

WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

In the High Court of Judicature at Madras

Reserved on : 20.2.2025	Delivered on : 26.2.2025
--	---

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.26560, 31048, 31109 & 31335 of 2024 &
WMP.Nos.29067, 31549, 31552, 33667, 33669, 33753,
33754, 33994, 33995 & of 2024

1.Prof. Dr.R.Manonmani
2.Prof. Dr.M.Gayathri

...Petitioners in
WP.No.26560 of
2024

Dr.J.A.Jayalal

...Petitioner in
WP.No.31048 of
2024

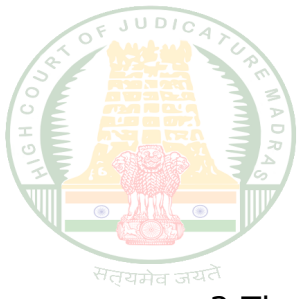
Dr.T.M.Manohar

...Petitioner in
both WP.Nos.
31109 & 31335
of 2024

Vs

1.The State of Tamil Nadu, rep.
by its Principal Secretary to
Government, Health & Family
Welfare Department, Secretariat,
Fort St.George, Chennai-9.

...R1 in WP.Nos.
26560, 31109 &
31335 of 2024



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

2.The State of Tamil Nadu, rep.
by its Secretary to Government,
Health & Family Welfare
Department, Secretariat,
Fort St.George, Chennai-9.

...R1 in WP.No.
31048 of 2024

3.The Director of Medical Education
& Research, Kilpauk, Chennai-10.

...R2 in all the
WPs

4.The Dean, Kanyakumari
Government Medical College,
Asaripallam, Kanyakumari-629201.

...R3 in WP.No.
31048 of 2024

- 5.Dr.G.Sivasankar
- 6.Dr.M.Bhavani
- 7.Dr.T.Ravikumar
- 8.Dr.V.Ramalakshmi
- 9.Dr.S.Kumaravel
- 10.Dr.L.Arul Sundaresh Kumar
- 11.Dr.R.Amutha Rani
- 12.Dr.P.Leo David
- 13.Dr.J.Devi Meenal
- 14.Dr.S.Kalaivani
- 15.Dr.S.Muthuchitra
- 16.Dr.V.Lokanayaki
- 17.Dr.T.Jeyasingh
- 18.Dr.M.Rohinidevi

...R4 to R17 in
WP.No.31048 of
2024 & R3 to
R16 in WP.No.
31335 of 2024



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

PETITIONS under Article 226 of The Constitution of India praying

for the issuance of

(i) a Writ of Mandamus directing the respondents to consider the petitioners for inclusion in 2024-2025 panel for promotion to the post of Deans, Medical Colleges, an administrative post coming under common pool based on the Civil Medical List (CML) seniority, without reference to the date of joining the post of Professor consequent to the promotional counselling conducted on 26.2.2019 in accordance with the proceedings of the 2nd respondent in Ref.No.10491/E1/1/2024 dated 05.7.2024 and consequently consider the petitioners for promotion to the post of Dean, Medical Colleges based on 2024-2025 panel within a time frame to be fixed by this Court (WP.No.26560 of 2024);

(ii) a Writ of Certiorarified Mandamus to call for the records relating to the impugned G.O.(D) No.1044 Health and Family Welfare (A1) Department dated 03.10.2024 issued by the 1st respondent promoting respondent Nos.4 to 17 as Deans of Government Medical Colleges in the State, quash the same and further direct the 1st and 2nd respondents to give promotion to the petitioner as Dean by placing him at the appropriate position in the panel of Deans in the

3/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

Government Medical Colleges in the State for the year 2024-2025 as per his seniority in the Civil Medical List (CML) within a reasonable time as made be stipulated by this Court (WP.No.31048 of 2024);

(iii) a Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of Dean, Government Medical Colleges based on the Civil Medical List (CML) seniority by including the petitioner in 2024-2025 panel for the said promotion, considering similarly placed candidates in the promotional counselling conducted on 26.2.2019 as per the petitioner's representations dated 30.5.2024, 26.8.2024 and 09.10.2024 (WP.No.31109 of 2024); and

(iv) a Writ of Certiorari to call for the records pertaining to the impugned G.O.(D)No.1044 Health and Family Welfare (A1) Department dated 03.10.2024 on the file of the first respondent promoting respondents 3 to 16 as Deans of Government Medical Colleges and quash the same (WP.No.31335 of 2024).

