



W.A(MD)No.1101 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A(MD)No.1101 of 2023
and
C.M.P(MD)Nos.8474 and 8475 of 2023

Dr.A.L.Meenakshi Sundaram,
S/o. Alagappan,
Director of Medical Education (OSD),
Dean, Government Theni Medical College,
Theni & District.

... Appellant

-VS-

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare (A1) Department,
Secretariat, Fort St.George,
Chennai-600 009.

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

3. Dr.R.Shanthimalar,
Director of Medical Education,
Kilpauk, Chennai-600 010.

... Respondents

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PRAYER : Appeal filed under Clause 15 of the Letters Patent, against the order dated 12.06.2023 made in W.P(MD)No.7507 of 2023.

For Appellant : Mr.G.Sankaran, Senior Counsel for
Mr.S.Venkatesan
For R1 to R3 : Mr.D.Sadiq Raja
Additional Government Pleader

J U D G M E N T

[Judgment of the Court was made by S.S.SUNDAR, J.]

The above appeal is preferred against the order dated 12.06.2023 dismissing the writ petition filed by the appellant in W.P(MD)No.7507 of 2023.

2. Brief facts that are necessary for disposal of this appeal are as follows:-

The appellant was originally appointed as Medical Officer in Tamil Nadu Medical Service in the year 1989. He was promoted as Associate Professor/Professor in Anesthesiology and later promoted as



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Dean and transferred to Pudukkottai Government Medical College.

The appellant after serving different positions is now working as Director of Medical Education (OSD) and Dean of Government Theni Medical College, Theni District. It is the case of the appellant that he is entitled to get promotion to the post of Director of Medical Education which is the head of the department. According to the appellant, he is fully qualified for promotion to that post as per the service rules. It is admitted that the petitioner's age of superannuation is 31.08.2023. However, vide G.O.Ms.No.268, Health and Family Welfare Department, dated 13.03.2023, the 3rd respondent was appointed as Director of Medical Education in the existing vacancy arose with effect from 01.11.2022. Though the appellant was senior to the 3rd respondent herein and his name was also in the panel, the appellant was denied promotion only on the ground that he does not satisfy rule 8(b)(iv) of the Special Rules pertaining to State Services which states that the candidate must have a minimum of one year left over service prior to the date of retirement. The learned Single Judge after considering the admitted facts and the position that vacancy



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arose only on 01.11.2022 and the appellant if appointed will not have one year of left over service prior to retirement, dismissed the writ petition on the ground that the appellant is not eligible to be considered for promotion. Since the appellant was not qualified, the learned Single Judge held that the appellant has no *locus standi* to maintain the writ petition challenging the appointment of the 3rd respondent as Director of Medical Education. Aggrieved by the same, the above appeal is filed.

3. Before dealing with the facts, it is relevant to extract below rule 8(b) of the Special Rules pertaining to State Services as amended for convenience:-

"8.Special qualifications.- (a) No person shall be eligible for appointment to the post of Director of Medical and Rural Health Services, unless he has worked for a period of not less than five years in a post in the cadre of Civil Surgeon under the control of the Director of Medical and Rural Health Services:

Provided that, other things being equal, preference shall be given to those who possess post-graduate degree in one of



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the medical subjects in the case of appointment by promotion from among the Civil Surgeons in general line.

(b) No person shall be eligible for appointment to the post of Director of Medical Education, unless

(i) he possesses a post graduate degree in a Medical faculty or any other qualification approved by Medical Council of India to be treated on par with MD/MS awarded by Indian University.

(ii) he has served for a period of not less than ten years after completing the required post graduate degree mentioned in clause (i) above, in one or more of the following posts, namely:-

Tutor / Assistant Professor / Professor /
Reader in a Clinical or Non-clinical department
in a Government teaching medical institution,
out of which four years must be of teaching
experience as Reader / Professor.

(iii) he has administrative experience for a period of not less than two years in one or more of the following posts, namely, Director of Upgraded Institute or Director Institute of Thoracic Medicine, Director of King Institute, Guindy / Dean / Principal / Superintendent of a Medical College / Medical College Hospital out of which one year must be as a Dean of Medical College.



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(iv) he has a minimum of one year left over service prior to date of retirement.

(c) No person shall be eligible for appointment to the post specified in column (1) of the Annexure unless he possesses the qualifications specified in the corresponding entry in column (2) thereof:

Provided that, other things being equal, preference shall be given to those who possess post-graduate degree in one of the medical subjects in the case of appointment by promotion from among the Civil Surgeons in general line.

