



W.P.Nos.14542 and 14854 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**ORDERS RESERVED ON : 06.06.2024**

**ORDERS PRONOUNCED ON : 25.06.2024**

**CORAM**

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.Nos.14542 and 14854 of 2024**  
**and W.M.P.Nos.15834 & 16110 of 2024**

**W.P.No.14542 of 2024:**

- 1.Dr.N.S.Sasikumar
- 2.Dr.S.Navurang
- 3.Dr.W.Jesi
- 4.Dr.Pillai Karthik Pirmanayagam
- 5.Dr.S.Thenmozhi
- 6.Dr.G.Lord Krishna
- 7.Dr.G.Sherry Jenilin
- 8.Dr.N.Nithyavikasini
- 9.Dr.S.S.Syed Safina

... Petitioners

**Vs.**

1.The State of Tamil Nadu  
Rep.by its Additional Chief 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.

... Respondents



W.P.Nos.14542 and 14854 of 2024

**W.P.No.14845 of 2024:**

WEB COPY

Dr.K.Dhivya

... Petitioner

Vs.

1.The State of Tamil Nadu  
Rep.by its Additional Chief 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.

... Respondents

PRAYER in W.P.No.14542 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to re-conduct the restructuring counselling for Medical Officers in the cadre of Assistant Professor /Tutor in Physiology Department under the control of Directorate of Medical Education and Research in accordance with directions issued by this Hon'ble Court in W.P.No.15215 of 2019 etc., cases dated 14.08.2019 and the orders passed in W.A.No.2917 of 2019 dated 11.12.2023 by confining/giving priority to Medical Officers working within the department as on 15.02.2019 and by following the procedure in G.O(4D) No.2, Health and Family Welfare Department dated 15.02.2019 operational guidelines, in consideration of representation submitted by the petitioners dated 30.05.2024, within a time frame to be fixed by this Court.



W.P.Nos.14542 and 14854 of 2024

PRAYER in W.P.No.14854 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to re-conduct the restructuring counselling for re-fitment of Medical Officers in the cadre of Assistant Professor /Tutor in Physiology Department under the control of Directorate of Medical Education and Research in accordance with directions issued by this Hon'ble Court in W.P.No.15215 of 2019 etc., cases dated 14.08.2019 and the orders passed in W.A.No.2917 of 2019 dated 11.12.2023 by confining/giving priority to Medical Officers working within the department as on 15.02.2019 and by following the procedure in G.O(4D) No.2, Health and Family Welfare Department dated 15.02.2019 operational guidelines, in consideration of representation submitted by the petitioner dated 04.06.2024, within a time frame to be fixed by this Court.

In both the W.P's.:-

For the petitioners : Mr.G.Sankaran  
Senior Counsel  
Assisted by  
Mr.S.Nedunchezhiyan

For the respondents: Ms.Sneha  
Spl.Counsel for Health and  
Family Welfare Department

### **COMMON ORDER**



W.P.Nos.14542 and 14854 of 2024

WEB COPY

The common grievance of the Writ Petitioners in both these Writ Petitions is against the 'zero' counselling conducted on 31.05.2024 for the Medical Officers in the cadre of Assistant Professor / Tutor in the Physiology Department based on the Circular dated 29.05.2024 as such these Writ Petitions are taken up, heard and disposed of by this common Judgment.

**Brief Facts:-**

2. The petitioners' case is that they are regularly appointed as Tutors / Assistant Professors in the Department of Physiology in various Government Medical Colleges based on M.D., (Physiology) degree qualification. Some of the petitioners have been appointed as Assistant Surgeons and on acquiring PG degree qualification, posted as Tutor / Assistant Professor under the Director of Medical Education (from now on referred to as 'the DME'), while some of the petitioners were directly appointed in the said position as such through the Medical Recruitment Board. However, all the petitioners were working as Tutors / Assistant Professors as on 15.02.2019.