For Petitioners in
WP.No.26560 of 2024 : Mr.G.Sankaran, SC for
Mr.B.Nedunchezhiyan

For Petitioner in
WP.No.31048 of 2024 : Mr.Isaac Mohanlal, SC for
M/s.Isaac Chambers



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

For Petitioner in both
WP.Nos.31109 &
31335 of 2024 : Mr.K.Nishanth

For State : Mr.P.S.Raman, AG
assisted by
Mrs.M.Sneha,
Special Counsel

For R4 in
WP.No.31048 of 2024 &
For R3 in
WP.No.31335 of 2024 : Mr.Adinarayana Rao

For R5 in
WP.No.31048 of 2024 &
R4 in
WP.No.31335 of 2024 : Mr.V.Kadhirvelu

For R6
in WP.No.31048 of 2024
& R5 in
WP.No.31335 of 2024 : Mr.V.P.Sarathi for
M/s.V.P.S Law Firm

For R8 in
WP.No.31048 of 2024 &
For R7 in
WP.No.31335 of 2024 : Ms.T.Divya

For R9, R10, R16 & R17
in WP.No.31048 of 2024: Mr.Dinuprashanth

COMMON ORDER

These writ petitions have been filed by the Professors working in
the Specialities of (i) Obstetrics and Gynaecology; (ii) General Surgery



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

and (iii) Orthopaedics, who were aspiring for promotion and selection to the post of Dean and were deprived of the same by virtue of the Government Order in G.O.(D) No.1044 Health and Family Welfare (A1) Department dated 03.10.2024 issued by the first respondent, questioning the promotion of the private respondents as Deans of various Government Medical Colleges and for a consequential direction to the official respondents to give promotion to the petitioners as Deans by placing them at the appropriate position in the panel for the year 2024-2025 to the post of Dean in the Government Medical Colleges as per their seniority in the Civil Medical List (CML).

2. Heard the respective learned counsel appearing on behalf of both parties.

3. Initially, W.P.No.26560 of 2024 came to be filed by the two petitioners seeking a direction to the official respondents to consider the inclusion of their names in the 2024-2025 panel for the post of Dean consequent upon the promotion counselling conducted on 26.2.2019 and in accordance with the subsequent proceedings of the second respondent dated 05.7.2024.

6/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

4. W.P.No.26560 of 2024 came to be disposed of by an order

dated 12.9.2024 in the following terms :

"3. *The case of the petitioners is that the petitioners 1 & 2 are working as Associate Professors from 2013 onwards. Subsequently, a promotion counselling was conducted on 26.02.2019 and the order of promotion for the post of Professor was issued on 03.05.2019 and both the petitioners joined the post of Professor on 15.05.2019 and 13.05.2019 respectively.*

4. *The State Government issued orders in G.O.(4D). No.2, dated 15.02.2019 to streamline the teaching post in the Government Medical Colleges and Hospitals under the control of DME by sanctioning the post matrix for Speciality Department in every Government Medical Colleges and attached institutions. Accordingly, the Government directed conducting promotional counselling for the post of Professor after the completion of the transfer counselling subject to the availability of the vacancies and preparation of panel.*

5. *In the light of the above G.O, circulars were issued by the 2nd respondent dated 22.02.2019 and 24.02.2019 to conduct promotional counselling for all the Speciality Departments for promotion to the post of*



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

Professors. In so far as the petitioners are concerned, since they were fully qualified and completed three years of service in the post of Associate Professor, there were allowed to participate in the promotional counselling conducted on 26.02.2019. The further case of the petitioners is that the Dean of a Medical College is an Administrative Post coming under the common pool and the feeder post for the same is the post of Professor and the seniority is taken into consideration in the CML in all the Speciality Departments.

6. The Government issued letter dated 26.06.2024 through which the 2nd respondent was directed to include the name of the Medical Officers promoted as Professors in different Speciality Departments including the OG Department for whom promotion order for the post of Professors was delayed in the year 2019. This happened due to the pendency of some writ petitions and also the following pandemic.

