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W.P.No.35907 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.35907 of 2019

and

W.M.P.Nos. 36825 & 36826 of 2019, 12170 of 2020

Dr.Shanaz Begum

.. Petitioner

VS

1.The Principal Secretary to Government
Health and Family Welfare Department
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director of Indian Medicine and Homeopathy,
Arignar Anna Government Hospital
for Indian Medicine and Homeopathy,
Third Avenue, Anna Nagar High Road,
Near Anna Arch,
Chennai – 600 106.

3.The District Siddha Medical Officer,
Vellore District,
Government Bentland Hospital Campus,
Vellore – 632 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the Director of Indian Medicine and Homeopathy, Chennai-106 the second respondent herein made in Ref. No 6658/E1/2/2017 dated 11.12.2019 and the consequential proceedings issued by the District Siddha Medical Officer, Vellore District, Vellore, the third respondent made in Ref.No.568/E/2019 dated 20.12.2019 and affixed on 21.12.2019 quash the same and direct that the petitioner is deemed to be in service with all consequential service and monetary benefits with continuity of service and all other concomitant attendant benefits



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due to the petitioner and disburse all the arrears on the above head within a short date that may be fixed by this Court.

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For Petitioner : Mr.K.Rajkumar
For Respondents : Mr.R.Neethi Perumal
Government Advocate

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking interference with the proceedings of the second respondent, the Director of Indian Medicine and Homeopathy, Arignar Anna Government Hospital for Indian Medicine and Homeopathy at Chennai in Ref. No.6658/E1/2/2017 dated 11.12.2019 and consequential proceedings issued by the third respondent, the District Siddha Medical Officer, Vellore, Government Bentland Hospital Campus at Vellore, in Ref.No.568/E/2019 dated 20.12.2019 and quash both the said orders and direct that the petitioner is deemed to be in service with all consequential services and monetary benefits with continuity of service.

2. The petitioner herein is working as Assistant Medical Officer, Unani and had been appointed through Tamil Nadu Public Service Commission. She is now working under the third respondent. She had been appointed to the said post on 28.10.2014



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consequent to issuance of G.O.(Ms).No.345, Health and Family Welfare (IMZ-1) Department.

3. The petitioner at that particular point of time had produced educational certificates which indicated that she had passed her tenth standard examination in April, 1979 with Urudu as second language. She had subsequently passed her higher secondary examination in April, 1981, again with Urudu as second language. In view of this particular fact, as she had not studied Tamil language in formal educational course, there was an obligation placed that she should qualify herself in Language Test in Tamil on obtaining the Government employment as stipulated even in the appointment order had been issued to her.

4. In the appointment order issued in G.O.(Ms).No.345 Health and Family Welfare (IMZ-1) Department dated 28.10.2014, it had been very specifically stated that she along with others who had been so appointed do not possess adequate knowledge of Tamil and should pass a Second Class Language Test (Full Test) in Tamil within two years from the date of appointment and failing which, an order of discharge from service would be issued. The conditions of the appointment was, therefore, known to the petitioner herein.



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5. The petitioner had been quite diligent in appearing and making attempts to pass the said language test. It is on record to show that she had applied to write the language test eight times and had actually written it for seven times. On the fifth occasion, she was not permitted to appear since she had made some mistakes in filing up the form. On all those attempts however she was not able to pass the qualifying mark which is required to show that she actually passed the test.

6. At the time of filing the writ petition, the petitioner was 55 years of age. In view of this particular fact, since she had not passed this particular test, the respondents had passed the impugned order dated 11.12.2019 placing reliance of Section 21(2) of the Tamil Nadu Government Servants' (Conditions of Service) Act, 2016. Under the said provision, it had been stated that any candidate, if selected to the Tamil Nadu Government service should pass the second language test in Tamil as conducted by the TNPSC within a period of two years from the date of appointment. It had also been stated that if the candidate does not so pass the test, he / she shall be discharged from service.



