



W.P.No.33235 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:20.06.2023

Delivered on: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.33235 of 2019

&

W.M.P.No.33696 of 2019

Dr.E.S.Amarnath

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Principal Secretary to Government
Health and Family Welfare Department
Secretariat, Fort St.George
Chennai-600 009

2.The Director of Medical Education
Kilpauk
Chennai-600 009

3.The Dean
Chengalpattu Medical College
Chengalpattu

4.Dr.B.Sudha

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order issue in Ref.No.4053/E3/4/2019 dated 04.11.2019 and the subsequent impugned fitment transfer and posting order in Ref.No.4053/E3/4/2019 dated 15.11.2019 issued by the 2nd respondent as well as the consequential relieving order in Ref.No.15681/E2/2019 dated .11.2019 (served on 21.11.2019) issued by the 3rd respondent and to quash the same in so far as the petitioner and the 4th respondent concerned and consequently directing the respondents 1 and 3 to give posting order to the petitioner to the post of Tutor in ENT speciality, Chengalpattu Medical College.

For Petitioner : Mr.G.Sankaran, Senior Counsel
for
Mr.S.Nedunchezhiyan

For Respondents : Mr.D.Gopal.Govt. Advocate

ORDER

The petitioner challenges an order dated 04.11.2019 and subsequent fitment transfer and posting order dated 15.11.2019 and the relieving order dated Nil November 2019 and to consequently direct the respondents 1 to 3 to give posting to the petitioner to the post of Tutor in ENT Speciality, Chengalpet Medical College.



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2. The case of the petitioner is that he completed his MBBS and P.G.Diploma in ENT. He was appointed as Assistant Surgeon in the Tamil Nadu Medical Service on 01.03.2007. Subsequently, he was given posting as a Tutor/Assistant Professor of Forensic Medicine in Chengalpet Medical College on 01.10.2010. While he was in service, he pursued his P.G Medical course and based on his post P.G, in counselling he was posted as Tutor/Assistant Professor of Community Medicine at Chengalpet Medical College on 20.06.2018. In the meantime, G.O.No.(4D)No.2 dated 15.02.2019 was issued seeking to streamline teaching posts sanctioned in Government Medical Colleges and Hospitals under the control of Director of Medical Education in accordance with norms of MCA and Patient Care departments. Following the same, notification for transfer counselling dated 24.05.2019 came to be issued which has been challenged by the Writ Petitioner. This Court, pending a Writ Petition in W.P.No.15215 etc., (batch) passed orders on 19.07.2019 and again on 31.07.2019, constituting a committee, with directions to receive objections/suggestions from all stake holders/doctors/associations with regard to promotion, postings, transfer and to formulate



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draft guidelines and submit the same before this Court. Such a report came to be submitted on 07.08.2019 and this Court passed final orders in a batch of Writ Petitions on 14.08.2019.

3. It is the grievance of the petitioner that contrary to the order of this Court dated 14.08.2019, the petitioner being fully qualified to the Post Graduate Diploma in ENT was given a posting in Department of Pathology which is a totally different department and not concerning his specialisation. Moreover, the 4th respondent has been accommodated in the post of Senior Resident in the ENT department despite being far junior to the petitioner, which is also in violation of the orders passed by this Court.

4. The 1st and 2nd respondents have filed a counter stating that after being posted as Tutor in Community medicine, the petitioner has not worked in the ENT department for 4 years and since there are M.D qualified Doctors, the petitioner was shifted to Pathology department. It is also stated that the petitioner would be accommodated in Community Medicine department if he



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passed M.D in Community Medicine and subject to vacancy arising. In so far as the appointment of the 4th respondent, as she has DLO qualification only, she was fir to be posted as Senior Resident in ENT at the Government Chengalpet Medical College based on her qualification. The Writ Petition was therefore liable to be dismissed.

4.A. Heard Mr.G.Sankaran,learned Senior counsel for Mr.S.Nedunchezhiyan, learned counsel for the petitioner and Mr.D.Gopal, learned Government Advocate for the respondents.

5. Learned Senior counsel would take this Court through the order of the learned single Judge dated 14.08.2019 in the batch of Writ Petitions and contended that the respondents have flouted the said orders and the same has resulted in a junior Doctor being promoted and posted in the ENT department ahead of the petitioner. Learned Senior counsel would also place reliance on G.O.Ms.No.66 and the proceedings of the Director of Medical and Rural Health Service. G.O.Ms.No.66 set outs the academic qualification for the



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post of Senior Resident. It mandates a Post Graduate qualification MD/MS/DNB/Diploma in the concerned subject and also requires teaching and research experience in the concerned post graduate subject after obtaining P.G. Degree/Diploma, besides the candidate also being below the age of 45.

