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W.P.No.30251 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.30251 of 2022

Dr.G.Ashok Kumar

Petitioner

vs.

- 1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai-600 009.
- 2.The Director of Medical and Rural Health Services,
Chennai-600 006.
- 3.Dr.V.P.Harisundari,
Director of Family Welfare,
Full Additional Charge of Director of Medical and
Rural Health Services,
Chennai-600 006.
- 4.Dr.J.Rajamurthy,
Joint Director,
Office of the Director of Medical and
Rural Health Services (ESI),
Chennai-600 005.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to G.O.(D)No.1048 dated 30.09.2022, Health and Family Welfare (A2) Department, issued by the 1st respondent and quash the



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same and consequently direct the 1st respondent to place the petitioner to hold full Additional Charge of the post of Director of Medical and Rural Health Services, Chennai-600 006 or in the alternative to place the petitioner to hold full Additional Charge of post of Director of Medical Health Services (ESI), Chennai-6.

For Petitioner	: Mr.C.P.Sivamohan
For Respondents	: Mr.P.Muthukumar, State Government Pleader for R1 & R2 Mr.V.Prakash, Senior Counsel for M/s.Ganapathi for R4

ORDER

This writ petition has been filed challenging the Government Order issued by the first respondent in G.O.(D).No.1048 dated 30.09.2022 and for a consequential direction to the first respondent to place the petitioner to hold Full Additional Charge of the post of Director of Medical and Rural Health Services, Chennai or in any other alternative place.

2. The case of the petitioner is that he was promoted as Joint Director of Health Services on 04.11.2016 and subsequently was promoted as Additional Director of Medical and Rural Health Services (Planning & Development) in the year 2019. The further case of the petitioner is that he completed 33 years of service and his next avenue of promotion was to the post of Director of Medical and Rural Health Services.

3. The Government, by order dated 29.04.2022, identified 2 vacancies



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in the rank of Director of Medical and Rural Health Services and hence, a panel was prepared. In the said panel, 3 persons were identified and the name of the petitioner was found in Sl.No.3.

4. The incumbent, who was holding the post of Director of Medical and Rural Health Services, attained superannuation and retired on 31.07.2022. Dr.J.Malathi Prakash, whose name was at Sl.No.1 in the panel prepared, also retired and hence, Dr.S.Shamsath Begum, who was at Sl.No.2 in the panel was given Full Additional Charge of Director of Medical and Rural Health Services. She held that post for two months and she ultimately retired on 30.09.2022.

5. The grievance of the petitioner is that he was next in the line and should have been given Additional Charge of Director of Medical and Rural Health Services. The petitioner was also about to retire on 31.01.2023. Hence, the petitioner was expecting that he will be given Full Additional Charge. However, the first respondent through the impugned Government Order dated 30.09.2022 gave the Full Additional Charge to the third respondent. Aggrieved by the same, the present writ petition has been filed



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before this Court.

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6. The respondents 1 and 2 have filed their counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“15. It is submitted that when the proposal was sent on 06.05.2022 and at that time, the retirement date of Dr.J.Malathi Prakash and Dr.S.Shamsath Begum, Additional Director of Medical and Rural Health Services which was due on 31.07.2022, 30.09.2022 respectively and the petitioner is due to retire from Government service on 31.01.2023 AN. Moreover, in G.O. (Ms). No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, has fixed the eligibility for promotion as Head of Department as "that officer should have minimum one year of left over service before retirement". As per the above G.O, no one is eligible for the post of Director of Medical and Rural Health Services.

16. With reference to the averments made in paragraphs 18, 19 and 20 of the affidavit, it is submitted that Dr.S.Gurunathan, Director of Medical and Rural Health Services retired from Government service on attaining the age of superannuation on 31.07.2022 AN. In that post, Dr.S.Shamsath Begum, Additional Director of Medical and Rural Health Services was placed to hold full additional charge of the post of Director of Medical and Rural Health Services and she retired from Government service on attaining the age of superannuation on 30.09.2022 AN. Hence, Dr.V.P.Harisundari, Director of Family Welfare has been placed to hold full additional charge of the post of Director of Medical and Rural Health Services.

17. It is submitted that the name of the petitioner was next to Dr.S.Shamsath Begum included for consideration of the post of Director of Medical and Rural Health Services. However, mere inclusion of his name doesn't mean that he has to be placed to hold full additional charge of the post of Director of



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Medical and Rural Health Services after the retirement of Dr.S.Shamsath Begum. Further, third respondent, Director of Family Welfare is in the cadre of Director post and in G.O.(D).NO.1049, Health and Family welfare Department, dated 30.09.2022, she has been placed to hold full additional charge of the post of Director of Medical and Rural Health Services which is purely discretion of the Government.

18. With reference to the averments made in paragraphs 21, 22 and 23 of the affidavit, It is submitted that the post of Director of Medical and Rural Health Services (ESI) becomes vacant with effect from 01.04.2020. Initially, Dr.G.Ashok Kumar, Additional Director of Medical and Rural Health Services (Planning and Development) was placed to hold in-charge of the post of Director of Medical and Rural Health Services (ESI) vide G.O.(D).No.432, Health and Family Welfare Department, dated 21.04.2020.

