



W.P.(MD).No.19877 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 30.11.2023

ORDER PRONOUNCED ON : 08.12.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.19877 of 2023
and W.M.P(MD).Nos.16413, 16414, 18845 and 23931 of 2023**

Dr.A.Selvam

....Petitioner

Vs

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

2.The Director of Medical Education & Research
Kilpauk
Chennai 600 010

3.Dr.P.Sivasankar
Assistant Professor (Periodontics)
Tamil Nadu Government Dental College
Chennai 600 003

4.Dr.Poorna
Senior Resident (Dental Surgery)
Tiruvarur Medical College
Tiruvarur

...Respondents



W.P(MD).No.19877 of 2023

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the second respondent in Ref.No. 35800/E3/1/2023-Intra-I dated 08.08.2023 and to quash the same insofar as transfer and posting of third and fourth respondents are concerned and consequently directing the respondents 1 and 2 to grant transfer and posting to the petitioner to the arising vacancy to the post of Assistant Professor in Periodontics in Tamil Nadu Government Dental College, Chennai based on seniority (both CML seniority and station seniority) than the 4th respondent, in rectification of discrepancy committed during the transfer counselling held on 02.08.2023)

(Prayer amended vide Court order dated 22.11.2023)

For Petitioner	: Mr.G.Sankaran Senior Counsel For Mr.F.Deepak
For R1 & R2	: Mr.T.Villavan Kothai Additional Government Pleader
For R3	: Mr.S.Karthik
For R4	: Mr.G.Thalaimutharasu For Mr.S.Wilson

ORDER

The present writ petition has been filed by an Assistant Surgeon(Dental) challenging the Transfer Counselling Posting order issued by the second respondent on 08.08.023 and a consequential mandamus directing the respondents 1 and 2 to grant transfer and posting to the



W.P(MD).No.19877 of 2023

petitioner in arising vacancy to the post of Assistant Professor in Periodontics in Tamil Nadu Government College Chennai based on CML and Station seniority.

2(A).The undisputed facts are as follows:

(i)The writ petitioner, the third and fourth respondents are Dental Surgeons. The writ petitioner is working as an Assistant Surgeon(Dental) in Government Theni Medical College Hospital from 21.08.2018 onwards. The third respondent is working as an Assistant Professor of Dental Surgery in Tamil Nadu Government Dental College and Hospital, Chennai from 06.09.2018 onwards. The fourth respondent is working as a Senior Resident in Dental Surgery in Tiruvarur Medical College, Tiruvarur from 12.06.2020 onwards.

(ii)The first respondent has issued G.O.(2D).No.131 Health and Family Welfare (A1) Department, dated 20.11.2007 issuing revised guidelines for conducting counselling for transfer and promotion in Tamil Nadu Medical Services.

(iii)As per Clause-2 of the said G.O., re-counselling for filling up of the vacancies arising as a result of counselling should be conducted seven days after the original date of counselling. As per Clause 8.2, there should be a clear gap of atleast five working days between the date of publication of schedule and the actual date of re-counselling. Once the vacancies are



W.P(MD).No.19877 of 2023

notified for re-counselling, they cannot be modified without approval of the Government. As per Clause 10.7, as far as the seniority of the Assistant Surgeons working in the Chennai City Institutions are concerned, it will be governed by CML seniority. For the other vacancies in Mofussil Institutions, the seniority will be based on station seniority.

(iv) The second respondent herein has issued a circular on 27.07.2023 under which certain instructions were issued for conduct of transfer counselling to be held through video-conferencing. As per the said circular, the counselling for Medical Officer working in Dental Surgery was proposed to be conducted on 02.08.2023.

(v) A tentative speciality wise existing vacancy list was also annexed to the said circular in order to enable the Assistant Surgeon to be prepared for attending Counselling. Annexure to the said circular indicates that seven vacancies were notified as tentative vacancies in Dental Surgery. Out of seven vacancies, one is from Tamil Nadu Government Dental Medical College & Hospital and another from Kalaingar Centenary Super Speciality Hospital, Guindy, Chennai. Two more vacancies were in Government Sivagangai Medical College, Sivagangai. One vacancy was notified from Government Medical College Hospital, Nilgiris. One vacancy was notified in Government Theni Medical College Hospital, Theni (DEIC). The seventh



W.P(MD).No.19877 of 2023

vacancy was notified from Government Thiruvapur Medical College, Thiruvapur.

(vi)The tentative seniority list of Medical Officers who had expressed willingness for the said Transfer Counselling was also annexed along with the circular. As per Clause-7 of the said circular, the Medical Officers will be allowed to exercise their option among the vacancies shown at the time of counselling in the prescribed format namely Annexure-II as per their seniority. It was pointed out in Clause 10 that the option exercised by the Medical Officer at the time of Counselling will be final and the change of posting will not be entertained at any circumstances.

