



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.18862 of 2015

M.Balasundaram

... Petitioner

Vs.

1.The State of Tami Nadu,
Rep. by the Additional Secretary to Government,
Health and family Welfare (A1) Department,
Fort St. George, Chennai – 600 009.

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

3.The Secretary,
Medical Council of India,
Pocket – 14, Sector-8,
Dwaraka, New Delhi – 110077.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order passed by the 1st respondent the Additional Secretary to Government, Health and Family Welfare (A1) Department vide the letter No.1927/A1/2015-4 dated 27.05.2015 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents herein to select and appoint the petitioner as Associate Professor in General Surgery notionally with effect



from the date on which the immediate junior in the General Surgery speciality was promoted as Associate Professor under the Control of the 2nd respondent herein.

For Petitioner : Mr.A.R.Suresh
For R1 & R2 : Mr.E.Sundaram
Government Advocate
For R3 : Ms.Shubharanjani Ananth
Standing Counsel.

ORDER

The brief facts that are relevant of disposal of this writ petition are as under:

1.1. The petitioner herein who was working as Assistant Professor in General Surgery acquired super speciality degree namely M.Ch in Paediatric Surgery at the expense of the State. It was thereafter, during the panel year 2010-2011, the petitioner having found himself eligible for promotion to the post of Associate Professor in General Surgery participated in the promotion counselling. But the case of the petitioner was not considered for promotion to the post of Associate Professor in General Surgery on the ground that the petitioner has acquired M.Ch (Paediatric Surgery) a super speciality degree at the expense of the State and therefore, he is eligible for consideration for promotion to the post of Associate Professor in Paediatric Surgery alone. However, the case of the petitioner was not considered for promotion to the



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post of Associate Professor in Paediatric Surgery also for want of possessing necessary qualification of experience of two years. Though the petitioner was found fully eligible for promotion to the post of Associate Professor in General Surgery, his case was not considered and the persons who were juniors to the petitioner in the post of Associate Professor in General Surgery were considered and accordingly, they were promoted to the post of Associate Professor in General Surgery during the said panel year 2010-2011.

1.2. At that stage, the petitioner approached this Court by filing W.P.No.6430 of 2011, seeking to declare the selection of his juniors, who were arrayed as respondents 6 to 9 therein, as Associate Professors in General Surgery as null and void, and thereby sought for a direction to the Director to select and appoint the petitioner as Associate Professor in General Surgery in any one of the Medical Colleges in Tamil Nadu. However, the said writ petition came to be dismissed by a learned Single Judge of this Court by an order dated 10.07.2014 and aggrieved thereby, the petitioner filed Writ Appeal in W.A.No.1315 of 2014, wherein, the learned Division Bench considered the aspect of entitlement of the petitioner for consideration of his case for promotion to the post of Associate Professor in General Surgery and disposed of the said writ appeal, by an order dated 16.02.2015. The operative portion of the said order reads as under:



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“8. No material has been placed before us to indicate that when the writ petitioner was promoted to take higher super speciality course in M.Ch., the petitioner has submitted any undertaking or any condition was imposed by the State Government that after having obtained M.Ch super speciality degree, the writ petitioner would not claim promotion in any other discipline, i.e., general surgery. The fact that the writ petitioner had obtained M.Ch in super speciality on the expense of the State Government is not denied. It is also not denied that the writ petitioner was granted two advance increments on acquiring M.Ch degree, but the fact remains that whether there is some bond or undertaking which prohibits the writ petitioner from seeking promotion to any other discipline on obtaining super speciality degree in Paediatric Surgery.

9. The policy of the Government to assist the service Doctors for obtaining super speciality degree to cater to the need of public at large, deserves appreciation. However, in the absence of any restriction, bond or undertaking by the officer concerned, the writ petitioners cannot be denied an opportunity for consideration to the post of Associate Professor in General Surgery, if he is otherwise eligible for consideration. We cannot give a positive finding that the writ petitioner is eligible and as such, he may be promoted to the post of Associate Professor in General Surgery. However, in the facts as aforesaid, we leave it to the State Government to consider the case of the writ petitioner/appellant for promotion on the post of Associate Professor in General Surgery on its merit and as per law. While considering the case of the writ petitioner/appellant, the authorities may also examine the fact of any restriction, bond or undertaking if given by the writ petitioner or put by the Government, at the time of undergoing super speciality course at the expense of the State Government. Thus, at this stage, we do not express any opinion on the merits of the case. As a sequel, we direct the State Government to consider the case of the writ petitioner/appellant and pass a reasoned order in



accordance with law and on its own merit.”

