Gynecology.

6.37. It is submitted that the results were later announced by the Tamil Nadu Public Service Commission, in which, the said Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/ third respondent in W.P.No.12734 of 2018) secured 228.12 marks out of 340 marks and was thus placed at TNPSC Seniority No.164/1997.

6.38. It is submitted that the said Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 / third respondent in W.P.No.12734 of 2018) was appointed as the Assistant Surgeon



vide Proceedings No.151293/E1/S5/97, dated 18.09.1997 and was asked to join duty within a period of thirty days.

6.39. However, Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 /third respondent in W.P.No.12734 of 2018) could not join duty immediately as she was pursuing Diploma in Obstetrics and Gynecology and as one of the conditions is that if any person breaks up the course after six months from the date of joining, such person cannot do again such course in future.

6.40. It is submitted that Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) has requested the third respondent Director of Public Health and Preventive Medicine for appropriate relaxation.

6.41. The third respondent Director of Public Health and Preventive Medicine denied the request of the Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 / third respondent in W.P.No.12734 of 2018).

6.42. Against the order of the third respondent Director of Public Health and Preventive Medicine, Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 / third respondent in W.P.No.12734 of 2018) approached the Tamil Nadu Administrative Tribunal vide O.A.No.3670 of 1999.

6.43. It is submitted that the Tamil Nadu Administrative Tribunal disposed the batch of cases filed by similar placed persons like the Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) on 29.09.2000 directing the third respondent Director of Public Health and Preventive Medicine to issue fresh appointment order to similar placed persons like the Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) and thus a favourable order was granted by allowing Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 / third respondent in W.P.No.12734 of 2018) and other applicants before the Tamil Nadu Administrative Tribunal to join the duty on completion of the course.

6.44. It is submitted that the third respondent Director of Public Health and Preventive Medicine had approached the Hon'ble Supreme Court against the above order of the Tamil Nadu Administrative Tribunal.

6.45. However, the Hon'ble Supreme Court dismissed the appeal filed by the third respondent Director of Public Health



and Preventive Medicine as the candidates had already join duty. Thereafter, the third respondent Director of Public Health and Preventive Medicine issued a fresh appointment order to Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) vide Proceedings in Ref.No.166213/E5/2000/A3, dated 23.05.2001.

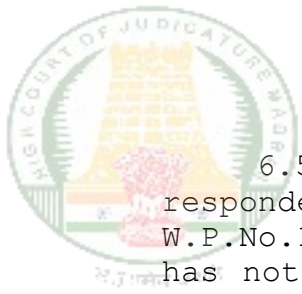
6.46. It is submitted that that Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) joined the duty as an Assistant Surgeon on 01.06.2001 at Kankoduthavanitham Primary Health Centre, Thiruvarur District and completed her probation on 31.05.2003 and joined as Assistant Professor on 02.04.2008 and was promoted as Senior Assistant Professor in the year 2011.

6.47. It is submitted that when Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) was doing Diploma Course in Obstetrics and Gynecology, she has been regularly participating in family planning programmes conducted by the Government.

6.48. It is submitted that Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/ third respondent in W.P.No.12734 of 2018) has earned a higher position than the petitioner in all aspects viz., educational qualification, marks obtained in the qualifying examination and in service.

6.49. It is submitted that in the table mentioned by the petitioner in Paragraph No.7 of the affidavit, CML number of Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 / third respondent in W.P.No.12734 of 2018) for the year 2005 and 2010 has not been mentioned because, the official respondents, after issuing the notice by the Court to the official respondents, considered the seniority in education and seniority of clearing the qualifying examination conducted by the Tamil Nadu Public Service Commission and the rank obtained in the TNPSC exam and fixed the CML number as 3465 in the tentative list as on 01.01.2017 which was finalized on 31.08.2017.

6.50. It is submitted that the date of joining of Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) may not be relevant as the Tamil Nadu Administrative Tribunal has directed the third respondent Director of Public Health and Preventive Medicine to issue fresh order with service benefit and hence the seniority has to be construed way back from the year 1997 when the TNPSC recruited for appointment.



6.51. It is submitted that though Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) joined the duty in the year 2001, her CML has not been allowed till 2017 and therefore was constrained to file W.P.No.22750 of 2017 before this Court to direct the authorities to consider the representation of her and allot CML number.

6.52. After notice was issued by this Court, the official respondents considered the representation of Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018 / third respondent in W.P.No.12734 of 2018) and allotted the CML number as 5971A for the year 2010 and as 3465 for the year 2017.

6.53. It is submitted that the contention of the petitioner that the date of joining has to be taken into account for calculating seniority cannot be accepted as the CML number is allotted based on the marks obtained in the qualifying examination and communal reservations.

6.54. In G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, it was categorically held as follows:-

II. Director of Medical Education side:-

(i).....

.....

(vi) Entry into director of Medical Education side against particular vacancy in any speciality should strictly be on the basis of Civil Medical List seniority, provided the person is eligible otherwise.

(vii) Once a person joins any speciality under Director of Medical Education, his inter-se seniority in the speciality would depend on the person's seniority in the Civil Medical List. The Civil Medical List would continue to decide the speciality specific seniority, till the Associate Professor level.

.....

6.55. It is submitted that by virtue of G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, the inter-se seniority is based on the CML Seniority and not otherwise. It is submitted that the CML number of Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) was allowed only by way of Circular dated 31.08.2017 and it was open for all to raise their grievances if aggrieved, by granting time till 22.09.2017 and the petitioner sent representation dated 12.09.2017 and the same



was considered by the second respondent Director of Medical and Rural Heal Services while granting promotions.

6.56. It is submitted that the petitioner had earlier filed a Writ Petition in W.P.No.27551 of 2017 and this Court has directed the official respondents to consider the representation of the petitioner on merit with regard to the rectification of the seniority and with utmost care.

6.57. The second respondent Director of Medical and Rural Heal Services after considered the fixation of inter se seniority and issued the present G.O.(D) No.873, dated 16.05.2018 and hence, this Writ Petition is devoid of merits and without bona fide.

6.58. It is submitted that Rule 4(e) could not be applied to these doctors because of their varying duration of higher educational courses (diploma and degree). It is also submitted that some of the doctors namely, Dr.Tamilkothai, Dr.N.Sivakumar and Dr.A.D.Sampath Kumar who joined later than the petitioner were promoted to the higher post than the petitioner, the petitioner has not raised any objections regarding the CML seniority when there were promoted and therefore, the petitioner had instituted the present Writ Petition only to settle her personal vengeance with the Dr.R.Manimegalai (fifth respondent in W.P.No.12996 of 2018/third respondent in W.P.No.12734 of 2018) and on the ground also, this Writ Petition is liable to be dismissed.

7. Category No.3:- The petitioner [W.P.No.24404 of 2018] appeared in the examination conducted by the Tamil Nadu Public Service Commission, joined the service and thereafter, he was pursuing MS Degree in General Surgery between 2000-2003 and rejoined the service after completion of MS Degree in General Surgery and again he was pursuing Mch Degree in Urology between 2004-2007.

7.1. This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with first respondent's order dated 03.09.2018 in G.O. (D) No.1580, Health and Family Welfare (A1) Department, and quash the same and direct the first to third respondents to consider the petitioner for promotion to the post of associate professor of urology based on CML 2018 and the lawful seniority assigned to him as per the his date of joining service.

