



W.P.No.2869 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.2869 of 2023

Dr.T.Saravanan

..Petitioner

Vs.

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

2.The Director of Medical Education,
Directorate of Medical Education (DME),
Kilpauk,
Chennai – 600 010.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Mandamus, directing the respondents to restore the petitioner's original station seniority i.e., 21.08.2018 on par with others as per the order of this Court dated 28.02.2020 made in W.P.Nos.31499 and 32953 of 2019 with all service benefits.



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For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.M.Bindran,
Additional Government Pleader

ORDER

This Writ Petition has been filed for the issue of writ of mandamus directing the respondents to restore the petitioner's original station seniority pursuant to the order passed by this Court in W.P.No.31499 and 32953 of 2019 dated 28.02.2020.

2. The case of the petitioner is that he was appointed as Assistant Surgeon in Tamil Nadu Medical Services on 15.06.2011. He became an Assistant Professor and he was working at Government Mohankumaramangalam Medical College Hospital, Salem by virtue of order passed by the 2nd respondent dated 27.07.2018.

3. In the year 2019, there was a huge agitation conducted by the Doctors and the petitioner also participated in the same. As a result, the 2nd respondent issued transfer and posting order dated 30.10.2019 and the petitioner was transferred from Government



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Mohankumaramangalam Medical College Hospital, Salem to Government Hospital, Tittakudi, Cuddalore District. The disciplinary proceedings were also initiated against the petitioner under Rule 17(b) of the Civil Service Discipline Rule on the ground that the petitioner had voluntarily absented himself from duty. Both the orders became subject matter of challenge before this Court. Those writ petitions were taken up with a batch of other writ petitions filed by the Doctors. A common order was passed in all these writ petitions on 28.02.2020 and this Court considering the facts and circumstances of the case, recalled all the transfer orders and directed that the petitioners should be restored to their original positions in the Directorate of Medical Education.

4. The petitioner was thereafter transferred and posted at Government Mohankumaramangalam Medical College Hospital, Salem through the proceedings dated 24.08.2021 issued by the Director of Medical Education. The grievance of the petitioner is that his original seniority was not restored as per the direction issued by the Court and he therefore made a representation in this regard. Since the same was not considered, the present writ petition was filed before this Court.



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5. The 2nd respondent has filed a counter affidavit. The stand taken by the 2nd respondent in the counter affidavit is as follows:-

7. It is respectively submitted that seniority list has been prepared as and when transfer counselling conducted for every year in respect of the Medical Officers working in the cadre of Assistant Professor/Senior Resident/Junior Resident Tutor working in Government Medical College institutions throughout the state At that time only and in that counselling those who have submitted their willingness to attend the transfer counselling then seniority list will be communicated to all the Medical Officers through their Head of institutions duly following the guidelines issued in G.O.(2D).No.131, Health & Family Welfare Department, Dated.20.11.2007. It is submitted that in G.O.(2D).No.131, Health & Family Welfare Department Dated.20.11.2007, counting of station seniority is ordered as follows:

10.5. For transfer within the Directorate, Station Seniority will be the criterion for priority whereas in the case of inter Directorate transfers, service seniority will be criteria for priority.

10.6. For counting station seniority, actual



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period of duty in the present posting alone will be counted, excluding period spent on leave like Earned leave. Medical Leave, Extra-ordinary leave etc., and period of unauthorised absence.

8. It is submitted that following the above criteria, counselling has been conducted for the year 2021 and 2022 and transfer and postings have been issued for several Medical Officers including those who have participated in the strike similar to the petitioner herein as per the orders issued in G.O.(2D).No.131, Health & Family Welfare Department, Dated.20.11.2007 i,e from the actual period of duty in the present posting alone and not as requested by the petitioner herein. It is therefore submitted that during the forthcoming transfer counselling, station seniority will be followed from the actual period of duty in the present posting alone as per G.O.(2D).No.131, Health & Family Welfare Department, Dated.20.11.2007 including the petitioner herein.

9. It is submitted that moreover the Hon'ble Court in its order dated.28.02.2020 made in W.P.No.31369 of 2019 has ordered only to restore the



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petitioners to their original position in the Director of Medical Education in the next transfer counselling and however the 2nd respondent had posted the petitioner herein again to his original station prior to the transfer counselling conducted. It is further submitted that the petitioner herein had worked in Director of Medical and Rural Health Services side from 08.11.2019 to 15.05.2020 and drawn salary in the Head of account pertaining to the Director of Medical and Rural Health Services side and after obtaining relieving order from that institution and joined duty in the present station on 16.05.2020 and thereby it is pertinent that station seniority has to be counted from 16.05.2020 onwards only as per the instructions issued in G.O.(2D).No.131, Health & Family Welfare Department, Dated 20.11.2007. It is further submitted that no separate orders for station seniority to any of the Medical Officers working in the Department has been issued by the 2nd respondent so far prior to the transfer counselling and station seniority list will be arrived before the conduct of counselling and communicated to the participants in the counselling through their present Head of Institutions.



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6. Heard Mr.M.R.Jothimanian, learned counsel appearing for the petitioner and Mr.M.Bindran, learned Additional Government Pleader appearing for the respondents.

7. The short issue that arises for consideration is as to whether the petitioner can be deprived of the original seniority on the ground that he was not working with the 2nd respondent for the period from 08.11.2019 to 15.05.2020, and therefore this period cannot be taken into consideration to reckon the station seniority as per G.O.(2D).No.131 dated 20.11.2007.

8. The petitioner was originally working under the 2nd respondent at Government Mohankumaramangalam Medical College Hospital, Salem. During the agitation conducted by the Doctors, the petitioner was transferred by the 2nd respondent and he was relieved from the DME side and he was posted at Government Hospital, Cuddalore District, which comes within the Director of Medical and Rural Health Services. If this was a regular transfer which was acted upon, then G.O.(2D).No.131 dated 20.11.2007 will come into play and for the



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purpose of counting the station seniority, the actual period of duty alone will be considered and the period between 08.11.2019 to 15.05.2020 will not be counted.

9. In the instant case, the transfer and posting order of the petitioner resulting in the petitioner being relieved from DME side and going into the Director of Medical and Rural Health Services side was interfered by this Court in the order passed in W.P.No.31499 of 2019. This Court had given a very specific direction at paragraph No.55 that the transfer order will be recalled and the petitioners will be restored to their original positions in the Directorate of Medical Education.

10. In view of the same, the period between 08.11.2019 to 15.05.2020 that was spent by the petitioner under the Directorate of Medical and Rural Health Services, becomes *non-est* in the eye of law. Since it has been interfered, this period must also be reckoned by the 2nd respondent to be the period spent under DME. Consequently, the seniority of the petitioner has to be reckoned for this period also while counting the actual period to determine the station seniority.



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11. In the light of the above discussion, this writ petition stands **allowed** and there shall be a direction to the respondents to restore the petitioner in original station seniority from 21.08.2018 in-line with the orders passed in W.P.No.31499 of 2019 dated 28.02.2020. No costs.

12.09.2024

dsa

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking order/ Non-speaking order

To:-

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The Director of Medical Education,
Directorate of Medical Education (DME),
Kilpauk,
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N.ANAND VENKATESH, J.

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