



WP.No.18530 of 2024

In the High Court of Judicature at Madras

Reserved on : 19.8.2024	Delivered on : 21.8.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.18530 of 2024
& WMP.No.20310 of 2024

Dr.B.Velladuraichi,
Associate Professor, Institute of
Vascular Surgery, Madras
Medical College, Chennai-3.

...Petitioner

Vs

1.The Principal Secretary to
Government, Health &
Family Welfare Department,
Secretariat, Fort St.George,
Chennai-9.

2.The Director of Medical
Education, Directorate of
Medical Education, Kilpauk,
Chennai-10.

...Respondents

PETITION under Article 226 of The Constitution of India praying
for the issuance of a Writ of Mandamus to direct the respondents

(a) to fix the petitioner's effective date of promotion/
appointment to the post of Associate Professor in Vascular Surgery
from 20.6.2019 on par with the other eligible candidates, who were
appointed/promoted to the post of Associate Professor in various
specialties in the year 2019 vide the orders given by this Court in
W.P. Nos.14219 & 14220 of 2019 & W.P.No.33369 of 2019 and the



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subsequent clarification given in the orders dated 06.11.2020 in Review Application Nos.35 & 36 of 2020;

(b) to identify the eligible candidates, fix the crucial date, draw up the year-wise promotion panel for the year 2023 and to conduct the promotion counselling to the post of Professor in Vascular Surgery for the year 2023 in accordance with Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 read with Schedule XI appended to the Act; and

(c) to consider the petitioner for promotion to the post of Professor in Vascular Surgery for the year 2023.

For Petitioner	:	Mr.K.Ravi Anantha Padmanabhan, SC for M/s.Jury Brain Law Offices
For Respondents Counsel	:	Mrs.M.Sneha, Special Standing

ORDER

This writ petition has been filed for the issuance of a Writ of Mandamus seeking to direct the respondents to fix the petitioner's effective date of promotion/appointment to the post of Associate Professor in Vascular Surgery Specialty from 20.6.2019 and for a further direction to identify the eligible candidates, draw up the promotion panel for the year 2023, conduct promotion counselling to the post of Professor in Vascular Surgery for the year 2023 and consider the petitioner for promotion to the post of Professor in Vascular Surgery.



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2. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Special Standing Counsel appearing for the respondents.

3. The case of the petitioner is as follows :

(i) The petitioner has been working as an Associate Professor in the Department of Vascular Surgery at Madras Medical College (MMC), Chennai. She got promoted as the Associate Professor by virtue of G.O.(4D) No.2 dated 15.2.2019 and became eligible to the said post in the year 2018 itself. Since her promotion in the year 2018 was overlooked, she filed W.P.No.20357 of 2019 seeking for a direction to conduct promotion counselling to the post of Associate Professor in the Department of Vascular Surgery by drawing year-wise panel for the years 2018 and 2019 separately.

(ii) Similar writ petitions viz. W.P.Nos.14219 & 14220 of 2019 were filed by two other eligible doctors also and they were disposed of through a common order dated 08.1.2020 by giving directions to the second respondent to prepare a promotion panel for the post of Associate Professor in various specialties for the year 2018 fixing the cut off date as 15.3.2018 and enlist the names of all eligible candidates. Further, W.P.No.20357 of 2019 filed by the petitioner was disposed of by this Court on 09.1.2020 in terms of the order dated



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08.1.2020 in W.P.Nos.14219 & 14220 of 2019.

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(iii) Thereafter, the petitioner in W.P.No.14219 of 2019 filed a contempt petition in Cont.P.No.782 of 2020 alleging disobedience of the order dated 08.1.2020. Further, the respondents along with others filed Review Application Nos.35 & 36 of 2020 in order to get clarity on the implementation of the common order dated 08.1.2020. This Court, by a common order dated 06.11.2020, disposed of both the contempt petition as well as the review applications and clarified the directions already issued. While doing so, this Court made it clear that posting orders should take effect from 20.6.2019.