7.2. By G.O.(D) No.1580, Health and Family Welfare (A1) Department, dated 03.09.2018, the first respondent Principal



Secretary of Health and Family Welfare (A1) Department has requested the second respondent Director of Medical Education to conduct the counseling to the four Medical Officers namely, Dr.Frank Davis Daniel (the fourth respondent in this W.P.), Dr.G.Chengalvarayan (the fifth respondent in this W.P.), one Dr.S.Mangaiyarkarasi and Dr.T.Gnanasekaran (the sixth respondent in this W.P.), for the promotion of Associate Professor of Urology.

7.3. It is the case of the petitioner that since the fifth respondent namely, Dr.G.Chengalvarayan, joined the service only on 12.03.1999, his seniority should have been fixed below the junior most candidate appointed to that post in that service on the date of his joining the service and the fourth namely, Dr.S.Frank Davis Daniel as per the rules in force has not served in a department of urology for a minimum of 5 years and hence, he is not qualified to be promoted as Associate Professor of Urology though his date of joining is 06.04.1990. Particulars of the petitioner are given below:-

Name	Selection Batch	CML 2010	CML 2018	Date of Joining / Date of Regularization
Dr.Jyapraakash Narayan (petitioner)	1997 Main	5985	2820	25.09.1997
Dr.Frank Davis (fourth respondent)	1991-92	4712	8069	06.04.1990
Dr.Chengalvarayan (fifth respondent)	1995 General	5308	3440	12.03.1999

7.4. W.P.No.24404 of 2018 also has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the order of the first respondent Secretary, Tamil Nadu Health and Family Welfare (A1) Department, dated 03.09.2018 in G.O.(D) No.1580 and quash the same and direct the first to third respondents namely, Secretary of Tamil Nadu Health and Family Welfare (A1) Department, Director of Medical Education and Director of Medical and Rural Health Services, to consider the petitioner for promotion to the post of associate professor of urology based on CML 2018 and the lawful seniority assigned to him as per the date of his joining service.



7.5. It is submitted that the petitioner completed MBBS Degree in the year 1995. The petitioner was appointed as Assistant Surgeon on 25.09.1997 in the Government Public Health Center, Siruvaviduthy and joined the service. The petitioner thereafter completed MCH Degree in Urology in August 2007 and after the completion of MCH Degree in Urology, the petitioner rejoined the service. The petitioner again pursued MS Degree in Urology in 2007 and again rejoined the service.

7.6. It is submitted that initially, Civil Medical List was made as per Rule 35-A of the Tamil Nadu State and Subordinate Service Rules. Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules was added in 1983 with effect from 13.09.1983. As per the said Rule, if any candidate, who is allowed to join duty beyond the time limit of six months and who had sought for extension of time beyond the period of six months, seniority of such candidate will be fixed below the junior most candidate appointed to the post in that service on the date of said candidate joining the duty.

7.7. It is submitted that in respect of Assistant Surgeons who were issued with appointment order under Rule 21-A of the Special Rules for Tamil Nadu Medical Services opt for extension of joining time the same was granted and their temporary services were regularized with an indication that the seniority of the said candidate will be placed below the junior most Assistant Surgeon at the time of his joining duty.

7.8. It is submitted that the seniority was assigned for the first time in 2010 and the Tentative Civil Medical List 2017 as on 01.01.2017 was hosted on 07.09.2017. After hosting the Tentative Civil Medical List 2017, many medical officers who were aggrieved by fixation of seniority with regard to candidates who had joined duty later than them by availing extension over and ahead of them, filed Writ Petitions both in the Principal Seat and Madurai Bench and orders were passed in such Writ Petitions and even Contempt Petitions were filed to enforce the orders.

7.9. As a result of the above developments, the third respondent Director of Medical and Rural Health Services was pleased to assign CML 2018 as on 01.06.2018 and release the same. It is submitted that seniority of the petitioner was placed at Sl.No.2820, whereas, the fifth respondent Dr.Chengalvarayan and fourth respondent Frank Davis Daniel were placed at Sl.Nos.3440 and 8069 respectively. It is submitted that all the sudden, the first respondent Secretary of Health and Family Welfare (A1) Department has decided to fill up the post of Associate Professor in Urology Department on temporary



basis and for the purpose of said purpose, most curiously, the first respondent Secretary of Health and Family Welfare (A1) Department has chosen to do so, on the basis on CML 2010 which was found discrepant and deficient. The first respondent Secretary of Health and Family Welfare (A1) Department has decided to form a panel comprising of fourth to sixth respondents vide impugned G.O.

7.10. The sixth respondent was later impleaded vide order dated 06.03.2021 made in W.M.P.No.17361 of 2019. Therefore, the petitioner has prayed for quashing the impugned G.O. and for allowing the Writ Petition.

7.11. The official respondents namely, Secretary of Tamil Nadu Health and Family Welfare (A1) Department, Director of Medical Education and Director of Medical and Rural Health Services, in their counter, submitted that appointment of Medical Officers belonging to the State Services in Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine / Director of Medical Education side was governed by Special Rules for the Tamil Nadu Medical Service.

7.12. It is submitted that the Service Manual containing the Rules in Section 21 shall apply to the holders of Tamil Nadu Medical Service and hence, the contention of the petitioner was not correct. It is submitted that when the Medical Officer has been selected by the Tamil Nadu Public Service Commission and appointed in Tamil Nadu Medical Service, the Civil Medical List is assigned based on the marks in the Tamil Nadu Public Service Commission examination and other reservations including communal reservation and the data given in the Tamil Nadu Public Service Commission selection list is adopted in Civil Medical List without any change. It is submitted that the Tamil Nadu Public Service Commission list was updated for the year 2010 and assigned to the fourth respondent, fifth respondent and the petitioner are 4712/2010, 5308/2010 and 5985/2010 respectively.

7.13. It is submitted that the crucial date for the preparation of panel for the post of Associate Professor is 15.03.2018. As per the CML list issued for the year 2010, the second respondent Director of Medical Education has called for the list of eligible Medical Officers fit for the promotion to the post of Associate Professor in Urology Department from all the Government Medical Colleges and thereafter the second respondent Director of Medical Education, on receipt of the list, has sent necessary proposal to the Government to fill up the vacant post of Associate Professor in Urology Department



along with the list of following Medical Officers belonging to the Urology Specialty:-

Sl. No.	Name of the Medical Officer	CML/2010
1	Dr.S.Frank Davis Daniel (fourth respondent)	4712
2	Dr.G.Chengalvarayan (fifth respondent)	5308
3	Dr.S.N.Rajakumari	5367
4	Dr.G.Latha	5682
5	Dr.S.Mangaiyarkarasi	5711
6	Dr.T.Gnanasekaran	5970
7	Dr.K.Jayaprakash Narayanan (the petitioner)	5985

7.14. It is submitted that the petitioner is the junior most Medical Officer to the fourth and fifth respondents as per the Civil Medical List for the year 2010 and hence the name of the petitioner has not been included in the temporary list of eligible Medical Officers for the post of Associate Professor in Urology Department. It is also submitted that if the Civil Medical List for the year 2018 is concerned, the name of the petitioner has to be placed before the fourth and fifth respondents. It is therefore prayed for dismissal of this Writ Petition and passing orders as the Court may deem fit, in proper and circumstances of the case.

7.15. The fourth respondent namely, Dr.Frank Davis Danies. S, in his counter, stated that as per the Existing Norms of the Medical Council of India, only two years of teaching experience is enough for promotion of a Associate Professor from the Assistant Professor post after completion of Super Specialty Degree.

