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W.P.No.20807 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.20807 of 2018

L.Ayyanar

... 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 – 9.

2.The Director of Public Health and Preventive Medicine,
DMS Campus, Anna Salai,
Teynampet, Chennai – 600 006.

... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent in R.No.73207/E4/S2/2016-1 dated 21.02.2018 and to quash the same and consequently directing the respondents to pass orders for revision of seniority of the petitioner in the post of Assistant on par with Juniors P.Jananayagam and C.Muthukrishnan with all consequential benefits including arrears of salary including promotion to the post of Superintendent on par with juniors with all consequential benefits, within a time frame to be fixed by this Court.



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For Petitioner : M/s.M.Kaviya

for Mr.S.Nedunchezhiyan

For Respondents : Mr.L.S.M.Hasan Fizal, AGP for R1.
Mr.Tippu Sulthan, GA for R2.

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the first respondent and the learned Government Advocate for the second respondent and perused the materials available on record.

2. The case of the petitioner is that he was appointed as Junior Assistant in Public Health and Preventive Medicine Department on compassionate grounds as per the proceedings of the 2nd respondent dated 28.12.1998. He joined duty in the forenoon on 12.01.1999, his service was regularised w.e.f. 19.06.1999. Subsequently, the Government issued orders in G.O.(D).No.333 Health and Family Welfare Department dated 08.04.2008 to regularize the service in the post of Junior Assistant w.e.f. 12.01.1999, after getting concurrence from TNPSC.



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3. Subsequently, the petitioner passed the departmental test i.e, Tamil Nadu Office Manual Test (DOM) in May 2001 and Accountant Test for Subordinate Officers Part-I in December 2002. Thereafter, the probation was declared vide proceedings of the Deputy Director of Health Services, Villupuram dated 13.02.2003. After a period of seven years, the Deputy Director of Health Services issued orders in Rc.No.548/A1/07 dated 13.11.2009 by stating that the declaration of probation for compassionate appointment to be made only by the State Government. On that basis, proposal was forwarded to the State Government and consequentially the State Government issued orders in GO.(D).No.573 Health and Family Welfare Department dated 04.06.2010 for declaration of probation on the normal date of completion of his probationary period in relaxation of relevant rules w.e.f. 11.01.2001 A.N.

4. The petitioner was due to promotion to the post of Assistant on inclusion of his name in 2009 panel based on the seniority. But the issue of declaration of probation was pending with Government and his name was not included in 2009 panel.



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5. One Mr.P.Jananayagan who was junior to the petitioner was appointed on 02.08.1999 after of date of petitioner's appointment i.e., 12.01.1999 and another junior Mr.C.Muthukrishnan was appointed on 13.01.1999 have been promoted to the post of Assistant subsequent to the petitioner. In the year 2014, seniority of said persons who were juniors to the petitioner in the post of Assistant was suddenly revised by including their names in 2009 panel and accordingly they were given the benefit of promotion to the post of Assistant from the year 2009 onwards. Thereafter, the petitioner submitted his representation seeking to include his name in 2009 panel to the post of Assistant and accordingly to revise the seniority in the post of Assistant on par with junior P.Jananayagam and C.Muthukrishnan, without considering the representation of the petitioner for fixation of seniority on par with junior the second respondent proceeded to prepare panel for the post of Superintendent in the year 2017-18 by calling profoma particulars of eligible candidate vide proceedings dated 04.05.2017.



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6. In the said circumstances, the petitioner filed writ petition before this Court in WP.No.22833 of 2017 to direct the second respondent to consider the representation submitted by the petitioner and to pass appropriate orders on merit and in accordance with law, within a period of 12 weeks. Consequent to the order of this Court, the second respondent issued the impugned order in R.No.73207/E4/S2/2016-1 dated 21.02.2018 stating that the claim for revision of seniority on par with the junior P.Jananayagam cannot be complied with as the name of the petitioner cannot be considered for inclusion in the panel for promotion to the post of Assistant in the year 2009-2010, as he was not qualified with the requisite examination on 15.03.2009, the crucial date for preparation of panel to the post of Assistant in the year 2009-2010. Aggrieved by the said order, the present writ petition is filed.