19. It is submitted that when he was in-charge of the post of Director of Medical and Rural Health Services (ESI), various complaints have been received against the petitioner and due to administrative reasons, the petitioner herein relieved from the post of Director of Medical and Rural Health Services (ESI) vide G.O.(D).No.941, Health and Family Welfare Department, dated 25.08.2021 and he relieved from his duties on 26.08.2021 FN. Subsequently, in G.O. (D). No.1008, Health and Family Welfare Department dated 07.09.2021, Dr.J.Malathi Prakash, Additional Director of Medical and Rural Health Services (Inspection) is transferred and posted as Director of Medical and Rural Health Services (ESI) and she joined duty on 08.09.2021 FN. Due to her presence needed at Inspection wing, she was transferred back to the office of the Director of Medical and Rural Health Services as Additional Director of Medical and Rural Health Services (Inspection) in G.O.(D).No.1278, Health and Family Welfare Department dated 03.12.2021.

20. It is submitted that as per the above G.O, when she was relieved from the duties of the post of Director of Medical and Rural Health Services (ESI), charges have been handed over to the fourth respondent who is in the cadre of Joint Director of



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Medical and Rural Health Services (ESI) by making internal charge arrangement. Further, due to administrative reasons and some complaint petitions-in purchase of medicines under ESI scheme received against the petitioner, have been brought to the notice of the Government, then only he was relieved from the post of Director of Medical and Rural Health Services (ESI). In such a situation, again handing over the charges of the post of Director of Medical and Rural Health Services (ESI) to the petitioner herein will lead to administrative issues.

21. With reference to the averments made in paragraph 24 of the affidavit, it is submitted that the crucial date for preparing panel for the post of Director of Medical and Rural Health Services for the panel year 2022-23 is 15.03.2022 and as on crucial date, he is having less than one year left over service for consideration of the post of Director of Medical and Rural Health Services i.e., Head of Department and he is not fully eligible for that post as per the orders issued in G.O.(Ms).No.368, Personnel and Administrative Reforms Department, dated 18.10.1993.”

7. Heard Mr.C.P.Sivamohan, learned counsel for the petitioner, Mr.P.Muthukumar, learned State Government Pleader for the respondents 1 and 2 and Mr.V.Prakash, learned Senior Counsel appearing on behalf of the third respondent.

8. The limited issue that is involved in the present writ petition is as to



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whether the petitioner has a legal right to be considered to hold the Full Additional Charge to the post of Director of Medical and Rural Health Services.

9. It is apparent from the proceedings of the second respondent dated 06.05.2022 that a panel was prepared to fill up the vacancies to the post of Director of Medical and Rural Health Services. In the said panel, 3 names were included and the name of the petitioner was found at Sl.No.3. It is clearly stated in the abovesaid proceedings that none of the three are having one year of left over service. Hence, as per G.O.(Ms.)No.368, Personnel and Administrative Reforms (Per.S.) Department dated 18.10.1993, the post of Director of Medical and Rural Health Services could not be filled up with any of the eligible candidates whose name found place in the panel. Hence, the second respondent had requested the Government to relax the relevant rules.

10. Admittedly, rules were not relaxed. The first respondent thought it fit to manage the vacancies by giving additional charge to an otherwise qualified doctor. After the incumbent to the said post retired, Dr.S.Shamsath



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Begum was given Additional Charge as Director of Medical and Rural Health Services. She attained the age of superannuation on 30.09.2022. According to the petitioner, he was next in the line as per the panel prepared and hence, he should have been given Full Additional Charge of the post of Director of Medical and Rural Health Services. Instead, the third respondent was brought in and the same has been questioned by the petitioner.

11. The panel was prepared by the second respondent out of the eligible candidates for promotion to the post of Director of Medical and Rural Health Services. None of the candidates were able to be promoted, since they were not having one year of left over service. The Government also did not relax the relevant rules. Hence, the panel that was prepared by the second respondent lost its significance and the same cannot be the basis of the claim made by the petitioner to seek for Additional Charge of the post of Director of Medical and Rural Health Services. In other words, the petitioner cannot derive a legal right from the panel that was prepared by the second respondent. If the petitioner is seeking for holding Full Additional Charge of the post of Director of Medical and Rural Health Services, it must be traced to some rules which are admittedly not available.



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13. When it comes to giving Additional Charge, the same is done more by way of interim arrangement and the Government takes a decision by exercising its discretion and by considering the attendant circumstances. While exercising such a discretion, the third respondent has been given the Full Additional Charge, which is more temporary in nature. The same cannot be questioned by the petitioner since the petitioner is not able to trace any legal right to make such a claim.

14. Apart from the absence of a legal right, a stand has also been taken in the counter affidavit to the effect that there were complaints against the petitioner when he was holding the Additional Charge of the post of Director



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of Medical and Rural Health Services (ESI) and hence, he was relieved from his duties in the year 2021. In view of the same, the first respondent thought it fit not to grant Additional Charge of the post of Director of Medical and Rural Health Services to the petitioner. The said decision of the first respondent cannot be found fault with.

15. In the light of the above discussion, the relief sought for by the petitioner is unsustainable and in the result, the writ petition stands dismissed. No costs.

31.01.2023

Index : Yes / No
Internet : Yes / No
Jvm

To

- 1.The Principal Secretary,
The Government of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Medical and Rural Health Services,
Chennai-600 006.
- 3.Dr.V.P.Harisundari,
Director of Family Welfare,
Full Additional Charge of Director of Medical and



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Rural Health Services,
Chennai-600 006.

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4.Dr.J.Rajamurthy,
Joint Director,
Office of the Director of Medical and
Rural Health Services (ESI),
Chennai-600 005.

N.ANAND VENKATESH. J

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