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W.P.Nos.10904,11483 and 21605 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**W.P.No.10904 of 2017 & W.M.P.No.11855 of 2017 &
W.P.No.11483 of 2017 & W.M.P.Nos.12461 and 12462 of 2017 &
W.P.No.21605 of 2017 & W.M.P.No.22605 of 2017**

1. Dr.C.Sabarigirinathan
2. Dr.G.Vimala ... Petitioners in W.P.No.10904 of 2017

Dr.K.Amudhalakshmi ...Petitioner in W.P.No.11483 of 2017
Dr.P.Rupkumar ...Petitioner in W.P.No.21605 of 2017

Vs.

1. The Principal Secretary to
Government of Tamilnadu
Health and Welfare Department,
Secretariat,
Chennai – 600 009

2. The Director of Medical Education,
Kilpauk,
Chennai – 600 010 ...1st and 2nd Respondents in all the
petitions
3. Dr.S.Jaikailash ... 3rd respondent in W.P.No.21605 of 2017

Prayer in Writ Petition No.10904 of 2017:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Proceedings No.1407/E1/2/2017 dated 05.04.2017 with the seniority list for the higher category of Reader / Associate Professor in Dental Surgery as on 01.01.2017 shown as Annexure to the impugned



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proceedings issued by the 2nd respondent, the Director of Medical Education, Chennai – 600 010 and quash the same and direct the respondents from (1) and (2) to prepare seniority list for the Higher Category of Reader / Associate Professor in Dental Surgery afresh with the reasonable opportunity to given to petitioners to air out their grievance if any in accordance with the fulfillment of the requirement of being heard the connected persons before passing any orders pertaining to the issue as preferred by this Court in W.P.No.28836 of 2015.

Prayer in W.P.No.11483 of 2017 :

Writ Petition filed under Article 226 of the Constitution of India for an issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Proceedings No.1407/E1/2/2017 dated 05.04.2017 with the seniority list for the higher category of Reader / Associate Professor in Dental Surgery as on 01.01.2017 shown as Annexure to the impugned proceedings issued by the 2nd respondent, the Director of Medical Education, Chennai – 600 010 and quash the same and direct the respondents from (1) and (2) to prepare seniority list for the Higher Category of Reader / Associate Professor in Dental Surgery afresh with the reasonable opportunity to given to petitioners to air out their grievance if any in accordance with the fulfillment of the requirement of being heard the connected persons before passing any orders pertaining to the issue as preferred by this Court in W.P.No.28836 of 2015.



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Prayer in W.P.No.21605 of 2017 :

Writ Petition filed under Article 226 of the Constitution of India for an issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent bearing Ref.No.1407/E1/2/2017 dated 05.04.2017 and the accompanying seniority list for higher category post of reader / associate professor as on 01.01.2017 and to quash the same and consequentially to direct respondents to follow the CML seniority as in practice for the purpose of appointment in the Directorate of Medical Education.

W.P.No.10904 of 2017

For Petitioner : Mr.K.Sathish for
M/s Kavya Silambannan Associates

W.P.No.11483 of 2017

For Petitioner : Mr.R.Ramachandran

W.P.No.21605 of 2017

For Petitioner : Mr.G.K.Muthukumar

In all the Petitions :

For Respondents : Mr.V.Arun – Additional Advocate General
Assisted by
Mr.T.M.Rajangam
Government Advocate

COMMON ORDER

Since the issues involved in all these petitions are one and the same, they are taken up together and a common order is being passed.



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2. The brief facts of the case of the petitioners is as follows:-

(i) The petitioners have joined the Government service by recruitment through TNPSC as Assistant Surgeon (Dental) with effect from 04.11.1997; 24.05.1994 and in the year 1992-1993 and 1989 respectively. Their services have been regularised and he has been working in this post from various government colleges hospital in the Taluk level at Tamilnadu. According to the petitioners, the seniority to the various posts under the Tamilnadu Government Dental service both service and academic side is based on the CML List in accordance with G.O.Ms.No.354 dated 25.10.2009. In the said G.O., Clause II, Sub Clause (4) clearly directs both the general seniority and special seniority for all promotion in the medical education side will be based on the CML seniority and the said sub-clause further clarifies by way of amendment as per G.O.Ms.No.245 dated 31.10.2013 to the effect that CML seniority will be taken into consideration for promotion to the post of Associate Professor under the Director of Medical Education. The CML list prepared based on marks obtained in the written test mark awarded in the interview based on the community reservation and other relevant criteria based on the service rules, hence it is considered to be the gold standard for service promotion.