7.16. It is submitted that the fourth respondent Dr.Frank Davis Danies. S, is having 5 years and 8 months teaching experience in Urology Department, whereas, the petitioner has falsely stated that the fourth respondent Dr.Frank Davis Danies. S, has not served in a department of urology for a minimum period of 5 years and hence he is not qualified to be promoted as Associate Professor of Urology, though his date of joining is 06.04.1990 which is absolutely incorrect. It is also submitted that it is well settled norms of Medical Council of India that 2



years teaching experience is enough for promotion for the candidates who has completed Super Specialty Degree as Associate Professor from Assistant Professor cadre.

7.17. It is submitted that the fourth respondent Dr. Frank Davis Danies's CML Number is 1869 and is the senior most candidate in every points and his name is found first in the list. It is also submitted that the petitioner has falsely stated CML Number of the fourth respondent Dr. Frank Davis Danie as 8069 instead of 1869. It is therefore prayed for dismissal of this Writ Petition.

7.18. The fifth respondent namely, Dr. Chengalvarayan, in his counter, stated that at the time of appointment, he was pursuing Post Graduation in M.S. (General Surgery) in March 1998. It is submitted that P.G. Degree is mandatory for further promotion in services and therefore, the Government permits the selected candidates as Assistant Surgeon to complete their P.G. Degree and the joining period was extended.

7.19. Therefore, the fifth respondent Dr. Chengalvarayan approached the Tamil Nadu Administrative Tribunal vide O.A.No.9425 of 1997, in which, the Tamil Nadu Administrative Tribunal by an order dated 25.08.1998, has directed the official respondents to permit the fifth respondent Dr. Chengalvarayan to join service after completion of P.G. Degree. The fifth respondent Dr. Chengalvarayan was appointed as a Tutor in Anatomy and posted at Chengalpattu Medical College on 16.02.2005.

7.20. It is submitted that the fifth respondent Dr. Chengalvarayan's seniority was reckoned from the date of appointment continuously for more than 20 years and the seniority pertaining to the original entry into the service cannot have any bearing after promotion was effected to the fifth respondent Dr. Chengalvarayan.

7.21. It is submitted that the petitioner was appointed as Senior Assistant Professor on 18.05.2011, whereas, the fifth respondent Dr. Chengalvarayan was appointed on 23.10.2009 as Senior Assistant Professor and therefore, the fifth respondent Dr. Chengalvarayan is much senior.

7.22. It is submitted that this Writ Petition was filed with an inordinate delay by the petitioner questioning the seniority from entry level after a lapse of two decades and such delay is fatal and on this ground, this Writ Petition is liable to be dismissed.



7.23. It is submitted that the petitioner has filed this Writ Petition only questioning the promotion of the fourth to sixth respondents. The petitioner has not questioned the seniority list prepared by the official respondents. It is submitted that the last drawn seniority is considered when the crucial date for promotion to the concerned post is fixed.

7.24. It is submitted that the crucial date for promotion to the post of Associate Professor of Urology is fixed on 15.03.2017 and therefore, the CML 2010 was considered for promotion. Therefore, the impugned G.O. is liable to be confirmed and it is prayed for dismissal of this Writ Petition.

8. I have considered the arguments advanced by either of the parties. I have also perused the affidavits of the petitioners and the counter affidavits of the official respondents and the private respondents.

9. The Medical Service in the State of Tamil Nadu fall under different Directors namely, the :-

- i.
- ii. Director of Medical and Rural Health Services,
- iii. Director of Public Health and Preventive Medicine; and
- iv. Director of Medical Education as per the Special Rules to Tamil Nadu Service Rules.

10. The post of an Assistant Surgeon is in the General Line in Section 21 of the Special Rules relating to State Services in the Tamil Nadu Service Manual, Volume-II (hereinafter referred to as "Special Rules"). It is a Category 2 Service in Class I in Branch 1-Medical as is evident from a reading of Section 21 of the Special Rules. It deals with Tamil Nadu Medical List.

11. Appointment of Category 2 Assistant Surgeon is permissible either by direct recruitment or by promotion from the post of junior Assistant Surgeon who possesses the DM&S qualification. In these writ petitions, the petitioners and the private respondents were appointed through direct recruitment to the aforesaid Post.

12. In all these cases, applications were called for by the Tamil Nadu Public Service Commission to the post of Assistant Surgeon. All the petitioners in the respective writ petitions and the private respondents therein were appointed through Direct recruitment pursuant to applications called for by the Tamil Nadu Public Service Commission.



13. Barring few of the petitioners, rest of the petitioners joined duty only after 1995. Rule 21 of Section 21 - The Tamil Nadu Medical Service of the Special Rules deals with special provisions regarding service conditions of Assistant Surgeons appointed on or after 29.06.1995. It reads as under:-

21. Special provisions regarding service conditions of Assistant Surgeons appointed on or after 29.06.1995.-

(a) The appointing authority in respect of Assistant Surgeons recruited on or after 29th June 1995 shall be the Director of Public Health and Preventive Medicine.

(b) Every person appointed to the post of Assistant Surgeon under this rule shall, within the period of probation undergo a course of training in administration which shall be for a period not less than three months prescribed by the Government failing which he shall be discharged from service.

(c) The leave, posting and transfer of Assistant Surgeons shall be made by the appointing authority.

(d) Every Assistant Surgeon appointed under this rule and who has completed or will complete five years of service on duty as on the 31st December of a year, excluding any period spent on training, leave or higher education shall exercise his option in writing for transfer to the Tamil Nadu Medical Service provided that he satisfies the prescribed qualification and such option shall be submitted to the appointing authority on or before the 31st January of the succeeding year. The option shall be exercised only once and may be withdrawn at any time before the actual transfer. If a person does not exercise his option under this sub- rule he shall forfeit his right of exercising such option.

(e) The selection for transfer to the Tamil Nadu Medical Service from among the persons who exercised option under sub-rule (d) shall be made on the basis of seniority and suitability by a Screening Committee consisting of the Director of Medical Education, Director of Medical and Rural Health Services and Director of Public Health and Preventive Medicine.

(f) No person selected under this rule for transfer to the Tamil Nadu Medical Service and appointed in that



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service shall be eligible for re-transfer to the post from which he was transferred.

(g) Persons who do not exercise their option under sub-rule (d) for transfer to the Tamil Nadu Medical Service and those who exercised their option but not selected for such transfer, shall continue to serve in the Public Health and Preventive Medicine Service and shall be eligible for promotion to the higher posts such as Health Officer, Civil Surgeon, Deputy Director, Joint Director, Additional Director (Health) and Director of Public Health and Preventive Medicine, subject to eligibility and in accordance with the special rules for the Tamil Nadu Public Health Service.

(h) In case, a person who exercised his option under sub-rule (d) is promoted as Civil Surgeon before he is actually transferred to the Tamil Nadu Medical Service, the option exercised by such person shall automatically lapse.

(i) Every person transferred to the Tamil Nadu Medical Service in accordance with sub-rule (e) and who has completed or will complete two years of service on duty as on the 31st December of a year in that service excluding the period of service spent on training, leave or higher education shall exercise his option in writing for transfer to the Tamil Nadu Medical Service provided that he satisfies the prescribed qualification. Such option shall be submitted to the Director of Medical Education on or before the 31st day of January of the succeeding year. The option shall be exercised only once and may be withdrawn at any time before the actual transfer. If a person does not exercise his option under this sub-rule, he shall forfeit his right of exercising such option for transfer to the Tamil Nadu Medical Service and shall continue to serve in the Tamil Nadu Medical Service.