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2. It was pursuant to the said order passed by the learned Division Bench, the 1st respondent herein, having considered the case of the petitioner for promotion to the post of Associate Professor in General Surgery, passed the impugned order rejecting the claim of the petitioner. The operative portion of the said order reads as under:

“4. I am also to state that the Government spends huge money to impart medical education to facilitate the public to utilize the medical facilities at Government Medical Institutions and at the same time provides stipend to the private candidates and also valuable increments including the stipend equal to the salaries of the service candidates, therefore on completion of the Superspeciality degrees, their services should be utilized in the departments where the Medical Officers have got their Superspeciality degrees. If your request is considered under broad speciality i.e. M.S.(General Surgery), the purpose for studying the Superspeciality degree will not survive. As these degrees are very valuable in Medical Education.”

3. Aggrieved by the said order dated 27.05.2015, the petitioner approached this Court by filing the present writ petition.

4. The fact remains that immediately after passing of the order, the petitioner retired from service on attaining the age of superannuation on 31.05.2015.



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5. Heard Mr.A.R.Suresh, learned counsel for the petitioner, Mr.E.Sundaram, learned Government Advocate for 1st and 2nd respondents and Ms.Shubharanjani Ananth, learned Standing Counsel for the 3rd respondent.

6. The only issue that arise for consideration is whether the reason assigned in the impugned order dated 27.05.2015 by the 1st respondent rejecting the claim of the petitioner for promotion to the post of Associate Professor in General Surgery is sustainable or not?

7. The reason assigned is that the Government had spent huge money to impart medical education for acquiring super speciality degree, with a view to utilise the services of the medical officer who was sponsored for such Super speciality degree; and in case his case was considered for M.S.(General Surgery), the purpose of studying the super speciality degree i.e., M.Ch in Paediatric Surgery would not serve. The very same defence was taken by the Government in the previous round of litigation, and the learned Division Bench of this Court specifically dealt with the said aspect and came to the conclusion that, in the absence of any condition being imposed on the petitioner before sponsoring him for super speciality course, it is not open for



the State to deny the case of the petitioner for consideration for promotion to the post of M.S (General Surgery) and accordingly, after having arrived at such conclusion *interse* the parties, the learned Division Bench directed the respondents to consider the case of the petitioner for promotion.

8. From the order passed by the learned Division Bench which is extracted herein above, it is very clear that the direction issued to the respondents to consider the case of the petitioner for promotion is without reference to the fact that the petitioner was sponsored for the super speciality course, that is, M.Ch in Paediatric Surgery, and the direction was to consider his case for promotion to the post of Associate Professor in General Surgery. Therefore, it is not open for the respondents to reject the case of the petitioner on the very same ground which was found unsustainable by the learned Division Bench of this Court.

9. From the perusal of the impugned order and the manner in which the case of the petitioner was considered and rejected, it is clear that the same is directly in contravention of the order passed by the learned Division Bench of this Court amounting to contempt of this Court. Had the petitioner filed contempt petition at the appropriate time complaining against the action of the respondents, this Court definitely would have taken serious action for flouting

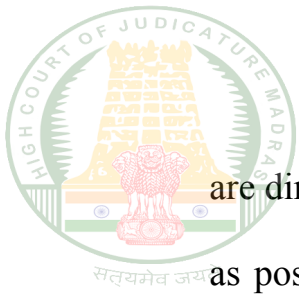


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the orders passed by the learned Division Bench of this Court. But, for the reasons best known, the petitioner has only chosen to question the impugned order by filing the present writ petition. At this stage, the fact remains that the petitioner has already retired from service on 31.05.2015, However, as this Court has already come to the conclusion that the action of the respondents in rejecting the case of the petitioner, in the teeth of the orders passed by the learned Division Bench of this Court, is contemptuous in nature, this Court deem it appropriate to quash the impugned order and further direct the respondents for fresh consideration of the case of the petitioner for promotion to the post of Associate Professor in General Surgery, without reference to the fact that the petitioner acquired super speciality degree, and to extend the benefit of promotion to the petitioner on par with his immediate junior, if he is otherwise found eligible.

10. It is further made clear that the petitioner is entitled for notional fixation of pay but not entitled for any monetary benefits till the date of his superannuation, as he has not worked in the promotional post. The petitioner shall be entitled for all monetary and terminal benefits only from the date of superannuation.

11. Accordingly, this writ petition is disposed of. The respondents



are directed to complete the entire exercise as directed above, as expeditiously as possible, at any rate, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions, if any, shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

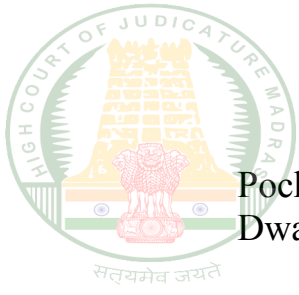
Neutral Citation : Yes / No

MUMMINENI SUDHEER KUMAR, J.

dpa

To

- 1.The Additional Secretary to Government,
State of Tami Nadu,
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