



W.P.No.1789 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2023
CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.1789 of 2021
and W.M.P.No.2003 of 2021

1. S.Sujindra
2. S.Srinivasan
3. Sankappa P.Sinhasan
4. Johnson Cherian
5. Shanmuganathan.K
6. Madhusudhan
7. Dheeraj Jain
8. C.Barathy
9. K.Rupa Vani
10. Remadevi
11. Malini
12. Ragul
13. D.Niraimathi
14. Arun
15. Rimi Singh
16. Prakash
17. Vinita Agarwal
18. Lopamudra
19. Sri Vengadesh.G
20. O. Murugesabharathi
21. Lalitha V
22. Rajesh D.R.
23. K.Ananthi
24. TharaSundhar
25. Babu L N



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26. Faculty of Indira Gandhi Medical College

Association (FIGMA),

(Reg. No.261/2012)

Indira Gandhi Medical College & Research Institute (IGMC&RI),

Rep. by its Secretary, Dr.S.Sujindra,

Kadirkamam, Puducherry – 9.

...Petitioners

/vs/

1. The Union of India,

Rep. by the Union Territory of Puducherry,

Rep. by its Chief Secretary,

Government of Puducherry,

Puducherry.

2. The Deputy Secretary,

Department of Health,

Government of Puducherry,

Puducherry.

3. The Director,

Indira Gandhi Medical College & Research Institute

(A Govt. of Puducherry Institution),

Vazhoduvar Road, Kathirkamam,

Puducherry – 9.

4. The Administrative Officer,

Indira Gandhi Medical College & Research Institute

(A Govt. of Puducherry Institution),

Vazhoduvar Road, Kathirkamam,

Puducherry – 9.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the first respondent in his proceedings in the 17th Governing Body Meeting (the 1st



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impugned order herein) dated 10.08.2018 and the consequential order of the second respondent in his proceedings in G.O.Ms.No.51 (the 2nd impugned order herein) dated 15.11.2018 and the consequential order of the third respondent in his proceedings in Order No.IGMC&RI/Estt.(Acad)/Eval.CAS/2020/2856 (the third impugned order herein) dated 22.12.2020, in so far as not redesignating the petitioners from Assistant Professor to Associate Professor and from Associate Professor to Professor from the date of their eligibility and the consequential order of the fourth respondent in his notification No.2-3/IGMC&RI/Estt./Acad./2020-2021/ (the 4th impugned order herein) dated 05.01.2021 and quash the same, and consequently consider the petitioners for promotion by redesignating them from Assistant Professor to Associate Professor and from Associate Professor to Professor, from the date of their eligibility, as per Dynamic Assured Career Progression Scheme as applicable to the teaching sub-cadre Central Health Scheme communicated in O.M.No.F.No.A.45012/2/2008-CHS.V dated 29.10.2008 of Ministry of Health and Family Welfare, Government of India. 2008-CHS.V dated 29.10.2008 of Ministry of Health and Family Welfare, Government of India, within a time frame fixed by this Court.

For Petitioner	...	Mr.M.S.Stalin Abhimanyu
For Respondents	...	Mr. R.Syed Mustafa
		Special Govt. Pleader for R3 and R4
		Mr.M.Nirmal Kumar
		Govt. Advocate for R1 and R2



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ORDER

WEB COPY The first petitioner is the employer at the Indira Gandhi Medical College and Research Institute (hereinafter referred to as “IGMC & RI). It is an institution functioning under Perunthalaivar Kamaraj Medical College Society (hereinafter referred to as “PKMCS”) which is fully funded and controlled by the Government of Puducherry through governing body comprising of top bureaucrats espousing all the rules of Puducherry / Central Government with regard to Administration, Finance and Accounting procedures. It is administered by duly constituted governing body headed by the first respondent as Chairman and the Principal Secretary (Health) as Vice Chairman.

1.1 On 29.10.2008, the Government of India has brought a Dynamic Assured Career Progression (DACP) scheme for Assistant professor, Associate professors and Professors of Medical colleges. After several representations to grant time bound promotion to faculty members, the 50th Governing Body of PKMCS has approved the scheme. However, on 10.08.2018 in the 17th Governing Body meeting, it was decided to give



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only financial upgradation but not time bound promotion under the scheme. A structure of the scheme adopted by the third respondent college is same as that of the Central Government Scheme. Despite the third respondent institution has adopted the scheme, no promotion was given to the Assistant Professors who have joined and working from the year 2010.

