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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

and

W.M.P.(MD)Nos.14013 of 2019,

1879 and 1880 of 2020

W.P.(MD)No.17527 of 2019:

S.Subramian

... Petitioner in both cases

vs.

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

2.The Director,
Department of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.



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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

3.The Commissioner/The Special Commissioner,
Department of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.

4.A.Rafeek Ahmed
5.S.Susukannama
6.J.Mabel Arulmani
7.S.Padmanaban
8.M.Parvatham
9.S.Kasthuri
10.B.Ramasamy
11.P.M.Shanmuga Vadivel
12.M.Saribanu
13.R.Thilagamani
14.R.Rajaselvi
15.C.Senthilkumar
16.M.Prabhakaran
17.R.Mala

... Respondents in both cases

***(R5 to R17 are Suo motu impleaded,
vide Court order, dated 18.10.2022, in
W.P.(MD)Nos.17527 of 2019 and
2224 of 2020)***

PRAYER in W.P.(MD)No.17527 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 3rd respondent in Ref.No.



WEB COPY

W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

6521/E1/1/2017, dated 31.10.2017 and the order, dated 09.07.2018 in Na.Ka.No. 6521/Ne.1/2017 of the 2nd respondent and to quash the same and consequently, to direct the respondents to revise the seniority list and place the petitioner in the appropriate place and to promote the petitioner as per his date of appointment, i.e., 31.03.1988.

PRAYER in W.P.(MD)No.2224 of 2020:: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st respondent in G.O.(2D)No. 184, Health and Family Welfare [M I-1] Department, dated 20.11.2019 and to quash the same and consequently, to direct the 1st respondent to revise the promotional panel list and place the petitioner in the appropriate place as per his date of appointment, i.e., 31.03.1988.

In both cases:

For Petitioner	: Mr.G.Prabhu Rajadurai for Mr.C.Mahadevan
For R1 to 3	: Mr.R.Suresh Kumar Additional Government Pleader
For R4	: Mr.R.J.Karthick
For R15 to 17	: Mr.V.Karthikeyan
For R6, 12 and 14	: No appearance



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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COMMON ORDER

These two writ petitions are filed by the same petitioner. The prayer in the writ petition W.P.(MD)No.17527 of 2019 is for writ of Certiorarified Mandamus, to quash the impugned proceedings dated 31.10.2017 of the 3rd respondent and the impugned order, dated 09.07.2018, of the 2nd respondent and consequently to direct the respondents to revise the seniority list and place the petitioner in the appropriate place and to promote the petitioner as per his date of appointment, i.e., 31.03.1988.

2. The prayer in the writ petition W.P.(MD)No.2224 of 2020 is for writ of Certiorarified Mandamus, to quash the proceedings of the 1st respondent in G.O. (2D)No.184, Health and Family Welfare [M I-1] Department, dated 20.11.2019 and consequently to direct the 1st respondent to revise the promotional panel list and place the petitioner in the appropriate place as per his date of appointment,



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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i.e., 31.03.1988.

3. The brief facts of the case are that in the year 1988, the Department of Indian Medicine and Homeopathy newly created Assistant Medical Officer Posts in Government Hospital for Siddha Medicine and with a view to fill up the same immediately 186 candidates who were holding BS., MS., Degree and practicing Siddha were appointed on temporary contract basis as Assistant Medical Officers by the 1st respondent. On expiry of their contract period their service period was extended as per Rule 10(a)(i) of Tamil Nadu Sub Ordinate Service Rules. In the year 1989, Tamil Nadu Public Service Commission which is the appropriate authority for recruitment of the above post was taking steps for conducting a qualification examination for the post of Assistant Siddha Medical Officers and issued notification and called for applications for recruitment of 162 posts. For the 162 posts, 186 candidates who were appointed under 10(a)(i) of the Tamil



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

Nadu Subordinate Service Rules including the petitioner also appeared in the said TNPSC written examination and oral interview. Totally out of the said 186 candidates, 108 candidates were selected in the said TNPSC examination. The selection was based on performance and skill. The selected 108 candidates were placed in appropriate seniority in the seniority list, dated 12.10.1999, from the date of TNPSC selection along with the other 54 fresh candidates who cleared the TNPSC examinations directly. 78 candidates out of 186 candidates who did not pass in the TNPSC examinations were retained in service due to want of vacancy and all of them were given another opportunity. In the 2nd TNPSC examination some of them did not appear and only 30 candidates passed and they were absorbed in regular vacancy and placed in appropriate seniority below the petitioner as per TNPSC selection.