7. The 1st respondent passed orders on 26.06.2024 followed by the proceedings of the 2nd respondent dated 05.07.2024 for rectification of the discrepancies in the matter of eligibility out of all medical officers who were given promotion as Professors based on the earlier counselling that was conducted in the year 2019 without reference



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

to the date of joining to the post of Professors.

8. The grievance of the petitioners is that the respondents are promoting the juniors without considering the petitioners on the premise that they were not holding the post of Professor as on 15.03.2019 and thereby had not completed five years of service as Professor as on the crucial date of 15.03.2019. It is under these circumstances, the present writ petition has been filed before this Court.

9. In the considered view of this Court, the Government has already issued letter dated 26.06.2024, whereby the 2nd respondent was directed to include the names of all the Medical Officers for the promotion as Professors in different Speciality Departments including the OG Department for whom the promotion was delayed. Consequently, the 2nd respondent has issued proceedings dated 05.07.2024 by rectifying the discrepancies in the matter of eligibility conditions of the Medical Officers who were given promotion as Professors in the year 2019. While that being so, the names of the petitioners will have to be necessarily included in the panel for the post of Dean for the panel year 2024-2025. Hence, this Court finds that there is no reason as to why the names of the petitioners should not be added without there being a valid reason inspite of the



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

letter issued by the Government dated 26.06.2024 followed by the proceedings of the 2nd respondent dated 05.07.2024.

10. In the result, the representation made by the petitioners shall be considered and their names shall be included in the 2024-2025 panel for the promotion to the post of Dean, if they are otherwise qualified.

11. Accordingly, this Writ Petition stands disposed of in the above terms."

5. After the above order was passed by this Court, Review Application No.177 of 2024 came to be filed by the official respondents mainly on the ground that the notice of this Court was not drawn to the policy decision taken by the Government not to relax the requirement of five years experience in the post of Professor and thereby the Government's letter dated 26.6.2024 and the consequential proceedings of the second respondent dated 05.7.2024 became inoperative.

6. This Court, after hearing the learned counsel on both sides, allowed the said review application by an order dated 30.9.2024 in the following terms :



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

"3. The writ petition was filed by respondents herein for inclusion of their names in the 2024-2025 panel for promotion to the post of Dean consequent to the promotional counselling conducted on 26.02.2019 and in accordance with the proceedings of the second respondent dated 05.07.2024.

4. This Court, on hearing either side, disposed of the writ petition by order dated 12.09.2024 by taking note of the Government letter dated 26.06.2024 and the consequential proceedings of the Director of Medical Education and Research dated 05.07.2024. The crux of these proceedings is that even though the writ petitioners did not fulfil the requirement of completing five years as Professors, considering the delay that had occasioned in their promotion, the period was sought to be relaxed and the names of the writ petitioners were sought to be considered for inclusion in the panel for the post of Dean.

5. This review application has been filed mainly on the ground that it was not brought to the notice of this Court that the Government had taken a policy decision not to relax the requirement of five years experience in the post of Professor for preparation of panel to the post of Dean. Thus, a ground has been taken in the review application to the effect that the policy decision taken by the



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

Government virtually makes the Government letter dated 26.06.2024 and the consequential proceedings of the Director of Medical Education and Research dated 05.07.2024, inoperative.

6. Learned Additional Advocate General, in order to substantiate the grounds raised in the review application, also circulated the -Note File- containing the decision taken by the Government and it has been signed by the concerned authority on 02.09.2024.

7. The relief was granted to the writ petitioners only by relying upon the Government letter dated 26.06.2024 and the consequential proceedings of the Director of Medical Education and Research dated 05.07.2024. If these proceedings are set at naught by the policy decision taken by the Government, then the relief cannot be granted to the writ petitioners based on these proceedings. The matter has to be heard on merits and appropriate orders must be passed in the writ petition.

8. In the light of the above discussion, this review application is allowed and the order passed in W.P.No.26560 of 2024, dated 12.09.2024 is recalled. As a consequence, the writ petition is restored to file to be heard on merits. No costs.

Post W.P.No.26560 of 2024 for hearing on 16.10.2024 at the end of the motion list."