7. In the counter affidavit it is stated that as per sub rule (b) of Rule 30, of the Tamil Nadu Ministerial Service Rules and also as per the amendment issued in the Government Order GO.Ms.No.104 Personnel and Administrative Reforms (B) Department, dated 03.11.2016 *“No member of the service shall be eligible for promotion to any of the post mentioned in*



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column (1) of Annexure IV unless and until he has passed the special tests or undergone the training, if any specified in the corresponding entry in Column (2) thereof" The petitioner has passed all the departmental tests prescribed for promotion to the post of Assistant in Tamil Nadu Ministerial Service only during May 2009, hence he is eligible for inclusion in the panel for year 2010-2011 for promotion to the post of Assistant and accordingly he was promoted as Assistant on the F.N. of 13.10.2010, as the contention of the petitioner is that he was denied promotion to the post of Assistant in the year of panel 2009-2010 is not correct.

8. The learned counsel for the petitioner submits that the impugned order issued by the second respondent is exfacie, illegal, arbitrary and against law and offending the rights of the petitioner to get promotion on par with the junior as per Fundamental Rules. He further contends that P.Jananayagam who is the junior to the petitioner has also not cleared the requisite departmental test as on 15.03.2009 and cleared the said examination along with the petitioner only during May 2009. Therefore, the impugned order is exfacie, illegal and its far from the facts of the records.



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post of Assistant he has been retrospectively promoted as Assistant vide proceedings dated 22.05.2015 w.e.f. 08.07.2009, as on the date on which the immediate junior S.Sathishkumar was retrospectively promoted as Assistant. Accordingly, the seniority of P.Jananayagam has been revised in the post of Assistant on par with that of his junior.

12. But in the present case, the petitioner has not passed one of the departmental test in Tamil Nadu Medical code on the crucial date i.e, on 15.03.2009, as such his name was not included in the panel and as such he is not entitled to seek for revision of seniority in the post of Assistant on par with that of his juniors P.Jananayagam and sought to dismiss the writ petition.

13. This Court gave anxious consideration to the submissions of the respective counsel. It is an undisputed fact that the petitioner is senior to one Jananayagam and both of them passed the qualifying test Tamil Nadu Medical code examination only in the month of May 2009. In compliance to the order dated 22.02.2013 in WP.No.9656 of 2009, P.Jananayagam (i.e.,) junior of the petitioner was included in the panel of promotion to the post of



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Assistant 2009-2010 on par with immediate junior S.Satishkumar. It is also an admitted fact that P.Jananayagam has been retrospectively promoted as Assistant vide order dated 22.05.2015 w.e.f. 08.07.2009, the date on which his immediate junior was retrospectively promoted as Assistant. It is also an admitted fact that Seniority of P.Jananayagam has been revised in the post of Assistant on par with that of his junior S.Sathishkumar.

14. Under these circumstances, it is established that P.Jananayagam who is the junior to the petitioner was included in the panel for promotion to the post of Assistant in the year 2009-2010 and he was promoted retrospectively as Assistant and his seniority has been revised in the post of Assistant on par with that of his junior.

15. Under these circumstances, the contention of the respondents that the petitioner is not entitled for revision of Seniority on par with his junior P.Jananayagam, as the petitioner did not passed the departmental test before the crucial date i.e, 15.03.2009 is not tenable. As and when the junior of the petitioner i.e., P.Jananayagam has given the benefit to include his name in the panel for promotion to the post of Assistant during 2009-2010 and



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promoting him retrospectively in the post of Assistant and revised his seniority on par with his junior, the action of the respondents in not extending the same benefit to the petitioner is to be held as discrimination.

16. As such, the action of the respondents in not extending the same benefit to the petitioner to include his name in the panel for promotion to the post of Assistant in the year 2009-2010 on par with his immediate junior and with all consequential reliefs amounts to discrimination and which is in violation of Article 14 of the Constitution of India.

17. For the reasons stated above, the order impugned in this writ petition is unsustainable in law and accordingly it is liable to be set aside.

18. Accordingly this writ petition is allowed, with the following directions:-

(i) the impugned proceedings issued by the second respondent in R.No.73207/E4/S2/2016-1 dated 21.02.2018 is hereby set aside.

(ii) the respondents are directed to revise the seniority of the petitioner in the post of Assistant on par with this junior P.Jananayagam with all



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consequential benefits including arrears of salary and including promotion to the post of Superintendent on par with his juniors with all consequential benefits within a period after two months from the date of receipt of a copy of this order.

(iii) There shall be no order as to costs.

(iv) Consequently, connected miscellaneous petitions are closed.

15.02.2024.

Index :Yes/No

Neutral Citation :Yes/No

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To

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2.The Director of Public Health and Preventive Medicine,
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