W.P.Nos.14542 and 14854 of 2024

WEB COPY

2.1. The respondents issued orders in G.O (4D). No.2, Health and Family Welfare (A1) Department, dated 15.02.2019 to streamline the teaching posts sanctioned in the Government Medical Colleges and Hospitals under the control of the DME. The teaching posts in the Government Medical Colleges were re-organized and re-structured by sanctioning the post matrix in Government Medical Colleges and attached Institutions, under the control of the DME, as per the annexure to the said Government Order. The Government Order also approved the operational guidelines for effective and smooth implementation of the order as per which the operationalization has to be completed on or before 31.03.2019. Even as per the said guidelines, the promotion from Assistant Professor to Associate Professor ought to be completed before effecting the transfer and posting.

2.2. Pursuant to the same when a Circular was issued on 24.05.2019, to conduct the Specialty Transfer Counselling, a Batch of Writ Petitions came to be filed before this Court in W.P.Nos.15215 of 2019 etc., wherein several grievances were expressed. The grievances were of different kinds while many of the Departments had an adequate number of posts to



W.P.Nos.14542 and 14854 of 2024

WEB COPY

accommodate all the Specialist Doctors who possessed the qualifications, there were certain Departments like that of the Physiology Department, which the petitioners are concerned with, where under the number of Doctors who are qualified with the PG Degree in the discipline were more and the posts were less. Considering all the grievances raised by the Doctors in various Departments, pending disposal of the said Writ Petitions, this Court by way of an interim order constituted an expert committee to formulate the guidelines to conduct counselling for the restricted posts, as per the Government Order. Thereafter, the Writ Petitions were disposed of by a common order dated 14.08.2019, essentially accepting the recommendations of the Committee. The directions contained in the final orders of this Court are as follows:

“7. On the compliance with G.O.131, the Committee is of the opinion is that the relevant G.O would not be applicable to this particular counselling, since it is being undertaken after once in a life time restructuring exercise. However, the same should be followed in the regular promotion posting counseling from the next year.

.....

9. In the certain specialties, it is observed that there are more number of PG qualified Medical Officers are available against the sanctioned posts of Assistant Professor/Senior Resident as per the G.O.2. For such specialties all sanctioned posts of Assistant Professors/Senior Residents may be considered as vacant and counseling be conducted afresh.



WEB COPY



W.P.Nos.14542 and 14854 of 2024

While conducting the counselling for restructuring the post of Assistant Professor, Medical Officers may be allowed to take part in the following order of preference.

1. Medical Officer qualified with PG degree in that particular specialty working under DME based on CML seniority
2. Medical Officer qualified with PG degree in that particular specialty working under DMS based on CML seniority
3. Service Post Graduates with PG degree based on CML seniority
4. Non Service Bond Candidates with PG degree.”

2.3. According to the petitioners, thus the principles contained in G.O (2D). No.131, Health and Family Welfare (A1) Department, dated 20.11.2007 in respect of transfer counselling would not be applicable. As per G.O (4D). No.2, dated 15.02.2019 and the orders passed by this Court, it can be seen that the promotion counselling should precede the restructuring counselling. After the directions of this Court on 14.08.2019, while the counselling in respect of restructuring / re-organizing of the teaching posts was conducted in the majority of the Departments, the same was never followed as far as the Physiology Department is concerned. A Writ Appeal was also filed as against the said order in W.A.No.2917 of 2009. When the Writ Appeal came up for hearing, it was undertaken on behalf of the



W.P.Nos.14542 and 14854 of 2024

respondents therein that the directions issued by this Court on 14.08.2019 would be followed and the counselling would be conducted in respect of the Physiology Department also. Recording the same, the Writ Appeal was disposed of. The relevant portion of the order is extracted hereunder:-

“4. Learned Senior Counsel appearing for the appellant has pointed out the grievance of the appellant in the said appeal, which reads as follows.

"i) The directions issued by this Hon-ble Court in batch of writ petitions dated 14.08.2019 to conduct zero counseling for specialty department in which P.G. qualified doctors outnumbering sanctioned posts not followed for Physiology department alone, resulting in violation of High Court order.

(ii) The directions issued to conduct promotion counseling before transfer counseling not followed in Physiology department and thereby number of Assistant Professor in Physiology could not be posted within department in the resultant vacancies after promotion. The fact remains that for all other departments, the promotion counseling conducted prior to transfer counseling.