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

7. In the light of the above order dated 30.9.2024 passed in the said review application, W.P.No.26560 of 2024 has been restored to the file of this Court to be heard on merits.

8. Pursuant to that, the first respondent issued G.O.(D) No.1037 dated 01.10.2024 preparing a panel of 26 Medical Officers fit for promotion to the post of Dean. The first respondent also invited objections from the Senior Medical Officers, whose names were not included in the list, within a period of two months. The second respondent, through proceedings dated 02.10.2024, communicated the said Government Order dated 01.10.2024 to the Deans of all the Medical Colleges, who were, in turn, directed to communicate the same to the concerned Medical Officers for submitting their objections, if any.

9. By the time the objections could be submitted by the Senior Medical Officers, the impugned Government Order in G.O.(D) No.1044 dated 03.10.2024 came to be issued by the first respondent by giving promotion to 14 Professors as Deans, who have been arrayed as private respondents in two of the writ petitions namely W.P.Nos.31048

13/41



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

and 31335 of 2024. Aggrieved by that, the other three writ petitions namely W.P.Nos.31048, 31109 and 31335 of 2024 have been filed before this Court.

10. Individual counter affidavits have been filed in each of the writ petitions. In the counters filed by the official respondents, they have taken a stand that as per the Notification of the National Medical Commission (NMC) dated 14.2.2022, the position of Dean can be held only by a person possessing a recognized post graduate medical degree from a recognized institution with a minimum of 10 years teaching experience as Professor/Associate Professor in a medical college/institution, out of which, at least five years should be as a Professor in the concerned Department. As per the Tamil Nadu Medical Service Rules, the crucial date for possession of the prescribed qualification shall be 15th March of the year, in which, the selection for appointment is made. Thus, the aspiring candidate must have five years of teaching experience as a Professor in the concerned Department as on the crucial date i.e. 15.3.2024.



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

11. The further stand taken in the counter affidavits filed by the official respondents is that vide G.O.(4D) No.2 dated 15.2.2019, 1008 posts were sanctioned to the post of Professor in various Government Medical Colleges and Hospitals. The promotional counselling was conducted on 26.2.2019 and 05.3.2019 in respect of all the specialities. After completion of the promotional counselling, orders were also immediately issued to all the specialities except 11 specialities, which included General Surgery, Obstetrics & Gynaecology and Orthopaedics specialities.

12. According to the official respondents, the delay occurred in issuing the promotion orders due to various writ petitions that were filed before the Madurai Bench of this Court and in one of the writ petitions, an oral order was passed not to issue any further promotion and transfer order. In view of the same, the Government processed the file for promotion and posting and issued the orders on 28.2.2019 for 22 specialities except those specialities, for which, oral orders were issued by the Court not to issue the promotion and transfer orders. Immediately thereafter, the Model Code of Conduct for the 2019 general elections to Lok Sabha came into force from 11.3.2019. As a

15/41



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

result, in so far as the General Surgery speciality is concerned, the promotion orders were issued to the candidates only on 30.9.2019 in G.O.(D) No.1485. The same was the case with the promotion of the candidates belonging to the speciality of Orthopaedics. In so far as the speciality of Obstetrics and Gynaecology is concerned, the promotion orders were issued in G.O.(D) No.780 dated 03.5.2019. Only after the issuance of the above Government Orders, the petitioners joined in the promotional post of Professor on 15.5.2019, 13.5.2019, 01.10.2019 and 04.10.2019 respectively.

13. The further stand taken in the counters filed by the official respondents is that a representation was made by some of the candidates to include their names in the panel for promotion to the post of Dean in the Government Medical Colleges for the year 2024 - 2025 by considering their promotion to the post of Professor from the date, on which, the promotion counselling was conducted instead of the dates when the respective promotion and transfer orders were actually issued. This representation was considered by the Government, which, by letter dated 26.6.2024, instructed the second respondent to include the details of the Medical Officers in the proposal for further

16/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

examination. Accordingly, the letter dated 26.6.2024 issued by the first respondent resulted in the issuance of the circular dated 05.7.2024 by the second respondent to all the Deans/Heads of the institutions calling for particulars.