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7. Taking note of the fact that the petitioner herein had not qualified for the test, and therefore holding that she does not possess adequate knowledge in Tamil, the petitioner was discharged from service by the impugned order. Questioning that particular order, the present writ petition has been filed.

8. Learned counsel for the petitioner fundamentally placed reliance on the orders passed by the respondents themselves granting exemptions to several other individuals and more particularly, to one individual, who was simultaneously appointed with the petitioner herein and who had never written that particular test and therefore there was no question of qualifying the said test, but had been granted exemption and had been permitted to retire. A series of Government Orders granting exemptions to various other individuals had also been pointed out by the learned counsel.

9. Learned counsel for the petitioner also pointed out G.O.(Ms).No.1120 P & AR Department dated 30.10.1984 by which, the Government had also recognized the difficulties in qualifying for this particular test and had, under certain conditions granted exemptions. The conditions were that the candidates should be less



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than 53 years of age and should have attempted the test at least five times.

10. Learned counsel for the petitioner stated that this particular Government Order was an extension of an earlier Government Order, which had been passed in G.O.(Ms).No.1398, Public (Services-A) Department, dated 29.05.1972, wherein the Government had recognized the difficulties in passing the said test and had granted exemptions.

11. It is contended by learned counsel for the petitioner that these Government Orders granting exemptions were passed by the P&AR Department which applies to every department and, therefore, states that these exemptions would override the stipulations that the candidate should be discharged from service if at all they do not qualify the Tamil language test.

12. Learned counsel for the petitioner also placed very strong reliance on the judgment of the learned Single Judge of this Court in W.P.No.16309 of 2010 dated 29.03.2011, wherein, the learned Single Judge had examined all the Government Orders granting exemption and also the Government Orders whereby the



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Government had granted specific exemptions to specific individuals and had therefore stated that the writ petitioner therein was being singled out for prejudicial treatment and had struck down the order of discharge from service on the only ground that the petitioner therein had not qualified for the said test.

13. On the side of the respondents, however, it had been stated that these exemptions and the order of learned Single Judge had been passed prior to the coming into force of the Tamil Nadu Government Servants' (Conditions of Service) Act, 2016. It had been stated that under the said enactment, which has now attained the force of law, Section 21 deals with linguistic qualifications and specifically provides that any person, who is appointed should qualify in basic knowledge of Tamil within a period of two years from the date of such appointment. It was also pointed out on the side of the respondents that failure to so qualify would entail an order of discharge.

14. It had therefore been contended that this particular provision would override every Government Order which had been referred to by the learned counsel for the petitioner and also the judgment of the learned Single Judge of this Court referred supra. It



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had therefore been stated that since the petitioner herein had not qualified, the only option available to the respondents is to discharge the petitioner from service.

15. When the writ petition had come up for admission, a learned Single Judge of this Court by order in W.M.P.No.36826 of 2019 dated 30.12.2019, had granted an order of interim stay. Seeking to vacate that particular interim stay granted on the basis on which the petitioner continues to function as Assistant Medical Officer under the third respondent, the State had filed W.M.P.No.12170 of 2020 seeking to vacate the interim stay.

16. I have carefully considered the arguments advanced and perused the relevant records.

17. The petitioner herein, had completed her tenth standard in April, 1979 with Urdu as the second language. She had then completed her higher secondary in April, 1981 again with Urdu as second language. She had then obtained a certificate issued to practice Unani System of Medicine and Surgery by the Tamil Nadu Board of Indian Science and she had obtained that certificate in the year 1989.



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18. Thereafter, finding that there was a post available as called for by the Tamil Nadu Public Service Commission to the post of Assistant Medical Officer (Unani), she had applied for the same and had been selected provisionally for being appointed as Assistant Medical Officer (Unani) in Tamil Nadu Medical Service in the year 2012. Her order of appointment was issued along with 18 other candidates in G.O.(Ms).No.345, Health and Family Welfare (IMZ-1) Department dated 28.10.2014. The relevant portion of the condition which is involved as an issue in the present writ petition is as follows:-

"4. Among the candidates temporarily appointed as Assistant Medical Officer (Unani) Sl.Nos. 1,2,3,4,6,7,8,9,10,11,12,13,14,15 and 16 in the approved list, do not possess adequate knowledge in Tamil. They should pass the second class language test (full test) in Tamil within a period of two years from the date of their appointment failing which they will be discharged from service."