(ii) The CML seniority is being followed for appointment to the post of HOD as per G.O.Ms.226 dated 10.10.2013 wherein the senior medical



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officer as per CML shall be considered for being appointed as Head of the Department provided he/she has not lost seniority by relinquishment of punishment imposed on her / him. Further, the CML seniority is being followed for appointment of various posts under the Directorate of Medical Education in particular of Government Dental college, Chennai, which is only government dental college in the state. Under G.O.Ms.NO.1289 dated 25.11.2013, the respondents have followed the CML seniority in filling up vacant post of reader and assistant professor in Dental surgery in the Tamilnadu Government dental college and other medical colleges.

(iii) The seniority in CML is arranged according to the TNPSC selection list of medical officers, who are subsequently regularised by the Government and this is based on the preface to the CML dated 01.06.2005. According to the petitioners, the seniority under each speciality department in Tamilnadu Dental college chennai on promotion is based on CML seniority and the panel seniority was never considered for any promotion in a particular Specialty or Department, including the post of Principal.

(iv) The Junior persons, who do not overtake the seniors and be promoted to senior post so as to create an unhealthy working environment. This issue was considered by the Government and it was made clear that the CML seniority will be followed within the speciality/ department in the



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Tamilnadu Government Dental College and the junior person is by virtue of educational qualification holding a post superior to that of CML senior then, once the CML senior acquires the same or higher qualification, then the seniority in that cadre automatically supercedes the seniority of his junior based on the CML seniority. This avoided the unpleasant situation where doctors, who are seniors and overall experiences had to work under juniors just because they acquire the qualification to the said post little later, in view of various factors such as rural government service postings delay in the date of counselling and vacancy and other factors beyond their control, for which, they cannot be faulted with.

(v) It is also the case of the petitioners that one Dr.S.J.Kailash, professor of Dental Surgery, Coimbatore Medical college, Coimbatore had filed a Writ Petition W.P.No.28836 of 2015 sought for a direction to the 1st respondent to consider his representation, concerning his seniority and disburse the same. This Court by an order dated 14.05.2015 directed the 1st respondent to consider the said representation on merits and in accordance with law that too after issuing notice to the petitioner and all persons concerned and the pass orders, however, without considering merits and without issuing notice to all the interested persons, which includes the petitioner, the respondents had issued notice only to Dr.J.Kailash and by proceedings bearing reference no.1407/E1/2/2017 dated 05.04.2017, prepared and obtained approval from the Government



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and a seniority list for the post of reader / associate professor, were given to the petitioners only on 22.04.2017 and in the said proceedings, the full list of medical officers concerned is to be communicated to all of them but they have to file an appeal, if any, on or before 21.04.2017, which was handed over to them on 22.04.2017 and they received the said communication and after that time expired for preferring the appeal and on 21.05.2017, the petitioners were given a copy of another copy of communication dated 11.05.2017 stating that the time for preferring the appeal has been extended up to 25.05.2017, it was only three days, they could not effectively collect the G.Os and other materials filed for appeal and the respondents have given time only for three days after sitting over a same for a month clearly shows the ulterior motives and the petitioners avers serious objection to the seniority list.

(vi) As per the proceedings of the 3rd respondent dated 05.04.2007, the seniority has been fixed not on the basis of CML seniority but on the date of joining post the post of Associate professor contrary to the G.Os prescribed and these proceedings are contrary to and violation of the said G.Os, the petitioners has no other remedy has filed these writ petitions.

3. Per contra, it is the contention of the learned Additional Advocate General appearing for the respondents that the 2nd respondent has



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prepared and published separate seniority list for the higher category of reader in dental surgery / Associate Professor by determining the seniority on the basis of panel for the post of Reader in Dental Surgery / Associate Professor in respect of the petitioner among others following the orders passed by the order dated 14.09.2015 made in W.P.No.28836 of 2015, therefore there are no violation committed by the 2nd respondent while publishing seniority list for the higher category of reader in dental surgery / associate professor by determining the seniority on the basis of panel for the post of reader in dental surgery / associate professor.