5.However, the learned Special Government Pleader appearing for the respondents would contend that, every direction given by the learned Judge through the impugned order has been scrupulously followed and insofar as the Physiology Department also, such direction if at all has not been followed, that would be followed and hereafter it will be strictly followed. The said submission of the learned Special Government Pleader is taken on record and in view of the order of the learned single Judge which is impugned herein and the subsequent Division Bench judgment, where similar grievance has been considered by order dated 06.06.2023, we feel that by giving a direction to the respondents to follow the direction given by the learned Judge to the Physiology Department also as in the case of other departments, W.A.No.2917 of 2019 can be disposed of.



W.P.Nos.14542 and 14854 of 2024

6. Accordingly, there shall be a direction to the respondents to follow the direction given by the learned Judge through the impugned order and in this regard, no discrimination can be shown against any Department and even in respect of the Department of Physiology, the same pattern shall be followed as directed by the learned Judge through the impugned order in respect of retaining or transferring incumbents hereafter. ”

### **Grievances of the Petitioners:-**

3. The grievance of the petitioners is that now subsequently when the issue was taken up for conducting the ‘zero’ counselling, as per the impugned Circular dated 29.05.2024, it was conducted hastily and hurriedly. When the Circular itself is dated 29.05.2024, the counselling was conducted on 31.05.2024 itself, without giving adequate time for the aggrieved Doctors to even make representations to the respondents in respect of their grievances.

3.1. The second grievance of the petitioners is that when the directions of this Court are very clear that promotional counselling should precede the ‘zero’ counselling, without effecting promotions, now the counselling is hurriedly done. Therefore, the same constitutes a violation of the earlier order as well as the order of the Division Bench of this Court.



W.P.Nos.14542 and 14854 of 2024

Further, there was a contempt notice also issued to the respondents.

3.2. The third grievance is that when the restructuring and reorganization was done, the same was done taking into account the position prevalent as of the year 2019 and therefore, zero counselling has to be done with reference to the date 15.02.2019 in the sense that preference should be given to the Tutors / Assistant Professors who were on duty as on date, i.e., 15.02.2019. However, while conducting the counselling belatedly now in the year 2024, the respondents have included everyone else who were working as Tutors / Assistant Professors who have subsequently obtained PG degrees or subsequently posted in the said post also, as per their CML seniority in the preferential order and thus, the Writ Petitioners who were working as Tutors / Assistant Professors as on date of the issue of G.O., though could have got their postings as per their preference are now, deprived of either the post itself as Assistant Professors or the place as desired by them. Therefore, for the violations done by the respondents, the petitioners should not be prejudiced. Some of them did not get their preferred place of posting and some of them were forced to move out of the medical education side to the general side.



W.P.Nos.14542 and 14854 of 2024

WEB COPY

3.3. Because of the G.O (4D). No.2, dated 15.02.2019 directing the restructuring / re-fitment counselling to be conducted, it proposed a cut-off date of 15.02.2019. However, when the same was challenged before this Court an expert Committee was subsequently been constituted and the expert committee report, which did not prescribe such a cut-off date, having been accepted by this Court and detailed directions were issued by this Court, which was now directed to be implemented by the Division Bench of this Court, the petitioners cannot now fall back on the cut-off date which was prescribed under G.O (4D). No.2, dated 15.02.2019.

3.4. According to the petitioners, this is not a mere grievance as to the place of posting but will have greater ramifications on their career itself when the number of years of teaching experience is counted for further career advancement as Associate Professor, Professor, etc. Therefore, the writ Petitioners are before this Court.

4. The Writ Petitions were resisted by the respondents by filing



detailed counter affidavits.

