

W.A.(MD)No.1366 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.02.2025

CORAM:

THE HONOURABLE MRS JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.1366 of 2024
and
C.M.P.(MD)No.10607 of 2024

1. Directorate of Medical Education and Research,
Chennai – 600 010.
2. Directorate of Medical and Rural Health Services,
Chennai.
3. The Joint Director,
Joint Director of Health Services,
Madurai.
4. The Chief Medical Officer,
Government of Hospital Vadipatti,
Madurai.
5. The Dean,
Government Medical College, The Nilgiris,
Nilgris.
6. The Dean,
Government Medical College,
Virudhunagar.

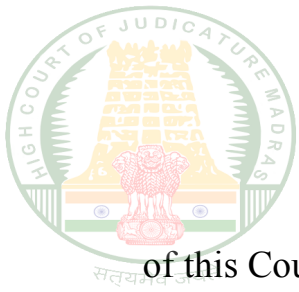
Vs.

M.K.Bharathi

... Appellants

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the orders



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of this Court in W.P.(MD)No.13792 of 2024, dated 27.06.2024.

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For Appellants : Mr.J.Ashok
Additional Government Pleader
For Respondent : Mr.C.Deepak

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed by the respondents against the order passed in W.P.(MD)No.13792 of 2024, dated 27.06.2024.

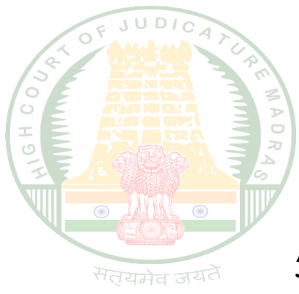
2. The writ petition was filed inter alia praying for issuance of Writ of Mandamus, to direct the 1st respondent therein to revise the seniority list in Pharmacology Department based on the date of transfer posting order before conducting the re-counselling which arises due to the vacancy caused by transfer counselling vide circular Transfer Counselling / By E-Mail / Ref.No. 000033/E3/1/2024, dated 14.06.2024.

3. The 1st respondent herein is the writ petitioner. The writ petitioner was earlier transferred vide order dated 16.08.2023 to Virudhunagar Government



College. At that point of time the writ petitioner was working in Nilgiris Medical College and she was relieved only on 25.10.2023 and then she joined in the transferred place of Virudhunagar on 26.10.2023. In the next transfer counselling, which was released on 19.06.2024 the petitioner's name has been included in incorrect seniority by taking the date of joining instead of date of transfer order.

4. The contention of the writ petitioner is that the transfer order was issued on 16.08.2023 but she was belatedly relieved on 25.10.2023 by the Nilgiris Medical College and the very next day the writ petitioner joined the transferred place without availing the joining leave. Hence the claim of the petitioner she ought to have been kept in seniority list by taking the date of transfer order. But when the 1st respondent issued the circular, dated 14.06.2024, fixing the date of counselling for Pharmacology on 19.06.2024, a seniority list was released based on the date of joining in the last working station. If the date of transfer dated 16.08.2023 is taken for consideration, then the writ petitioner is eligible to be placed in the seniority list and would have obtained the transfer order. But the respondents have taken 26.10.2023, the date of joining and have calculated the seniority, thereby, deprived the writ petitioner from participating in the transfer counselling based on circular, dated 14.06.2024. Hence, the writ petition was filed.



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5. After considering the writ petitioner's plea, the Writ Court has disposed of the writ petition and directed the 1st respondent therein to modify the transfer counselling seniority by including the writ petitioner's name. Aggrieved over the same the respondents in the writ petition had filed the present writ appeal.

6. The contention of the appellants is that G.O.(2D).No.131, Health and Family Welfare Department, dated 20.11.2007, has given guidelines for conducting transfer counselling. In the said G.O., guidelines for determining the seniority list were also prescribed. Under clause 10.6, it states that actual period of duty in the present posting alone can be counted for preparing the seniority list. When the writ petitioner had joined the duty on 26.10.2023, then the writ petitioner is entitled to seniority from the date of joining the transferred post.

