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W.P.Nos.23042 of 2021 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.23042, 23052, 23059, 23049, 23061, 23065, 23068, 23075,
23076 & 23079 of 2021
and W.M.P.Nos.24293, 24289, 24287, 24272, 24267, 24262, 24252,
24245, 24241, 24232 of 2021

S.Rajendran

...

Petitioner

/vs/

1. State of Tamil Nadu,

Rep. by Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2. The Director of Public Health and Preventive Medicine,

O/o. The Directorate of Public Health and Preventive Medicine,
359, Anna Salai, DMS Complex,
Teynampet, Chennai – 600 006.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to
issue a writ of certiorarified mandamus to call for the records relating to the
impugned order issued by the second respondent in
R.No.21079/E4/S2/2021-17 dated 07.08.2021 and to quash the same and



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consequently directing the respondents to grant promotion to the petitioner to the post of Assistant, Superintendent and other higher posts, on par with Tmt.Y.V.Vimala with post and pay parity, with all consequential and other attendant benefits, including the arrears of salary and other benefits, within a time frame.

For Petitioner : Mr.S.Nedunchezhiyan
(in all W.P's.)

For Respondents : Mr.G.Ameedius
(in all W.P's.) Government Advocate for R1

Mrs.N.Sneha
Standing Counsel for R2

ORDER

These writ petitions are filed challenging the impugned order issued by the second respondent dated 07.08.2021 and consequently to direct the respondents to grant promotion to the petitioner to the post of Assistant, Superintendent and other higher posts, on par with one Tmt.Y.V.Vimala, with post and pay parity, with all consequential and other attendant benefits, including the arrears of salary and other benefits, within a time frame.



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2. The petitioners are appointed as Junior Assistant-cum-Typist in

Government Primary Health Centre under the control of Directorate of Public Health and Preventive Medicine. The petitioners' services have been regularized and probation was declared. After appointment to the post of Junior Assistant, the petitioners have passed the Special Test in Tamil Nadu Medical Code, Special Test in District Manual Test, Account Test for Subordinate Office Part-I and thereby became eligible for the post of 'Assistant'. Subsequently they have been promoted to the post of 'Assistant' and thereafter promoted to the post of 'Superintendent'.

3. Mr.S.Nedunchezhiyan, the learned counsel for the petitioners, submitted that the grievance of the petitioners is that one Y.V.Vimala who stood as the Senior to them in the post of 'Junior Assistant' had cleared the Tamil Nadu Medical Code only in the year 2018 but she was promoted in the year 1991 and the petitioners came to know the same only when the seniority list was released in the year 2018; since the person who is not eligible to be promoted as 'Assistant' has been promoted even before these petitioners, they have filed a writ petition in W.P.No.2591 of 2021 for



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promotion on par with Y.V.Vimala and got a direction to consider their request; the request was considered and a detailed order has been passed on 07.08.2021 by rejecting the petitioners' request; aggrieved over that the petitioners have filed these writ petitions.

4. Mrs.N.Sneha, the learned Standing Council for the second respondent, submitted that similarly placed persons have already filed a writ petition before the Madurai Bench of this Court in W.P.(MD) No.7807 of 2020 and the same was dismissed on 14.06.2021; despite Y.V.Vimala has been promoted in the year 1991 itself, the petitioners have not challenged her promotion during the relevant point of time; after the petitioners retired from service and now they have come out with a request for notional promotion on par with Y.V.Vimala.

4.1. Even in the case of the petitioners, they did not pass all the test as prescribed and they have been given exemption at the time of promotion to the post of 'Assistant' in the year 1993; the petitioners themselves submit that there are four tests to be passed namely Account Test for Subordinate



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Officers Part-I, Special Test on District Office Manual, Special Test on Tamil Nadu Public Health Code and Special Test on Tamil Nadu Medical Code; but on the representations made by the petitioners and like others, the Government vide Letter No.65866/AB-1/81-9, Health and Family Welfare Department, dated 01.07.1973 has stayed the G.O.Ms.No.1447, Health and Family Welfare Department, dated 01.08.1981 which alone prescribed the additional test to be passed.

4.2. During the year 2008, the test in Tamil Nadu Medical Health Code and Tamil Nadu Medical Code was not considered as a requisite qualification for promotion; hence there is no violation or illegality in promoting the individuals without considering a pass in Tamil Nadu Medical Code till the year 2009.

4.3. It is further submitted that since the Tamil Nadu Public Service Commission never conducted Tamil Nadu Medical Health Code Test due to non-revision of Public Health Code and non-availability of Code books, the Government has issued G.O.Ms.No.200 Health and Family Welfare



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Department, dated 09.07.2014 by deleting the test in Tamil Nadu Health

Code with effect from 01.01.1982; an another Government Order in G.O

Ms.No.104, Personnel and Administrative Reforms Department dated

03.11.2016 has also been issued to the Special Rules for deletion of Tamil

Nadu Public Health Code with effect of 01.01.1982; while issuing the

above order, no saving clause was issued to protect the interest of

individuals who have not passed the other test i.e. Tamil Nadu Medical

Code during the period from 01.01.1982 to 22.12.1989; it is the lacuna that

has to be remedied in order to protect the legitimate interest of the seniors.

5. The above submission of the learned Standing Counsel is logical in the given circumstances and the petitioner cannot take advantage of the lacuna to their disadvantage and that too after a delay of several years. In fact the Government has issued a letter (D) No.267, Health and Family Welfare (AB1) Department dated 19.02.2021 by upholding the consolidated panel (Seniority based) drawn by the second respondent in the year 2009.



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6. Though some of the seniors have passed the test in Tamil Nadu

Medical Code later than their juniors, but before the date of preparation of consolidated panel in the year 2009, the petitioners have filed these writ petitions only as an after thought. The said Y.V.Vimala had already retired and she is 13 years senior to the petitioners. Many candidates who have not passed the test in Tamil Nadu Medical Code have retired during these 13 years. The claim of the petitioner to give retrospective promotion after several years and that too on invalid grounds cannot be considered. I do not find any merits in these petitions and they are liable to be dismissed

7. Accordingly, these writ petitions are dismissed. No costs.

Connected miscellaneous petitions are closed.

01.03.2024

Index: Yes / No

Speaking order / Non-speaking order

Neutral citation : Yes / No

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To:

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



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R.N.MANJULA ,J.

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