14. A specific stand has been taken by the official respondents to the effect that this internal communication between respondents 1 and 2 does not confer any right on the petitioners to include their names in the panel. Ultimately, the petitioners had not completed 5 years of teaching experience as Professors in the respective specialities as on the crucial date i.e 15.3.2024 and they were not eligible for inclusion of their names in the panel for 2024-2025 for promotion to the post of Dean. Accordingly, their names were not included in the panel by relaxing the rules since such relaxation will go against the mandate prescribed in the relevant rules. Thus, the panel of 26 eligible medical officers was prepared and appropriate posting orders were issued to 14 medical officers in G.O.(D) No.1044 dated 01.10.2024 subject to outcome of W.P.No.26560 of 2024. Ultimately, the official respondents sought for dismissal of these writ petitions.



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

15. Before this Court, the learned Senior Counsel appearing on behalf of the respective petitioners submitted that the promotion counselling was held to the post of Professor following the transfer counselling for all the 33 departments on 26.2.2019 and 05.3.2019 respectively. The petitioners were found eligible and by some quirk of fate, the promotion orders came to be issued only on 03.5.2019 and 30.9.2019, which delay is not attributable to the petitioners. This anomaly was properly considered by the first respondent through the Government's letter dated 26.6.2024 where the Government took into consideration the delay in issuing the promotion orders and directions were issued to include the names of all the medical officers, who underwent the promotion counselling at the same time in the year 2019 for promotion. This was followed by the circular of the second respondent dated 05.7.2024 to all the Deans/Heads of institutions calling for particulars of the candidates without reference to the respective dates of joining to the post of Professor.

16. The learned Senior Counsel appearing on behalf of the respective petitioners further submitted that having given such an impression and after taking a specific stand before this Court in W.P.

18/41



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

No.26560 of 2024, the Government, in a hurried manner, approved the panel consisting of 26 eligible Medical Officers and issued G.O.(D) No.1037 dated 01.10.2024 and also directed the second respondent to communicate the same to all the Medical Officers in the feeder category to the post of Dean and to call for objections from those aggrieved within 2 months from the date of issuing the order. This Government Order was communicated by the second respondent only on 02.10.2024 and by the time the objections were given, the impugned Government Order came to be passed in a hasty manner on 03.10.2024. Thus, the very purpose of filing an appeal against the panel prepared by the Government has become otiose.

17. According to the learned Senior Counsel appearing on behalf of the respective petitioners, in view of such a hasty decision taken by the Government, many juniors have marched ahead and are holding the post of Dean. In so far as the higher level posts and the posts in the common pool are concerned, the CML seniority will be the basis for promotion as per G.O.Ms.No.354 dated 23.10.2009. It was further submitted that the stand taken by the official respondents by throwing the blame on the oral interim order passed by the Madurai Bench of

19/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

this Court and the administrative delay due to the Code of Conduct issued before the 2019 general elections to the Lok Sabha, cannot be put against the petitioners, who are otherwise very much qualified for being considered for promotion to the post of Dean.

18. It was also submitted by the learned Senior Counsel appearing on behalf of the respective petitioners that there was no occasion for the petitioners to question the promotion orders passed in the month of May and September 2019 since the petitioners never thought that it will be put against them and this was further amplified by the communication sent by the first respondent to the second respondent dated 26.6.2024 to include the names of the eligible Medical Officers without reference to their respective dates of promotion and posting orders. It was further submitted that a policy decision cannot take away a right that was already recognized by the Government through the letter dated 26.6.2024.

19. To substantiate the above submissions, the learned Senior Counsel appearing on behalf of the respective petitioners relied upon the following decisions :

20/41



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

'(a) a judgment of the Hon'ble Supreme Court in the case of **P.Ranjithraj Vs. State of Tamil Nadu [reported in 2022 SCC OnLine SC 508]**;

(b) a common order rendered by me in the case of **S.Sudhakar & Others Vs. Government of Tamil Nadu rep.by its Secretary to Government, Finance (Pension) Department, Fort. St. George, Chennai-9 & Others [W.P. No.8584 of 2021 etc. cases dated 10.2.2023]**;

(c) an order passed by a learned Single Judge of this Court in the case of **S.Sasisivanandam Vs. District Collector, Thoothukudi District, Thoothukudi & Another [reported in 2011 SCC OnLine Madras 1757]**;