(iv) After getting necessary clarifications, the first respondent approved the regular panel for the post of Associate Professor in the Vascular Surgery Specialty through proceedings dated 26.12.2020. Thereafter, the second respondent, through letter dated 27.1.2021, sent the proposal for promotion and appointment. Pursuant to that, the first respondent issued G.O.(D) No.249 dated 16.2.2021 and the petitioner was regularly promoted and appointed as the Associate Professor in the Vascular Surgery Specialty at the MMC, Chennai.

(v) The grievance of the petitioner is that even though this Court specifically directed that the posting orders should take effect from 20.6.2019, the same was not implemented/given effect to. As a result, the panel for conducting the promotion counselling to the post



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of Professor in the Vascular Surgery Specialty for the year 2023 was not drawn. Further, a representation was given by the petitioner in this regard to the respondents. Ultimately, the second respondent, through the letter/communication dated 20.5.2024, listed the eligibility criteria for promotion to the post of Professor in various specialties for the panel 2024-25 fixing the crucial date as 15.3.2024.

(vi) According to the petitioner, had the effective date of appointment/promotion been properly fixed as per the earlier directions issued by this Court, the promotion panel would have been drawn for the year 2023-24 by fixing the crucial date as 15.3.2023. Since this has not been done, the above writ petition has been filed before this Court seeking for the reliefs mentioned supra.

4. When the matter came up for hearing on 16.8.2024, this Court, after hearing both sides, passed the following order :

"Heard the learned Senior Counsel appearing on behalf of the petitioner and the also the learned Special Standing Counsel appearing on behalf of the respondents.

2. Some clarity is required with respect to the over all seniority of the petitioner and also the further course of action that is to be taken for appointing Professor of Vascular Surgery.

3. The main grievance of the petitioner seems to be that in so far as the post of Associate Professor in



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ENT Specialist is concerned, the promotion counseling was conducted on 10.05.2019 and the passing of orders took effect from 20.06.2019. Whereas, in so far as the petitioner and two others who were also similarly placed, the promotion counselling was held only on 20.01.2021 and the order promoting the petitioner as Associate Professor of Vascular Surgery was passed only on 16.02.2021. As a result, those persons who were promoted to the post of Associate Professor of ENT got the further promotion to the post of Professor of ENT through G.O.(D).No.205 dated 21.02.2024. Whereas, the petitioner continues to be Associate Professor of Vascular Surgery.

4. Post this case under the same caption on 19.08.2024."

5. Pursuant to the said order dated 16.8.2024, the petitioner filed an additional affidavit dated 19.8.2024 and additional typed set of papers. In the additional affidavit, the petitioner has stated that she became eligible to be promoted as the Assistant Professor even in the year 2017, that right from the year 2020-21, the declaration that is submitted by the MMC to the National Medical Commission (NMC) would show that the petitioner has been teaching in her capacity as the Associate Professor effective from 05.10.2017 and that the petitioner is having teaching experience for nearly seven years, which is much more than the requirement prescribed for promotion to the post of Professor in the Vascular Surgery Specialty.



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6. She further stated in the additional affidavit that when it came to the ENT Specialists, who also attended the counselling along with the petitioner on 10.5.2019, they have been promoted as Associate Professors with effect from 20.6.2019 and that their further promotion to the post of Professor has taken place by drawing a panel in the year 2023 and they were promoted through G.O.(D) No.205 dated 21.2.2024 whereas the petitioner, who is similarly placed, is considered for further promotion only in the year 2024.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

8. On the earlier occasion, this Court had an opportunity to deal with a chaotic situation that was prevailing in the conduct of promotion counselling as the promotion panel was not drawn in line with Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (for short, the Act) read with Schedule XI appended to the Act. Therefore, the grievance that was put forth by all the stakeholders was considered and a common order was passed in W.P.Nos.14219 & 14220 of 2019 on 08.1.2020 by disposing of the writ petitions and by issuing the following directions :



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"26. In view of the above discussion, these writ petitions are disposed of with the following directions:

(a) The Director of Medical Education, Kilpauk, Chennai is directed to prepare an year wise promotion panel, henceforth, for filling all the posts, strictly in accordance with Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 read with Schedule XI appended to the Act.