19. The petitioner was thus aware that she should qualify herself and possess adequate knowledge in Tamil. With that particular intention to actually qualify herself, there is no denial or dispute of the fact that she had applied to write that particular examination eight successive times. This fact shows that she had been diligent enough and had applied herself to so qualify herself. It



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is not a case where after getting appointment, she had just forsaken that particular clause and had continued to discharge her without even attempting to write the examination.

20. The petitioner had put her foot forward but unfortunately she could not pass the said test. There was one attempt in May, 2017 which could be called the fifth attempt, but, owing to her filling up the form in an improper manner she was not permitted to write. But she subsequently again and again attempted. Every individual has some limitations and it could be found fault if they do not take any effort to overcome the limitation and just stagnate in the same place.

21. In the instant case, the petitioner had a limitation of not being able to pass the test but she did not let go after the first attempt but continuously applied for exam eight times. She had applied for atleast eight times and written the exam seven times. There have been earlier occasions when the Government had examined the difficulties of candidates who have been so appointed and could not pass the qualifying test. Exemptions had been granted with conditions.



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22. The first instance of such exemption being granted is G.O.(Ms).No.1398 dated 29.05.1972. By that particular Government Order, the Government had taken note of the difficulties which candidates might face and therefore they had brought in relaxation of Rules for exempting the Government Servants from passing the said test and instructions had been issued. It had been noted that even though the Government servants have put in service of about 20 years there had been only two or three attempts made to acquire the qualification and ultimately cases had come to the Government for relaxation of the Rules on the plea of being over aged.

23. In the instant case, the petitioner had been diligently attempting to pass the test. That is evident from the very fact that she had continuously applied to write the exam for eight times and had written the exam seven times and the only time only she did not write was owing to the wrong filling up of the application form and not for absenting herself from writing the exam. It was observed in G.O.(Ms).No.1398 that individual cases of exemption had been sought and, therefore, it was necessary that a general rule should be passed and therefore, it was stated in the Government Order as follows:-



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"... After careful examination the Government direct that cases for relaxation or rules for exempting Government servants from passing the special and departmental tests should satisfy the following criteria:-

- i) the Government servant should not be less than 50 years of age.
- ii) he should have made atleast five attempts to pass the test.
- iii) his record of service should be such as to merit the concession.

3. Department of the Secretariat and all Heads of Departments are requested to take into account the above factors while recommending cases for relaxation of rules.

(By order of the Governor)

Sd/-

Chief Secretary to Government."

24. The second Government Order which was issued is G.O.(Ms).No.1120 P&AR Department dated 30.10.1984. Again, it had been observed that since there were instances of candidates writing the exam and crossing the age limit before they could qualify for it and that the age limit previously fixed of 50 years was to the disadvantage of the government servants, the Government further relaxed the Rules and has ordered as follows:-

"சிறப்பு மற்றும் துறைத் தேர்வுகளில் ஒரு அரசு அலுவலர் தேர்ச்சி பெறுவதிலிருந்து விலக்கு அளிக்க அவர் பொருட்டு விதிகளை தளர்த்த கீழ்க்கண்ட நிபந்தனைகளை அவர் பூர்த்தி செய்ய வேண்டும்.

1. சம்மந்தப்பட்ட அரசு அலுவலர் 53 வயதிற்குக் குறையாதவராக இருக்க வேண்டும்.



