



W.A(MD)No.1706 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)No.1706 of 2024
and
C.M.P.(MD)No.13134 of 2024**

1.State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
Health and Family Welfare Department,
Fort St George,
Chennai-600 009.

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

... Appellants / Respondents

-vs-

T.Gnanasekaran

... Respondent/Writ Petitioner

PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 19.09.2023 made in W.P.(MD)No.8536 of 2023.

For Appellants : Mr.P.T.Thiraviyam,
Government Advocate

For Respondent : Mr.R.Murali



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JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The state is on appeal. Challenge is to the order of the learned single Judge made in W.P.(MD)No.8536 of 2023 dated 19.09.2023, in and by which, the writ Court directed the 1st respondent to appoint the petitioner as professor of Urology without any delay.

2. The brief facts that led to the filing of the writ appeal are as follows:

2.1. The petitioner who holds an M.S.(General Surgery) and M.Ch was working in the Urology Department of Madurai Medical College, from 01.11.2010 to 15.04.2014 on deputation. He was formally designated as an Assistant Professor with effect from 16.04.2014. Though the petitioner was qualified to be promoted as Associate Professor in the year 2018 itself, he was not promoted as Associate Professor, despite the fact that his name was included in the panel for the year 2018-2019. This happened because there were certain issues regarding the CML seniority and cases were pending before the principal bench. The petitioner had also filed W.P. (MD)No.25203 of 2018 seeking promotion as Associate Professor. The batch of writ petitions pertaining to CML seniority were disposed of on 25.04.2022.



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2.2. The petitioner's writ petition was taken up for disposal and was allowed on 18.11.2022, directing the respondents to grant promotion to the petitioner as an Associate Professor with effect from 2018-2019. This order was not challenged. It was complied with on 14.02.2023. Since there are 10 vacancies of professor in the Urology Department, the petitioner sought promotion as a professor with effect from 15.03.2021 in the available vacancy. Since the request was not considered, the petitioner moved this Court seeking a mandamus. The claim was resisted by the Department mainly contending that an Associate Professor with not less than three years experience and four research publications alone could be appointed as professor. Of the four research publications, 2 must be after being appointed as an Associate Professor. Therefore, it was contended that the petitioner is not qualified for appointment as Professor.

2.3. The writ Court repelled the contentions of the department on the ground that the direction of this Court was to appoint the petitioner as an Associate Professor with effect from 2018-2019 and the same having been complied with, it should be deemed that the respondent had worked as an Associate Professor from 2018-2019 and all research publications made by him between 2018-2019 and 2023 should be taken as research publications made in the capacity as an Associate Professor. On the said conclusion, the writ Court allowed the writ petition and directed that the



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petitioner be appointed as a professor forthwith. Aggrieved the instant appeal.

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3. We have heard, Mr.P.T.Thiraviyam, learned Government Advocate appearing for the appellants and Mr.R.Murali, appearing for the respondent.

4. Mr.P.T.Thiraviyam, learned Government Advocate appearing for the appellants would submit that since the petitioner was promoted as an Associate Professor only on 14.02.2023, he cannot seek appointment as Professor without completing the required number of years of service as an Associate Professor. He would also point out that the requirement of research publications has also not been satisfied by the petitioner.

5. We are unable to agree with the learned Government Advocate appearing for the appellant. Once it is found that the petitioner ought to have been promoted even in the year 2018-2019, the authorities cannot take advantage of their own wrong in not promoting the petitioner, in time, as an Associate Professor. Even after including his name in the panel for promotion for the year 2018-2019, the petitioner was not promoted. Such non promotion is not due to any action or inaction on the part of the petitioner. It is only because of the pendency of cases relating to seniority. Therefore, the petitioner cannot be deprived of chances of promotion



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because of pendency of some other disputes.

6. This Court had in W.P.(MD)No.25203 of 2018 specifically directed the respondents to promote the petitioner with effect from 2018-2019 and that order has been given effect to. Therefore, it shall be deemed that the petitioner worked as an Associate Professor for all practical purposes including for determining as to whether he is qualified for the post of Professor. The writ Court has only opined that once the petitioner is promoted with effect from 2018-2019, it is not open to the respondents to contend that he is not qualified to be appointed as a Professor.

7. We therefore see no reason to interfere with the order of the writ Court. The writ appeal therefore fails and it is accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.]

[L.V.G., J.]

26.09.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes

Sml

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