(d) a judgment of a Division Bench of this Court in the case of **District Collector, Thoothukudi District. Thoothukudi & another Vs. S. Sasisivanandam [reported in 2014 SCC OnLine Madras 9499]**; and

(e) an order passed by a learned Single Judge of this Court in the case of **A.Gobinath Vs. State of Tamil Nadu, rep. by its Principal Secretary to Government, Rural Development and Panchayat Raj Department, Fort St. George, Chennai-9 [W.P.No.8558 of 2020 dated 18.8.2020].'**

20. Per contra, the learned Advocate General appearing on



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

behalf of the official respondents, apart from reiterating the stand taken in the counter affidavits, submitted that at no point of time, the petitioners were given an impression that their promotion to the post of Dean will be considered by relaxing the relevant Rules. According to him, the delay in issuing the promotion orders to the post of Professor in the respective specialities was only attributable to the court order and the administrative reasons and while considering the entitlement, the crucial date as fixed by the NMC must be necessarily fulfilled. Admittedly, on 15.3.2024, the petitioners have not completed five years of teaching experience as Professors in the concerned departments.

21. The learned Advocate General further submitted that even though the Government was considering the claim made by the Medical Officers, the Government could not have promoted them without relaxing the relevant Rules as such relaxation is not permissible. In view of the same, the Government took a considered decision in line with the prevailing Rule and the Government had nothing against the petitioners as the Government strictly went by the Rules. He also submitted that the promotion orders were issued on

22/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

03.10.2024 since the Government had to fill up large vacancies in view of the fact that keeping the posts vacant would have caused disruption to the administration of various hospitals. It was further made clear that the impugned Government Order dated 03.10.2024 would be subject to the outcome of W.P.No.26560 of 2024 and the private respondents were made aware of the earlier order passed by this Court.

22. In order to substantiate his submissions, the learned Advocate General relied upon the following :

(i) a judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs. M.Bhaskar [reported in 1996 (4) SCC 416]***; and

(ii) a common order passed by a learned Single Judge of this Court in the case of ***Dr.S.R.Kannan Vs. State of Tamil Nadu rep.by the Principal Secretary to Government, Health & Family Welfare Department, Fort St.George, Chennai-9 & Others [W.P.Nos.6428 to 6430 of 2011 dated 10.7.2014]***.



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

23. In so far as the judgment of the Hon'ble Supreme Court relied upon on behalf of the petitioners in the case of **P.Ranjithraj** is concerned, the learned Advocate General, by pointing out to paragraph 12 of the judgment, submitted that this judgment will not apply to the facts of the present case since that was a case where the State had withheld the names of eligible candidates for two to three years even though their names were cleared and sent to the State Government for issuing fresh appointments and hence, it was held that the delay was not attributable to the candidates. According to him, in the instant case, there was no delay on the part of the Government and the delay had occurred only due to the oral interim order issued by the Madurai Bench of this Court and the Code of Conduct issued before the 2019 general elections to the Lok Sabha. He concluded his arguments by submitting that there is no ground to interfere with the impugned Government Order.

24. The respective learned counsel appearing on behalf of the private contesting respondents, apart from adopting the arguments made by the learned Advocate General, submitted that each of the

24/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

private respondents had the eligibility and fulfilled the requirements as per the relevant Rules and that therefore, their promotion cannot be put to question. That apart, the appointment to the post of Dean is based both on seniority and merit and therefore, the petitioners cannot claim their right only based on seniority. In some of the cases, the respective respondents are clearly seniors to the petitioners in the CML. Accordingly, they also sought for dismissal of these writ petitions.

25. This Court has carefully considered the submissions of the respective learned counsel on either side and perused the materials available on record and more particularly the impugned order.

26. The case in hand pertains to the promotion and appointment to the post of Dean in the Government Medical Colleges in Category 13 of Class I in Branch - I Medical in the Tamil Nadu Medical Service Rules. As per the Notification of the NMC dated 14.2.2022, Clause 3.6 deals with general norms for appointment to the post of Dean. For proper appreciation, it is extracted as hereunder :

*"3.6 The position of Dean/Director/Principal
of Medical College/Institution should be held by a*



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

person possessing recognized postgraduate medical degree from a recognized institution with a minimum of ten years teaching experience as Professor/Associate Professor in a Medical College/ Institution, out of which at least five years should be as Professor in the Department. Appointment to these posts shall be made on seniority-cum-merit basis. The Dean/Director/Principal of Medical Institution shall not hold the post of Head of the Department."