14. The Director of Public Health and Preventive Medicine is appointing authority for the post of Assistant Surgeon as per Rule 21 of Section 21 - The Tamil Nadu Medical Service of the Special Rules. As per the said Rule, a person appointed as an Assistant Surgeon who has completed or was likely to complete five years of service on duty as on the 31st December of a year is entitled to exercise an option in writing for transfer to the Tamil Nadu Medical Service subject to such persons satisfying the prescribed qualification. Such option is to be submitted to



the appointing authority namely, the Director of Public Health and Preventive Medicine on or before the 31st January of the succeeding year.

15. A person who does not exercise the option for transfer to the Tamil Nadu Medical Service and a person who has exercised the option but was not selected for such transfer under Sub-Rule (d) to Rule 21 of the Special Rules is to continue to serve in the Public Health and Preventive Medicine Service. Such a person who continues in Public Health and Preventive Medicine Service is eligible for promotion to the higher posts such as Health Officer, Civil Surgeon, Deputy Director, Joint Director, Additional Director (Health) and Director of Public Health and Preventive Medicine, subject to eligibility and in accordance with the special rules for the Tamil Nadu Public Health Service.

16. A reading of the Tamil Nadu State and Subordinate Service Rules indicates that the seniority of a selected candidate would be from the list of "approved candidates" in a class or category or service.

17. The expression "approved candidates" has been defined in Rule 2(2) of the Tamil Nadu State and Subordinate Service Rules. Expression "appointed to a service" has also been defined in Rule 2(1) of the aforesaid Rules. They read as under:-

Part I of the Rule 2(2) of Tamil Nadu State and Subordinate Service Rules	Section 2(c) of the Tamil Nadu Government Servants (Conditions of Service Act, 2016
"Approved candidate" means a candidate whose name appears in an authoritative list of candidates approved for appointment to any service or class or category.	"Approved candidate" means a candidate whose name appears in an authoritative list of candidates approved for appointment to any service or class or category.

18. As per Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules, if an "approved candidate" selected by the Tamil Nadu Public Service Commission for appointment by direct recruitment fails to join duty ordinarily within three months from the date of receipt of the orders directing him/her to join duty or within an earlier date, if so specified by the appointing authority in special circumstances, he/she shall



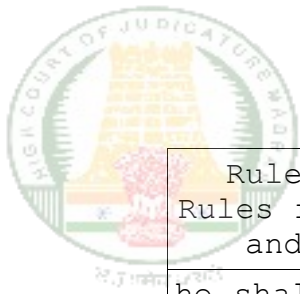
forfeit his/her right for appointment to the post and his/her name shall be removed from the approved list.

19. There are two provisos to Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules. As per the first proviso, aforesaid period of three months may be extended by the appointing authority upto six months under a very special circumstance for valid reasons.

20. As per the second proviso, the seniority of such person joining service after six month shall be fixed below the junior most candidate appointed to that post in that service on the date of joining duty of the former. A reading of the facts indicates that the petitioners in Category No.1 are those candidates who did not join services immediately.

21. Rule 4 (e) of the Tamil Nadu State and Subordinate Service Rules is pari-materia with Section 7(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. For the sake of clarity, Rule 4 (e) of the Tamil Nadu State and Subordinate Service Rules and Section 7(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 are reproduced below:-

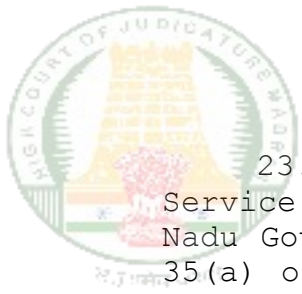
Rule 4 (e) of the General Rules for the Tamil Nadu State and Subordinate Service	Section 7 (5) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016
4. Approved candidates - (a)..... (b)..... (c)..... (d)..... (e) If an approved candidate selected by the Tamil Nadu Public Service Commission for appointment by direct recruitment fails to join duty ordinarily within three months from the date of receipt of the orders directing him to join duty or with in an earlier date, if so specified by the appointing authority in special circumstances,	7. (1) (2)..... (3)..... (4)..... (5) If an approved candidate selected by the Commission for appointment by direct recruitment fails to join duty ordinarily within three months from the date of receipt of the order directing him to join duty or within an earlier date, if so specified by the appointing authority in special circumstances, he shall forfeit his right for appointment



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Rule 4 (e) of the General Rules for the Tamil Nadu State and Subordinate Service	Section 7 (5) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016
he shall forfeit his right for appointment to the post and his name shall be removed from the approved list; Provided that in special circumstances, the appointing authority may extend the time limit referred to in this sub-rule up to six months for valid reasons.} *Added in G.O.Ms.No.857, P&AR (Per.P) dt.13-9-83, w.e.f.13-9-83 \$(Provided further that in very special circumstances and in relaxation of the above proviso, if any candidate is allowed to join duty beyond the time limit of six months, his seniority in that post shall be fixed below the junior most candidate appointed to that post in that service on the date of joining duty of the former.) # Substituted in G.O.Ms.No.353, P&AR (Per.S) dt.20-6-89, w.e.f.4-5-88	to the post and his name shall be removed from the approved list: Provided that in special circumstances, the appointing authority may extend the time limit referred to in this subsection upto six months for valid reasons: Provided further that in exceptional circumstances, if any candidate is allowed to join duty beyond the time limit of six months, his seniority in that post shall be fixed below the junior most candidate appointed to that post in that service on the date of his joining duty.

22. As per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, seniority of a person in a service, class or category or grade shall unless he/she has been reduced to a lower rank as a punishment be determined by the rank obtained by him/her in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his/her probation shall be the date on which he/she joins duty irrespective of his/her seniority.



23. Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules is pari-materia with Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 are reproduced below:-

Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules	Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016
35 (a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.	40. (1) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

24. Though, as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, seniority of a person in a service, class or category or grade shall be determined by the rank obtained by him/her in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority and is subject to the rule of reservation where it applies, it is subject to a further exception in Rule 4(e) of the aforesaid Rules which has been reproduced supra. It would be a harmonious construction of Rule 35(a) & 4(e) of the Tamil Nadu State and Subordinate Service Rules. Thus, the petitioners in Category No.1 and the private respondents who joined after a period of six months were to be placed below the candidate whose name was last in the list of approved candidates prepared by the Tamil Nadu Public Service Commission, on the date of joining duty.



25. As per Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, application for the revision of seniority of a person in a service, class, category or grade is to be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be and any application received after the said period of three years is to be summarily rejected. This Rule is not applicable to cases of rectifying orders, resulting from mistake of facts.

26. Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules is parimateria with Section 40(6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. They are reproduced below:-

Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules	Section 40(6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016
(f) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.	(6) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.

27. The facts on record indicate that Civil Medical List was prepared for the first time in terms of G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009. This is long after the petitioners and the respective private respondents joined duty.

28. G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 was issued in the light of the



report of the Committee headed by the Special Secretary to Government, Finance Department, constituted by the Principal Secretary to Government, Health and Family Welfare Department vide G.O.(Ms) No.194, Health and Family Welfare Department, dated 07.07.2009.

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29. The seniority in the Civil Medical List (CML) in terms of G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 cannot be in a state of fluidity.

30. All the doctors working in hospital, dispensaries and primary health centers in the State who do not come under Director of Medical Education side are considered as one unit for the purpose of G.O.(Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009.

As per G.O.(Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, the Director of Medical and Rural Health Services is required to maintain Civil Medical List and the seniority list of the Doctors in the Unit. G.O.(Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 further stipulates that the seniority list under the Civil Medical List is based on the Tamil Nadu Public Service Commission selection which is inconsonance with Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules.