**Submissions of the Respondents:-**

5. According to the respondents during the year 2019, the number of teaching posts as far as the Department of Physiology was reduced to 114 from 171 as per the Medical Council of India norms G.O (4D). No.2, dated 15.02.2019. At that time, there were 144 qualified Doctors in the Physiology Department. Pursuant to the said restructuring of the cadre, when a Circular was issued containing the directions as to the methodology of the counselling, the same was challenged before this Court as mentioned by the petitioners and the Writ Petitions were disposed of by an order dated 14.08.2019. As per the said order, counselling for all the other Departments took place, since the number of sanctioned posts was more than the number of qualified Doctors, except the Department of Physiology, which was otherwise. At the relevant point of time, when the respondents sought to take up the issue during October 2019, the Doctors went on strike. In the meanwhile, the above-mentioned W.A.Nos.3093 and 2917 of 2019 were also filed. At the time of admission of the Writ Appeals, there was an undertaking that the appellant



W.P.Nos.14542 and 14854 of 2024

Doctors would be retained in the DME side itself, as per the re-fitment counselling. Ultimately, the Writ Appeals were disposed of on 11.01.2023 by giving directions to the respondents therein to follow the order of this Court dated 14.08.2019.

5.1 As per the directions of this Court promotion counselling should precede the restructuring counselling. On 06.09.2021, it was proposed to conduct a promotion-cum-transfer counselling for the Physiology Department. A Writ Petition was filed, challenging the same in W.P.No.19031 of 2021 contending that the year-wise panel from the year 2018 – 2019 should be first drawn up and thereafter only promotion counselling should proceed. For the Physiology Department for the post of Associate Professor, for the year 2018-2019, it was a 'Nil' panel. For the year 2020, counselling took place only on 11.09.2023, in respect of 13 vacancies. For the 2021 panel, the estimated vacancy is 15 and for the year 2022 it is a 'Nil' vacancy and for the year 2023, there are 3 vacancies. The counselling in respect of the years 2021, 2022 and 2023 could not take place given the COVID-19 pandemic. The estimate of vacancies has been sent to the Government and the same is awaited.



W.P.Nos.14542 and 14854 of 2024

WEB COPY

5.2. In the year 2021, 11 new Colleges came into existence and 44 new posts were sanctioned for the Physiology Department. To fill up the said posts, special counselling took place during February 2021. In the said special counselling, the petitioners did not participate. Thereafter, in the month of May 2022, transfer counselling took place in respect of 6 vacancies and in August 2023, transfer counselling was conducted for another 4 vacancies. In the said counselling also, the petitioners did not participate.

5.3. Given the said changed scenario, now the present strength of sanctioned posts is 158 and the present strength of the qualified Doctors is 173. While the promotional counselling for the year 2020 was alone conducted on 15.09.2023, the order of the Division Bench dated 11.12.2023 (quoted supra) came to be passed. Therefore, the exercise of conducting zero counselling was taken up on 31.05.2024, according to the Circular dated 29.05.2024. Out of 193 Medical Officers, except one Medical Officer, who is on unauthorized absence from duty, for all 172 Medical Officers, re-fitment orders have been issued. Under the restructured counselling, for 8 Medical



W.P.Nos.14542 and 14854 of 2024

Officers working in their non-parental Department, care has been taken to retain them in the present post itself. The details of the petitioners' postings are given below:-

| Name of Petitioner                                        | CML 2022(R)                                      | Present Station                                              | Posted as during the Restructuring Counselling | Place of Postings                          |
|-----------------------------------------------------------|--------------------------------------------------|--------------------------------------------------------------|------------------------------------------------|--------------------------------------------|
| Sasikumar NS<br>Assistant Professor of Physiology         | 15606                                            | Government Medical College,Omandur Government Estate,Chennai | Assistant Professor of Physiology              | Government Medical College,Ramanathapuram  |
| Navurang S<br>Tutor in Physiology                         | 9959                                             | Government Villupuram Medical College                        | Tutor in Physiology                            | Government Thiruvannamalai Medical College |
| Jesi W<br>Tutor in Physiology                             | CML not allotted<br>Appointed only on 08.07.2017 | Government Thoothukudi Medical College                       | Tutor in Physiology                            | Government Medical College,Nilgiris        |
| Pillai Karthick<br>Pirammanayagam,<br>Tutor in Physiology | 15552                                            | Tirunelveli Government Medical College                       | Tutor in Physiology                            | Government Thoothukudi Medical College     |
| Thenmozhi S<br>Tutor in Physiology                        | 15294                                            | Madras Medical College Chennai                               | Assistant Professor of Physiology              | Government Medical College Kallakurichi    |
| Lord Krishna G,Tutor in Physiology                        | 15667                                            | Government Medical College & ESIC Hospital Coimbatore        | Tutor in Physiology                            | Government Medical College Pudukottai      |
| Sherry Jenilin G                                          | MRB/SQE                                          | Government                                                   | Tutor in                                       | Government                                 |