4. Heard all the parties concerned and perused the records available.

5. The main submissions made by the learned counsel for the petitioners are by challenging the impugned order dated 05.04.2017, which is the seniority list published by the 2nd respondent, the Director of Medical Education as on 01.01.2017. In all the writ petitions among various grounds, the main grievance of the petitioners were that they were not heard before publishing the seniority list. The claim of all the petitioners in the three writ petitions are one and the same. The petitioners were appointed on different dates as Assistant Dental Surgeons in different Hospitals. According to the writ petitioners, the persons, who



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join in any Speciality under the Directorate of Medical Education has interse seniority in the speciality would depend upon the persons seniority in Civil Medical List, which according to them would continue to be the criteria to decide the specialty specific seniority till the associate professor level. According to them, G.O.Ms.No.354 dated 23.10.2009, Health and Family Welfare B2 Department prescribed for those Doctors, who have under Directorate of Medical education, wherein it is clear that once a person have joined any speciality under Directorate of Medical education is interse seniority in the speciality would depend on the persons seniority in civil medical list.

6. It is the main grievance of the petitioners that they were not heard before issuing the impugned seniority list, which is based on the order passed by this Court, ie., one Dr.Jaikailash, who approached this Court in W.P.No.28836 of 2015 for a Mandamus directing the respondents to prepare a separate seniority list for higher category of reader in Medical surgery / Associate professor falling under Category 1 of Clause IX of Tamilnadu Medical service while determining the seniority under the basis of date of joining in the said post and accordingly, the said Jaikailash was placed in the appropriate place in the seniority list, above all the other candidates, who had been transferred to the teaching line promoted to the post of reader in the dental surgery / associate professor subsequent to the



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petitioner. The relevant portion of the order dated 11.09.2015 in W.P.No.28836 of 2015 is hereby extracted as follows:-

“ Though the petitioner has sought for larger relief, this Court in the light of above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 1st respondent to consider and dispose of the petitioner's representation dated 15.06.2015 and 11.08.2015 on merits and in accordance with law, after issuing notice to the petitioner as well as to the person concerned and pass orders within a period of ten weeks from the date of receipt of copy of this order and communicate the decision to the petitioner as well as the person concerned.”

7. Subsequent to the orders being passed by this Court, the same was not complied with, therefore, a contempt petition no.1416 of 2015 in W.:P.No.28836 of 2015 was filed, thereafter, the impugned seniority list was passed by the 2nd respondent. The impugned seniority list dated 05.04.2016 does not show any material as to whether all the concerned person as specified in W.P.No.28836 of 2015 was ever been served and heard. The impugned order merely shows that the petitioner, Kailash was allowed and the petitioners had reiterated the same prayer before the Government and a reply was received from the Government by way of the proceedings of the Director of Medical Education (FAC), Kilpauk, Chennai in Ref. No.1407/E1/2/2017 dated 05.04.2017 paragraph no.4 it is averred as follows:-



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“4. After examining the representations dated 15.06.2015 and 11.08.2015 of Dr.S.Jaikailash in the light of the orders of this Court, the following reply has been provided to him vide Government vide their letter no.45426/A1/2015-3, dated 23.05.2016 and the same was served to him on 09.06.2016.

a. “Nearly 80 medical Officers have been temporarily promoted as Associate Professor of Dental Surgery under Rule 39(1)(i) of the General Rules for Tamilnadu State and Subordinate services during the period from 2002 to till date. Among them, the temporary services of ten medical officers have been regulated vide G.O.(D) No.1449, Health and Family Welfare department dated 29.12.2014. However, the temporary services of the remaining medical officers have to be regulated and the same is under consideration of the Government.”

b. “No Special / adhoc rules have been framed for various specialities in Dental Surgery for the post of Associate Professor of Dental Surgery. In absence of the rule provision and non regulation of the temporary services of the medical officers in the cadre of Associate Professor, no seniority list was prepared so far. Hence after framing the rule for the post of Associate Professor of Dental Surgery in various specialities and regulating the temporary services of the remaining medical officers, the seniority list for the post of Associate Professor of Dental Surgery will be prepared”

The Contempt Petition no.1416 of 2016 was filed by the petitioners in view of non-compliance of the order in W.P.No.28836 of 2015 and the respondents were directed to prepare separate seniority list for higher category of reader in Dental Surgery / Associate Professor before 06.04.2017 and posted the case on 06.04.2017.