4. In the meantime, some of the candidates who were appointed on



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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temporary basis but not selected through TNPSC examination, filed O.A.No.707 of 1991, on the file of the Tamil Nadu Administrative Tribunal, seeking regularization of the temporary appointments. The said O.A.No.707 of 1991 was allowed and a direction was given to consider the regularization of the service. However, there was no direction regarding the period from and when the service should be regularized. Based on the order G.O.Ms.No.442, dated 12.08.1997, was issued for age relaxation to all 48 candidates who did not clear the TNPSC examination in the 2nd attempt and also enables the candidates who did not file any petition before the Tribunal. The said G.O., speaks about the age relaxation but not about the regularization or the seniority of 48 candidates. The seniority list was prepared on 12.10.1999 by the 2nd respondent. The 2nd respondent has not placed the candidates who did not pass the TNPSC examination and who were regularized under the said G.O.Ms.No.442, as they were not recruited through TNPSC examination. The Government of Tamil Nadu passed G.O.Ms.No.354,



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

Health and Family Welfare Department, dated 23.10.2009, creating avenues of promotion opportunity from the Government Doctors in Allopathy side on the recommendations of the Committee constituted by the Government under G.O.Ms.No.194, Health and Family Welfare Department, dated 07.07.2009. In the said G.O.s, the Doctors who belong to Siddha Indian System of Medicine Division was not considered for promotion. Hence, the President of Government Siddha Doctors Association submitted a representation, dated 29.07.2009, to the Government and requested the Government to extend the benefits of promotion to them also. Based on the representation, the Principal Secretary and Commissioner of Indian medicine and Homeopathy, had submitted for promotion of the Siddha Doctors, vide letters, dated 29.07.2009, 17.08.2009 and 20.08.2009.

5. The contention of the petitioner is that even though the seniority panel was drawn in the year 1997, there was no promotion given on the basis of the



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

panel. After several rounds of meeting with the 1st respondent, it was decided that the proposal of the Principal Secretary and Commissioner of Indian Medicine will be accepted by the Government with certain modifications. Hence, G.O.Ms.No. 51, Health and Family Welfare (1M2-1) Department, dated 25.03.2013, was issued by the 1st respondent after certain modification on the proposal of the Principal Secretary for creating promotional opportunities to Doctors in Indian system of Medicine and Homeopathy. The petitioner and other Doctors who were working as Assistant Medical Officers got promotion. Based on G.O.Ms.No.51, Health and Family Welfare (1M2-1) Department, dated 25.03.2013 and the seniority list, dated 12.10.1999, the 3rd respondent issued the promotion panel, dated 03.05.2014, for the newly created Medical Officer post from the Assistant Medical Officers. Accordingly, the 3rd respondent requested all the doctors in the promotion panel to furnish their details for completing the promotion procedure. Hence, the petitioner and other doctors furnished the details and the same was



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

also forwarded to the 1st respondent.

6. In the meanwhile, the Assistant Medical Officers who were appointed by G.O.Ms.No.442, dated 12.09.1997, challenged the promotion panel in W.P.(MD) No.10917 of 2014 before this Court, but no stay was granted. The petitioner and the similarly placed Doctors filed an impleading petition in M.P.(MD)No.4 of 2014 in W.P.(MD) No.10917 of 2014. Since no stay was there, the petitioner insisted the respondents to grant promotion and the 1st respondent assured that the promotion will be finalized, but there was no progress. Thereafter, the 1st respondent passed G.O.Ms.No.614, giving promotion to the 1st batch of candidates and this was also challenged in W.P.No.15713 of 2015. There was an interim direction that any promotion made will be subject to the outcome of the writ petition. In spite of the same, there was no promotion. Some of the Doctors attained superannuation and hence, the petitioner and some of the Doctors filed



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

W.P.(MD)No.1269 of 2016, for writ of Mandamus, directing the respondents to promote the petitioners therein to the post of Medical Officers (Siddha) based on promotion panel, dated 03.05.2014 and as per G.O.Ms.No.51, Health and Family Welfare (IM 2-1) Department, dated 25.03.2013, with effect from 2013 and the same is pending.

7. In the meanwhile, 3rd respondent on 31.10.2017, published the seniority list in his proceedings in Ref.No.6521/E.11-2017, in which the petitioner even though has joined duty on 31.03.1988 is completely neglected and most junior who is the 4th respondent herein and who have not even passed the TNPSC examination were given seniority No.350B, but he was appointed only on 11.05.1989. Since the petitioner was not assigned proper seniority list, the petitioner submitted a representation to the respondents on 28.11.2017 and filed W.P.(MD)No.1495 of 2018, challenging the order, dated 31.10.2017. The said



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

writ petition was disposed of observing that the representation of the petitioner seeking revision of his seniority has been considered and orders were passed by the 2nd respondent on 09.07.2018, and was dismissed as infructuous. However, liberty was granted to the petitioner to challenge, the order, dated 09.07.2018. Hence, the present writ petition in W.P.(MD)No.17527 of 2019 is filed challenging both the orders dated 31.10.2017 and 09.07.2018. Pending the same, the 1st respondent by proceedings in G.O.(2D)No.184, Health and Family Welfare [IM I-1] Department, dated 20.11.2019, had drawn panel for the post of District Siddha Medical Officer/Medical Officer (Siddha) for the year 2019-2020, wherein the 4th respondent a far junior of the petitioner in service had been placed above the petitioner. Aggrieved over the same, the petitioner has filed W.P. (MD)No.2224 of 2020. Since the facts are same in both the writ petitions, both are taken up for hearing and a common order is passed.