W.P.Nos.14542 and 14854 of 2024

|                                           |           |                                    |                                   |                                          |
|-------------------------------------------|-----------|------------------------------------|-----------------------------------|------------------------------------------|
| Assistant Professor of Physiology         | /307/2022 | Thoothukudi Medical College        | Community Medicine                | Thoothukudi Medical College              |
| Nithya Vikasini N, Tutor in Physiology    | 15266     | Government Vellore Medical College | Tutor Physiology in               | Government Medical College Krishnagiri   |
| Syed Safina SyedShah, Tutor in Physiology | 16094     | Madras Medical College Chennai     | Assistant Professor Physiology of | Government Medical College, The Nilgiris |

5.4. According to the respondents, thus, it cannot be said that they did not take up the promotion counselling at all, only because of the intervening interim orders passed by this Court in W.P.Nos.19031 of 2021 etc., the entire exercise of filling up of all the vacancies could not be completed. It is the case of the respondents that subsequently, now a final order has been passed on 21.03.2024. Therefore, the matters of transfer and place of posting being incidental to service and are not conditions of service, the petitioners have no right to claim the post as a matter of choice.

5.5. With the above pleadings, this Court heard, *Mr G.Sankaran*, the learned Senior Counsel appearing on behalf of the petitioners; and *Ms Sneha*, the learned counsel appearing on behalf of respondents 1 and 2.



W.P.Nos.14542 and 14854 of 2024

WEB COPY

**Submissions of the Petitioners:-**

6. *Mr G.Sankaran*, the learned Senior Counsel appearing on behalf of the petitioners would submit that the Government issued orders in G.O. Ms. No.387 dated 03.09.2018, followed by G.O. (4D) No.2 dated 15.02.2019 for restructuring and sanctioned post with post matrix in every Government Medical College and teaching institution under the control of DME. The operational guidelines of G.O. (4D) No.2 dated 15.02.2019 in Para 9 (ix) relate to the re-fitment of teaching faculty in the restructured post by the sequence, as directed therein. Therefore, the existing Doctors working in the Specialty Department on the post's restructuring date sought to be re-arranged and refitted in the sanctioned post as per G.O. Further, Para 9 (x) of G.O. directs that while implementing operational guidelines for transfer and promotion exercise in the sequence as directed, as an interim arrangement, the existing post in the lower categories will be deemed to continue till the operationalization of the higher category post. There are other directions in the same clause for salary payment for existing Medical Officers yet to be refitted for want of completion of the operationalization process, subject to the



W.P.Nos.14542 and 14854 of 2024

prescribed cut-off date. In para 9 (xi) of G.O. also gives a cut-off date for the completion of the operationalization process to implement the re-fitment of Medical Officers in the restructured post.

6.1. As per orders passed in the batch of Writ Petitions dated 14.08.2019 and the orders passed in [W.A.No.2917](#) of 2019 dated 11.12.2023, the respondents ought to have conducted the restructuring counselling based on zero counselling for re-fitment of Medical Officers disturbed on the restructuring of posts as of 15.02.2019 at the first instance; the remaining post should have been shown to the Medical Officers entered into Physiology Department for DME side in the subsequent years, not affected due to restructuring of post.

6.2. *Mr G.Sankaran*, the learned Senior Counsel would submit that the respondents, while conducting the restructuring counselling, have not considered the following facts:-

(1) Restructuring counselling is the counselling for the re-fitment of



W.P.Nos.14542 and 14854 of 2024

existing Medical Officers in the restructured post created as per G.O. (4D)

No.2 dated 15.02.2019.