31. It further stipulates that the Director of Medical and Rural Health Services will effect promotions in Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine / ESI / Foreign Service etc. Thus, for the first two service, it is the Director of Medical and Rural Health Services who maintains the seniority as per the ranking in the Tamil Nadu Public Service Commission selection.

32. Relevant portion from the said G.O.(Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 as far as the maintenance of seniority reads as under:-

I. Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine side:-

i. All the doctors working in hospitals, dispensaries and primary health centres in the state who do not come under Director of Medical Education side are considered as one unit for the purpose of this order.

ii. The Director of Medical and Rural Health Services shall maintain the Civil Medical List (CML)



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and the seniority list of the doctors in this unit. The seniority under the Civil Medical List will be based on Tamil Nadu Public Service Commission selection. The Director of Medical and Rural Health Services will effect promotions in Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine / ESI / Foreign Service etc

iii. The Director of Medical and Rural Health Services unit's seniority list shall be of

(1).General seniority - for all those doctors with MBBS degree.

(2).Specialist seniority- Speciality wise seniority for those with diploma and master degree. The specialities are:-

- 1).General medicine
- 2).General surgery
- 3).Obstetrics & and Gynaecology
- 4).Paediatrics
- 5).Ophthalmology
- 6).Orthopaedics
- 7).ENT
- 8).Psychiatry
- 9).Radiology 1
- 10).Chest medicine.
- 11).Anaesthesia
- 12).Dental
- 13).Dermatology.

All other specialists not coming under the above mentioned specialties will be included in the general category, unless ordered otherwise.

a. The Post Graduate doctors (i.e. doctors who have done Post Graduate Degree or diploma) in the Director of Medical and Rural Health Services side would get a separate seniority in their specific speciality based on their seniority in the Civil Medical List. After getting their seniority in their speciality, their future promotions would be based on the speciality-specific seniority, and the Civil Medical List for them would be relevant only for the limited purpose of fixing the inter-se seniority relative to those joining their speciality in the Director of Medical and Rural Health Services side. No equivalent promotion can be claimed by any specialist based on



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inter-se Civil Medical List seniority on account of doctors in some other speciality or in MBBS General list getting promotion. Civil Medical List seniority would after that be relevant only to fix their seniority in the speciality-specific seniority list, and after that it is that seniority list which would operate. Such fixing of speciality-specific seniority based on the Civil Medical List seniority would continue only upto the Senior Civil Surgeon stage, beyond which only the speciality-specific seniority would operate, except for posts common to all specialities. An illustration for fixing the seniority on Civil Medical List basis and for specific specialities is annexed to this order.

b. The inter-se-seniority of MBBS General candidates on Director of Medical and Rural Health Services and Director of Public Health and Preventive Medicine side and that of the Post Graduate diploma candidates in the Primary Health Centres side would be dealt as common pool and would be based on the Civil Medical List. Their promotion also would be based on the Civil Medical List. The MBBS General candidates can go either to Director of Medical and Rural Health Services or Director of Public Health and Preventive Medicine, depending on vacancy available, on promotion. The promotions gained by a specialist, cannot be cited for equivalent promotion by MBBS General (and the Post Graduate Diploma in the Primary Health Centre) candidates based on inter-seniority.

iv. The posts of Assistant Surgeon (AS), Senior Assistant Surgeon (SAS), Civil Surgeon (CS) and Senior Civil Surgeon (SCS) shall continue to be in the existing pay Band and Grade Pays, which are equivalent to the pre-revised scales of Rs.8000/-, Rs. 9100/-, Rs. 10,000/- and Rs.12000/- respectively, as laid down in the G.O.(Ms). No. 234 Finance (Pay Cell) Department, dated: 1.06. 2009.

v. A new rank of Chief Civil Surgeon (CCS) carrying salary in Pay Band -IV, with grade pay of Rs. 8700/- shall be created. The post of Chief Civil Surgeon is only a rank and the designation of Chief Civil Surgeon does not mean the person is head of an administrative Unit.

vi. The pay band and grade pay for Joint Director, Additional Director and Director level posts pay shall



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remain at the same level as they exist now. An additional allowance of Rs. 500/- per month shall be paid to the Joint Director. This allowance would be a standalone allowance and would not be eligible to be counted for calculating any other salary item such as Dearness Allowance and other allowances.

vii. The distribution of MBBS general and Post Graduate Diploma doctor posts on Director of Public Health and Preventive Medicine side is as per Annexure I to this order. The Director of Medical and Rural Health Services shall effect promotion and will be the officer responsible for maintaining the number of posts at each level. The Director of Public Health and Preventive Medicine shall be responsible for posting and also ensuring numbers in each level.

viii. The MBBS General and Diploma doctors on Primary Health Centre side would be considered equivalent for promotion purposes. 100 Upgraded Primary Health Centres would be headed by Chief Civil Surgeon level doctors. The Director of Public Health and Preventive Medicine may decide which 100 Primary Health Centres to be chosen based on the level of activity in Primary Health Centres. The selection and distribution of other level doctors amongst various categories of Primary Health Centres is left to the Director of Public Health and Preventive Medicine, to be calculated based on the volume of work in each Primary Health Centre. The Director of Public Health and Preventive Medicine would have to ensure that the total number of posts at each level in the entire Department is not more than the total posts fixed above, and that not more than the prescribed strength, speciality wise, are posted in any Primary Health Centre. Thus, in any Primary Health Centre the total strength would remain the same as prescribed through Government orders, but the level of doctors in any specific Primary Health Centre can be fixed by the Director of Public Health and Preventive Medicine. However, while fixing the level, the Public Health and Preventive Medicine has to ensure that the total number of posts in the department as a whole at each level are not altered.

ix. The distribution of MBBS general in Director of Medical and Rural Health Services / ESI side shall be as in Annexure-II to this order.



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x. The department wise distribution of specialists post in Director of Medical and Rural Health Services / Director of Medical and Rural Health Services (ESI) and Foreign services shall be as per Annexure -III to this order, The institution wise break up of specialists post is as per Annexure - IV to this order.

xi. The Director of Medical and Rural Health Services shall redistribute the total strength at each level as given in Annexure II, III and IV. The choice of redistributing the same amongst various district / taluk / non-taluk hospital/ other hospitals shall be done by the Director of Medical and Rural Health Services. However, while fixing the level of posts, the total number of posts in each level for MBBS General and each Speciality in the Department cannot be altered. Further, the total number of MBBS General and speciality posts, as per restructured plan in Director of Medical and Rural Health Services and as per norms for various categories of Primary Health Centre in Director of Public Health and Preventive Medicine , in each institution cannot be altered. Further, the total number of MBBS General and speciality posts, as per restructured plan in Director of Medical and Rural Health Services and as per norms for various categories of Primary Health Centre in Director of Public Health and Preventive Medicine, in each institution cannot be altered. If in any hospital any speciality post is upgraded to a higher level, it should be accompanied by a simultaneous downgrading of an equivalent post in the same speciality in some other hospital.

xii. The allotment of specialist post in each hospital under restructuring plan vide G.O (Ms) No 255, Health and Family Welfare Department, dated: 20.08.2009 should not be altered, in these exercises.

xiii. The total number of common posts would remain at 563 (438 High level and 125 lower levels). They would be continued to be available to all specialities (including MBBS General candidates, except for 125 low level posts in ESI which would be available only to specialities) based on seniority. The present common Senior Civil Surgeon 354 posts and 44 Deputy Director posts are refixed at the Chief Civil Surgeon level. Accordingly the common post distribution shall be as in Annexure V to this order