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

8. The official respondents have filed counter affidavit in both the writ petitions wherein it is stated that the post of Assistant Medical Officers of Indian Medicine and Homeopathy Department was coming under the purview of Tamil Nadu Public Service Commission at the time of appointment of the petitioner. Now, the same has been brought into the purview of Medical Services Recruitment Board. The petitioner was initially appointed as Assistant Medical Officer through employment exchange with effect from **31.03.1988**. Subsequently, the petitioner has been selected through Tamil Nadu Public Service Commission for the year 1989-1990 and temporarily appointed as Assistant Medical Officer as per G.O.Ms.No.362, Health & Family Welfare Department, dated 12.03.1991. Also, certain candidates who were already working under Rule 10 (a)(i) of the Tamil Nadu Government Service and new recruits were selected for the year 1989-1990 and appointed as Assistant Medical Officers and the list was furnished in Government letter, dated 10.03.1994. The Government in



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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G.O.Ms.No.932, Health and Family Welfare Department, dated 29.12.1994, have regularized the temporary services of the petitioner with effect from 31.03.1988, i.e., from the date of his initial appointment allowing him to get monetary benefit retrospectively, wherein it has been clearly indicated that his rank shall be in the order in which the Tamil Nadu Public Service Commission has assigned rank. Thus, the petitioner is not entitled to claim seniority from the date of his temporary appointment.

9. The seniority list of doctors working in various cadres in Indian System of Medicine and Homeopathy Department including such persons were published on 12.10.1999. The list of candidates whose services were regularized in G.O.Ms.No.442, Health and Family Welfare Department, dated 12.09.1997 and G.O.Ms.No.245, Health and Family Welfare Department, dated 04.06.1998, alone were kept separately with a note that the seniority in respect of Assistant Medical



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

Officers will be communicated later. Subsequently, they were assigned seniority as per proceedings, dated 24.09.2014 and placed below the petitioner. The Government have considered the directions of Tamil Nadu Administrative Tribunal and accepted the suggestion of the Tamil Nadu Public Service Commission to regularize the services of all Assistant Medical officers by relaxing rules in favour of them wherever necessary. Accordingly, the Government of Tamil Nadu relaxes the provisions of rule 7 (relating to Rule of Reservation) of the Adhoc Rules and rule 4 (relating to age) of the said Rules in favour of Dr.K.Rajamma who is over aged were relaxed.

10. As far as the averments made in paragraph 6 and 7 of the affidavit are concerned, the respondents submitted that the list, dated 12.10.1999, published by the Department, the Assistant Medical Officers whose services were regularized in G.O.Ms.No.442, Health and Family Welfare Department., dated 12.09.1997



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

and G.O.Ms.No.245, Health and Family Welfare Department, dated 04.06.1998, were kept separately.

11. The contention of the petitioner is that these Assistant Medical Officers were separately as they did not get through the Tamil Nadu Public Service Commission is not true, since there are earlier instances in which similarly placed incumbents who were recruited through employment exchange and subsequently regularized, have been placed in the seniority list as done in G.O.Ms.No.876, Health and Family Welfare Department, dated 30.11.1994.

12. The petitioner submitted a representation, dated 28.11.2017, for revision of seniority stating that the 4th respondent who had joined in service on 11.09.1989 as his junior. The 5th respondent considered the representation and informed through letter, dated 30.05.2018, that only based on the orders passed in



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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W.P.No.41500 of 2006, on 06.07.2010, the Government has issued orders permitting the Director of Indian Medicine and Homeopathy, Chennai, to fix the seniority of the 51 Assistant Medical Officers (Siddha), those absorbed from the Panchayat Union Service in G.O.Ms.No.298, Health And Family Welfare Department, dated 24.08.2017 and accordingly, the seniority of the 4th respondent who has been absorbed from the Panchayat Union service in which he was appointed with effect from **11.05.1989** whereas the petitioner was appointed as per G.O.Ms.No.362, Health & Family Welfare Department, Dated 12.03.1991, his seniority has been assigned as per the seniority assigned by the Tamil Nadu Public Service Commission as ordered in G.O.Ms.No.932, Health and Family Welfare Department, dated 29.12.1994, while regularizing the temporary services of the petitioner.

