



WP(MD) No.1354 of 2021 and 7259 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.03.2024

CORAM

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P(MD)Nos.1354 of 2021 and 7259 of 2020
and W.M.P.(MD)Nos.1149 of 2021 and
6697, 6701 and 7514 of 2020

1.P.Abbas
2.M.Gurumoorthy
3.A.Chithra

... Petitioners in
W.P.(MD)No.1354/2021

A.Chithra

... Petitioner in
W.P.(MD)No.7259/2020

Vs.

1.The Secretary to Government,
Health and Family Welfare (C2) Department,
Secretariat, Fort St. George, Chennai -600 009.

2.The Director of Medical Education,
Kilpauk, Chennai -600 010.

3.The Dean,
Government Rajaji Hospital,
Madurai -625 020.

... Respondents in
W.P.(MD)No.1354/2021



WP(MD) No.1354 of 2021 and 7259 of 2020

1.The Secretary to Government,
Health and Family Welfare (C2) Department,
Chennai.

2.The Director of Medical Education,
Kilpauk, Chennai -600 010.

3.The Dean,
Madurai Medical College,
Madurai.

... Respondents in
W.P.(MD)No.7259/2020

PRAYER IN W.P.(MD)NO.1354/2021: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent in G.O.(Ms) No.147, dated 18.03.2020 and the subsequent panel issued by the 2nd respondent in Ref.No.20737/E5/2/2020 dated 16.12.2020 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to publish District wise seniority list for the post of Lab Technician Grade-II and promote the petitioners to the post of Lab Technician Grade-I.

PRAYER IN W.P.(MD)NO.7259/2020: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the G.O.Ms.No. 147 dated 18.03.2020 issued by the 1st respondent as well as the circular issued by the 2nd respondent Ref.No. 20737/E5/2/2020 dated 03.06.2020 quash the same and consequently directing Respondents to promote the petitioner to the post of



WP(MD) No.1354 of 2021 and 7259 of 2020

Lab Technician Grade I notionally with effect from the Juniors promoted on 28.02.2011 and pay all other monetary benefits.

For Petitioners : Mr.D.Selvanayagam
(In both W.Ps)
For Respondents : Mr.V.Om.Prakash,
(In both W.Ps) Government Advocate.

COMMON ORDER

These two writ petitions have been filed challenging the Government Order in G.O.(Ms).No.147, Health and Family Welfare Department, dated 18.03.2020, whereby the Special Rules for the Tamil Nadu Medical Subordinate Services were amended by inserting Rule 4B and also amending the Annexure I appropriately. The relevant amendments are extracted hereunder for the sake of convenience:

“1.after rule 4A, the following rule shall be inserted, namely:-

“4B. Seniority.- For appointment by promotion to the post of Laboratory Technician Grade -I, the Director of Medical Education shall follow State Wide Seniority”.

2. in Annexure I (referred to rule 4) under the sub-heading, Class III in column (1), for the expression in column (2) against the expression Category I Laboratory Technician Grade I in column



WEB COPY



WP(MD) No.1354 of 2021 and 7259 of 2020

(1), the expression “The Director of Medical Education” shall be substituted.

2. By the said amendment, the post of Laboratory Technician Grade-I was made as a State Wide post, thereby directing the preparation of State Wide Seniority list of Laboratory Technician Grade-II for promotion to the post of Laboratory Technician Grade-I. These petitions have been filed by the petitioners, who are working as Laboratory Technician Grade-II in Maduari Medical College and Madurai Government Hospital.

3. The petitioner in W.P.(MD)No.7259 of 2020 is also the petitioner No.3 in W.P.(MD)No.1354 of 2021. The relief sought in both the Writ Petitions is one and the same. Hence, it would be sufficient, if W.P. (MD)No.1354 of 2024 is adjudicated.

4. Petitioners 1 to 3 herein were appointed as Laboratory Technician Grade-II on 01.04.2007, 01.04.2007 and 08.11.1994 respectively. By the date of their appointment as Laboratory Technician Grade-II and till issuance of impugned Government Order, the Unit for promotion to the post



of Laboratory Technician Grade-I was the District or the District Medical College/District Government Hospital. At that stage, the Government issued impugned Government Order making the post of Laboratory Technician Grade-I as State Wide post, thereby requiring the preparation of the seniority list of Laboratory Technician Grade-II for promotion to the post of Laboratory Technician Grade-I, which is declared as a State wide post.

