



W.P.Nos.3877 & 5483 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2024

Pronounced on : 08.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.3877 & 5483 of 2024 and
WMP.Nos.4194, 4197, 4199, 6058 & 6059 of 2022

WP.No.3877 of 2024

Dr.N.Kumar

... Petitioner

Vs.

- 1.The State of Tamilnadu,
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 and Research,
Kilpauk,
Chennai 600 010
- 3.The Director of Medical and Rural Health Services,
DMS Compound, Anna Salai,
Teynampet, Chennai 600 006
- 4.Dr.B.R.Sasikumar
- 5.Dr.D.Prabakar
- 6.Dr.P.Guna
- 7.Dr.T.Sivaraman
- 8.Dr.J.Balaji
- 9.Dr.M.Senthilkumar
- 10.Dr.S.Balamurugan
- 11.Dr.V.S.Subburaman
- 12.Dr.T.Murali
- 13.Dr.K.Sureshkannan
- 14.Dr.R.Ezhilasrasu
- 15.Dr.A.Umashankar



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16.Dr.P.Murugalatha

... Respondents

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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd Respondent in K.Dis. No. 41451/E1/2/2023-Paed dated 09.02.2024 and to QUASH the same in so far as Respondents 4 to 16 are concerned and consequently directing the Respondents 1 to 3 to include the name of the Petitioner in 2023-24 panel above the name of Junior 5th Respondent Dr. B.R.Sasikumar with appropriate revision of seniority in the post of Associate Professor based on 2019 panel and consequently promote the Petitioner to the post of Professor of Paediatrics with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran,
Senior Counsel
Mr.S.Nedunchezhiyan

For Respondents
For R1 to 3 : Mrs.M.Sneha,
Special Counsel for Health Department

WP.No.5483 of 2024



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- 12.Dr.T.Murali
- 13.Dr.K.Sureshkannan
- 14.Dr.R.Ezhilasrasu
- 15.Dr.A.Umashankar
- 16.Dr.P.Murugalatha

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned circular issued by the 2nd Respondent in Ref. No.41451/E1/ 5/ 2023 dated 27.02.2024 and to quash the same and consequently directing the Respondents 1 to 3 to include the name of the



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petitioner in 2023- 24 panel above the name of junior 4th Respondent Dr. B.R.Sasikumar with appropriate revision of Seniority in the post of Associate Professor based on 2019 panel and consequently promote the Petitioner to the post of professor of paediatrics, with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran,
Senior Counsel
Mr.S.Nedunchezhiyan

For Respondents
For R1 to 3 : Mrs.M.Sneha,
Special Counsel for Health Department

COMMON ORDER

The petitioner in both the writ petitions are one and the same and filed these writ petitions challenging the proceedings of the second respondent dated 09.02.2024 thereby issued panel for the post of Professor of Paediatrics for the year 2023-24 and the subsequent circular issued by the second respondent dated 27.02.2024 for counselling to fill up vacant post of Professor in the Specialty of Paediatrics scheduled on 28.02.2024.



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2. Heard, the learned counsel appearing on either side.

3. The petitioner was initially appointed as Assistant Surgeon in Tamilnadu Medical Service. In the selection process, he had secured 154th rank and therefore, he was considered in General Turn. His seniority was allotted based on roster point and he was assigned seniority in seniority No.702 by the Tamilnadu Public Service Commission. Accordingly, the petitioner was placed far junior than number of candidates who secured lesser marks than the petitioner. Thereafter, the petitioner had completed his post graduation degree in M.D(Paediatics) and he was posted as Assistant Professor in Directorate of Medical Education side on 01.08.2008. After completion of his five years in the post of Assistant Professor, he became eligible for promotion to the post of Associate Professor. However, his name was not included in the panel of Assistant Professor. In a batch of writ petitions, this Court concluded that Sections 1(2), 40 and 70 of the Tamilnadu Government Servants (Conditions of Service) Act, 2016 declared as ultravires and unconstitutional and directed to redo the exercise of fixation of seniority within a period of twelve weeks. Further, following the order passed by



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the Hon'ble Supreme Court of India in the Bimlesh Tanwar's case and the order passed by the Hon'ble Division Bench of this Court in N.Santhosh Kumar's case, it was directed to fix seniority based on the marks secured in the selection process. However, the said order has not been complied with and as such, a contempt petition was filed in Cont.P.(Civil)No.638 of 2017.

4. In the contempt petition, the Hon'ble Supreme Court of India directed to revise and publish the seniority list of the selectees who were selected in the selection process conducted in pursuance to the notification issued by the Tamilnadu Public Service Commission on the basis of merit and not on the basis of the roster point within a period of twelve weeks. In order to comply with the direction, the Tamilnadu Public Service Commission forwarded the seniority list of Medical Officers, who were selected in the year 1999 on merits as per the proceedings dated 25.05.2022. The petitioner's seniority was revised and he was placed above his juniors who had secured lesser marks than the petitioner. The petitioner was placed in seniority No.3808 of the Civil Medical List. However, his junior was promoted to the post of Associate



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Professor in the year 2019 itself and the petitioner was given promotion to the post of Associate Professor only on 29.04.2021. As per the revised seniority, once again the petitioner was placed above his juniors who were already promoted to the post of Associate Professor. Therefore, the petitioner submitted representation seeking promotion on par with his juniors based on the revised seniority. However, it was not considered and the second respondent by its proceedings dated 01.06.2023 called for service particulars of the Medical Officers for promotion to the post of Professor for the panel year 2023-24. The petitioner's service particulars were sent through the Dean of Medical College. The second respondent issued proceedings dated 30.06.2023 for verification of research publications in person from 11.07.2023 to 14.07.2023 by including his juniors as per the revised seniority list i.e. respondents 4 to 16. Therefore, the petitioner filed writ petition before this Court in WP.No.20680 of 2023 for direction to the respondents to place the petitioner's name in the 2023-2024 panel for promotion to the post of Professor of Paediatrics on par with his junior and also seeking promotion to the post of Professor in Paediatrics.