13. The fact has been intimated to the petitioner by the 2nd respondent in his



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

letter, dated 09.07.2018. Now, the petitioner has challenged the said reply. Since the petitioner was appointed as per G.O.Ms.No.362, Health and Family Welfare Department, dated 12.03.1991, his seniority has been assigned as per the seniority assigned by the Tamil Nadu Public Service Commission as ordered in G.O.Ms.No.932, Health and Family Welfare Department, dated 29.12.1994, while regularizing the temporary services of the petitioner and as per the rules in force. Hence, the first respondent in G.O.(2D) No.184, Health and Family Welfare Department, dated 20.11.2019, have approved the panel for the post of District Siddha Medical Officer / Medical Officer (Siddha) for the year 2019-2020 considering the names of the 36 Assistant Medical Officer (Siddha) in the order of their seniority wherein the petitioner has been placed in serial no.15 according to his existing seniority. Hence, the official respondents submitted that the petitioner is not entitled to be placed before the 4th respondent.



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

14. Heard Mr.G.Prabhu Rajadurai, learned Counsel appearing for the petitioner, Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for respondents 1 to 3, Mr.R.J.Karthick, learned Counsel appearing for 4th respondent and Mr.V.Karthikeyan, learned Counsel appearing for respondents 15 to 17 and perused the records.

15. The preliminary objection of the 4th respondent is that some of the individual respondents were not served and the petitioner has not impleaded some of the aggrieved persons.

16. On perusal of the earlier proceedings, it is seen that this Court has suo motu impleaded respondents 5 to 17. The 4th respondent was already arrayed as one of the respondents by the petitioner and he is being represented by learned Counsel Mr.R.K.Karthick. The respondents 15 to 17 are represented by learned Counsel Mr.V.Karthikeyan. The respondents 5 to 14 are similarly placed persons



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

like the petitioner and they are not being represented by any Counsel. However, the relief sought by the petitioner is against the respondents 4 and 15 to 17. Since they are represented by learned Counsels, this Court is proceeding to hear the case on merits.

17. The issue that was raised by the respondents is that the petitioner was appointed as 10(a)(i) appointee as early as 1988 and hence the service period rendered as 10(a)(i) service cannot be considered for fixing the seniority. The respondents relied on two judgments for the proposition that 10(a)(i) service period cannot be considered for regularization. The Hon'ble Supreme Court in the case of ***K.Madalaimuthu and another Vs. State of Tamil Nadu and others*** reported in **(2006) 6 SCC 558** and the relevant portion is extracted hereunder:

“After discussing the relevant rules relating to the appointment of District Registrars in terms of the Tamil Nadu State and Subordinate Service and the Special Rules, the High Court came to a finding that Rule 23-a of the



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

General Rules were relevant regarding the filling up of the vacancies by direct recruitment.

In order to understand the reasoning of the High Court, the provisions of Rule 23-a are set out hereinbelow:-

"Rule 23 (a) - If a person appointed temporarily either under sub-rule (a) or sub rule (d) of the Rule 10 to fill a vacancy otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under General Rule 10 (a) or 10 (d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may, in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine:



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of commencement of probation of the junior most person already in service."

According to the High Court, though initially the appointment of the promotee District Registrars was said to have been made under Rule 10 (a) (i) (1) of the General Rules, since they had been subsequently recruited by transfer and included in the list of direct candidates, the appointing authority had the discretion either to allow them to commence their probation from the date of their first temporary appointment or from such subsequent date as the appointing authority chose to determine. The High Court held in the instant case that when the appointing authority had not determined any subsequent date for the commencement of the probation by the promotee District Registrars, it would mean that they would deemed to have been allowed to commence their probation from the date of their first temporary appointment. In other words, the moment they commenced their probation were said to be appointed to the service. Negating the submissions made on behalf of the appellants herein that since the initial temporary appointments of the promotees had not been made according to the rules, their seniority could not be reckoned from the date of their initial appointment under Rule 10 (a) (i) (1) of the aforesaid rules and placing



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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reliance on Rule 4 (a) of the aforesaid rules, the High Court distinguished the various decisions cited on behalf of the appellants herein to bolster their case that appointment in accordance with the rules is a condition precedent in counting seniority. The High Court held that the appointment of the promotees had been made in accordance with the Rules and in particular Explanation II to Rule 4 and that having regard to the above, the said decisions would have no application to the facts of the case. On the contrary, the High Court was of the view that the appointments of the promotees, though temporary and ad hoc, were not by way of any stop-gap arrangement and the decision of this Court in the case of [I.K. Sukhjija & Ors. vs. Union of India](#) reported in 1977 (6) SCC 406 was relied upon in support of the view that when promotions are made on ad hoc basis against clear vacancies, the seniority will be counted from the date of the initial appointment and not from the date of confirmation.

On the basis of its aforesaid reasoning, the High Court chose not to interfere with the common order passed by the Tribunal and dismissed the writ applications filed by the appellants herein.

As indicated hereinbefore, these appeals have been preferred against the said judgment and order of the High Court of Judicature of Madras.