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xiv. The Government also fix the eligibility for promotion to a higher level in Director of Public Health and Preventive Medicine / Director of Medical and Rural Health Services / ESI/ Foreign service / other institutions as follows:-

- (i) An Assistant Surgeon shall put up 5 years of service for promotion as Senior Assistant Surgeon.
- (ii) A Senior Assistant Surgeon shall put up 4 years of service in the post of Senior Assistant Surgeon for promotion as Civil Surgeon.
- (iii) A Civil Surgeon shall put up 2 years of service in the post for promotion as Senior Civil Surgeon.
- (iv) A Senior Civil Surgeon shall put up 1 year of service in the post for promotion as Chief Civil Surgeon.

xv. The above eligibility is prospective i.e. for future promotions and it is not applicable to the existing structure. The Medical Officers on whom disciplinary action is pending / punishments given are not eligible for the above exercise.

a. However, the above minimum periods would be for future promotions only, and would not be applicable while refitting the existing structure into the proposed structure. This refitment will be done based on the restructured posts, with the postulate that those who have completed 20 years may be fitted in the Chief Civil Surgeon level, those who have completed 15 years may be fitted in the Civil Surgeon level and those who have completed 8 years may be fitted in the Senior Assistant Surgeon level without taking into reckoning the minimum experience prescribed above for each level.

b. The Director of Medical and Rural Health Services will be empowered to do the refitment and effecting the promotions upto the level of Chief Civil Surgeon, on the guidelines above. However, the district level higher administrative posts should be prepared and sent to the Govt. for approval.

xvi. Approximately 1/28th of the total number of posts should be filled up every year to ensure that



there is a smooth transition from each level to the next one. The Director of Public Health and Preventive Medicine as the common recruitment officer will ensure this.

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xvii. The first general as well as speciality wise review of the above proposed structure may be undertaken after 3 years and thereafter general as well as speciality wise review may be taken up every 5 years as this would ensure that any distortions caused by the above exercise are corrected.

xviii. Suitable modifications to the above proposed structure be carried out from time to time whenever number of certain posts are increased or reduced.

33. As far as the third wing namely, under the Director of Medical Education, is concerned, it has been stipulated that seniority list of Medical Officers working in the Medical College Hospitals, Institutions and Dispensaries under the control of Directorate of Medical Education, will have to be maintained by the Director of Medical Education for promotions.

34. There were two categories of seniority, i.e. General Seniority and Speciality Seniority. Both the General Seniority and Speciality Seniority are based on the seniority in Civil Medical List.

35. Further, G.O.(Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 states that after getting the seniority in speciality, the future promotions would be based on the specialty specific seniority and that such Medical Officers have no further lien on their seniority in Civil Medical List for the purpose of promotion.

36. The seniority in Civil Medical List is however relevant only for the limited purpose of fixing inter-se seniority relative to those joining their specialty in the Director of Medical Education side and that no equivalent promotion can be claimed by any specialist based on inter-se Civil Medical List seniority on account of Medical Officers in some other speciality. It further states that Civil Medical List seniority would after that be relevant only to fix the seniority in the speciality specific seniority list and after that, it is that seniority list which would operate as illustration. The relevant portion of the said G.O.(Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 reads as under:-



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II. Director of Medical Education side:-

- (i) The Medical Officers working in the Medical College Hospitals, Institutions and dispensaries under the control of Directorate of Medical Education shall come under the Director of Medical Education unit.
- (ii) The Director of Medical Education will maintain the seniority list of the doctors in this unit and will effect the promotions.
- (iii) The Director of Medical Education unit's seniority list will be of two categories (1). General seniority- for all those doctors with MBBS and diploma degree. (2). Specialist seniority- Speciality wise seniority for those with master degree and or super speciality degree
- (iv) Both the general seniority and speciality seniority will be based on their seniority in Civil Medical List. After getting the seniority in their speciality, their future promotions would be based on the speciality specific seniority and they would not have further lien on their seniority in Civil Medical List for the purpose of promotion. However seniority in Civil Medical List would be relevant only for the limited purpose of fixing inter-se seniority relative to those joining their speciality in the Director of Medical Education side. No equivalent promotion can be claimed by any specialist based on inter-se Civil Medical List seniority on account of doctors in some other speciality. Civil Medical List seniority would after that be relevant only to fix the seniority in the speciality specific seniority list, and after that, it is that seniority list which would operate as illustrated in the annexure to this order.
- (v) For higher level posts and posts in common pool, the Civil Medical List seniority will be the basis for promotion.
- (vi) Entry into Director of Medical Education side against particular vacancy in any speciality should strictly be on the basis of Civil Medical List seniority, provided the person is eligible otherwise.
- (vii) Once a person joins any speciality under Director of Medical Education, his inter-se seniority in the speciality would depend on the person's seniority in the Civil Medical List . The Civil



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Medical List would continue to decide the speciality specific seniority, till the Associate Professor level. However, any person getting promoted under any speciality would not entitle other persons in other specialities to be promoted similarly, if they are senior in the Civil Medical List to such a person. Similarly, any person in any speciality would not be entitled to get a promotion, based on a junior in the same speciality having got such a promotion in the Director of Medical and Rural Health Services, Director of Medical and Rural Health Services, (ESI) and Director of Public Health and Preventive Medicine side.

- (viii) A new grade viz., 'Senior Assistant Professor' equivalent to Civil Surgeon (CS) shall be created and a Medical Officer should have spent at least three years as Assistant Professor to become a Senior Assistant Professor.
- (ix) The combined grade of Associate Professor / Professor is split into two, namely, Associate Professor and Professor corresponding to Senior Civil Surgeon and Chief Civil Surgeon on Director of Medical and Rural Health Services, Director of Public Health and Preventive Medicine side, respectively. Thus, Assistant Professor, Senior Assistant Professor, Associate Professor and Professor would be in the Pay band and Grade Pays laid down in the G.O.(Ms). No. 234 Finance (Pay Cell) Department. Dated 1.06.2009, corresponding to the pre-revised scales of Rs. 9100/-, Rs.10000/-, Rs. 12000/- and Rs.14300/- respectively.
- (x) The distribution of 4566 specialists posts on Director of Medical Education side shall be as given in Annexure VI to this order.
- (xi) There are 264 MBBS/Diploma Doctors as per pre-revised scale of Rs. 8000/- working on Director of Medical Education side who do not have any promotional opportunity above Tutor/Assistant Surgeon level on Director of Medical Education side as per Medical Council of India norms. They shall be allowed to be part of Civil Medical List. Their promotion will be on par with their immediate juniors in Civil Medical List in general (MBBS) category on the Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine side. Less qualified and not eligible for promotion as



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Assistant Professor and above as per the guidelines of the Medical Council of India, they shall be moved to Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine side at the time of first promotion, instead of they being promoted over time to Chief Civil Surgeon level for doing work which is basically a non-teaching support work.