(b) The Director of Medical Education, Kilpauk, Chennai is directed to prepare a promotion panel for the post of Associate Professors in various specialties for the year 2018 by fixing the cut-off/crucial date as 15.03.2018 and enlist the names of all those eligible candidates who fulfill the qualifications as prescribed in the Special Rules of Tamil Nadu Medical Services which follows the MCI Guidelines, based on their CML seniority. On such preparation, the promotion counseling to the post of Associate Professors shall take place in all the specialties, strictly in accordance with the guidelines given by the Committee and which was accepted by this Court in W.P.No.15215 etc., of 2019, dated 14.08.2019.

(c) Likewise, the Director of Medical Education, Kilpauk, Chennai is directed to prepare a promotion panel for the post of Associate Professors in various specialties for the year 2019 by fixing the cut-off/crucial date as 15.03.2019 and enlist the names of all those eligible candidates who fulfill the qualifications as prescribed in the Special Rules of Tamil Nadu Medical Services which follows the MCI Guidelines, based on their CML seniority. On such preparation, the promotion counselling to the post of Associate Professors shall take place in all the specialties, strictly in accordance with the guidelines given by the Committee and which



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was accepted by this Court in W.P.No.15215 etc., of 2019, dated 14.08.2019.

(d) *This exercise shall be completed within a period of three months from the date of receipt of copy of this order.*

(e) *The present status quo with regard to the transfer and postings which had already taken place pursuant to the counselling held in accordance with Circular dated 07.05.2019, shall be maintained till the process as directed in clauses (b), (c) and (d) are completed, with in the time stipulated."*

9. A separate writ petition in W.P.No.33369 of 2019 was filed by doctors in the ENT Specialty seeking for a direction to the Director of Medical Education to grant posting order as Associate Professors pursuant to the promotion counselling conducted on 10.5.2019. W.P. No.33369 of 2019 was disposed of by an order dated 09.1.2020. It will be relevant to extract paragraph 8 of the said order dated 09.1.2020 in W.P.No.33369 of 2019, which is as follows :

"In the result, this writ petition is disposed of with the direction to the 2nd respondent to grant posting orders to the petitioners in the post of Associate Professor in ENT Specialty based on the promotion counseling conducted on 10.05.2019 and post the petitioners in the Medical Colleges and Hospitals to which they have exercised their option. It is made clear that the posting orders of the petitioners shall take effect from 20.06.2019 since the petitioners were selected even at that point of time and for no fault on



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the petitioners, the promotion order was kept pending. The same should not be put against the petitioners and they must be given promotion from the date on which they were found to be entitled to be promoted to the post of Associate Professors. This exercise shall be completed within a period of four weeks from the date of receipt of copy of this order and appropriate orders shall be passed."

10. The petitioner also filed W.P.No.20357 of 2019 challenging the circular dated 07.5.2019 issued by the second respondent and for a consequential direction to conduct the promotion counselling to the post of Associate Professor in the Vascular Surgery Specialty by drawing year-wise panel for the years 2018 & 2019. W.P.No.20357 of 2019 was disposed of by an order dated 09.1.2020 in terms of the common order dated 08.1.2020 passed in W.P.Nos.14219 & 14220 of 2019.