(d) A person not possessing the diploma of the D.M.R. (Chennai), who has been selected for appointment in the category of Assistant Surgeons in the General Line in the Radiological Department of Government Medical Institutions in the State by direct recruitment shall not be appointed as a probationer in the said category unless he undergoes training in the Radiological Department for a period of not less than nine months and obtains the diploma of D.M.R. (Chennai) at one of the first two examinations held after he has completed such training. There shall be paid to every such person while undergoing such training a subsistence allowance fixed by the Government from time to time and no such person shall be required to pay either the tuition fee for the training or the examination fee.



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(e) The crucial date for possession of the prescribed qualification for appointment to any post by recruitment by transfer or promotion shall be the 15th March of the year in which the selection for appointment is made."

4. The learned counsel for the appellant submitted that as per the Special Rules applicable to State services, the crucial date for possession of the prescribed qualification for appointment to any post by recruitment by transfer or promotion shall be the 15th March of the year in which the selection for appointment is made. Learned counsel then submitted that as per rule 8(b) of the Special Rules, the appellant had one year left over service as on 15th March of 2022. The interpretation of the counsel appearing for the appellant is too artificial. From the rule, it is seen that the crucial date for possession of the prescribed qualification for appointment to any post by recruitment by transfer or promotion shall be the 15th March of the year in which the selection for appointment is made. The appointment in the present case is after the retirement of incumbent on 31.10.2022. The appointment is made in 2023 after a process of



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selection in 2023. As seen from G.O.No.268, Health and Family Welfare Department, dated 13.03.2023, the Government have approved the vacancy for the post of Director of Medical Education for the year 2022-23 and the panel was prepared for promotion to the post of Director of Medical Education on 13.03.2023.

5. Learned counsel then submitted that as per the mandate of Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the list of approved candidates for appointment by promotion should be prepared by including the names of eligible persons as on the crucial date and that as per G.O.Ms.No.368, dated 18.10.1993, the panel for the post of Head of the Department has to be initiated by the Secretary to Government three months in advance prior to the retirement of the incumbent. Referring to Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and G.O.Ms.No.368, the counsel for the appellant submitted that the proposal to fill up the post of Director of Medical Education ought to have been initiated three months prior to the retirement of the



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existing incumbent and that the appellant's candidature ought to have been considered as eligible by following the mandate of Section 7 read with G.O.Ms.No.368 dated 18.10.1995.

6. Learned counsel for the appellant also submitted that the appellant was not included in the panel prepared in the year 2020 only because charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, against the appellant were pending. Referring to the fact that the disciplinary proceedings initiated against the appellant were dropped vide G.O.No.490, dated 06.05.2022, the learned counsel submitted that the appellant ought to have been considered for promotion to the post of Director of Medical Education in the vacancy arose in the year 2022. Stating that the appellant should be treated as a special case having regard to the fact that he was denied promotion for no fault of him, the learned counsel contended that the learned Single Judge failed to consider the factual aspects.



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7. This Court is unable to countenance the arguments of the learned counsel for the appellant. First of all, Rule 8(b) of the special Rules pertaining to State Service stipulates that the candidate must have a minimum of one year left over service prior to the date of retirement. The post of Director of Medical Education fell vacant only on 01.11.2022. Therefore, only then the appellant or any one could have been considered for the said post. Even though the appointment was little later, the appellant cannot be considered, as he does not satisfy the requirement of having one year left over service prior to the date of his retirement. The appellant who is going to be retired by the end of next month is not eligible to be considered for promotion. The contention of the learned counsel appearing for the appellant by referring to Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 read with G.O.Ms.No.368, dated 18.10.1993 does not hold water. Even assuming that the panel has to be prepared three months prior to the date of vacancy, the appointment cannot be prior to the retirement of the then incumbent. The learned Single Judge has considered the object behind the



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stipulation that a candidate should have a minimum of one year left over service prior to the date of retirement. It is only to secure administrative efficiency, the rule has been framed.

8. This Court is in agreement with the learned Single Judge for the reasons stated in the impugned order while rejecting the contention of the counsel appearing for the appellant. This Court, therefore, finds no merit in the Writ Appeal and hence it is dismissed. No costs. Connected miscellaneous petitions are closed.

[S.S.S.R, J.] [D.B.C., J.]
17.07.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare (A1) Department,
Secretariat, Fort St.George,
Chennai-600 009.

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



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and
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JUDGMENT MADE IN
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DATED : 17.07.2023