- (xii) The post of Principal of Dental College shall be upgraded to Chief Civil Surgeon grade provided that he has a Post Graduate qualification. In addition, as the incumbent heading an institution having other professors in Pay Band 4, they would get an additional administrative allowance of Rs. 500/- per month, which would be a standalone allowance and would not be eligible for being counted for purpose of other allowances.
- (xiii) 20 posts of Deputy Directors of Medical Education and Deputy Director (King Institute) are brought under Pay Band 4 with grade pay of Rs. 8700/- .
- (xiv) As a onetime measure to be followed at the time of refitment after creation of the posts, to address the problem of stagnation at Assistant Professor level for large number of doctors at present, all those who have done 20 years of total service from the time of entering into the TN Medical service shall be promoted as Professors, provided they are eligible as per Medical Council of India norms.
- (xv) As a onetime measure while exercising the above restructuring, the Director of Medical Education shall do the exercise as per the Medical Council of India guidelines.
- (xvi) All the promotions will be issued strictly on acquiring adequate minimum teaching experience as per Medical Council of India norms. In no case, Medical Council of India norms should be relaxed for giving promotions.
- (xvii) The Medical Officers on whom disciplinary action is pending / punishment given shall not be eligible for promotion.
- (xviii) Movement of a person from Director of Medical and Rural Health Services / Director of Public Health and Preventive Medicine side to Director of Medical Education side should be only on the basis of seniority of a person in Civil Medical List. Approximately 1/20th of the total number of posts in the speciality should be filled up every



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year to ensure that there is a smooth transition from each level to the next one.

(xix) The Director of Medical Education shall review the above promotional structure at regular intervals. The first speciality wise review shall be undertaken after 3 years and thereafter speciality wise review shall take place every 5 years.

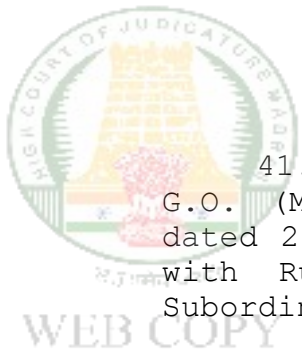
(xx) Suitable modifications to the above structure shall be carried out from time to time whenever number of certain posts are increased or reduced.

37. The issue relating to the fixation of seniority came up for consideration before a learned Single Judge of this Court in W.P.No.26180 of 2010 etc. batch in the case of Dr.Senthilnathan and others Vs. Medical Council of India and others and that a common order came to be passed on 02.02.2011, wherein, the content of the above G.O.(Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, particularly in the context of promotion in the Director of Medical Education side, i.e. under the third wing, was considered. In the said order, the decision of the Hon'ble Supreme Court in Challa Jaya Bhaskar Vs. Thungathurthi Surendar, (2010) 13 SCC 348, was also referred to.

38. Seniority in Civil Medical List (CML) in the year appointment is relevant for the rest of the career of a person appointed as an Assistant Surgeon. Therefore, this exercise ought to have been done in accordance with Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules.

39. It cannot be in variance with Rule 4 (e) of the Tamil Nadu State and Subordinate Service Rules. Preparation of Civil Medical List (CML) and the seniority of Assistant Surgeon in the said List in terms of G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 is intended to act as a guideline for promotion.

40. Therefore, persons who could not join duty immediately after their selection but were allowed to join later after six months cannot claim any seniority over those candidates who joined immediately. Thus, petitioners in Category No.1 and others who did not join within six months are not entitled to any seniority over their batch mates or those who joined before them in services. Those petitioners in Category No.1 and others who joined medical services after six months were to be placed at the bottom of the seniority of the candidates in the year of their joining service.



41. Preparation of Civil Medical List (CML) in terms of G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 has to be only consonance and not in variance with Rule 4(e) and 35(f) of the Tamil Nadu State and Subordinate Service Rules.

42. There can only be one Civil Medical List. However, it appears that different Civil Medical List have been prepared. The Civil Medical List is to be prepared for each batch at the time of their recruitment and joining services. It cannot fluctuate and remain in a state of fluidity.

43. There is no scope for creation of multiple Civil Medical Lists. Once a candidate is selected and joins the service depending upon the marks secured at the time of initial selection recruitment as an Assistant Surgeon, the Civil Medical List (CML) Number assigned at that time will govern the candidates for rest of the career in the Tamil Nadu Medical Service.

44. There is no question of revision of fresh Civil Medical List (CML) under the provisions of Tamil Nadu State and Subordinate Service Rules or under G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009. The above G.O. provides comprehensive method for determining the inter-se seniority among the candidates who have joined special branches, in which case, they lose lien in the general list. Only if there are conflicts between two candidates from the super specialty or specialty, the seniority in Civil Medical List will be referred for finalizing the inter-se seniority.

45. Therefore, the candidates who joined the Tamil Medical Service immediately after their initial selection will be the senior to those who were allowed to join later either by way of relaxation under Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules or pursuant to the orders of the Tamil Nadu Administrative Tribunal / Court. The ranking in the TNPSC selection is of no consequence, if they have joined later due to their inability to join.

46. Thus, the petitioners in Category No.1 cannot march over the petitioners in Category Nos.2 & 3. The seniority in the Civil Medical List (CML) would freeze once for all on and from the date of joining service with Tamil Nadu Medical Service. Therefore, the Writ Petitions filed by the petitioners in Category No.1 are liable to be dismissed.

47. The petitioners in Category No.2 & 3 who joined service immediately but later pursued their Post Graduation Course,



could have continued in service subject to the provisions relating to Leave, Payment of Special Allowances during the Study Leave under the Fundamental Rule. Rule 9-A of the Fundamental Rules has classified the Government Servants as follows:-

- | | | |
|---------|---|---|
| Group A | - | Government Servants in posts drawing Grade Pay of Rs.6,600/- and above. |
| Group B | - | Government Servants in posts drawing Grade Pay of Rs.4,400/- and above, but below Rs.6,600/-. |
| Group C | - | Government Servants in posts drawing Grade Pay of Rs.1,400/- and above, but below Rs.4,400/-. |
| Group D | - | Government Servants in posts drawing Grade Pay of Rs.1,300/-. |

Explanation : - For the purpose of these rules, persons holding posts in the Selection Grade or Special Grade shall be deemed to be under the respective groups in which such posts in the ordinary grades are classified.

48. A similar classification is in Section 4 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which reads as under:-

4. Classifications - Persons holding posts under the Tamil Nadu State and Subordinate Services shall be classified into following groups, namely:

- | | |
|---------|---|
| Group A | Government servants in posts drawing Grade Pay of Rs.6,600/- and above. |
| Group B | Government servants in posts drawing Grade Pay of Rs.4,400/- and above but below Rs.6,600/- |
| Group C | Government servants in posts drawing Grade Pay of Rs.1,400/- and above below Rs.4,400/- |
| Group D | Government servants in posts drawing Grade Pay of Rs.1,300/- |



49. Similarly, Explanation (1) to Rule 2(3) of the Tamil Nadu Government Servants' Conduct Rules, 1973 has also classified as follows:-

Explanation (1):- The Government servants holding posts in the Tamil Nadu State and Subordinate Services shall be classified as follows:-

- | | |
|-----------|--|
| Group - A | Government servants in posts having pay levels from 25 to 32 drawing the pay of Rs.59300 - Rs.187700 to Rs.128900 - Rs.225000. |
| Group - B | Government servants in posts having pay levels from 13 to 24 drawing the pay of Rs.35,900 - Rs.113500 to Rs.57700 - Rs.182400 |
| Group - C | Government servants in posts having pay levels from to 12 drawing the pay of Rs.15,900 - Rs.50400 to Rs.35600 - Rs.112800 |
| Group - D | Government servants in posts having pay level 1 drawing the pay of Rs.15700 - Rs.50000. |

[*Substituted as per G.O.Ms No.21, P&AR(A) Department, dated.05.03.2019.]