11. Thereafter, the respondents along with others filed the review applications in R.A.Nos.35 and 36 of 2020 seeking for clarity on the implementation of the orders passed in W.P.Nos.14219 & 14220 of 2019 dated 08.1.2020. Simultaneously, Cont.P.No.782 of 2020 was filed by the petitioner in W.P.No.14219 of 2019 on the ground that the directions issued by this Court were not complied with. All the three cases were taken up together and a common order



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dated 06.11.2020 was passed. The relevant portions in the said common order dated 06.11.2020 read as hereunder :

"10. At the risk of repetition, it is again made clear that the guidelines issued by this Court in WP Nos. 14219 and 14220 of 2019, dt. 08.01.2020 shall be kept as the basis for preparation of the promotion panel. The subsequent order passed by this Court in WP 33369 of 2019 dt.09.01.2020 will be implemented in line with the guidelines given by this Court in the above Writ Petitions.

11. In view of the above, there shall be direction to the respondents to immediately withdraw the Government Order passed in G.O.(D) No.221 dated 24.02.2020. The Respondents are directed to immediately complete the process of preparation of the promotion panel as per the guidelines given by this Court in WP Nos.14219 and 14220 of 2019, within a period of 8 weeks from the date of receipt of copy of this order. The implementation of the order passed by this Court in WP No. 33369 of 2019 will be in line with the above guidelines."

12. In so far as the Associate Professors in the ENT Specialty are concerned, the panel was drawn as per the directions issued by this Court and the promotion counselling was conducted on 10.5.2019. Their posting orders were directed to be given effect from 20.6.2019. In view of the same, they completed three years and the subsequent promotion counselling was held for them for promotion to



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the post of Professors in the ENT Specialty and promotion orders were also issued under G.O.(D) No.205 dated 21.2.2024.

13. The grievance of the petitioner seems to be that she also attended the counselling conducted on 10.5.2019 for promotion to the post of Associate Professor in the Vascular Surgery Specialty where three vacancies were identified. However, the same was not acted upon and yet another promotion counselling was held on 20.1.2021, pursuant to which, three vacant posts of Associate Professor in the Vascular Surgery Specialty were filled up through G.O.(D) No.249 dated 16.2.2021. The petitioner wants her seniority in the post of Associate Professor to be considered in line with the post of Associate Professors in the ENT Specialty with effect from 20.6.2019.

14. It is true that the circular dated 07.5.2019 was issued by the Directorate of Medical Education for promotion counselling to the post of Associate Professors. At that point of time, three vacancies were also identified in the Vascular Surgery Specialty. The counselling was held for the petitioner in the year 2019 along with others, who fell within the same specialty. However, unfortunately, the counselling was undertaken without properly drawing the panel as directed by this Court in the common order dated 08.1.2020 in W.P.Nos.14219 & 14220 of 2019.



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15. The Directorate of Medical Education furnished the details of vacancy position to the post of Associate Professor in the Vascular Surgery Specialty along with the eligibility of medical officers as on 15.3.2018 and 15.3.2019. Pursuant to that, after examining the proposal of the Directorate of Medical Education, G.O.(D) No.1483 dated 26.12.2020 was issued by the Government and the following order was passed :

"11. The Government examined the proposal of the Director of Medical Education in the light of the above orders of the Hon'ble High Court of Madras and accordingly issue the following orders in compliance with the direction of the Hon'ble Court in the orders ninth read above.

i. The orders issued in Government Order third read above is cancelled;

ii. The estimate of vacancy for the post of Associate Professor of Vascular Surgery is fixed as 2 for the year 2018 and the regular panel consisting the names of the following medical officers fit for promotion to the post of Associate Professor of Vascular Surgery for the year 2018-19 is approved;

Sl. No.	Name of the Medical Officer	CML 2018
1	Dr.B.Velladuraichi, Assistant Professor of Vascular Surgery, Government Madras Medical College, Chennai	4466
2	Dr.C.Shanmugavelayutham, Assistant Professor of Vascular Surgery, Stanley Medical College, Chennai	5896

iii. The acceptance of temporary relinquishment



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tendered by Dr.K.Rajesh in the Government Order fourth read above is cancelled;

iv. The estimate of vacancy for the post of Associate Professor of Vascular Surgery is fixed as 1 (one only) for the year 2019 and the regular panel consisting the name of the following Medical Officer fit for promotion to the post of Associate Professor of Vascular Surgery for the year 2019-20 is approved;