27. Category 13 of Class I in Branch 1 – Medical in the Tamil Nadu Medical Service Rules provides as follows :

Category 13 Deans of Medical Colleges	Must possess the recognized post graduate medical qualification or any other qualifications approved by the Medical Council of India which are on par with MD/MS awarded by Indian Universities with a minimum of 10 years teaching experience as Professor/Associate Professor/Reader in a Medical College/Institution, out of which, at least five years must be as Professor in a Department
--	---



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

28. Clause 8(e) of the Tamil Nadu Medical Service Rules makes it clear that the crucial date for possession of the prescribed qualification for appointment to any post by recruitment by transfer or promotion shall be the 15th March of the year, in which, the selection for appointment is made.

29. G.O.Ms.No.354 dated 23.10.2009 deals with promotional opportunities provided to the Government doctors, in which, Part II, deals with Director of Medical Education side wherein Clauses (iii) to (v) are extracted as hereunder :

"(iii) The Director of Medical Education unit's seniority list will be of two categories (1) general seniority- for all those doctors with MBBS and diploma degree. (2) specialist seniority- Speciality wise seniority for those with master degree and or super speciality degree.

(iv) Both the general seniority and speciality seniority will be based on their seniority in Civil Medical List. After getting the seniority in their speciality, their future promotions would be based on the speciality specific seniority and they would not have further lien on their seniority in Civil Medical List for the purpose of promotion. However



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

seniority in Civil Medical List would be relevant only for the limited purpose of fixing inter-se seniority relative to those joining their speciality in the Director of Medical Education side. No equivalent promotion can be claimed by any specialist based on inter-se Civil Medical List seniority on account of doctors in some other speciality. Civil Medical List seniority would after that be relevant only to fix the seniority in the speciality specific seniority list, and after that, it is that seniority list which would operate as illustrated in the annexure to this order.

(v) For higher level posts and posts in common pool, the Civil Medical List seniority will be the basis for promotion."

30. A combined reading of the above Rules makes it clear that for promotion to the post of Dean in various medical colleges, a candidate must possess a recognized post graduate medical qualification or any other qualifications approved by the Medical Council of India with a minimum of 10 years teaching experience as a Professor/Associate Professor, etc., out of which, at least five years must be as a professor in a department. The Notification of the NMC states that the appointment to the post of Dean shall be made on seniority cum merit basis. The seniority is determined by the CML. In

28/41



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

so far as the CML seniority is concerned, the petitioners in W.P.No. 26560 of 2024 are placed at S.Nos.785 and 779 respectively. The petitioner in W.P.No.31048 of 2024 is placed at S.No.460. The petitioner in both W.P.Nos.31109 and 31335 of 2024 is placed at S.No. 1103.

31. In G.O.(D) No.1037 dated 01.10.2024, the CML seniority is given against the names of each of the 26 candidates, who were found fit for promotion and appointment to the post of Dean. Ultimately, it boiled down to the selection of 14 candidates under the impugned Government Order. In so far as the petitioner in W.P.No.31048 of 2024 is concerned, there is only one candidate, who is above him in the seniority list in S.No.120. In so far as the petitioners in W.P.No. 26560 of 2024 are concerned, there are five selected candidates in S.Nos.1 to 5, who are seniors to them in the CML seniority. In so far as the petitioner in both W.P.Nos.31109 and 31335 of 2024 is concerned, there are 12 selected candidates out of 14, who are placed above in the CML seniority. There is absolutely no controversy in the inter-se seniority between the parties and if the petitioners had been found eligible by the first respondent, obviously their names would

29/41



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

have found place in the promotion and appointment to the post of Dean.

32. In the light of the above, the only issue that has to be considered by this Court is as to whether the petitioners possess necessary requirements as provided by the relevant Rules and if they do not strictly possess the requirements as per the relevant Rules, any relaxation of the Rule must be given taking into account the fact that the promotion order to the post of Professor was issued with a delay for nearly 11 specialities, which included the specialities, in which, the petitioners are placed. For such a delay, the fault cannot be attributed against the petitioners.