50. Rule 66 of the Fundamental Rules gives the power to the Authority to grant the following specified leaves:-

- i. Earned Leave, Unearned Leave on Medical Certificate, Unearned Leave on Private Affairs, Extraordinary Leave, Maternity Leave, Hospital Leave.
- ii. Earned Leave not exceeding 120 days other than Leave preparatory to retirement.
- iii. Special Disability Leave.
- iv. Study Leave.

51. The petitioners in Category No.2 & 3 could have proceeded to pursue their post graduation after obtaining Study Leave. As per Rule 84 of the Fundamental Rules, leave may be granted to the Government Servants, on such terms as the



Government may, by general order prescribe, to enable them to study scientific, technical or similar problems or to undergo special course of instruction. Such leave shall not be debited against the leave account which reads as under:-

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84. Leave may be granted to Government servants, on such terms as the Government may, by general order prescribe, to enable them to study scientific, technical or similar problems or to undergo special courses of instruction. Such leave shall not be debited against the leave account.

Note.—The rules prescribed to regulate the grant of leave to Government servants for the study of scientific, technical and similar problems or to undergo special courses of instructions are given in Appendix II.

RULINGS.

Study allowance for the period of private work during study leave.

(1) The Government of India and the State Government have agreed to the grant of study allowance to officers for the period during study leave devoted to the collating and elaborating in the form of readable report of the notes made and literature collected during their tour of inspection.

In the case of an officer granted study leave with the object of taking a definite course of study or preparing for a specific examination, attendance at an institution or supervision by a responsible authority is the normal procedure. The Study Leave Rules should be more strictly adhered to in this case and private work at home is not, therefore, accepted for purposes of study leave.

(G.O. Ms. No. 887, Finance, dated 19th December 1929.)

(2) A Government servant of a vacation department can draw study allowance during vacation if he prosecutes his studies during the period. The period of such vacation will be taken into account in calculating the maximum period of two years for which study allowance is admissible.



[Paragraph 22 (ii), Chapter X, Section 1 of Manual of Audit Instructions (Reprint).]

(3) Study leave may be granted to an officer of less than five years' service at the discretion of the authority competent to grant the leave.

[Ruling (33), Section IV of Compilation of Audit Rulings.]

(4) Scholarship or stipend received by a Government servant from the Consolidated Fund of India or Consolidated Fund of a State is treated as honorarium under Fundamental Rule 9 (9). It is only when a Government servant is awarded scholarship or stipend from a source other than the above two sources, it will have to be treated as fees.

No portion of any scholarship or stipend, received during study leave or otherwise, by a government servant from a source other than Consolidated Fund of India or the Consolidated Fund of State for the purpose of prosecuting a course of studies or receiving specialized training in professional or technical subjects need be credited to Government.

In cases where permission is granted by the Government, no portion of the payments received by Government servants as a result of full-time or part-time employment undertaken by them need be credited to the Government.

(Finance Memo. No. 30909/FR/60-4, dated 16th May 1960.)

(5) The Government servants, who are sponsored by the Government for training abroad under the various training schemes of the United Nations, the Colombo Plan, the Point Four Programme and the like and the schemes operated through non-official channels (Rockefeller Foundation, Ford Foundation and the like) should be brought under the orders issued in G.O. Ms. No. 798, Finance, dated 1st July 1962 and not under the Study Leave Rules.

(6) A certificate to the effect that the study allowance and/or cost of fees for study is/are claimed in accordance with rules 12 and 13 and/or rule 16 of the Study Leave Rules shall be recorded in the bills by the drawing officers.



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(7) Restrictions under rules 5 and 9 of these rules limiting the grant of study leave to a maximum period of two years for a Government servant's entire service shall not apply in the case of medical officers of the Tamil Nadu Medical Service to enable them to avail themselves of study leave in excess of two years, wherever necessary to undergo postgraduate courses.

These orders take effect from 1st July 1962.

(G.O. Ms. No.1942, Health, dated 5th June 1963.)

52. For the purpose of Study Leave, the Study Leave Rules have also been prescribed. A Reading of Rule 3(5) of the Study Leave Rules in Annexure which have been issued for the purpose of Rule 84 of the Fundamental Rules indicates that the Study Leave shall not be ordinarily granted to a Government Servant who has rendered less than five years or who does not hold a Group A and Group B post under the Government or who has retired or who has the option to retire from the Government Service within three years of the date on which he is expected to return to duty after the expiry the leave.

53. As per Rule 5 of the Study Leave Rules in Annexure issued for the purpose of Rule 84 of the Fundamental Rules, ordinarily, such leave shall not exceed 12 months at any one point of time except for exceptional reasons and further shall not exceed 24 months inclusive of study leave granted under any other rules in all during his entire career.

54. Rule 17 of the Study Leave Rules in Annexure issued for the purpose of Rule 84 of the Fundamental Rules contemplates the Execution of a Bond in Form "A" before proceeding the Study Leave or extension of Study Leave granted. As per Rule 19 of the Study Leave Rules in Annexure issued for the purpose of Rule 84 of the Fundamental Rules, the Government Servant is entitled to draw leave salary equal to the amount admissible during half pay leave under the Tamil Nadu Leave Rules, 1933.

55. The candidates in Category No.2 & 3 would have had to complete minimum period of service before they should have opted to pursue higher education and obtained leave under the relevant Leave Rules read with the provisions of the Fundamental Rules as detailed above.

56. Facts on record indicate that on account of confusion created by the official respondents in tweaking the seniority in the Civil Medical List, irregular promotions may have been



granted to some of the candidates in the past in contravention of the provisions.

57. This has to be set right and balanced by notionally promoting those who were denied promotion earlier based on the wrong seniority in the Civil Medical List prepared.

58. Therefore, the officials respondents are directed to promote those candidates who missed out their regular promotions on account of the confusions created by them. In the next round of promotion, the official respondents are required to promote the candidates strictly in accordance with G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 read with Rule 4(e) of the Tamil Nadu State and Subordinate Service Rules. Civil Medical List is directed to be prepared year wise, in which, the candidates joined. That Civil Medical List shall govern all the candidates for rest of their career.

59. In the light of the above discussion, these Writ Petitions are disposed by directing the appointing authority to re-fix the seniority in Civil Medical List strictly in accordance with Rule 4 (e) of the Tamil Nadu State and Subordinate Service Rules and G.O. (Ms) No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 year wise and promote the petitioners and the private respondents who earlier missed out their promotion in accordance with the above Rules and the above G.O., within a period of six weeks from the date of receipt of a copy of this order. Needless to state that all attendant benefits shall be conferred to those who wrongly missed out their promotion earlier. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

jen

To

1. The Principal Secretary,
Health and Family Welfare (A1) Department,
The State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.



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2. The Principal Secretary,
Health and Family Welfare Department,
The State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.
3. The Director of Medical Education,
Kilpauk
Chennai - 600 010.
4. The Director of Medical and Rural Health Services,
DMS Compound,
Teynampet, Chennai - 600 006.
5. The Director of Public Health and Preventive Medicine,
DMS Compound,
Teynampet, Chennai - 600 006.
6. The Director of Medical Education,
No.162, Poonamallee High Road,
Opposite MJRC Clinic,
New Bupathy Nagar,
Chetpet, Chennai,
Tamil Nadu 600 031.

+1cc to Mrs.Mythili Srinivas, Advocate, S.R.No.30502

+1cc to M/s.A.Mohamed Ismail, Advocate, S.R.No.30746

+2ccs to Mr.Arun Anbumani, Advocate, S.R.No.30225

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.30287

+1cc to the Government Pleader, S.R.No.30870

W.P.Nos.24404 of 2018 etc. batch

AJB(CO)
RLP(30/05/2022)