Sl. No.	Name of the Medical Officer	CML 2018
1	Dr.D.N.Sharmila, Assistant Professor of Vascular Surgery, Government Madurai Medical College, Madurai	2964

v. The Director of Medical Education is directed to send suitable proposal for giving postings to the above 3 medical officers as per the directions given by the Hon'ble High Court in the orders fifth, sixth and ninth read above after conducting promotion counselling."

16. As a follow up of the above Government Order, the promotion counselling was held on 20.1.2021 and the petitioner and two others were promoted as the Associate Professors in the Vascular Surgery Specialty. Ultimately, the petitioner was appointed in the newly sanctioned post.

17. It is seen from the records that the petitioner has been functioning as the Associate Professor effective from 05.10.2017 onwards. This is evident from the declaration form signed by the



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Dean of the MMC for the periods 2020-21, 2021-22 and 2023-24. This declaration is more in the nature of providing necessary particulars to the NMC to fulfil the norms. Even if the petitioner was functioning as the Associate Professor from 05.10.2017, she actually assumed the said position only after G.O.(D) No.249 dated 16.2.2021 was issued. Till that date, at the best, the petitioner can only be considered to have been an Incharge Associate Professor in the Vascular Surgery Specialty at the MMC.

18. Being incharge in that post, by itself, does not confer the position of an Associate Professor to the petitioner till she was actually promoted and appointed as the Associate Professor in the Vascular Surgery Specialty with effect from 16.2.2021. The petitioner cannot equate herself with the effective date of promotion given to the Associate Professors in the ENT Specialty. This is in view of the fact that the promotion counselling to the post of Associate Professor in the ENT Specialty was completed on 10.5.2019 based on the panel prepared for the years 2018 and 2019.

19. Even though the petitioner attended the counselling at that point of time, the actual panel for 2018 and 2019 was drawn and acted upon only pursuant to G.O.(D) No.1483 dated 26.12.2020. This



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was done pursuant to the specific directions that were issued by this Court on 08.1.2020 in W.P.Nos. 14219 & 14220 of 2019. Further, the earlier writ petition in W.P.No.20357 of 2019 was disposed of 09.1.2020 by this Court in terms of the common order dated 08.1.2020 in W.P.Nos.14219 & 14220 of 2019.

20. In the light of the above discussions, the promotion and appointment of the petitioner as the Associate Professor in the Vascular Surgery Specialty comes into effect only on 16.2.2021. In other words, the role of the petitioner performing as an Associate Professor gets fructified only on and from 16.2.2021 and not before that date even though she might have held the incharge position as the Associate Professor. Consequently, the panel drawn by the second respondent to the post of Professor for the year 2024-25 by fixing the crucial date as 15.3.2024 for completion of three years teaching experience as the Associate Professor is perfectly in order. The petitioner can participate only in this promotion counselling and can get promoted as the Professor in the Vascular Surgery Specialty, if she is otherwise entitled to. For the foregoing reasons, the relief sought for by the petitioner cannot be granted.

21. Accordingly, the writ petition stands dismissed. No costs.



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Consequently, the connected WMP is also dismissed.

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N.ANAND VENKATESH,J

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Index : Yes (or) No

Neutral Citation : Yes (or) No

To

1.The Principal Secretary to
Government, Health &
Family Welfare Department,
Secretariat, Fort St.George,
Chennai-9.

2.The Director of Medical
Education, Directorate of
Medical Education, Kilpauk,
Chennai-10.

P.D.ORDER IN
WP.No.18530 of 2024&
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