



WEB COPY



W.P.No.19915 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.19915 of 2020

P.K.Asokan

...

Petitioner

/vs/

1. The Government of Tamil Nadu,
Health & Family Welfare Department,
Rep. by its Secretary to Government,
Secretariat, Chennai – 600 009.

2. The Director of Medical & Rural Health Services,
No.359, DMS Complex,
Anna Salai, Teynampet,
Chennai – 600 018.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the second respondent to consider the representation of the petitioner dated 10.01.2020 in the light of G.O.(Ms) No.354 Health and Family Welfare (B2) Department dated 23.10.2009 and the clarification letter issued by the Secretary to Government, Health and Family Welfare (A2) Department dated 22.03.2019 and grant the re-fitment



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to the petitioner in the substantive post of Chief Civil Surgeon with effect from 05.08.2013 (from the date of completion of 20 years of service) in the restructured cadre with all attached benefits, and all other attendant benefits including of further promotion and seniority.

For Petitioner ... Mr.D.Muthukumar
For Respondents ... Mr.T.Arunkumar
Government Advocate

ORDER

This Writ Petition has been filed for the issuance of a writ of mandamus directing the second respondent to consider the representation of the petitioner dated 10.01.2020 in the light of G.O.(Ms) No.354 Health and Family Welfare (B2) Department dated 23.10.2009 and the clarification letter issued by the Secretary to Government, Health and Family Welfare (A2) Department dated 22.03.2019 and grant the re-fitment to the petitioner in the substantive post of Chief Civil Surgeon with effect from 05.08.2013 (from the date of completion of 20 years of service) in the restructured cadre with all other attendant benefits including of further promotion and seniority.

2. The petitioner who was working as a Senior Assistant Surgeon from the year 01.02.2006 has sought the benefit of G.O.(Ms)No.354



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Family Welfare (B2) Department dated 23.10.2009 and claims that the advantage of re-fitment contemplated in the said Government Order should be extended to him and that his representations given to the respondents in this regard have not been considered so far.

3. The petitioner is said to be a Senior Assistant Surgeon in the year 01.02.2006. In the above Government Order, the Government fixed the eligibility of promotion of higher level of Director of Public Health and Preventive Medicine / Director of Medical and Rural Health Services / ESI / Foreign Service / other institutions and with regard to re-fitment, the following stipulations have been given as under:

“xv. The above eligibility is prospective i.e. for future promotions and it is not applicable to the existing structure. The Medical Officers on whom disciplinary action is pending/ punishments given are not eligible for the above exercise.

a. However, the above minimum periods would be for further promotions only, and would not be applicable while refitting the existing structure into the proposed structure. This refitment will be done based on the restructured posts, with the postulate that those who have completed 20 years may be fitted in the Chief Civil Surgeon level, those who have completed 15 years may be fitted in the Civil Surgeon level and those who have contemplated 8 years may be fitted in the Senior Assistant



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Surgeon level without taking into reckoning the minimum experience prescribed above for each level.

b. The Director of Medical and Rural Health Services will be empowered to do the refitment and effecting the promotions upto the level of Chief Civil Surgeon, on the guidelines above. However, the district level higher administrative posts should be prepared and sent to the Govt. for approval.”

4. According to the petitioner though he has got the required years of service in the year 2009 when the above Government Order was passed to refit him in the cadre of Chief Civil Surgeon, he was given with the said post only in the year 2021.

5. The learned Government Advocate submitted that the petitioner was on unauthorised leave from 17.12.2007 to 22.07.2010 and for which disciplinary action has been initiated and he has also been punished; the period of absence has been treated as Extraordinary Leave and hence those three year period for which he was absent shall not be included for the purpose of re-fitment.

6. The beneficial Government Order stating about re-fitment came into force at a time when the petitioner was absent. However, the learned



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counsel for the petitioner claims that the petitioner's earlier services ought to have been counted for the purpose of fitting him in the relevant post in accordance into his experience, but that was not done.

7. However the learned Government Advocate submitted that these promotions are person specific promotions and once the person whose fitment has been upgraded due to re-fitment, retires from service, the post will automatically downgrade to its original position. He further submitted that it is an one time measurement to encourage the Medical Officers who had rendered many years of service.

8. According to Government Advocate, the petitioner has missed the opportunity by being absent during the relevant point of time and hence he cannot claim the same any time later.

9. The petitioner earnestly believes that he would fulfill the condition stipulated in the Government Order, even though he was absent during the



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relevant point of time and he apprehends that the Government has a different understanding about the said Government Order, I feel the representation of the petitioner should be considered by the respondents in the light of the rules and its objectives and a detailed order should be passed.

10. The petitioner is at liberty to give a fresh representation to the second respondent and on receipt of the same, the second respondent shall consider the same and pass appropriate orders in accordance with the appropriate rules, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition is disposed. No costs.

20.10.2023

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



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R.N.MANJULA ,J.

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