3.The writ petitioners, the third and fourth respondents have attended the Transfer Counselling on 02.08.2023. On the said date, the senior most among the Dental Surgeons namely Dr.K.Sarala who was working in Government Medical College, Omandurar Government Estate, Chennai had chosen one of the notified vacancies namely Assistant Professor in Tamil Nadu Government Dental College and Hospital, Chennai. The second in the seniority namely Dr.P.Kavitha who was a Senior Resident in Dental Surgery in Government Medical College, Omandurar Government Estate, Chennai had chosen the post of Assistant Professor of Dental Surgery in the same Hospital. There is no record to show what happened to the third senior namely Dr.S.Sripriya. The fourth in the seniority namely Dr.S.B.Sethurajan



W.P(MD).No.19877 of 2023

who was working in Tamil Nadu Dental College and Hospital, Chennai had chosen another notified vacancy namely Kalaignar Centenary Super Speciality Hospital, Guindy, Chennai.

4.Though the third respondent namely Dr.P.Sivasanker is ranked as fifth in the said seniority list (As per CML seniority) he was moved to rank 12(A) in view of the fact that he had proposed to exercise his option for Tiruvarur Medical College which is a Mofussil Institution. This downgrading of the seniority was followed in view of the fact that the third respondent wanted to move from an Institution in Chennai to a Mofussil Institution where only the station seniority counts.

5.One Dr.R.Suresh ranked as sixth in the seniority list opted for Tiruvarur Medical College which is one of the notified vacancies. The next in the list of seniority is the writ petitioner (based on speciality), he had proposed to opt for Government Dental College and Hospital, Chennai. Since the said vacancy has already been chosen by a Senior Doctor namely Dr.K.Sarala, there was no further notified vacancy available in the said College. Hence, the petitioner has not exercised his option and waited for the next round of Counselling.

6.The third respondent herein who had proposed to opt to Tiruvarur Medical College found that the vacancy notified has already been occupied by his senior Dr.R.Suresh and therefore, he opted to choose Thanjavur



W.P(MD).No.19877 of 2023

Medical Hospital, Thanjavur which was vacated by Dr.R.Suresh. Since the third respondent who was working in Government Dental College and Hospital, Chennai has chosen to move to Thanjavur Medical College, a resultant vacancy arose at Government Dental College Chennai. The next in the seniority namely the fourth respondent herein has immediately opted for the said vacancy in the Government Dental College, Chennai. These facts are not in dispute.

7.The grievance of the writ petitioner is that, he being a senior in both CML seniority as well as station seniority, he should have been first offered the vacancy in Government Dental College, Chennai and it should not have been granted to the fourth respondent.

8.(B).The Contentions of the learned Senior Counsel appearing for the writ petitioner are as follows:

(i)The writ petitioner is senior in CML seniority as well as station seniority to the fourth respondent. Therefore, when a resultant vacancy arises, first it should have been offered to the writ petitioner.

(ii)When the third respondent had chosen Tiruvarur Medical College, there was no vacancy at Tiruvarur. Therefore, the posting order issued to the third respondent to Tiruvarur is not legally sustainable.

(iii)The vacancy in Government Dental College, Chennai was not a notified vacancy, but it is resultant vacancy arising out of transfer option



W.P(MD).No.19877 of 2023

exercised by the third respondent.

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(iv) Therefore, after notification, a re-counselling should have been conducted as contemplated in G.O.(2D).No.131 Health and Family Welfare (A1) Department, dated 20.11.2007. Instead, the re-counselling was conducted as a continuation of the counselling process and the resultant vacancy in Government Dental College, Chennai has been allotted to the fourth respondent ignoring the seniority of the writ petitioner. Hence, he had prayed for quashing the order of transfer and to grant transfer and posting order to the writ petitioner to the Government Dental College and Hospital, Chennai.

9 (C). Contentions of the learned Additional Government Pleader are as follows:

(i) In view of the fact that only few vacancies existed after filling up of the notified vacancy, with the consent of all Dental Surgeons, the second round of counselling was conducted on the same day. Therefore, the petitioner is estopped from contending that re-counselling ought not to have been conducted on the same day.

(ii) When turn of the petitioner came, there was no vacancy at Government Dental College and Hospital, Chennai and hence, he could not opt for the same.

(iii) When turn of the third respondent came, there were vacancies in



W.P(MD).No.19877 of 2023

Tiruvarur Medical College and he opted for the same.

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(iv)When turn of the fourth respondent came, she moved to Government Dental College and Hospital, Chennai in the vacancy created by the third respondent. Therefore, whatever vacancy that was available when Dental Surgeons were called to participate, they have been allotted in the order of seniority.

(v)The Tamil Nadu Government Dental College and Hospital, Chennai has not been included as one of the City based institutions in G.O.(2D).No. 131 Health and Family Welfare (A1) Department, dated 20.11.2007 and therefore, the petitioner cannot claim benefits under the said Government Order.

