



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2022

CORAM:

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THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.3661 of 2022

Dr.Nandhinee Vijay

... Petitioner

Vs.

1.The Secretary to Government,
Health Department, Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, direction in the nature of writ directing the respondents herein to consider the petitioner's promotion as Professor as sought for in representation dated 07.01.2022, within a specific period.

For Petitioner : Mr.R.Sreerangan

For Respondents : Mr.D.Sadiq Raja

Additional Government Pleader

ORDER

The claim of the writ petitioner is that he should be considered for promotion to the post of Professor, as per the adhoc rules in force. In this regard, the petitioner submitted a representation dated 07.01.2022.

2.The learned counsel for the petitioner reiterated that the said representation is yet to be considered for promotion to the post of Professor.

3.Promotion *per se* cannot be claimed as a matter of right. All promotions are to be made strictly in accordance with the rules in force. However, consideration for promotion is a fundamental right of an employee. Whenever an administrative decision is taken by the authorities competent to fill up the higher post then the panel of eligible persons are to be prepared in accordance with the rules and the eligible persons in the order of seniority is to be considered for promotion.



4. Contrarily, an employee cannot merely submitted a representation and claimed that he should be considered for promotion. As promotion is not a right, the consideration would arise only if any decision is taken by the competent authorities to fill up the particular post or cadre.

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5. A growing trend of sending representation and immediately filing a writ petition seeking the relief to consider the representation and such orders are providing unnecessary scope for the litigant to approach the authorities even without any right to do so. By virtue of such orders, even promotions are granted on certain extraneous consideration and this practice is leading to corrupt activities amongst to the officials also. With the support of the order of the High Court to consider the representation they do grant relief in violation of rules or without considering the names of other persons, this will cause not only infringement of right but also is in violation of rules. Therefore, even to issue an order to consider the representation, the petitioner has to establish his right or infringement of right, and mere representation is insufficient to issue an order of direction to consider the representation and such directions would do no service to the cause of justice. Therefore, only if rights are established or infringement of rights are established, then alone the High Court would exercise the power of judicial review under Article 226 of the Constitution of India, but not otherwise.

6. In the present case, the learned counsel for the petitioner made a submission that none of the juniors to the petitioner has been promoted to the post of professor and therefore, only at the time of preparation of panel, after taking a decision to fill up the post of Professor, the names of all the eligible persons are to be considered, including the name of the writ petitioner.

7. With these observations, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1.The Secretary to Government,
Health Department, Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai.

+1 CC to M/s.SPL GP (SR-9232[F] dated 01/03/2022)

+1 CC to M/s.M.SIVASANKAR, Advocate (SR-9042[F] dated 28/02/2022)

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RS (21.03.2022) 3P-5C