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

Appearing in support of the appeals, Mr. L. Nageshwara Rao, learned senior advocate, firstly submitted that the High Court had erred in applying Rule 4 of the Tamil Nadu State and Subordinate Services Rules to the facts of the instant case, inasmuch as, the appointment orders of the promotees themselves indicate that they had been appointed temporarily under Rule 10 (a) (i) (1) of the Tamil Nadu State and Subordinate Services Rules. For the sake of convenience Rule 4 of the aforesaid Rules is set out hereinbelow:-

"Rule 4 (a) - All first appointments to a service or class or category or grade thereof, State of Subordinate, whether by direct recruitment or by recruitment by transfer or by promotion, shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the prescribed manner by the appointing authority or any other authority empowered in the Special Rules in that behalf and shall be published in the Tamil Nadu Government Gazette in respect of appointments to State Services and in the Notice Board in the office of the appointing authority in respect of appointments to Subordinate Services. The list shall also be communicated to all persons concerned by Registered Post whose names are found in such list whose names have not been included in the list,



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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

where the candidates in such list are arranged in their order of preference, appointments to the service shall be made in such order:

Explanation II: "In respect of appointment to the post, which are under the purview of the Tamil Nadu Public Service Commission, temporary list may be drawn and published as aforesaid with reference to the qualification on the date fixed for the regular lists to meet out the exigencies of service and to avoid, administrative delay. Once a qualified candidate is included in the temporary list with reference to the qualification on the crucial date fixed for regular list his rights for temporary appointment should be protected and he should not be overlooked in preference to a person, who was not included in the temporary list as he was not qualified on the crucial date but subsequently qualified. The temporary list shall be adopted for giving temporary appointments till the regular list is approved and regular appointments are made with reference to the regular list."

Mr.Rao urged that none of the conditions indicated in Rule 4 regarding preparation and publication of the list of approved candidates had been complied with and, and on the other hand, the orders of promotion and posting of the promotees were admittedly made under Rule 10 (a) (i) (1) of the General Rules which specifically indicates that such appointments



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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temporary appointee appointed dehors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment. Considering further the effect of Rule 4, 23 (a) and 33(a) of the Rules and Rule 5 of the sub-rules, this Court went to hold that a Public Service Commission candidate gets his seniority from the date on which he starts discharging his duties on the post borne on the cadre and his seniority shall be determined with effect from that date while in respect of temporary appointees under Rule 10 (a) (i) (1) who are subsequently appointed in accordance with the Rules, the temporary service rendered prior to their appointment would not be counted towards their seniority.

Reliance was also placed to another decision of this Court in the case of [State of Tamil Nadu and Ors. vs. E. Paripoornam and Ors.](#), 1992 Supp (1) SC 420, wherein also the provisions of Rule 10 (a) (i) (1) of the Tamil Nadu State and Subordinate Services Rules were under consideration in respect of Junior Professors who were later appointed on a regular basis on the basis of an approved list prepared by the Public Service Commission. Even though the order or regularization of the services of such temporary appointees were intended to be regularized with effect from the dates of their original appointments on a temporary basis, this Court held that they would not be entitled to count their temporary service



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

for the purpose of seniority and that the services rendered by the appointees under Rule 10 (a) (i) (1) could not be considered for the purpose of seniority as such appointment was a stop-gap arrangement, emergency or fortuitous arrangement.

A later decision of this Court in the case of [Sanjay K. Sinha-II and Ors. vs. State of Bihar and Ors.](#), (2004) 10 SCC 734 was referred to by Mr. Rao regarding promotions against non-existing posts and its effect on inter se seniority with direct recruits. This Court held that appointments made contrary to rules were merely fortuitous and did not confer any benefit of seniority on appointees over and above the regular/substantive appointees to the service. Several other decisions in which the aforesaid principle had been reiterated were relied upon by Mr. Nageshwara Rao, but reference to the same could only amount to multiplication of the decisions cited. It was contended by Mr. Rao that seniority in a cadre could only be in respect of substantial posts and not in respect of temporary posts made otherwise than in accordance with the rules.

Mr. Rao urged that the High Court had, in fact, taken a view which was contrary to the law as laid down by this Court and, could not, therefore, be sustained.



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

Mr.R.Venkataramani, learned senior advocate, who appeared for the respondents sought to justify the order passed by the High Court and contended that unless there was a contrary rule, service rendered on probation or in an officiating capacity could not be ignored for determination of seniority as was held by this Court in [L. Chandrakishore Singh vs. State of Manipur and Ors.](#), (1999) 8 SCC 287. In the said matter, a further observation was made that grant or approval to an appointment made without following the prescribed procedure implies confirmation and relates back to the date on which appointment was made. In other words, the entire period of service in such case counts for seniority. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants, the decisions cited by Mr. Rao have been rendered in the context of Rule 10 (a) (i) (1) and the other relevant rules which are also applicable to the facts of the instant case. The law is well established that initial appointment to a post without recourse to the rules of recruitment, an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39 (c) of the General Rules indicate



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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that a person temporary promoted in terms of Rule 39 (a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularized. Therefore, it is only from the date on which his services are regularized that such appointee can claim seniority over those appointees subsequently. In the instant case the authorities, on the strength of the several Government Orders giving retrospective effect to the regularization of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well established principles relating to determination of seniority. In our view, the High Court appears to have taken an erroneous view in the matter in holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed under Rule 10 (a) (i) (1) were to be counted for determining their seniority.