(2) Since it remains to be re-fitment of existing Doctors in the restructured post, the counselling for re-fitment would be available only for the Doctors affected by the restructuring of the post vide G.O. (4D) No.2 dated 15.02.2019.

6.3. The Doctors holding the post of teaching faculty in specialty Departments sought to be disturbed due to the deletion/creation of the posts in the process of restructuring post, and hence, they sought to be refitted in the restructured post, in accordance with operational guidelines directed in G.O. (4D) No.2 dated 15.02.2019. Hence, the Medical Officers who have been accommodated in the DME side in the Specialty Department subsequently in the years 2020, 2021, 2022, 2023, and 2024 in the vacancies of restructured posts cannot be considered on par with the Medical Officers working in the Department as on the date of restructuring of post on 15.02.2019.

6.4. Whereas, the restructuring counselling conducted by including



W.P.Nos.14542 and 14854 of 2024

the Medical Officers on the DME side after 15.02.2019 up to 2024 by assigning seniority, following CML, for re-fitment in the post and the same is in gross violation of the Government Orders as well as the orders of this Hon'ble Court. The Government order in G.O. (4D) No.2 dated 15.02.2019, while prescribing the operationalization guidelines for effective and smooth implementation of the order, contains the tabulation for "tentative steps to implement G.O. (4D) No.2 dated 15.02.2019". As per the said Government Order, the transfer and posting within the Assistant level by counselling is to be conducted only after promotion from Assistant Professor to Associate Professor, whereas the same is not followed.

6.5. There are more than 20 vacancies for the post of Associate Professor in the Physiology Department, and if the restructuring counselling is conducted after completing promotion counselling, as carried out by other Departments, it will be in compliance with the orders of the Government for effective and smooth implementation of Government Order since the resultant vacancy for the post of Assistant Professor will be available for transfer and posting.



W.P.Nos.14542 and 14854 of 2024

WEB COPY

**Submissions of the Respondents:-**

7. Per contra, *Ms Sneha*, the learned counsel appearing on behalf of respondents 1 and 2 would submit that on account of the restructuring or re-fitment, there is no adverse impact as far as the conditions of service of the petitioners are concerned, since they are essentially in the same cadre of the Assistant Surgeon, whether they work as Assistant Surgeon in the general side or whether they work as Tutors / Assistant Professors on the DME side. When there has been fluctuation in the number of postings and number of qualified Doctors etc., without any discrimination, rules have been framed by way of operational guidelines to restructure the entire cadre and re-fit the Doctors only taking into account the grievances expressed by them. The same was challenged before this Court and this Court appointed an expert Committee, who gave their recommendations and the orders of this Court dated 14.08.2019 was to implement the said recommendations. Only because of the special circumstances mentioned above in the counter affidavit, the same was not implemented as far as the Physiology Department is concerned. However, there is no willful disobedience or any violations of the Court



W.P.Nos.14542 and 14854 of 2024

directions in as much as the respondents sought to fill up the promotional vacancies as well as the newly created vacancies, only on account of the interim order of this Court, the process of filling up of all the promotional posts could not be taken up. In any event, it can be seen that the promotions have been effected in respect of some of the years and only in respect of 3 years, i.e., 2021, 2022 and 2023, promotions could not be effected. However, since there was a direction of the Division Bench of this Court to carry out the exercise of re-fitment counselling, the same could not be delayed beyond a certain time and as such the same is done. The only grievance of the petitioners is that the preference as mentioned in the order of the learned Judge should be frozen to the date of the Government Order. There is no such direction in the order of this Court dated 14.08.2019, which was directed to be implemented by the order of the Division Bench.

7.1. The respondents are duty bound to consider all the candidates as on the date of exercise by way of zero counselling and taking into account the order of preference as directed by this Court. Therefore, just because some new candidates who are senior to the petitioners by way of CML seniority are



W.P.Nos.14542 and 14854 of 2024

posted as Tutor / Assistant Professor in the meantime and since as per the directions of this Court they have to be given preference over the petitioners, the contention of the petitioners cannot be accepted. She would submit that the only grievance of the petitioners is that because of some of them being posted in the non-teaching posts their years of experience in teaching is affected. However, it can be seen that when counselling was conducted in respect of 44 new posts, as also the transfer counselling which was subsequently conducted twice for the vacancies, the petitioners chose to opt out of the said counselling. Thus, the petitioners have chosen to prefer their current stations over their grievance of career advancement. Those of the petitioners who were directed to be retained in the side of DME, were retained and even in respect of the others as per the details, care has been taken to accommodate them in the same Medical Colleges as per their preference. In view thereof, there is nothing to interfere for this Court.