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5. In view of the interim order granted by this Court, the petitioner was permitted to participate in the certificate verification process in respect of research publication to be made by the second respondent. However, the petitioner did not complete three years of service in the post of Associate Professor since he was belatedly promoted to the post of Associate Professor. Though this Court permitted the petitioner to participate in the verification of the research publications, he was not promoted and as such, the petitioner filed contempt petition before this Court in Cont.P.No.2662 of 2023. While pending contempt petition, the petitioner was permitted to attend the verification process of research publication on 21.11.2023. The petitioner produced all research publications and the same were duly accepted and approved by the Committee. Accordingly, the petitioner was declared as eligible to be promoted to the post of Professor. However, without considering the petitioner, the second respondent issued panel dated 09.02.2024 for the post of Professor of Pediatrics for the year 2023-24, wherein all the juniors of the petitioners have been included.

6. The first and second respondents filed counter and



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Mrs.M.Sneha, the learned Special Counsel for Health Department submitted that the petitioner was originally appointed as Assistant Surgeon. After completion of his Post Graduation, he was posted as Associate Professor of Paediatrician on 01.08.2008 at Coimbatore Medical College, Coimbatore. The next avenue of promotion is to the post of Associate Professor. Since the petitioner is qualified for promotion to the post of Associate Professor and he reached his seniority for the panel year 2021 and his name was included in the panel for promotion to the post of Associate Professor. Insofar as panel for the post of Professor in the Specialty of Paediatrics for the year 2023-24, the crucial date for the panel 2023-2024 is 15.03.2023. Accordingly, the second respondent has approved the panel consisting 18 Associate Professors for promotion to the post of Professor as on 09.02.2024. They had also completed three years of teaching experience and also published 4 research publications. For appointment to the post of Professor, insofar as the petitioner is concerned, he has not completed three years of teaching experience in the post of Associate Professor in the Specialty of Pediatrics as on crucial date 15.03.2023. Therefore, his name was not included in the panel for promotion to the post of Professor.



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7. As per the direction issued by the Hon'ble Supreme Court of India in the contempt petition, the State Government is to complete the exercise of finalising the seniority lists of selection processes conducted after 10.03.2003 on the basis of the principle that the seniority list shall be reckoned only on the basis of merit as determined by the Tamilnadu Public Service Commission in the selection process. Further, if any list is finalised in case of selections held prior to 2003 giving benefit to the persons selected as per the their seniority or as per merit, the same shall also not to be disturbed.

8. Admittedly, though the petitioner was permitted to participate in the certificate verification in respect of research publications, it does not confer any right on the petitioner for promotion to the post of Professor. That apart, the petitioner has not completed his three years of service in the post of Associate Professor for promotion to the post of Professor. It is one of the criteria for promotion to the post of Professor.

9. The contention of the learned Senior Counsel is that if it is as



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per the seniority list forwarded by the Tamilnadu Public Service Commission in respect of the list of Medical Officers who were selected in the year 1999 batch dated 25.05.2022, the name of the petitioner ought to have been included in the panel to the post of Associate Professor in the year 2019 itself. Therefore, he ought to have been promoted to the post of Associate Professor in the year 2019 itself. Instead the petitioner was promoted to the post of Associate Professor by including his name in the panel of the year 2021 and promoted to the post of Associate Professor only on 29.04.2021.

10. The Tamilnadu Public Service Commission forwarded the seniority list of the Medical Officers who were selected in the year 1999 as per the direction issued by the Hon'ble Supreme Court of India in SLP(C) No.2886 of 2016. However, in the contempt petition(Civil) Diary No.6415 of 2021, the Hon'ble Supreme Court of India fixed the cut off date for revision of seniority list as 10.03.2003. Accordingly, if any list is finalised in the case of selections held prior to 2003 giving benefit to the persons selected as per their seniority or as per their merit, the same shall not be disturbed. Accordingly, respondents 4 to 16 have been placed in the panel for promotion to the post of Professor for the year 2023-24



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considering their three years of teaching experience and also their research publications. That apart, admittedly the petitioner had completed only two years of teaching experience as Associate Professor in the Specialty of Paediatrics as on the crucial date of 15.03.2023. Therefore, this Court finds no infirmity or illegality in the impugned proceedings of the second respondent dated 09.02.2024. As such, the writ petition in WP.No.3877 of 2024 is devoid of merits and liable to be dismissed.

11. In view of the order passed in WP.No.3877 of 2024, this Court finds no infirmity or illegality in the impugned circular issued by the second respondent dated 27.02.2024. As such, the other writ petition is also liable to be dismissed.

12. Accordingly, both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

08.04.2024

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

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G.K.ILANTHIRAIYAN, J.

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