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8. On a perusal of the proceedings of the 2nd respondent dated 05.04.2017 and upon hearing the official respondents, it is clear that the *“said seniority list was prepared for higher category of reader and associate professor for dental surgery as on 01.01.2017, based on the orders passed in Contempt Petition in 1416 of 2016 dated 13.03.2017. Further, as per G.O.(Ms) No.354, Health and Family Welfare (B2) Department dated 23.10.2009 in Clause VII: Under the Heading of Director of Medical Education, the Civil Medical List would continue to decide the speciality Specific Seniority, till the Associate Professor Level'. As per rule 4c of Special Rules for Tamil Nadu Medical Service, also clearly states that 'Notwithstanding anything contained in Rule 12, if a medical officer, who is senior to another medical officer in the cadre of Assistant Surgeons possesses the post graduate qualification prescribed for the post of Reader (either clinical or Non Clinical) in a particular speciality, but does not possess the teaching experience for the period prescribed in that speciality and where the Junior Medical Officer possesses both the post graduate qualification and the prescribed teaching experience in the speciality, the junior may be appointed temporarily in any future of existing vacancy in that speciality and continued till the senior acquires the prescribed teaching experience. On acquiring such teaching experience, the senior medical officer shall, subject to sub rule (a), be appointed as Reader in the place of*



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Junior (or) in any other existing vacancy and for purposes of seniority in the cadre of Reader, the senior most medical officer shall be the senior.”

09. The reading of the above said paragraph would show that the Government has reiterated in G.O.Ms.no.354 dated 23.10.2009 that civil medical list would prevail to decide the speciality specific seniority till the associate professor level. However, the seniority list published on 01.01.2017 for the higher category of reader refers as totally contrary to clause 2(4) and 2(7), where the Government order at Clause 7 of the G.O., specified that civil medical list would continue to decide the speciality specific seniority till the associate professor level and even when any person obtained seniority / promotion of speciality would not be entitled in other speciality to be promoted similarly. The said clause in G.O., is specifically inserted for the reason that when the junior person is in virtue of educational qualification holding post superior to senior officer in the civil medical list and once the senior acquires the the senior post or qualification then ,the seniority in the cadre superceeds the junior based on the Civil medical test and insertion of clause (4) is to avoid such senior doctors by age and over all experience of being made to work under junior, who have acquired higher qualification than the seniors, this also gives the opportunity to the seniors in Civil Medical list, doctors to acquire similar or higher educational qualification that of the juniors.



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10. That apart, when there is a specific direction issued by this Court in W.P.No.28836 of 2017 to the respondents to grant opportunity by issuing notice to all the parties concerned, there is no proof or record has been filed by the respondents to show that any such communications were being sent to all the 58 higher category readers or associate professors in dental surgery as on 01.01.2017 except to say that the said J.Kailash in W.P.No.28836 of 2017 was served and heard in person, this is not sufficient, when it is affecting a larger number of persons, namely, the numbering 58 doctors, who had put in considerable service and experience and holds the seniority in the Civil Medical division and the present seniority is contrary to the guidelines issued under G.O.Ms.No.354 dated 23.10.2009.

11. In view of the above said facts and circumstances of the case, this Court is inclined to interfere with the proceedings of Director of Medical Education dated 05.04.2017 and hereby sets aside the same, with the direction to the respondents to issue notice to all the persons concerned, namely, all the doctors, as per the CML list and receive their objections, if any, and thereafter, redraw the seniority list in consonance with the G.O.Ms.No.354 dated 23.10.2009 and as per law, within a period of three months from the date of receipt copy of this order.



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In the result, the present Writ Petitions are allowed. Consequently,
connected miscellaneous petitions are closed. No costs.

14.02.2024

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. The Principal Secretary to
Government of Tamilnadu
Health and Welfare Department,
Secretariat,
Chennai – 600 009
2. The Director of Medical Education,
Kilpauk, Chennai – 600 010



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V.BHAVANI SUBBAROYAN J.

ssd

W.P.Nos.10904, 11483 and 21603 of 2017

14.02.2024