**Discussion & Findings:-**

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



W.P.Nos.14542 and 14854 of 2024

WEB COPY

8.1. As extracted above the facts remain uncontroverted. It can be seen that the present re-fitment counselling is carried on as zero counselling i.e., by considering all the posts in the Department vacant and conducting the counselling in the order of preference. The same is done as per the directions of the Division Bench of this Court dated 11.12.2023. The Division Bench directed the Court to conduct the said exercise as per the earlier directions of this Court dated 14.08.2019, the operative portion of the said order is extracted supra in paragraph No.2.2.

8.2. On a careful reading of the order dated 14.08.2019 as well as the order of the Division Bench dated 11.12.2023, it can be seen that the respondents have to conduct zero counselling, by considering all the incumbents and their preferences in the order of preference as mandated in the Judgment. However, nowhere the preference is frozen to the date of issuance of the Government Order., i.e., on 15.02.2019. When the exercise is now taken up in the year 2024 all the candidates as of the year 2024 have to be included and the counselling should be conducted as per the earlier directions in the above orders. Therefore, I do not find any merit in the



W.P.Nos.14542 and 14854 of 2024

contentions of the learned counsel for the petitioners that the petitioners who were working as Tutors / Assistant Professors as of 15.02.2019 should be given preference over the candidates, who came into service under the DME as Tutors / Assistant Professors upon obtaining the qualifications subsequently. When the CML seniority is the criteria that has to be followed among the cadre and when the substantive cadre is Assistant Surgeon, then if seniors in the cadre, even if they obtain the necessary educational qualifications subsequently, they regain their seniority and should also be considered along with the petitioners in preference No.1. The earlier Judgments did not expressly restrict the date as 15.02.2019, nor it can even be construed in that sense. Therefore, the said contention on behalf of the learned counsel for the petitioners shall stand rejected.

8.3. The second contention is that this Court had specifically directed the conduct of promotion counselling first and thereafter taking up the re-fitment counselling subsequently. While it could have been the ideal situation, then the respondents should have complied with the said conditions



W.P.Nos.14542 and 14854 of 2024

in its letter and spirit before undertaking the present exercise of re-fitment, it cannot be said that the respondents have ignored the said directions. The respondents have taken up the task of promotion counselling first, before advertng to the re-fitment counselling. When the said exercise is challenged before this Court on other grounds, the matter was entertained and interim orders were passed, the respondents cannot be found at fault for not undertaking the exercise of promotion counselling. Even then the respondents kept the matter pending, the aggrieved Doctors who had filed the Writ Appeal made submissions and when the Division Bench of this Court had given directions to implement the order dated 14.08.2019, in respect of the Physiology Department also, the same cannot be deferred eternally and since part promotions have already been effected. I do not find that the respondents are at fault for not completely effecting the promotion counselling before the re-fitment counselling. While a positive direction is given that the promotion counselling should be effected before the re-fitment counselling, the orders cannot be read, as if there was an injunction, never to take up the re-fitment counselling so long as the promotional vacancies remained unfilled. Therefore, even though, the re-structure / re-fitment counselling is not taken



W.P.Nos.14542 and 14854 of 2024

up in the ideal background of all the promotional vacancies filled up, I do not find that there is any material violation of the earlier orders of this Court to set aside the entire exercise of counselling.

