



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.01.2022**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.62 of 2018

and

W.M.P. (MD)No.52 & 53 of 2018

WEB COPY

R.Krishnan

...Petitioner

/Vs./

1.The Director of Medical Education,
Poonthamallee High Road,
Kilpauk, Chennai.

2.The Dean,
Tirunelveli Medical College Hospital,
Tirunelveli.

3.S.Regan,
Lab Supervisor,
Tirunelveli Medical College Hospital,
Tirunelveli, Tirunelveli District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order of the 2nd respondent in Ref.No.747/E3/17 dated 14.12.17 and quash the same and consequently direct the 2nd respondent to promote the petitioner as Lab Supervisor with effect from 14.12.17 and pay all service and monetary benefits and pay all the arrears within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam

For R1 & R2 : Mr.A.K.Manikkam
Special Government Pleader

For R3 : Mr.D.Selvanayagam

ORDER

The petitioner was appointed as Laboratory Technician Grade II on 21.11.1988 and posted in the Government Hospital, Mettupalayam. He was transferred to the Tirunelveli Medical College Hospital and joined duty on 29.05.1992 and promoted thereafter to the post of Lab Technician Grade I on 31.03.2008. He questions an order passed on 14.12.2017 promoting and posting R3 from the post of Lab Technician Grade I to the post of Lab Supervisor in preference to him.



2.The brief submissions upon which the challenge is premised are, firstly that the seniority of the petitioner qua all other lab technicians in the Department, including R3, is undisputed. To this end, a seniority chart is placed of the year 2013, wherein the petitioner, bearing reference to his date of joining duty as lab technician Grade I as 31.03.2008, is placed at Serial No.1. R3 in fact does not figure in the seniority list at all, falling far behind the petitioner in seniority. This is an admitted position.

3.The petitioner then argues that the Tamil Nadu Service Manual, (Manual, in short), which echoes the avenues of promotion as per G.O.Ms.47, Health and Family Welfare (C2) Department, dated 08.02.2007, provides for several classes and categories of posts as well as promotional avenues. We are concerned with Class-III/Category 1/ Laboratory Technician Grade I, for which the promotional avenues are to Class-I/ Category 1/ Laboratory Supervisor.

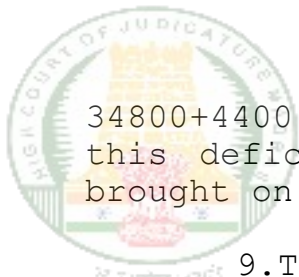
4.Inter alia, the State appears to have created an additional temporary post termed as 'Cyto Technician'. This post comes into being by virtue of a rule as set out under G.O.Ms.No.1796, Health and Family Welfare Department, dated 16.10.1978. The post of Cyto Technician is termed as a temporary post, to be sanctioned from time to time, subject to modifications in the rules themselves.

5.The constitution of the post is by way of a separate category and as a distinct branch of the service to which the petitioner belongs. Appointments thereto are to be made by three modes; firstly by transfer from the post of Lab Technician Grade I, secondly, by promotion from the post of Lab Technician Grade II, if no qualified candidates were available in the first category and thirdly by direct recruitment, if the first two methods yield no result.

6.The petitioner would emphasis that his posting as a Cyto Technician on 04.04.2013 is temporary, by way of transfer and not promotion as argued by the respondents. He would also submit that his posting as Cyto Technician carried a lower remuneration as compared with Lab Technician Grade I, and this was brought on par by way of an increment granted to him.

7.Though the counter filed by the respondents, at para 5 appears to dispute this position, this distinction is not correct, since the figures that are set out in paragraph 5 relates to the position as obtained in 1988 when perhaps there was a difference in the scales of pay.

8.As on the date of transfer and posting of the petitioner, ie., 04.04.2013, admittedly, the petitioner has been posted in the



34800+4400 with reduction of Rs.200. According to the petitioner, this deficiency of Rs.200 was made good and the pay scales were brought on par by an increment granted to him.

9.The petitioner draws attention to Rules 12 and 13 of the Fundamental Rules (FR) of the State of Tamil Nadu to state that an employee would hold a lien in respect of the post held by him and to promotional avenues thereto. Thus, he would continue to hold a lien in respect of the promotional post of Lab Supervisor, which does not get effaced by virtue of a temporary posting as Cyto Technician.

10.Order dated 04.04.2013 appointing him to the post of Cyto Technician has not been challenged by the petitioner. However, upon hearing all learned counsel, I am of the view that non challenge of order dated 04.04.2013 is not fatal to the petitioner's case. This is for the reason that after all, the posting as Cyto Technician was only temporary and the petitioner could well have been of the impression that he would be promoted to the post of Lab Supervisor, despite the temporary posting as Cyto Technician.

11.It was only upon the posting of R3 as Lab Supervisor on 14.12.2017 that the petitioner awoke to the fact that the promotional avenue has been denied to him after all. In fact, the first instance when he was alerted was when vacancy posts were notified on 03.07.2017 and 01.12.2017. The petitioner has been diligent to point out his version of the facts as above, by way of representation dated 18.07.2011, that remains pending as on date. Hence this writ petition filed in 2018 without challenging the order dated 04.04.2013, is in my view, maintainable.

12.In sum and substance, the arguments of the petitioner are to the effect that the impugned order denies to him a promotion to which he, by virtue of his admitted seniority, is legitimately entitled. The promotion of R3, who is far junior to him as Lab Supervisor is contrary to the specific hierarchy of posts and the governing Rules.