10 (D). The contentions of the learned counsel appearing for the third respondent:

(i)When turn of the third respondent came, he had opted for Thanjavur Medical College Hospital which fell vacant due to the moving away of Dr.R.Suresh to Tiruvarur Medical College. Later, he came to know that the vacancy in Thanjavur Medical College is DEIC post and he gave a representation on 03.08.2023 to the second respondent to shift him to Tiruvarur Medical College. Based upon the said request, a transfer order was issued to him on 08.08.2023 transferring him to Tiruvarur Medical College which was vacated by the fourth respondent herein.



W.P(MD).No.19877 of 2023

(ii) Unless the third respondent moves out of Chennai, both the petitioner as well as the fourth respondent will not have any available vacancy in Government Dental College and Hospital, Chennai. Therefore, viewed from any angle, the transfer of the third respondent to Tiruvarur Medical College should not have been challenged.

11 (E).Contentions of the learned counsel appearing for the fourth respondent:

(i) When turn of the writ petitioner came, he had never opted any one of the notified or resultant vacancy that were available at the relevant point of time. The third respondent who is junior to the petitioner had moved to Thanjavur Medical College. The fourth respondent is next in seniority to the third respondent and hence, she had opted to Government Dental College, Chennai. Therefore, the entire transfer counselling process was conducted strictly following station seniority.

(ii) If counselling is postponed, it will be a never ending process and the resultant vacancy could never be filled up. Though the writ petitioner is senior to the fourth respondent in CML as well as station seniority, the fourth respondent had already shifted her family to Chennai and in case of any adverse order, studies of her children would be affected.

(iii) The transfer order was issued on 08.08.2023 and the fourth respondent had joined at Government Dental College and Hospital, Chennai



W.P(MD).No.19877 of 2023

on 17.08.2023. In view of the interim order, the posting order granted to the fourth respondent has been cancelled on 07.09.2023.

(iv)The fourth respondent had addressed an email to the second respondent on 11.09.2023 to accommodate her in any one of the vacant post in Chennai and the same is yet to be acted upon.

12.I have considered the submissions made on either side and perused the material records.

(F).Discussion:

13.The undisputed facts narrated above will clearly establish the fact that the petitioner, the third and fourth respondents are governed only by station seniority. It is also an admitted fact that the writ petitioner is senior to the fourth respondent in both CML seniority as well as station seniority. The dispute is between the writ petitioner and the fourth respondent to get accommodated in Tamil Nadu Government Dental College at Chennai.

14.As per Annnexe to the circular of the second respondent dated 27.07.2023 only one vacancy was notified in Tamil Nadu Government Dental Medical College at Chennai. The said vacancy was allotted to their senior most Dental Surgeon Dr.K.Sarala in the transfer counselling. Thereafter, no further vacancy was available in the Government Dental College at Chennai as a notified vacancy.



W.P(MD).No.19877 of 2023

15. When turn of writ petitioner came, his first option was to choose a posting in Government Dental College in Chennai. Since there was no notified vacancy, he has not exercised his option. The next turn fell upon the third respondent (who was working in Government Dental College, Chennai) and he had opted to Medical College Thanjavur which was vacated by Dr.R.Suresh. Therefore, only at this relevant point of time, a resultant vacancy (not a notified vacancy) arose at Government Dental College, Chennai. Though it is contended on the side of the Government that the third respondent had opted for Tiruvarur Medical College, the facts are otherwise. The only notified vacancy at Tiruvarur Medical College has already been chosen by Dr.R.Suresh and there was no further vacancy at the said College.

16. The third respondent in his counter has categorically admitted that he had chosen only Thanjavur Medical College as his option on 02.08.2023. Later, he found that he was not eligible to occupy the said post and gave a representation to the authorities on 03.08.2023 to shift himself to Tiruvarur Medical College on the vacancy of the fourth respondent. Therefore, it is clear that when the third respondent moved from Chennai to Thanjavur resultant vacancy arose at Government Dental College Chennai.

17. When the surgeons are called in their order of seniority to the notified vacancies and they are filled up, there may not be any dispute. When a resultant vacancy arises in view of the option exercised by a junior in



W.P(MD).No.19877 of 2023

station seniority, whether the said resultant vacancy could be filled up by a next junior in the seniority list or it should be referred back to the senior most surgeon who had opted to wait, is the issue to be decided.

18.A perusal of Clause-2 and 8.2 in G.O.Ms.No.131 dated 20.11.2007 clearly reveals that, for the resultant/ arising vacancy, only a re-counselling has to be conducted and that too seven days after the original date of counselling. In fact, the re-counselling should be published in the web-site and notice board of the concerned heads of departments within seven days of counselling. There should be a clear gap of at least five working days between the date of the working days of the schedule and the actual date of re-counselling. Therefore, it is clear that the counselling could cover only the notified vacancies and not resultant/arising vacancies which are created due to the option exercised by the Medical Officers while participating in the original counselling.

