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W.P.No.10549 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10549 of 2024

Dr.A.Tharmar

.. **Petitioner**

Vs.

1.The Secretary to Government
Health and Family Welfare Department
Secretariat, St.George
Chennai.

2.The Director
Medical and Rural Health Service
Chennai – 600 006.

.. **Respondents**

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the 2nd Respondent to consider the seniority and add petitioner name in the proposed empanelment for the post of Additional Director of medical and rural health services for the year 2024-2025 in the reference notification no. 9901/E6/2024 dated 13.03.2024.



W.P.No.10549 of 2024

For the Petitioner : Ms.B.Bhuvaneshvari

For the Respondents : Mr.E.Sundaram, GA

ORDER

This Writ Petition is filed for a Mandamus, directing the respondents to consider the seniority and add the petitioner's name in the proposed panel for the post of Additional Director of Medical and Rural Health Services for the year 2024-2025 in the reference Notification No. 9901/E6/2024 dated 13.03.2024 and for such further or other orders.

2. The case of the petitioner is that the petitioner is presently working as Joint Director in Health Services, Krishnagiri. He is senior to the persons mentioned in the panel dated 13.03.2024 in the CML seniority list. Originally when he was working as an Assistant Surgeon, a charge memo dated 21.09.1998 was issued against him and with much delay without completing the enquiry within six months, as per the rules, the disciplinary proceedings were kept pending and only in the year 2008, a punishment of



W.P.No.10549 of 2024

WEB COPY

increment cut was imposed against the petitioner. In the meanwhile, the juniors of the petitioner were promoted as Senior Civil Surgeon, while the petitioner's promotion got delayed. It is the contention of the petitioner that the punishment is only increment cut and the consequential loss of promotion would be double jeopardy and would amount to double punishment.

3. The learned counsel appearing on behalf of the petitioner further submits that the respondents ought to have completed the disciplinary enquiry within a period of six months. For their administrative delay, the petitioner may not be made to suffer. If that has to be taken into account, the petitioner's date of promotion to Senior Civil Surgeon has to be advanced and consequentially the petitioner will be senior to that of the other persons, who are now empanelled. It is her second contention that in any event, it is the CML Seniority which has to be followed as per the Medical Services are concerned. In spite of the fact that such punishment has been given, in the CML Seniority, the petitioner is senior. When the petitioner is senior, he



W.P.No.10549 of 2024

WEB COPY

cannot be left out, when there is no other impediment and therefore, the respondents are liable to be directed by this Court to include the name of the petitioner in the panel for promotion to the post of Assistant Director.

4. Per contra, *Mr.E.Sundaram*, the learned Government Advocate appearing on behalf of the respondents, producing the written instructions would submit that when the petitioner's turn came, disciplinary proceedings were pending against him. Ultimately, the disciplinary proceedings ended with a punishment of stoppage of increment cut, for a period of one year 11.03.2008. Only after the currency of punishment was over, the petitioner again became eligible for promotion as Senior Civil Surgeon. Accordingly, the petitioner's name was included in the seniority of Senior Civil Surgeon and was granted promotion with effect from 09.11.2011 only. Thereafter, considering his seniority in the post of Senior Civil Surgeon, further promotion was granted as Chief Civil Surgeon on 30.04.2013 from the post of Senior Civil Surgeon. The petitioner was further promoted to the post of Joint Director of Health Services with effect from 10.03.2020. The post of



W.P.No.10549 of 2024

WEB COPY

Assistant Director has to be filled up from among the holders of the post of Joint Director. As far as other persons who were empanelled were all promoted in the year 2019-2020, while the petitioner was promoted only on 14.09.2023 and as such senior to the petitioner in the cadre of Joint Director of Health Services and accordingly, the petitioner's name had rightly been left out in the panel.

5. I have carefully considered the rival submissions made on either side and perused the material records of the case.

6. The post in question is the post of Additional Director of Health Services. Admittedly, the feeder cadre is the Joint Director of Health Services. Therefore, it is the seniority in that post of Joint Director that has to be taken into account, among the holders of the post of Joint Director. The empanelment has to be done as per the seniority. When the petitioner was facing disciplinary proceedings, obviously the petitioner's name would be passed over, pending the disciplinary proceedings. If only the



W.P.No.10549 of 2024

WEB COPY

disciplinary proceedings end up in exoneration of the petitioner, he will be considered from the original date on which the petitioner's name became due. If the disciplinary proceedings end up in punishment, then obviously apart from the punishment which is imposed, the petitioner will necessarily lose the opportunity of promotion in the meantime. Ultimately, the punishment of stoppage of increment cut was imposed. During the currency of punishment, the petitioner cannot be considered for promotion as per the rules. Therefore, the petitioner was rightly granted promotion to the post of Senior Civil Surgeon only in the panel for the year 2011.

7. Therefore, this Court does not find any infirmity in not granting of promotion to the petitioner as Senior Civil Surgeon earlier to 2011 as claimed by the petitioner. This apart, aggrieved by the very same fact, the petitioner filed an appeal and the same was disposed of by an order dated 11.05.2019 and the same is extracted hereunder:-

“The attention of Joint Director of Health Services, Pudukottai is drawn to the appeal petition of Dr.A.Tharmar, MD (A) Assistant Surgeon – Government Hospital, Aranthangi, Pudukottai Dist, and he is informed that the



WEB COPY



W.P.No.10549 of 2024

individual request for a promotion as a Senior Civil Surgeon will be considered after only subsequent to the completion of the implementation of the punishment which was imposed on him. This fact may be conveyed to the individual.”

8. Aggrieved by the same, the petitioner also filed a W.P. (MD) No.2870 of 2011 and this Court by an order dated 14.03.2011 upheld the said order and it is relevant to extract an operative portion of the order, which reads as follows:-

“5.It is not the case of the petitioner that the punishment imposed on the petitioner was not in currency, on the date when his claim for promotion was rejected. Hence, I am of the view that the impugned order of the second respondent does not require any interference by this Court. However, if a panel has to be prepared for promotion for the year 2011, since the punishment period was already over, the case of the petitioner has to be considered for promotion. The petitioner can make a request for such inclusion, within one week from the date of receipt of a copy of this order and on receipt of the same, the respondents are directed to consider the same and to take suitable action in that regard.”

9. Therefore, when the petitioner's grievance has already been negated by an order dated 11.05.2019, once again the petitioner cannot re-agitate the same grievance. Therefore, I am unable to accept both the contentions of the learned counsel for the petitioner that non grant of



W.P.No.10549 of 2024

promotion to the petitioner amounts to double jeopardy or that for the seniority in the CML list, the petitioner has to be empanelled.

10. For all the foregoing reasons, the Writ Petition is dismissed. No costs.

24.04.2024

Index : Yes
Neutral Citation : Yes
Speaking order : Yes

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To

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W.P.No.10549 of 2024

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W.P.No.10549 of 2024

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