2. Mr.M.Nirmal Kumar, learned Government Advocate (Puducherry), submitted that the object of the scheme is to secure some monetary benefit to the employees without leakage of vacancies. Since the promotional post will be less in number, there will be delay in each cadre to get promoted to the next cadre. So as a welfare measure, these kinds of schemes are implemented just to give a time bound scale of pay in the next cadre even though the actual vacancies are not there. Since the benefits are given to the individuals without vacancies, on their retirement, their vacancies will be considered only against their actual cadre. The third respondent college has chosen to partly implement the scheme by giving financial upgradation alone without promotion. So there was no promotion for Assistant Professors or Associate Professors who have been working in the third respondent college from the year 2010. Only in the



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year 2023, the promotion as against the vacancies in the cadre of Associate Professors was given. Even during that time the first petitioner's name was not considered in view of the pending writ petition. Even though the pendency of the writ petition is not relevant to the actual promotion, the third respondent college has chosen to promote the juniors of the petitioners on 14.08.2023. So far, the petitioner has not been promoted. Probably it was because the petitioner had filed litigations against the third respondent college.

3. It is reliably learnt that the petitioner had filed some other petition in W.P.No.30800 /2023 for seeking appropriate relief to restore her seniority by giving her promotion with effect from 14.08.2023 on which date actual promotion for the vacancies in the cadre of Associate Professor was made. The petitioner seeks promotion given under the above mentioned Carrier Advancement Scheme with effect from 06.09.2021. Even though the petitioner joined service in the year 2010, the benefit was given to all those juniors who had the qualifying service for getting the benefit under Dynamic Assured Career Progression. The petitioner claims that she cannot be kept on par with her juniors. As her promotion was long



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due, the benefit of DACP ought to have been given to her at much an early date than that of her juniors.

4. However the learned Government Advocate submitted that the third respondent college, being a society, has got an option to exercise its willingness to participate in the DACP scheme. Since the institution had adopted the scheme only in the year 2018, the first panel was approved for all those who have completed the qualifying services.

5. Though DACP was the long pending demand of petitioner, due to the indifference of the 3rd respondent college, it is has not been implemented. At a time when it is implanted, the actual benefit was not given to the seniors, who have put considerable number of years of service. While implementing the scheme, the third respondent college ought to have framed guidelines in order to ensure some edge for the seniors over the juniors. The seniors got stagnated for many years. In fact the object of the DACP scheme itself is to avoid such stagnation.



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6. The learned counsel for the petitioner attracted the attention of the Court to the judgment of this Court held in ***Dr. Sheela Das Vs. The Pondicherry University Rep. By Deputy Registrar, Pondicherry and others in W.P.No.1964 of 2007 dated 31.08.2021***. In the said case, the petitioner who was working in Pondicherry University has claimed that she is eligible to be posted as Chief Medical Officer as she was eligible as on 11.03.2001 by completing the eligible period of service in the eligible post. However, it is held that the DACP scheme has come into force only on 05.04.2002 and the petitioner is eligible to be promoted to the post of Chief Medical Office as she had the required qualifying service on the said date and her monetary benefits and other service benefits eligible to the petitioner by granting notional promotion to the posts for which the petitioner was eligible on the date when the scheme came into force.

7. The above judgment was cited in order to show that the scheme has been implemented realistically in other Universities like Pondicherry University and the benefit was given to senior medical officers by according notional promotion notionally and by granting the monetary benefit commensurating with the post in which the individual got fixed



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after impacting the notional promotions, with effect from the date on which the scheme was implemented.

8. The learned Government Advocate submitted that though they have adopted the Central Government Scheme, it is the autonomy of the Units to adopt the scheme either in its entirety or by limiting it in accordance with the size and other aspects of the institution. The Units and the petitioner cannot have the right to seek directions against the 3 and 4th respondents to implement the scheme in the same pattern as how it has been implemented by other units. In support of his above contention the learned Government Advocate has cited the decisions of the Hon'ble Supreme Court held in *Md.Islam & Ors. Vs. The Bihar State Electricity Board & Ors. In C.A.No.5764/2022 dated 23.08.2022.*

9. Since the Indira Gandhi Medical College & Research Institute is also an extension of the Government, it cannot escape from implementing the Central Government scheme when similarly placed universities and Institutions do the same. Since the petitioner had filed another writ petition in W.P.No.30800/2023 to safeguard her right of promotion as against the



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vacancy and restore her seniority, those matters are left open to be agitated in the said petition.

10. The scheme which has been drafted to the benefit of the Medical Officers and which has been adopted by the respondents 3 and 4, but has not been implemented in its true letter and spirit. The seniors who ought to have got more benefit have been kept at par with the juniors. Hence in all fairness, it is obligatory on the part of the respondents 3 and 4 to consider the issue objectively and frame guidelines by scrutinizing / relying on the models of similar such institutions, who had already chosen to adopt the scheme.

11. With the above observations, this Writ Petition is disposed. No costs. Connected miscellaneous petition is closed.

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Index: Yes / No
Speaking order / Non-speaking order
bkn



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To:

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1. The Chief Secretary,
Union Territory of Puducherry,
Government of Puducherry,
Puducherry.
2. The Deputy Secretary,
Department of Health,
Government of Puducherry,
Puducherry.
3. The Director,
Indira Gandhi Medical College & Research Institute
(A Govt. of Puducherry Institution),
Vazhoduvar Road, Kathirkamam,
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4. The Administrative Officer,
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R.N.MANJULA ,J.

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