



W.P.No.29491 of 2010

-IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.29491 of 2010
and M.P.No.2 of 2010

1.Dr.P.Nagarajan
2.Dr.R.Nagarajan
3.Dr.G.Sivakumar
4.Dr.V.Balaraman
5.Dr.B.Pasupathi

... Petitioners

Vs

1.The Tamil Nadu State Government,
Represented by its Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai – 600 010.

3.The Medical Council of India,
Represented by its Secretary,
Pocket 14, Sector – 8,
'Dwaraka' Phase – I,
New Delhi – 110 077.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of

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India, to issue a Writ of Certiorarified Mandamus to call for the records issued by the first respondent in G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 and to quash the same in so far as the re-fitment of the post of Associate Professor with fixation of pay in Pay Band III + Grade Pay in so far as the petitioners are concerned and consequently direct the respondents to refit the petitioners already working in the post of Associate Professor in the rank of Chief Civil Surgeon on par with Professors with fixation of scale of pay in PB IV with Grade Pay with consequential benefits including promotion/ re-designation and pass such further orders.

For Petitioner : Mr.R.Ramachandran
for Ms.N.Kavitha

For RR1 & 2 : Mr.S.Ravi Chandran
Additional Government Pleader

For R3 : Ms.Shubharanjani Ananth
Standing Counsel

ORDER

This Writ Petition has been filed challenging the Government order dated 23.10.2009 in so far as the re-fitment to the post of Associate Professors with fixation of pay in Pay Band III + Grade Pay

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in so far as the petitioners are concerned and consequently direct the respondents to refit the petitioners already working in the post of Associate Professor in the rank of Chief Civil Surgeon on par with Professors with fixation of scale of pay in Pay Band IV with Grade Pay with consequential benefits including promotion/re-designation.

2. Heard Mr.R.Ramachandran, learned counsel for Ms.N.Kavitha, learned counsel for the petitioners, Mr.S.Ravi Chandran, learned Additional Government Pleader for respondents 1 and 2 and Ms.Shubharanjani Ananth, learned Standing Counsel appearing for the 3rd respondent.

3. The learned counsel for the petitioners would submit that the petitioners were all working under different specialities in the cadre of Associate Professors/ Professors in the Director of Medical Education. The Government under the impugned order in so far as the fixation of pay scale in Pay Band III in respect of the Doctors working in the cadre

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of Associate Professors as on date alone had challenged the same. He would submit that by the Government order restructuring of the entire system by providing re-fitment promotion wherever it is necessary was ordered. The petitioners who were working in the cadre of Associate Professors/ Professor are being greatly affected in view of the present status. Since, the post of Associate Professors/ Professor were in the same band of pay and by refitting them as Associate Professors they would be pushed to a lesser band pay. Therefore, he would contend that the designation would be detrimental to the interest of the petitioner.

4. He would further submit that promotions hitherto has been given based on the qualification and seniority through Council and that they were all working as Unit Chief/ Head of the Department in the administrative cadre. If the restructuring is allowed as per the Government order, then there would be two different posts namely Associate Professor and Professor and thereby they would also have some disadvantages as they would be down-graded in the status to the

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level of Assistant Professor. Therefore, he would submit that the Government order in so far as it affects the right of the petitioners would have to be struck down and the petitioners should be given the benefits.

5. Countering his arguments, Mr.S.Ravi Chandran, learned Additional Government Pleader, appearing for the 1st and 2nd respondents would submit that the Government order in G.O.Ms.No.354 dated 23.10.2009 provided for a Dynamic Assured Career Progression by taking into note of lack of adequate promotional opportunities and stagnation at the various levels in the system. He would further submit that the pay scale that had been received by the petitioners had not been disturbed and a new rank of Chief Civil Surgeon carrying a Pay Band IV was created. Promotional eligibilities were also prescribed and such promotional eligibilities would be only taken as prospective and would not be applicable to persons who had been promoted.

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6. He would submit that 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. The restructuring was also made as a one time measure by following the guidelines issued by the Medical Council of India and the promotions made would also be made only based on the guidelines prescribed by the Medical Council of India. A decision was also taken that no relaxation should be given for promotions in violation of the Medical Council norms. He would submit that the petitioners have not challenged the norms prescribed by the Medical Council of India which came into effect on 21.07.2009 and without challenging the same, the petitioners cannot said to be an aggrieved persons of the guidelines given under the impugned Government order. He would submit that the Government order impugned in this Writ Petition is a creature based upon the guidelines issued by the Medical Council of India, the 3rd respondent herein. Therefore, he would submit that this Writ Petition is

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not at all maintainable.

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7. I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

8. The Government order impugned in this Writ Petition provides for a Dynamic Assured Career Progression which ensure the benefit of the persons working in various cadres due to lack of promotional avenues. In regard to the services rendered by the Doctors under the Director of Medical Education, the Government has specifically and expressly stated that the restructuring that is sought to be made from the common cadre of Associate Professor/ Professor which has been split as Associate Professor and Professor on the basis of the guidelines issued by the 3rd respondent/ Medical Council of India. The promotions would also be issued only based on the minimum teaching experience as per the Medical Council of India norms and that

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no relaxation will be given. For better appreciation, the relevant portion of the Government is extracted herein.

HEALTH AND FAMILY WELFARE (B2)

DEPARTMENT

G.O.(MS).No.354 Dated: 23.10.2009
Thiruvalluvar Aandu 2040
Iypasi:6

Read:

1.G.O.(Ms).No.194, Health and Family Welfare
Department, dated 07.07.2009.

Read also:

2.From the Special Secretary to Government,
Finance Department, letter No.384/SS/PK/2009, dated
03.08.2009.

.....

ORDER:

The Tamil Nadu Government Doctors Association (TNGDA) requested the Government that the Government doctors may be provided with Dynamic Assured Career Progression (DACP) due to lack of adequate promotional opportunities and stagnation at various levels in the system.

.....

II. Director of Medical Education Side:-

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xv) As a one time 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.”

9. As rightly pointed by the learned Additional Government Pleader, the restructuring came to be necessitated while granting this Dynamic Assured Career Progression in view of the amended notification issued by the 3rd respondent on 21.09.2009. Admittedly, the said notification had not been challenged by the petitioners. What they now seek under this Writ Petition is protection of their services as on the same grade pay which would amount to relaxing the norms prescribed by the Medical Council of India. Therefore, I am of the view that the Writ Petition could not be entertained, as it is not the case of the petitioners that the MCI norms are being violated in restructuring.

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9. It is further noted that one of the petitioner namely the 1st petitioner had been issued with an order of re-fitment on 15.09.2010 which had also given him a right to challenge the same, if such a re-fitment has been wrongly made. However, the same has also not been challenged. To which the learned counsel for the petitioner would submit that the Government order empowering the re-fitment itself is challenged and what was the order passed by the respondents was only a consequential order. If the Government order goes, then the order of re-fitment also goes. As I already found that the order of re-fitment had been made pursuant to the guidelines issued by the Medical Council of India, which had remained unchallenged, I am of the view that the Government order of restructuring of re-fitment cannot also be challenged without impugning the MCI norms.

10. For the aforesaid reasons, I do not find any merits in the Writ Petition and accordingly, the same is dismissed. However, there

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shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

1.The Tamil Nadu State Government,
Represented by its Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai – 600 010.

3.The Medical Council of India,

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Represented by its Secretary, Pocket 14, Sector – 8,
'Dwaraka' Phase – I, New Delhi – 110 077.

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