We, therefore, set aside the order passed by the High court and direct the concerned respondents to re-determine seniority of the appellants in relation to the promotees after reckoning the starting point of seniority of



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

such promotees from the date of regularization of their services. The appeals, therefore, succeed and are disposed of with the aforesaid directions. There will be no order as to costs.”

18. In fact I have also passed an order to this effect in W.P.(MD)No.22605 of 2015, dated 07.03.2022 and the relevant portion is extracted hereunder:

“6.The second respondent has filed a counter affidavit stating that the petitioner's appointment is under 10(a)(i)(1) and therefore, the Rules stated there under is applicable. The petitioner applied afresh in the recruitment process in the year 1983-1984 and was selected. Thereafter, entered the service in a permanent post. The petitioner is comparing the other persons whom already entered this service through TNPSC in the Agricultural Department in the year 1982-1983. Since the petitioner's 10(a)(i)(1) appointment cannot be taken into account for fixing the seniority, the petitioner's claim was rejected vide the impugned order. Therefore, the petitioner is not entitled to any relief. It is an admitted fact that the petitioner's initial appointment is under 10(a)(i)(1) in the year 1981 and it is also an admitted fact that the petitioner was selected for the



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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permanent post in the recruitment process held for the academic year 1983-1984. The third respondent in particular was appointed through TNPSC in a permanent post for the academic year 1982-1983.

7. Therefore, the question now arose whether the temporary appointment under 10(a)(i)(1) service can be taken into account while fixing the seniority. The conditions stated in 10(a)(i)(1) appointment is that the petitioner cannot claim any service benefits especially, seniority for the service rendered in 10(a)(i)(1).

8. Therefore, this Court is not inclined to grant any relief because there are several judgments where it has been held that 10(a)(i) appointment is temporary appointment and the employee cannot claim any service or monetary benefits attached to the permanent post. Hence, the claim of the petitioner is rejected."

19. In the present case, admittedly, the petitioner was appointed in the year 1988, vide appointment order, dated 22.03.1988. The said appointment order states that as per G.O.No.18, Indian Medicine and Homeopathy Department,



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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

dated 09.03.1988, the Doctors stated thereunder were appointed with a scale of pay of Rs.1340-75-1715-90-2435 and their appointment is under 10(a)(i). In the said list, the petitioner's name is in Serial No.10 and the relevant portion of the said appointment order is extracted hereunder:

“Read: From the Director of Indian Medicine and Homeopathy Letter No. Roc.28616 / 53 /87 dated 03.12.1987

Order:

The following Notification shall be published in the Tamil Nadu Government Gazette:

NOTIFICATION

Under Rule 10(a)(i) of the Central Rules for the Tamil Nadu State and Subordinate Service, the candidates mention in the Annexure to this order who have been sponsored by the Professional and Executive Employment Exchange, Madras-17 for appointment as Assistant medical Offices in the Department of Indian Medicine and Homoeopathy are appointed temporarily as Assistant Medical Officers with effect from the date of their assumption of charge.”



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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

20. Subsequently, TNPSC conducted examination in the year 1989-1990, the petitioner had participated in the selection process and the petitioner was selected. Even then the petitioner was appointed temporarily under 10(a)(i) through G.O.Ms.No.362 Health, Indian Medicine & Homoeopathy & Family Welfare dated 12.03.1991. The relevant portion of the G.O.Ms.No.362 is extracted hereunder:

“Health, Indian Medicine & Homoeopathy & Family Welfare

G.O.Ms.No.362

Dated

12.03.1991

Ref: From the Tamil Nadu Public Service Commission, Letter No. 5651/G4/85 dated 30.03.1990, 17.04.1990, 14.05.1990 and 18.06.1990

ORDER:

*At the instance of the Government, the Tamil Nadu Public Service Commission **has selected 176 candidates for regular appointment as Assistant Medical Officers in the Department of Indian Medicine. Pending verification of their antecedents and physical fitness, it has been decided***



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

to appoint them temporarily as Assistant Medical Officers. Out of the 176 candidates, 96 candidates are already holding temporary appointment as Assistant Medical Officers. The Government have decided to appoint the remaining 80 candidates also temporarily as Assistant Medical Officers.

2. The following Notification will be published in the Tamil Nadu Government Gazette:

NOTIFICATION

Under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Service, 80 candidates among the 176 candidates mentioned in the Annexure to this order who have been selected by the Tamil Nadu Public Service Commission provisionally for regular appointment as Assistant Medical Officers in the Indian Medicine and Homoeopathy Department are appointed temporarily with effect from the dates of the joining duty.”