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2. அவர் தேர்வுகளில் தேர்ச்சி பெற குறைந்தது ஐந்து தடவைகளாவது முயற்சி செய்திருக்க வேண்டும். இதற்கு அத்தாட்சியாக பணிப்பதிவேட்டில் (Service Register) விபரம் இருக்க வேண்டும் அல்லது இது குறித்து நுழைவுச்சீட்டுகளை (Hall Tickets) வைத்து சம்மந்தப்பட்ட அலுவலர் அனுப்ப வேண்டும்.

3. அவர் இந்த சலுகையை அடையத்தக்க அளவிற்கு அவருடைய பணிக்குறிப்புகள் மனநிறைவு அளிப்பதாக இருக்க வேண்டும்.

3) மேலே பத்தி 2-ல் குறிப்பிட்டுள்ள நிபந்தனைகளை சிறப்பு மற்றும் துறைத் தேர்வுகளிலிருந்து விதிவிலக்கு அளிக்க விதிகளை தளர்த்தக் கோரும் கோரிக்கைகளை பரிந்துரை செய்யும்போது கருத்திற்கொள்ளுமாறு அனைத்து செயலகத் துறைகள் மற்றும் துறைத் தலைமைகளை கேட்டுக்கொள்ளப்படுகிறது.

(ஆளுநரின் ஆணைப்படி)

கு.சொக்கலிங்கம்
அரசு தலைமைச் செயலாளர்"

25. These two Government Orders were taken note of by the learned Single Judge in the order in W.P.No.16309 of 2010 dated 29.03.2011. In the said order, the learned Single Judge had observed as follows:-

"27. Yet another issue to be considered is whether the Government had properly exercised its discretion in the matter of considering his request for relaxation, when he has satisfied the conditions prescribed in G.O.Ms.No.1120, P & AR Department, dated 30.10.1984. As per the said G.O., a Government



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servant, seeking exemption/relaxation of a pass in the Special Test or departmental test, has to satisfy the following conditions, (i) He should not be below 53 years, (ii) He should have attempted atleast 5 times to write the special examinations and (iii) He should have a satisfactory records of service.

28. G.O.Ms.No.1120, P & AR Department, dated 30.10.1984, deals with the relaxation of the rules, pertaining to passing of special or departmental tests. Though the said G.O., does not specifically deal with a pass in Tamil, this Court is of the view that passing of the language test could be construed as one of the Special tests for those, who have no adequate knowledge of the official language of the State."

26. The further thrust of the arguments advanced by the learned counsel for the petitioner was the Government Orders issued in individual cases whereby relaxation had been granted and in this connection learned counsel had placed reliance on the Government Order passed with respect to Dr.G.S.M.P.Khadri, who was formerly Tutor in Kilpauk Medical College at Government Royapettah Hospital and had retired from service and then had sought exemption from the said qualification of passing the Tamil language test. The Government passed G.O.(D) No.946 dated 08.08.2007 granting exemption and permitting the said individual to retire and further directed the Director of Medical Education to settle



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the terminal benefits of the said medical officer.

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27. There was yet another instance of Dr.S.S.Abdul Khudus Azami. The said individual was the petitioner in W.P.No.16309 of 2010. In his writ petition, he pointed out instances where the Government had exempted candidates from such qualification. His argument was addressed by the learned Single Judge in the said writ petition as follows:-

"29. When the petitioner has made a representation to grant relaxation of the rule, pertaining to passing of the second language test, i.e., rule 12-A of the General Rules for the Tamil Nadu State and Subordinate Service Rules, stating that he had appeared for nearly 27 times and even then, he could not pass the tests, crossed the age of 57 years and due for retirement, on 31.05.2010, and maintained an unblemished record of service, there is no reason, as to why, his case was not considered, in the light of the abovesaid government order.

30. In his representation, dated 21.01.2010, the petitioner has also referred to an order in G.O.Ms.No.946, Health and Family Welfare Department, dated 08.08.2007, passed in the case of Mr.G.S.N.Khadri, former Tutor, Government Medical College, who has been permitted to retire from Tamil Nadu Medical Service, by relaxing the rules, relating to non-passing of departmental test in Medical Code and Second Language Test in Tamil.



