



W.P.(MD)No.8536 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Pronounced on : 19.09.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.8536 of 2023

T.Gnanasekaran

... Petitioner

Vs.

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

**2.The Director of Medical Education,
Kilpauk, Chennai – 600 010.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Professor, Urology Department with effect from 15.03.2021 in the available vacancy.

**For Petitioner : Mr.K.Govindarajan,
For Mr.R.Murali.**

**For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader.**



W.P.(MD)No.8536 of 2023

ORDER

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Heard the learned counsel on either side.

2.The writ petitioner joined the Tamilnadu Medical Service on 20.11.1997 as Assistant Surgeon. He is possessing the following qualification:-

(a) M.S.(General Surgery)

(b) Mch (Urology)

He was working in the department of Urology in Madurai Medical College from 01.11.2010 to 15.04.2014 on deputation. He was formally designated as Assistant Professor with effect from 16.04.2014. The petitioner ought to have been promoted as Associate Professor in the year 2018 itself. The learned counsel for the petitioner submits that his name was actually included in the panel for the year 2018 – 2019 and that he was also called for counselling on 12.09.2018. The petitioner attended the same but placement order was not issued.

3.There was an issue regarding CML seniority and cases were pending before the Madras High Court. The petitioner filed W.P.(MD)No.25203 of 2018 in this regard. The batch of petitions pertaining to CML seniority were



W.P.(MD)No.8536 of 2023

disposed of on 25.04.2022. Thereafter, the petitioner's writ petition was also taken up for disposal and on 18.11.2022. This Court directed the respondents to grant promotion to the petitioner as Associate Professor. It was held that the petitioner's promotion will relate back to 2018 – 2019. This order was subsequently complied with on 14.02.2023.

4.In the department of urology as many as 10 vacancies in the post of professor are available. The petitioner requested the respondents to promote him as Professor. Since the petitioner's request was not considered, the present writ petition came to be filed.

5.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

6.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contentions. The stand of the respondents is that the petitioner ought to have atleast three years' experience as Associate Professor and since this requirement has not been complied with, the writ petition deserves to be dismissed. They also expressed their apprehension



W.P.(MD)No.8536 of 2023

that if contrary to the requirement rules, the petitioner is promoted as Professor, that will attract the ire of National Medical Commission. The respondents called upon this Court to dismiss the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. “Teachers Eligibility Qualifications in Medical Institutions Regulations 2022” was issued by the National Medical Commission vide notification dated 14.02.2022. The learned counsel for the petitioner states that the earlier regulations were also broadly in *pari materia*. In the counter also, it is stated that the norms for faculty appointment and promotion to the post of Professor is that the candidate must have been an Associate Professor for three years in the subject and should have atleast four research publications (atleast two as Associate Professor). The petitioner in his affidavit filed in support of the writ petition had asserted that he is having four research publications.

7.In the counter affidavit, this aspect of the matter has not been specifically dealt with. The only stand taken by the respondents is that since the petitioner was appointed as Associate Professor only on 14.02.2023, he cannot be deemed as having experience at Associate Professor for three years. Their further stand is that the research publications should have been made in



W.P.(MD)No.8536 of 2023

his capacity as Associate Professor. Since two out of four research publications should have been in his capacity as Associate Professor, publications made prior to 14.02.2023 will not be taken into account.

8.As already pointed out that the petitioner ought to have been promoted as Associate Professor way back in the year 2018. In fact, he was empaneled and also called for counselling. Since placement order was not issued, W.P.(MD)No.25203 of 2018 filed before this Court. The prayer in the said writ petition was as follows:-

“Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 4 to issue promotion order as Associate Professor in Urology Department in favour of petitioner based on the proceedings of fourth respondent made in Reference No. 35588/E1/2018 circular dated 12.09.2018.”

During the pendency of the writ petition, the batch of cases filed by various persons with regard to CML seniority were disposed of on 29.04.2022. Pursuant thereto, G.O.(Ms)No.1213 Health and Family Welfare Department dated 14.11.2022 came to be issued. The said Government Order reads as follows:-



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ABSTRACT

Tamil Nadu Medical Service - Panel for the post of Associate Professor of Urology for the year 2018-19 - Approved - Orders - Issued

Health and Family Welfare (A5) Department

G.O.(D)No.1213

Dated:14.11.2022

சுகாதார, குடும்ப - 28

தேயுமெரும - 2053

Read:-

1. G.O.(D)No.953, Health and Family Welfare Department, dated 07.08.2022.
2. From the Director of Medical Education, Letter No.76584/E1/1/ 2021, dated 18.08.2022.