21. Thereafter the Government has issued G.O.Ms.No.932, Health and Family Welfare Department, dated 29.12.1994 and regularized the petitioner's service and relevant portion of the G.O.Ms.No.932 is extracted hereunder:

“ORDER:



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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

The Tamil Nadu Public Service Commission sent a list of 177 Candidates selected for appointment as Assistant Medical Officers in the Tamil Nadu Medical Service for the year 1989-90. All these candidates were appointed temporarily as Assistant Medical Officers in the Indian Medicine and Homeopathy. The Director of Indian Medicine and Homeopathy has now sent proposals for regularizing the temporary appointment of 173 Candidates in respect of whom physical fitness Certificates etc. have been received.

2. The Government have considered the proposal of the Director of Indian Medicine and Homeopathy and they have decided to approve the selection made by the Tamil Nadu Public Service Commission of the 173 Candidates. They have also decided to appoint these Candidates regularly as Assistant Medical Officers in the Tamil Nadu Medical Service.

3. Accordingly, the Government place on records the selection made by the Tamil Nadu Public Service Commission of the 173 Candidates mentioned in Annexure to this order, communicated in the Commission's letter first read above for regular appointment as Assistant Medical Officers in the Tamil Nadu Medical Services and approve the selection.

4. The question of regularizing the services of Dr. Md. Abdul Majeed will be considered after he joins duty.

5. The following notification will be published in the Tamil Nadu Government Gazette.

NOTIFICATION



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

WEB COPY

*The candidates mentioned in the Annexure to this order are appointed regularly as Assistant Medical Officers in the Indian Medicine Homeopathy under the Tamil Nadu Medical Service **with effect from the dates mentioned against their names.** They shall take **their ranks** in the order in which the Tamil Nadu Public Service Commission has assigned rank as indicated in **column (2)** in the Annexure.*

6. The following three candidates should pass the language Test in Tamil (full test) within a period of four years from the date of this order.

- 1. Dr. M.Radhika (Selvi)*
- 2. Dr. Hrushikesh*
- 3. Dr. Mahmooda Begum (Selvi)*

*7. Under Rule 23(a) of the General Rules for the Tamil Nadu State and Subordinate Service, the Government direct that the Candidates mentioned in the Annexure to this order, who have been appointed as Assistant Medical Officers in the Tamil Nadu Medical Service **on a regular basis with retrospective effect from the dates mentioned against each in column-5 of the Annexure are entitled to draw arrears/increment, if any, consequent of their regular appointment retrospectively.***

22. In the appointment order dated 22.03.1988 it has been stated the petitioner is appointed under 10(a)(i) and the petitioner's name is in Serial No.10.

And this appointment is by getting the list from the employment exchange and



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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thereafter the petitioner was appointed. Since this period from 22.02.1988 was without any selection process the said period from 22.02.1988 cannot be taken for fixing seniority.

23. But subsequently, TNPSC has conducted examination in the year 1989-1990, wherein 186 persons have attended the exam, but 177 candidates were selected for appointment. The TNPSC had submitted Letter No.5651/G4/85 dated **30.03.1990**, 17.04.1990, 14.05.1990 and 18.06.1990. Based on this letter, G.O.Ms.No.362 was issued wherein the petitioner's name is in Serial No.71 and he belongs to Backward Class and it has been stated that the petitioner is already appointed. But again the petitioner was appointed as 10(a)(i) appointee. The reason cited for passing G.O.Ms.No.362 is that the pending verification and physical fitness the selected candidates were appointed temporarily under 10(a)(i). This Court is of the considered opinion inspite of being successful candidate



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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in written examination, inspite of being successful in interview, after undergoing reservation process and other selection process the petitioner was appointed as 10(a)(i) thereby the valuable right of the petitioner and other candidates were affected. Hence the reason cited by the government cannot be accepted and the government ought to have issued appointment order immediately with a condition that the appointment order is subject to verification and physical fitness, so that the valuable right of seniority would have been protected.

24. Thereafter, the Director of Indian Medicine and Homeopathy submitted proposals for regularizing the temporary appointment of 173 candidates and the government lethargically considered the same and had issued G.O.Ms.No.932 dated 29.12.1994, after a lapse of five years. In G.O.Ms.No.932, an annexure was issued indicating the seniority assigned by TNPSC and totally 139 candidates were regularized, wherein it states that the said candidates were granted regular



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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appointment retrospectively. **The petitioner rank as stated in column (2) as 66 and the date of appointment of the petitioner is stated as 31.03.1988.** The official respondents and the private respondents contented that the regularization was granted through G.O.Ms.No.932 and hence the regularization ought to be taken from the date of the said G.O.Ms.No.932 i.e. 29.12.1994. As stated supra the government had acted lethargically after a lapse of five years and the petitioner had lost his valuable right of regularization inspite of being successful candidate in the selection process. Therefore, the date 29.12.1994 of the G.O.Ms.No.932 cannot be a date to fix the seniority.