5. The grievance of the petitioners is that one person, by name V.Renugadevi, who was appointed as Laboratory Technician Grade-II on 08.11.2004 in Government Hospital Madurai, was promoted as Laboratory Technician Grade-I on 28.02.2011, by treating the said hospital as Unit for promotion and seniority, i.e., within a period of six years from the date of her initial appointment as Laboratory Technician Grade-II, whereas the petitioners herein who were appointed as Laboratory Technician Grade-II much prior to the said V.Renugadevi, could not get their promotion and when the petitioners were eagerly waiting for the vacancy to arise in their respective institutes for consideration of their cases for promotion, the impugned Government Order came to be issued by making the post of



Laboratory Technician Grade-I as State wide post, thereby, the petitioners were deprived of considering their case for promotion in their respective institutions.

6. The very fact situation, basing upon which, the petitioners approached this Court by filing these two writ petitions, makes it clear that the situation, which was prevailing prior to the issuance of Government Order is arbitrary. Admittedly, the said Renuaga Devi, who was appointed as Laboratory Technician Grade-II on 08.11.2004, much later than the petitioners herein could get promotion to the post of Laboratory Technician Grade-I by treating the post of Laboratory Technician Grade-I as District level post or by treating the respective institute as a Unit. The persons who were appointed later could get promotion in view of the facts of availability of a vacancy in the particular institute. By virtue of the impugned Government Order, such a situation is sought to be avoided by bringing the post of Laboratory Technician Grade-I as a state level post. Thus, by virtue of the impugned Government Order, the anomaly that existed prior to issuance of impugned Government Order, is sought to be rectified. The petitioners, who are working as Laboratory Technician Grade-II having



been appointed during the year 2007 and 1994, may be placed in a little advantage position, because of preparation of state wide seniority list of Laboratory Technician Grade-II and their promotion may get delayed, but that cannot be a ground to annul the impugned Government Order. There is no fundamental right to get promotion and it is only the right to be considered for promotion is considered to be fundamental right by the Hon'ble Apex Court in a catena of decisions. The right of the petitioners, for being considered for promotion to the post of Laboratory Technician Grade-I, is no way affected and the same is in fact protected by the impugned Government Order.

7. Coming to the aspect of the legitimate expectation of the petitioners herein is concerned, there is no vacancy that is available in the respective institutions, in which the petitioners were working as on the date of filing of the Writ Petitions and it is also not stated in the affidavit filed in support of the writ petitions as to when any vacancy in the post of Laboratory Technician Grade-I is going to arise and when the petitioners are likely to get promotion. In the absence of any basic facts, it is not possible to consider the ground of legitimate expectation while considering the



challenge made to the Rule. Further, the contention of learned counsel for the petitioners that the respondent Government has failed to take into consideration Section 40 of the Tamil Nadu Conditions of Service Act, 2016, while issuing the impugned Government Order is concerned, this Court does not find any substance nor see any contradiction in the impugned Government Order, which is in violation of Section 40 of the Tamil Nadu Conditions of Service Act, 2016.

8. Further, from the counter affidavit filed by the respondents, it is noticed that the third petitioner herein already got promotion to the post of Laboratory Technician Grade -I as early as in the year 2021 itself, ie., immediately after issuance of impugned Government Order. But the third petitioner herein for the reasons best known choose to relinquish such promotion. Further, it is also brought to the notice of this Court that in the State Wide seniority list, the petitioners 1 and 2 are placed at serial Nos.173 and 175 and they have not challenged their places in the said seniority list and as such, their cases would be considered on their own turn for the promotion to the post of Laboratory Technician Grade I. Further, the impugned order is a policy matter amending the Rule in the interest of the



WP(MD) No.1354 of 2021 and 7259 of 2020

entire cadre. Thus, no case is made out warranting interference by this Court.

9. In the light of the above, this Court does not find any merit in these writ petitions and the same are accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.03.2024

NCC : Yes/No
Index : Yes/No

vsm

To

- 1.The Secretary to Government,
Health and Family Welfare (C2) Department,
Secretariat, Fort St. George, Chennai -600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai -600 010.
- 3.The Dean,
Government Rajaji Hospital,
Madurai -625 020.
- 4.The Dean,
Madurai Medical College,
Madurai.

9/10



WEB COPY



WP(MD) No.1354 of 2021 and 7259 of 2020

MUMMINENI SUDHEER KUMAR, J.

vsm

W.P(MD)Nos.1354 of 2021 and 7259 of 2020

19.03.2024