ORDER:-

The Government Order first read above, the Government have approved the estimate of vacancy for the post of Associate Professor of Urology in Tamil Nadu Medical Service by promotion as 5 (FIVE) for the year 2018-19.

2. Based on the estimate of vacancy approved by the Government in the Government Order first read above, the Government approve the regular panel for the year 2018-19 consisting the name of the following Medical Officer fit for promotion to the post of Associate Professor of Urology.

Sl.No.	Name and Designation	CML / 2022
1.	Dr.S.Frank Davis Daniel, Assistant Professor of Urology, Kanyakumari Government Medical College, Asaripallam	552
2.	Dr.S.Mangaiyarkarasi, Assistant Professor of Urology, Tirunelveli Medical College, Tirunelveli.	931
3.	Dr.T.Chanasakaran, Assistant Professor of Urology, Madurai Medical College, Madurai.	1105
4.	Dr.K.Jayaprakash Narayanan, Assistant Professor of Urology, Thanjavur Medical College, Thanjavur.	1114
5.	Dr.K.V.Arasi, Assistant Professor of Urology, Stanley Medical College, Chennai.	1464



W.P.(MD)No.8536 of 2023

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3. The Director of Medical Education is directed to communicate a copy of this order to other Medical Officer, if any, in the cadre of Assistant Professors, who are seniors to the above mentioned Medical Officers, by Registered post with specific instructions that appeal if any, shall be submitted through proper channel within two months from the date of issue of this order.

(BY ORDER OF THE GOVERNOR)

P.SENTHILKUMAR,
PRINCIPAL SECRETARY TO GOVERNMENT.

To

The Director of Medical Education, Chennai-600 010.

The Medical Officers,

- Through the Director of Medical Education, Chennai-600 010.

The Accountant General, Chennai-600 010.

The Pay and Accounts Officer, Concerned.

The District Treasury Officer, Concerned.

Copy to:-

The Special Personal Assistant to Hon'ble Minister (Health), Chennai-600 009.

Data Cell / Stock file / Spare copy.

// FORWARDED / BY ORDER //

M. Senthil Kumar
SECTION OFFICER



W.P.(MD)No.8536 of 2023

9. Vide order dated 18.11.2022, I directed the respondents to give effect to the said government order. It was specifically made clear that the petitioner's promotion as Associate Professor will relate back to 2018 – 2019 and that his right to be promoted as Professor will be considered by reckoning his promotion to the post of Associate Professor from the year 2018 – 2019. This order has become final. In fact, it came to be implemented vide G.O.(Ms)No.169 Health and Family Welfare Department 14.02.2023. The right of the petitioner should therefore be determined only with reference to the order dated 18.11.2022 made in W.P.(MD)No.25203 of 2018.

10. When this Court had specifically held that the petitioner's promotion as Associate Professor will relate back to 2018 – 2019 and his right to be promoted as Professor will be considered by reckoning his promotion to the said post of Associate Professor from the year 2018 – 2019, it is not open to the respondents herein to raise any contention to the contrary. I, therefore, hold that the petitioner fulfils the eligibility requirement of three years experience as Associate Professor already. The research publications of the petitioner were made on 04.04.2017, June 2017, March 2019, April 2019 and 02.01.2023. The learned counsel for the petitioner states that two of the research publications were made in March 2023 and that on the own showing of the respondents, the statutory requirement is fulfilled.



W.P.(MD)No.8536 of 2023

11. Even if I discount the research publications made in March 2023, still the fact remains that five other publications were made even before that. In the year 2019 itself, the petitioner had made two publications. When in the affidavit filed in support of the writ petition, the petitioner has asserted that he is having four publications, if according to the respondents, they do not meet the requirement as set out in the regulations, they should have said so accordingly. Instead the only argument put forth by the respondents is that since the publications were not made by the petitioner in his capacity as Assistant Professor, they cannot be taken into account. Since I have held that the petitioner must be considered as an Associate Professor with effect from the year 2018 – 2018, the logical inference is that the petitioner fulfils the norms regarding publication also. Thus, both the objections raised by the respondents are negated. The first respondent is directed to appoint the petitioner as Professor (Urology) forthwith and without any delay.

12. This writ petition is allowed accordingly. No costs.

19.09.2023

Index : Yes / No
Internet : Yes / No
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W.P.(MD)No.8536 of 2023

G.R.SWAMINATHAN, J.

ias

To:-

- 1.The Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai – 600 010.

WP(MD)No.8536 of 2023

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