25. Having held that the date 29.12.1994 of G.O.Ms.No.932 cannot be the date of fixing the seniority, this Court proceed to analyze to fix the date of appointment. Any candidate is entitled to get salary and other benefits on assuming the charge in the substantive post. In the present case since the



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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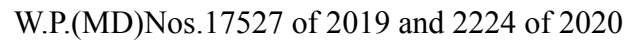
petitioner and others are already appointed in the substantive post and receiving salary, but under 10(a)(i). But the petitioner was not receiving any increment and other benefits, hence the G.O.Ms.No.932 states that the candidates stated thereunder are entitled to draw arrears/increment retrospectively. As far as the regularization is concerned the said G.O.Ms.No.932 states that the regularization is granted retrospectively. Further the said G.O.Ms.No.932, under Clause 7 states “under Rule 23 (a) of General rules for these Tamil Nadu Special and Subordinate Service, the Government has directed that the candidates mentioned in the annexure appointed as Assistant Medical Officer on regular basis with **retrospective effect from days mentioned thereunder** are entitled to draw arrears / increments consequent to the regular **appointment retrospectively**”. This would clearly indicate that even though the appointment is from 1989 onwards, the said candidates were not granted any increment. After regularization of their **appointment retrospectively, they were allowed to draw the**



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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increment retrospectively and also entitled to retrospective seniority. But the Hon'ble Supreme Court in Madalimuthu's case has held that the retrospective seniority cannot be granted, if granted it will affect the other persons who are directly recruited. In the Madalimuthu's case the issue raised thereunder is that the promotion was granted temporarily de hors rules and hence the Hon'ble Supreme Court has held so. The Hon'ble Supreme Court has also held the "the law is well established that initial appointment to a post without recourse to the rules of recruitment, an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service" and in such circumstances it has held retrospective seniority cannot be granted. In the present case, while appointing the petitioner from 22.03.1988 to 30.03.1990 (the discussion on this date is stated below) the rules of recruitment was not followed. But from 30.03.1990 or whichever is earlier the petitioner is entitled to be



26. However the Government being the appointing authority have power to grant retrospective regularization and consequential retrospective seniority based on the facts and circumstances of the case. Even though the appointment order states it is a temporary appointment, the Government has considered the case and granted regularization from the date of initial appointment that too with retrospective effect. And this would meet the ends of justice for the five years delay in granting regularization. Therefore, this Court is of the considered opinion that the plea of the respondents that regularization and seniority is applicable for the date of G.O.Ms.No.932 is not sustainable.

<https://www.mhc.tn.gov.in/judis>



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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of the considered opinion that the petitioner may not be entitled to seniority from 22.03.1988 (it is pertinent to state that the petitioner was granted regularization from 31.03.1988 and not from 22.03.1988). But the petitioner is entitled to seniority from the date on which the selected list was drawn by the TNPSC. In the present case as stated in reference in G.O.Ms.No.392 the list might have been drawn on 30.03.1990 or prior to the same, whichever is earlier. Therefore, the petitioner is entitled to be fix his seniority from the date of selected list drawn by TNPSC.

28. At this juncture, the respondents submitted that some of the incumbents have already attained superannuation and some of them are on the verge of retirement. Since it is the mistake of the respondents, this Court is not inclined to consider this request and the issue is left open.



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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29. The petitioner is comparing the seniority with the 4th respondent and interestingly the official respondents had filed counter wherein it is stated that the 4th respondent's seniority was fixed on **11.05.1989**, but the respondents is not categorically stating that the petitioner's seniority is fixed on such and such date and the relevant portion of the counter is extracted hereunder:

*“W.P.No.41500 of 2006, on 06.07.2010, the Government has issued orders permitting the Director of Indian Medicine and Homeopathy, Chennai, to fix the seniority of the 51 Assistant Medical Officers (Siddha), those absorbed from the Panchayat Union Service in G.O.Ms.No.298, Health And Family Welfare Department, dated 24.08.2017 and accordingly, the seniority of the 4th respondent who has been absorbed from the Panchayat Union service in which he was appointed with effect from **11.05.1989** whereas the petitioner was appointed as per G.O.Ms.No.362, Health & Family Welfare Department, Dated 12.03.1991, his seniority has been assigned as per the seniority assigned by the Tamil Nadu Public Service Commission as ordered in G.O.Ms.No.932, Health and Family Welfare Department, dated 29.12.1994, while regularizing the temporary services of the petitioner.”*



W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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If the Government enact rules properly to address the issue of seniority the litigations of this kind would not have arisen. The Government is allowing the parties to litigate endlessly. This Court can only hope that the Government would enact proper rules and regulations in future.

30. With the above said directions and observations, the writ petitions are allowed in above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

03.02.2023
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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

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To

- 1.The Secretary,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai 600 009.
- 2.The Director,
Department of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.
- 3.The Commissioner/The Special Commissioner,
Department of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.



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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

S.SRIMATHY, J

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W.P.(MD)Nos.17527 of 2019 and 2224 of 2020

03.02.2023
(3/3)