13.The respondents argue that the post of Cyto Technician is a sanctioned post and hence the posting of the petitioner as Cyto Technician is well within the sequence envisaged in the Manual. They would point out that R3 was fully qualified to hold the post of Lab Supervisor and hence, there is no justification to intervene in order dated 14.12.2017.

14.They invoke Rule 9(a) of the Tamil Nadu State and Subordinate Services Rules, 1955 (in short 'Service Rules') and the amendment thereto. Rule 9(a) of the Service Rules deals with the absence of members from duty.

15.The proviso states that where a member of a service who <https://www.apnps.com/it/eservices/> another service outside his regular line continued



in that service beyond five years, such candidate shall not be considered for promotion or appointment by recruitment or by transfer to a higher post in the regular line, even though he is otherwise qualified under the rules for such promotion or appointment, unless he returned to the former service and has put in a service not less than one year in the former service.

16.Thus, since the petitioner has not completed service of one year in the post of Lab Technician Grade I, he cannot be considered for promotion to the post of Lab Supervisor.

17.Heard learned counsel. The first argument in regard to status of the post of Cyto Technician may be answered from a reading of G.O.Ms.No.1796, dated 16.10.1978, under which the post was created. The language of the Government Order is very clear to the effect that the post is only temporary and shall be subject to modifications from time to time.

18.Thus, the argument of the respondents to the effect that it is a sanctioned post that finds place in the hierarchy of regular posts is misconceived. That apart, the mode of feeding feeder categories are by way of transfer from the post of Lab Technician Grade I as is clear from clause 3 of G.O.Ms.No.1796.

19.The argument of the respondents to the effect that the petitioner has been 'promoted' to the post of Cyto Technician is thus misconceived. No doubt, order dated 04.04.2013 uses the term 'promotion'. However, one need not go by the nomenclature in the order and I would prefer to go by the language of the Government Order, in terms of which the posting is, and has been made. The arguments of the respondents to the effect that the post of Cyto Technician is a regular post and that the petitioner has been transferred to the said post are both rejected.

20.I also find no merit in the argument touching upon Rule 9 of the Service Rules. The Rule, extracted below, deals with the absence of members from duty. The absence of a member is to be construed by way of leave, foreign service, deputation or 'any other reason'.

"9. Members absent from duty.- The absence of a member of a service from duty in such service, whether on leave, or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn

(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be probationer or an



approved probationer:

(b) for promotion from a lower category in such service:

(c) For appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of, appointment, seniority, promotion and appointment as full member which he would have enjoyed but for his absence subject to his completing satisfactorily the period probation on his return.

(d) For appointment to any substantive or officiating vacancy in another service, if according to the rules governing appointment to such other service-

(i) he is entitled to such appointment; and

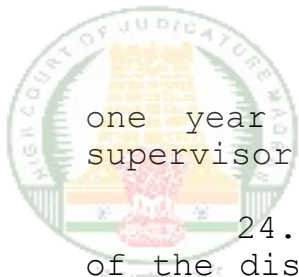
(ii) the normal method of recruitment to such other service is by transfer from the service of which he is a member of any class or category thereof.

Provided that a member of a service who has been appointed to another service outside his regular line and is continuing in that service beyond five years, shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified under the rules for which promotion or appointment, unless he returns to the former service and puts in a fresh service for a period of not less than one year in former service."

21.The phrase 'any other reason' would have to be seen ejusdem generis with the other three terms. Thus, the 'other reason' for which the member would come within the cover of Rule 9 would have to be one that he opts for or seeks, of his own volition.

22.In the present case, the transfer of the petitioner to the post of Cyto Technician is by the respondent. An instruction has been given to him as per the last sentence of the posting order, which states 'the individual is instructed to join as Cyto Technician at once the fact may be informed to this office'. The post has been thrust upon the petitioner and Rule 9 is thus, in my view, inapplicable is to the present situation.

23. With Rule 9 out of the picture so too is the proviso, and consequently there is no requirement that the petitioner work for



one year as a Lab Technician to be eligible for promotion as supervisor. This argument is also rejected.

24. The seniority of the petitioner is undisputed and in light of the discussion as above, I find that the impugned order posting R3 to the post of Lab Supervisor is not borne out, either by the service manual or the Rules. Reliance upon Rules 12 & 13 of the Tamil Nadu Government Fundamental Rules, is well placed. No defence is put forward to this submission.

25. Since the petitioner, in my view, continues to hold a lien for the promotional post of Lab Supervisor, and with the setting aside of impugned order dated 14.12.2017, there is a direction to the official respondents, ie., R1 & R2 to pass orders promoting the petitioner to the post of Lab Supervisor within a period of four weeks from today.

26. Such promotion will take effect from 14.12.2017, when R3 was promoted to the post of Lab Supervisor, as it is my view that the petitioner ought to have been promoted and posted in that post even then. All consequences to follow. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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

To

1. The Director of Medical Education,
Poonthamallee High Road,
Kilpauk, Chennai.

2. The Dean,
Tirunelveli Medical College Hospital,
Tirunelveli.



+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-2755[F] dated 28/01/2022)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-3053[F] dated 31/01/2022)

+1 CC to M/s.SPL.GP (SR-3106[F] dated 31/01/2022)

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