6. In the proceedings of the Director of Medical and Rural Health Services dated 15.07.2022, it is seen that the petitioner is placed above the 4th respondent in the Civil Medical list for the year 2022. The further contention of the learned Senior counsel was that having completed MBBS and P.G. Diploma in ENT it was highly inappropriate to post the petitioner in Pathology department where he had no experience whatsoever and on these grounds, challenge is made to the impugned transfer and posting order.

7. Per contra, learned Government Advocate would state that the petitioner never worked in the ENT department and he was only in Community medicine department and subsequently posted to the department



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of Pathology and it is also further contended that the 4th respondent also qualified in ENT and she was therefore rightly posted as Senior Resident in the ENT department, considering all cumulative factors.

8. This Court, in a batch of Writ Petitions, in and by order dated 14.08.2019, based on the recommendation of specially appointed committee for over all cadre restructuring in medical services, directed the authorities to recommence the counselling exercise for the current year and complete the same on the basis of recommendations of the committee, within a period of three weeks. The committee had recommended the following:

“ For restructuring the post of Senior Resident, available vacancies may be filled with both PG Degree qualified and PG diploma qualified in that Particular specialty in 50:50 ratio and Medical Officers may be allowed to take part in the following order of preference.

1. Medical Officer qualified with PG degree/diploma in that particular specialty working under DME based on CML seniority

2. Medical Officer qualified with PG



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degree/diploma in that particular specialty working under DMS based on CML seniority

3. Service Post Graduates with PG degree/diploma based on CML seniority

4. Non Service Bond Candidates with PG degree/diploma.?”

9. It is also seen from the circular dated 06.09.2019 issued by the Directorate of Medical Education that in pursuance of the orders of this Court dated 14.08.2019 and in order to comply with the directions in the said order, a counselling was proposed to be held and the relevant instructions issued were:

“ 4. All sanctioned posts of Assistant Professor/Senior Resident/Junior Resident/tutor in concerned specialities will be shown as vacancies.

5. All Medical officers with PG degree/diploma qualification in concerned specialities working under DME should attend the counselling. Medical Officers with PG Diploma qualification will be considered only for the posts of Senior Resident/Junior Resident in concerned speciality.”



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10. It is also seen from the Annexure to the fitment transfer and postings order dated 04.11.2019 that the 4th respondent is far junior to the petitioner. Infact, the petitioner was given the post of Senior Resident in the department of ENT at Chengalpet Medical College in the counselling that was held on 10.09.2019. Despite the same, the petitioner's name was not included in the fitment based on the CML seniority amongst medical officers. It is also seen from the circular dated 06.09.2019 that in the scheduled counselling that was proposed to be held in furtherance and in compliance of the orders of this Court in W.P.No.15215 etc., dated 14.08.2019, as also pointed by the learned Senior counsel for the petitioner, in the 2nd respondents circular dated 06.09.2019 to conduct restructured counselling, the petitioner has been recognised to be qualified in P.G.Diploma in ENT and working in DME site and was allowed to participate and given allotment as seen from the Annexure to the said circular only to the post of Senior Resident in ENT Opthamlogy. Subsequently for reasons not known, his name has been omitted in fitment transfer and posting order issued thereafter on 04.11.2019. There is no plausible explanation for such omission of the



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petitioner's name despite the circular dated 06.09.2019 and inspite of specifying his posting as Senior Resident in ENT Opthamalogy Department.

Nowhere, admittedly, it is the case of the respondents that the 4th respondent is senior to the petitioner. Having sought to comply with the directions of this Court in the batch of Writ Petitions, made in order dated 14.08.2019 and having rightly held counselling on 10.09.2019 and appointing the petitioner to the ENT department (Opthamalogy), the respondents cannot take a U-turn and take a contrary stand and deny the petitioner his due posting. This goes against not only the recommendation of the specially appointed committee but also the subsequent directions passed by this Court in the final order dated 14.08.2019. To contend that the petitioner never worked in the ENT department for 4 years and therefore he has been posted in the Pathology department is not acceptable for the simple reason that when the respondents themselves take a stand for not accommodating the petitioner in the ENT department was because he did not work there for 4 years, applying the same logic, they cannot justify his posting to Pathology department where he has absolutely neither specialisation nor experience. In any event, it is an



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admitted fact that the petitioner holds necessary qualification in P.G Diploma and ENT and therefore the reasoning for not posting him in the ENT department is wholly unjustified.

For the above reasons, the Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

21.07.2023.

Internet:Yes

Index:Yes/No

Speaking order Yes/No

Neutral Citation:Yes/No

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To

1.The Principal Secretary to Government
State of Tamil Nadu
Health and Family Welfare Department
Secretariat, Fort St.George
Chennai-600 009

2.The Director of Medical Education
Kilpauk
Chennai-600 009

3.The Dean
Chengalpattu Medical College
Chengalpattu

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Pre-delivery order in
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