8.4. It is relevant to extract Rule 11 of the Tamil Nadu Medical Service Rules:-

*“11. Seniority and appointment as full member in the cadre of Assistant Surgeons.—For purposes of probation, seniority and appointment as full members, all posts included in the cadre of Assistant Surgeons shall be deemed to constitute a single category.”*

8.5. It can be seen that the persons who are working as Tutors / Assistant Professors are substantially in the same cadre as that of Assistant Surgeons. Therefore, it cannot be said that the exercise has resulted in a reduction of rank or visited the petitioners with any adverse consequences. Yet the present exercise of streamlining / re-structuring the teaching posts and re-organizing and re-fitting the Doctors cannot be termed as a mere place of posting, because it would determine the future career advancement of the candidates in as much as the number of years of teaching experience is an essential criterion for promotion/career advancement to the next higher cadre



W.P.Nos.14542 and 14854 of 2024

of Associate Professor. Only in this context, in the earlier rounds, the Writ Petitions have been entertained and the matters have been interfered with.

8.6. Normally in matters of transfers and postings, the Courts shall take a hands-off approach leaving it to the domain of the respondents/employer. The matter has to be considered from the said angle of the postings having an effect on their career advancement on account of the impugned exercise being belatedly conducted in the year 2024. Firstly, the said delay is not solely attributable to the respondents in as much as there were protracted litigations. Secondly, it is not the case that the petitioners are suddenly deprived of their career advancement by the present counselling. The petitioners had an opportunity to participate in the counselling when 44 additional vacancies were created in the year 2021, 6 vacancies in the year 2022 and 4 vacancies in the year 2023 and when the petitioners chose their station/town/city in which they are working over their career advancement, then the delay of carrying out the fitment exercise, cannot be put against the respondents. When the petitioners had an opportunity to opt for teaching posts and when the petitioners did not participate in the said counselling and



W.P.Nos.14542 and 14854 of 2024

preferred the station over their career advancement, now belatedly they cannot turn around and complain as if their career advancement is affected by the re-fitment exercise.

8.7. Except for the said grievance, which is expressed on behalf of the petitioners there is no other right of the petitioners which is affected on account of the exercise. When the petitioners cannot demand the duty post or place of working as a matter of right, then unless the impugned exercise violates any statutory rules or the earlier orders of this Court, this Court cannot interfere with the administrative exercise. The respondent Department conducts the exercise by taking into the wide range of grievances of the Doctors as well as the necessity to build and maintain robust health care in the State and interfering with the same merely on certain grievances expressed by the petitioners would be substituting the Court as a super administrator of the Department. As such in the absence of any rights being violated, I am unable to interfere with the above exercise.

8.8. At the same time, it can be seen that final orders have also been



W.P.Nos.14542 and 14854 of 2024

passed on 21.03.2024 in W.P.Nos.19031 of 2021 etc., thereby clearing the decks for considering the promotions for the available vacancies. Therefore, swift steps can also be taken to conduct the promotional counselling and thereafter to fill up the resultant vacancies, so that those of the petitioners who are not in the post of Tutors / Assistant Professors in the discipline may get a chance to their preferred postings.

**The Result:-**

9. In view thereof, the Writ Petitions are disposed of on the following terms:-

- (i) The prayer of the Writ Petitioners to re-conduct the restructuring counselling of Medical Officers in the cadre of Tutor / Assistant Professor in the Physiology Department under the control of the Director of Medical Education and Research shall stand negatived;
- (ii) The respondents are directed to take up the exercise of promotion counselling in respect of uncompleted years of 2021, 2022 and 2023 and in respect of other vacancies as of the date



WEB COPY



W.P.Nos.14542 and 14854 of 2024

and complete the promotion counselling in accordance with the law, as expeditiously as possible in any event, within 12 weeks from the date of receipt of a copy of this order and thereafter conduct a special transfer counselling to accommodate the Doctors who have the qualification in Physiology in the resultant vacancies within a period of 4 weeks therefrom as per rules;

(iii) No costs. Consequently, the connected miscellaneous petitions are closed.

25.06.2024

Jer

Neutral citation : Yes

**D.BHARATHA CHAKRAVARTHY, J.,**

Jer

To

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

2.The Director of Medical Education & Research

Page 31 of 32



W.P.Nos.14542 and 14854 of 2024

Kilpauk, Chennai – 600 010.

WEB COPY

Pre-Delivery Order made in  
**W.P.Nos.14542 and 14854 of 2024**

**25.06.2024**