



W.P. No.7036 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

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Dr.A.Rajendran

...Petitioner

Vs

1. The Principal Secretary to Government
Health and Family Welfare
(B1) Department, Secretariat,
Chennai-9.

2. Director of Public Health and
Preventive Medicine,
Chennai- 600 006.

3. Director of Medical and
Rural Health Services,
Chennai – 6.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or order or direction in the nature of a writ or any other appropriate writ calling for the entire records in pursuant to the order of Promotion Counselling conducted on 12.01.2011 and 13.01.2011 for the post of Chief Civil Surgeon issued by the 3rd respondent vide No.190/E3/1/2010 dated 06.01.2011 in so far as excluding the name of the petitioner in the list of Medical Officers who



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are eligible to attend the counselling is concerned and quash the same and direct the respondents to promote the petitioner to the post of Chief Civil Surgeon from the date on which the Medical Officers who have attended the said promotion counselling were promoted with all consequential benefits.

For Petitioner : Mr.T.P.Prabakaran

For Respondents : Mr.U.M.Ravichandran
Special Government Pleader

ORDER

When the matter was taken up for hearing on 29.11.2022, this Court has allowed the Writ Petition on the ground that the petitioner was not under currency of punishment on the crucial date i.e., on 23.10.2009. However, on a perusal of the records, this Court found that the petitioner was under currency of punishment on the crucial date for promotion. Therefore, this matter has been posted today(20.04.2023) under the caption 'for clarification'.

2. Today, this Court has posed a question on the learned Special Government Pleader whether the petitioner was under currency of punishment during the crucial date. For that, he submitted that the



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petitioner was undergoing currency of punishment during the crucial date of promotion.

3. On hearing the above submissions, this court is inclined to pass the following order.

4. This Writ Petition has been filed by the petitioner praying to include his name in the List of Senior Assistant Surgeons and to consider him for the promotion to the post of Chief Civil Surgeon.

5. The petitioner was appointed as Assistant Surgeon through the selection process conducted by the Tamilnadu Public Service Commission on 14.07.1986 at Additional Primary Health Centre, Konur. Subsequently, he was promoted to the post of Civil Surgeon. He was issued with a charge memo by the second respondent vide letter dated 22.08.2007 for the allegation of unauthorized absence from 19.06.2005 to 22.06.2006.



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6. Learned counsel for the petitioner would submit that as per the direction of the Deputy Director of Health Services and disciplinary authority/1st respondent, the petitioner has not appeared before the Medical Board. Therefore, the 1st respondent/Disciplinary Authority imposed a punishment of stoppage of increment for a period of one year with cumulative effect vide G.O.(D).No.357, Health and Family Welfare Department (D1) Department, dated 25.03.2009. The 1st respondent/Disciplinary Authority also issued another G.O.(D).No.1221, Health and Family Welfare Department (D1) Department, dated 29.11.2010 to regularize the period of absence from 19.06.2005 to 22.06.2006 as non-duty and also stated that the non-duty period shall constitute an interruption in service and the past service shall not count for the purpose of leave. Hence, there is no punishment in currency against the petitioner and he is fully entitled to take part in the promotion counselling conducted on 12.01.2011 and 13.01.2011. However, the petitioner's name was not found in the promotion list of Senior Assistant Surgeons dated 10.01.2011 issued by the 3rd respondent. Aggrieved by the same, the petitioner had filed this writ petition.



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7. Learned Special Government Pleader appearing for the respondents would submit that the petitioner was on unauthorized absence from duty for a period of one year from 19.06.2005 to 22.06.2006. He also showed insubordination to the superiors by not appearing before the Medical Board as directed by the Deputy Director of Health Services and for that, disciplinary action was initiated against the petitioner and he was awarded a punishment of stoppage of increment for a period of one year in consonance with G.O.(D).No.357, Health and Family Welfare Department (D1) Department, dated 25.03.2009. He further submitted that though the petitioner has completed 20 years of service, he could not be considered for promotion in view of the said punishment which was under currency of punishment on the crucial date i.e., 23.10.2009 of the Panel. It is pertinent to note that, in Government Letter No.18824/S/2005-2, P&AR(S) Department dated 07/10/2005, the following instructions have been issued among others that,

“Whenever an Officer is undergoing any punishment, other than Censure, on the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should be



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passed over for that panel. If the currency of punishment continues at the time of subsequent consideration for the next panel(s), he should still be passed over on the grounds that an officer should not be considered for promotion or promoted during the currency of any punishment:”

As per the above instructions, the petitioner was not promoted as Chief Civil Surgeon in view of the crucial date of panel fixed on 23.10.2009 and the punishment of stoppage of increment for a period of one year with cumulative effect imposed on him vide G.O.(D).No.357, Health and Family Welfare Department (D1) Department, dated 25.03.2009 was under currency on the crucial date. Moreover, the petitioner was retired from his service on 27.06.2011.

8. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and also perused the materials available on record.



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9. Taking into consideration the nature of relief sought for in this writ petition, this Court is of the considered opinion that though the petitioner has completed 20 years of service in Tamilnadu Medical Service, his name could not be included for the refitment/promotion to the post of Chief Civil Surgeon, due to the currency of punishment as on the crucial date i.e., on 23.10.2009 vide G.O.(D).No.357, Health and Family Welfare Department (D1) Department, dated 25.03.2009. The petitioner has also retired from his service on 27.06.2011. In such view of the matter, the relief sought for by the petitioner cannot be granted by this court.

10. In the result, the Writ Petition is dismissed. No costs.

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Index:Yes/No
msv



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