19.In the counter filed by the second respondent, it is contended in paragraph No.7 that with the consent of all the Medical Officers, the second round of counselling was conducted on the same day. In the reply filed by the writ petitioner, it is contended that the re-counselling can be conducted only for the notified vacancy. The contention of the second respondent that the petitioner had consented for re-counselling on the same day has not been specifically denied. Therefore, it is clear that with the consent of all the



W.P(MD).No.19877 of 2023

Dental Surgeons, the re-counselling was conducted as a continuation of the transfer counselling even though the same is not in accordance with G.O.Ms. 131 dated 20.11.2007. Therefore, at this length of time, the petitioner cannot contend that the conduct of re-counselling on the same day is bad in the eye of law. That apart, no other Dental Surgeon has raised any objection for conduct of re-counselling on the same date.

20.From the impugned transfer order, it is clear that the third respondent has been transferred from Government Dental College Chennai to Tiruvarur Medical College. When the turn of the third respondent came, there was no vacancy at Tiruvarur Medical College. Hence, the third respondent had opted only for Thanjavur Medical College. In the vacancy created by the third respondent in Chennai, the fourth respondent had moved to Government Dental College, Chennai. Thereafter, the third respondent had again moved to Tiruvarur Medical College.

21.Once the fourth respondent had exercised her option and moved to Chennai, thereafter, the third respondent has exercised his option to move to Tiruvarur Medical College. Therefore, it is clear that the third respondent has been given the benefit of exercising his option after his junior has exercised her option. However, the said benefit has not conferred upon the writ petitioner.



W.P(MD).No.19877 of 2023

22. When the turn of the petitioner came, there was no vacancy at Government Dental College, Chennai and he was awaiting for such a vacancy. When the third respondent had opted to move out of Dental College Chennai to Thanjavur Medical College, immediately such an option should have been placed before the writ petitioner to opt to the said vacancy in Government Dental College Chennai. Admittedly, the petitioner is senior in station seniority to the third respondent as well as the fourth respondent. Without conferring such benefit upon the writ petitioner, the third and fourth respondents have mutually exchanged their vacancy without following the station seniority.

23. Whenever, a senior surgeon has not exercised his option and waiting for a vacancy and a resultant vacancy arises in view of an option exercised by a junior Medical Officer, the vacancy should again go back to the Medical Officer who is having station seniority. Otherwise, the resultant vacancy arising out of an option exercised by the Junior Medical Officer would be taken by a further Junior Medical Officer depriving the rights of a Senior Medical Officer. The petitioner admittedly being senior in CML and in station seniority than the fourth respondent, without permitting the petitioner to choose vacancy in Government Dental College, Chennai, the same should not have been handed over to the fourth respondent. After interim orders have been passed by this Court, the petitioner, the third and fourth respondents



W.P(MD).No.19877 of 2023

have been retained in their original place without giving effect to the order of transfer. The letter and spirit of guidelines issued for transfer counselling is that the senior most Dental Surgeon should have the first option to choose the place of his choice. This is applicable not only to notified vacancy, but also to the resultant vacancies created by the Junior Medical Officer during the counselling process.

24.(G).Conclusion and Direction:

(a)In view of the above said deliberations, the order impugned in the writ petition dated 08.08.2023 is set aside only with regard to the transfer order of the fourth respondent to Government Dental College, Chennai.

(b)The respondents 1 and 2 herein are directed to grant transfer and posting orders to the petitioner in Tamil Nadu Government Dental College and Hospital, Chennai.

(c)The fourth respondent had addressed an e-mail to the second respondent on 11.09.2023 to accommodate her in any other vacant place in Chennai instead of reverting her back to Tiruvarur Medical College. The said request of the fourth respondent shall be sympathetically considered by the respondents 1 and 2 depending upon the vacancy within a period of 4 weeks.

(d)The transfer of third respondent to Thiruvavur Medical College shall not be disturbed.



W.P(MD).No.19877 of 2023

(e)In the transfer counselling to be held in future, the respondents 1 and 2 should include a clause in their circular to the effect that a waiting senior (who had not exercised his option during his turn) should get the first option in the resultant vacancy arising out of an option exercised by a Junior Medical Officer.

25.With the above said observations, the writ petition stands allowed to the extent as stated above. No costs Consequently, connected miscellaneous petitions are closed.

08.12.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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W.P(MD).No.19877 of 2023

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To

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

2.The Director of Medical Education & Research
Kilpauk
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W.P(MD).No.19877 of 2023

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Pre-delivery order made in
W.P.(MD).No.19877 of 2023
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08.12.2023