7. The clause 10.6 of the said G.O. is extracted hereunder:

“For counting station seniority, actual period of duty in the present posting alone will be counted, excluding period spent on leave like Earned Leave, Medical Leave, Extra ordinary leave, etc., and period of unauthorised absence.”



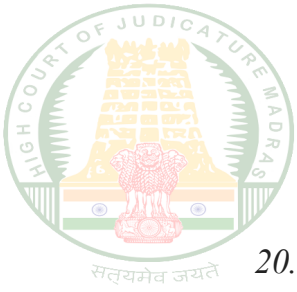
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The said clause only speaks to exclude the leave period or unauthorised absence period alone. In the present case, the writ petitioner was granted relieving order which is a belated one. Even according to the appellants, the service of the writ petitioner was necessary, hence the appellant had retained the writ petitioner in Nilgiris and the said decision was taken in the interest of public. But such decision cannot affect the writ petitioner's valuable right of seniority. Further, it is not the mistake of the writ petitioner. Infact the writ petitioner was ready and willing to serve in the transferred post at Virudhunagar. It is because of the appellants belated relieving order the petitioner could not join the service. Therefore, the said period from 16.08.2023 to 25.10.2023 ought to be calculated for seniority. When it is not the mistake of the writ petitioner, the valuable right accrued to the writ petitioner cannot be deprived.

8. It is pertinent to state that the appellants have noted such discrepancy and has rectified the same through government order wherein it is stated that the date of transfer order ought to be taken for fixing the seniority. The relevant portion of the said G.O.(D).No.1355, Health and Family Welfare (A1) Department, dated 30.12.2024 is extracted hereunder:

“2. In addition to the existing clause in paragraph 10.6 of G.O. (2D) No.131. Health and Family Welfare (A1) Department, dated



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20.11.2007, the following clause shall be added.

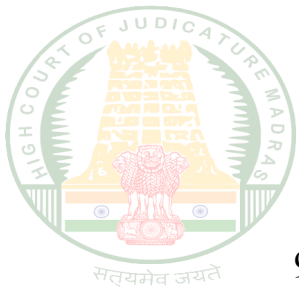
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Transfer Counselling:

Station seniority shall be calculated from the date of transfer /promotion orders issued by the Government / Directorate of Medical Education & Research. This calculation is applicable only for the purpose of transfer.

Provided that the aforesaid method of calculating station seniority shall not apply if there is willful delay on the part of Medical Officer in relieving from the old station or joining the new station on transfer/promotion.”

The Government has amended the original G.O. passed in G.O.(2D).No.131, by incorporating the above said clause. The new G.O. states that seniority can be granted from the date of transfer and not from the date of joining. The proviso clarifies the aforesaid station seniority can be granted from the date of transfer order only if there is no wilful delay on the part of the medical officer. Admittedly in the present case it is not the delay on the part of the writ petitioner, in such circumstances then the date of transfer order alone can be taken into account and not the date of joining.



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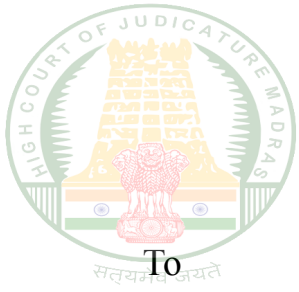
9. The subsequent G.O., is in favour of the writ petitioner. But the contention of the appellant is that the G.O. is applicable prospectively and not retrospectively. This Court is of the considered opinion the G.O. may be applicable prospectively. Even the earlier G.O. in G.O.(2D).No.131 is in favour of the writ petitioner where it directs to exclude the period spent on leave like Earned Leave, Medical Leave, Extra Ordinary Leave and period of unauthorised absence. In the present case it is not the case of leave at all but it is the case of non-issuance of relieving order by the appellants. In any angle the petitioner is entitled to count the date from 16.08.2023 to 25.10.2023 for calculating seniority for the purpose of transfer counselling.

10. Therefore, this Court is of the considered opinion that the appeal deserves to be dismissed and the order passed in the writ petition is absolutely correct and there is no infirmity. Accordingly, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
20.02.2025

Index : Yes / No

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