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31. Therefore, when the Government have exercised their power, granting exemption from passing the second language test in Tamil and departmental test, viz., Tamil Nadu Medical Code in the case of Mr.G.S.N.Khadri, no reasons have been given by way of any reply, as to why the Government have not considered the representation of the petitioner, dated 21.01.2010, in proper perspective, in terms of G.O.Ms.No.1120, P & AR Department, dated 30.10.1984 and G.O.Ms.No.946, Health and Family Welfare Department, dated 08.08.2007. There is no reason as to why the Government have applied different yardsticks to the petitioner, when the above said Mr.G.S.N.Khadri, appointed as Assistant Surgeon in Tamilnadu Medical Service, through the Tamil Nadu Public Service Commission w.e.f. 27.01.81 and regularised w.e.f. 27.07.1981, could not pass the second class language test in Tamil, till the date of his retirement, i.e., 31.10.2006, inspite of his appearance for seven times, has been granted exemption and whereas, the petitioner, who had even attempted for more than 27 times, has not been considered for grant of relaxation in terms of G.O.Ms.No.1120.

32. Failure on the part of the respondents to exercise their jurisdiction in terms of the above G.O., is per se apparent and violation of Article 14 of the Constitution of India, stands proved. Though the rules mandate that a person, who has no adequate knowledge of Tamil, after entry into service, has to pass the second language test in Tamil, conducted by the TNPSC, the object in



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imposing such a condition to pass the test, within the prescribed or extended period, as the case may be, presumably is to communicate with the departmental staff or officers or such other persons, depending upon the nature of job and understand the official correspondence or the orders, etc., and in the instant case, with the students and patients, who attend the hospital. The petitioner had entered the department of Indian Medicine and Hemopathy, in the year 1986. His services have also been regularised by the Government. Though he had worked in the same post without any promotion, material on record does not even indicate that the petitioner had come to any adverse notice from the students, patients, staff or officers or any other person with which he had to work or interact with the discharge of his duties.

33. There is no indication in the orders issued by the Government from time to time, discharging his services, imputing any misconduct nor he was unable to communicate with the abovesaid persons and therefore, he was not fit to continue in service and thus, exercise of powers under Rule 12-A of the abovesaid Rules, was warranted, instead of considering his case for relaxation, as per the government order, stated supra. As observed earlier, the respondents have failed to consider the case of the petitioner and exercise their discretion for relaxation, as per G.O.Ms.No.1120, and that discrimination is per se apparent, and there is violation of Article 14 of the Constitution of India.



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34. *In the absence of any serious complaints, from any of the quarters, stated supra, rejection of the request of the petitioner for relaxation of Rule 12-A of the General Rules is not only against the orders of the interim stay granted by the Tribunal and that the order of removal, a major penalty, cannot be inflicted, to achieve object of discharging him from service. As the petitioner has rendered 27 years of unblemished service, which is not controverted by the respondents, this Court is of the considered view that the Government ought to have shown some leniency in allowing the petitioner to retire peacefully from service, as done in the case of Mr.G.S.N.Khadri. Pension and other retiral benefits are the only source of income to a Government Servant, after rendering a long number of years of service. Except passing the second language test in Tamil, the petitioner had maintained a clean record of service, which deserves due consideration, and if pension and other retiral benefits are denied, it would cause serious hardship and agony. The petitioner has served his master satisfactorily for 27 years and he should not have been sent out by an order of removal, thus, depriving him of the retiral benefits, for the only mistake, in not passing the language test. Needless to say, even persons, who have committed misconduct are allowed to work, after awarding appropriate penalty, depending upon the gravity of the charge.*

35. *In such view of the above, this Court is inclined to interfere with the impugned order. Accordingly, the impugned order is set aside and*



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consequently, a direction is issued to the respondents to allow the petitioner to retire from service, by granting relaxation of the rules, with consequential service and monetary benefits, including retiral benefits and pension, with effect from the date of attaining the age of superannuation and disburse the arrears.

36. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed."

28. The learned Single Judge, had therefore, examined the issue of parity and equal application of the Rules with respect to every candidate and had faulted the Government by holding that there was an apparent violation of Article 14 of the Constitution of India. It was wondered as to how exemption was granted to one particular individual, and the writ petitioner therein was not granted the said exemption and therefore an order was passed granting such exemption directing the Government to permit the writ petitioner therein to retire from service and to grant the terminal benefits.

29. There is yet another instance also which is pointed out by learned counsel for the petitioner and that is G.O.(Ms.).No.1306, Health and Family Welfare Department dated 07.10.1991 with



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respect to Dr.Azeezur Rahaman Azani, wherein, again the said individual was granted exemption as a special case citing G.O.(Ms.)No.1120 dated 30.10.1984.

30. On the basis of these facts, if a perusal of the impugned order is now once again examined by this Court, it is seen that the impugned order had been passed by placing reliance on Section 21(2) of the Tamil Nadu Government Servants' (Conditions of Service) Act, 2016. It had been mentioned that the petitioner had been appointed with the specific condition that she should pass the Tamil language test as is required.

31. It is the contention of the learned counsel for the petitioner that another candidate, who had been similarly appointed along with the petitioner herein, Dr.Khaja Fareedudin, who was appointed as Assistant Medical Officer had not even written one exam to pass the test but had been permitted to retire. If that be the case, then the respondents will have to address that particular issue. That particular individual had also been appointed like the petitioner herein in G.O.(Ms).No.345 along with the petitioner and he had not even attempted the test even once.



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32. The petitioner had tried to pass the test by writing it again and again for at least seven times and had applied for eight times. When that particular individual had been permitted to retire, and if the petitioner had been discharged from service then the respondents will have to answer as to how they can discriminate between two equally placed persons. That should never be the policy of the Government. It should always provide equal treatment to everybody irrespective of any the conditions surrounding them.

33. There is no specific reply to this specific averment, except in the counter affidavit to state that no such exemption had been granted. However, it would only be worthwhile that the respondents re-examine the entire issue on the basis of the exemptions granted.

34. The petitioner may make a fresh detailed representation on the basis of all these exemptions granted with specific reference to Dr.Khaja Fareedudin and the respondents will necessarily have to answer as to how and under what instance that particular exemption was granted.



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35. Let me make it clear that if such an exemption had been granted to Dr.Khaja Fareedudin, the respondents will have no other option but to permit the petitioner to retire from service and grant all the terminal benefits. It all depends on the treatment which had been accorded to Dr.Khaja Fareedudin, Assistant Medical Officer, who had joined along with petitioner in G.O.(Ms.).No.345 dated 28.10.2014, as according to the petitioner, in sl.no.9. If he had been granted exemption then automatically, the petitioner is entitled for exemption.

36. Let the respondents examine all the surrounding circumstances and also examine whether that particular individual had any other circumstances prevailed on the respondents to grant him exemption. Let them first examine whether they had actually granted exemption and thereafter pass necessary orders. The petitioner may give a detailed representation in this regard specifically mentioning, quite apart from all the grounds taken, the instance of Dr.Khaja Fareedudin and on receipt of such representation, the respondents, may pass necessary orders before the petitioner attains the age of superannuation.



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37. The writ petition stands disposed of. It would only be in the interest of the petitioner that she gives a fresh representation as immediately as possible. No costs. Connected miscellaneous petitions are closed.

23.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

- 1.The Principal Secretary to Government
Health and Family Welfare Department
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Director of Indian Medicine and Homeopathy,
Arignar Anna Government Hospital
for Indian Medicine and Homeopathy,
Third Avenue, Anna Nagar High Road,
Near Anna Arch,
Chennai – 600 106.
- 3.The District Siddha Medical Officer,
Vellore District,
Government Bentland Hospital Campus,
Vellore – 632 001.



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C.V.KARTHIKEYAN,J.

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