33. There is also no controversy with regard to the fact that the promotion counselling for the post of Professor was held on 26.2.2019 and 05.3.2019 in respect of all the specialities including the specialities of Obstetrics & Gynaecology, General Surgery and Orthopaedics. After completion of the promotion counselling, orders were immediately issued to all the specialities except these three specialities and some others. The delay in issuing the promotion orders is attributed to the

30/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

oral direction that was given by the Madurai Bench of this Court while entertaining a writ petition questioning the promotion and transfer order not to issue any further promotion and transfer order. This oral direction was stated to have been communicated to the Government and hence, the Government proceeded to issue promotion and posting orders on 28.2.2019 for 22 specialities except those specialities, for which, oral orders were issued by this Court.

34. In so far as the Obstetrics and Gynaecology speciality is concerned, the connected writ petition in ***W.P.(MD) No.4609 of 2019 [P.M.Raja & Others Vs. State of Tamil Nadu rep.by its Principal Secretary to Government, Health & Family Welfare Department, Fort St.George, Chennai-9 & Others]*** was dismissed as withdrawn on **07.3.2019**. Another writ petition in ***W.P.(MD) No.4507 of 2019 [A.D.Samathkumar Vs. Secretary to Government, Health & Family Welfare Department, Fort St.George, Chennai-9 & Others]*** came to be dismissed as withdrawn on **14.3.2019**. In the meantime, a Model Code of Conduct before the 2019 general elections to the Lok Sabha came into force from 11.3.2019. As a result, in so far as the Obstetrics and



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

Gynaecology speciality is concerned, the promotion and posting orders were issued on 03.5.2019 and the concerned petitioners were stated to have joined on 15.5.2019 and 13.5.2019 respectively. In so far as the other two petitioners in the remaining writ petitions are concerned, the promotion and posting orders were issued on 30.9.2019 and they joined on 01.10.2019 and 04.10.2019 respectively in the promotional post of Professor.

35. The mind of this Court is redolent with the Latin maxim '**actus curiae neminem gravabit**', which means that an act of court shall prejudice no one. It is now too well settled that no person should suffer for the act on the part of the Court and it cannot be put against him to his prejudice.

36. In the case in hand, there was an oral direction issued by the Madurai Bench of this Court not to issue the promotion and transfer order till a particular date and ultimately, those writ petitions were dismissed as withdrawn. This oral direction issued by the Madurai Bench of this Court should not act prejudicial to the rights of the petitioners, who would have otherwise got the promotion and transfer

32/41



*WP.Nos.26560, 31048
31109 & 31335 of 2024*

WEB COPY

orders along with others on 28.2.2019 when the Medical Officers working in the other 22 specialities were issued with the promotion and transfer orders.

37. The further delay is attributed against the Code of Conduct, which came into force from 11.3.2019 before the 2019 general elections to the Lok Sabha. It is quite unfortunate that the Code of Conduct has been put against the petitioners. It is not a case of any fresh appointment or a fresh promotion and transfer posting. The entire process was over much before the issuance of the Code of Conduct and what remained was a mere administrative act of issuing promotion and transfer order, which waited till the completion of the Lok Sabha poll.

38. The petitioners admittedly participated in the promotion counselling that was held along with others and for reasons, which are not attributable to them or in other words, for which, the petitioners cannot be blamed, the promotion and posting orders came to be issued at a later point of time and that is now being put against the petitioners stating that as on the crucial date i.e on 15.3.2024, the

33/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

petitioners had not completed the five years' teaching experience as Professors.

39. The fact of the matter is that the petitioners are very much eligible for promotion to the post of Professor after having participated in the promotion and transfer counselling along with the Medical Officers of the other specialities. Hence, the benefits that accrued in favour of those candidates belonging to the other specialities should be equally extended to the petitioners also. In Service Law, the matter of promotion in many cases would be by virtue of seniority and more so when the mode of appointment to the next higher grade is on the basis of seniority in the feeder category.

40. The judgment of the Hon'ble Apex Court that was relied upon by the learned Advocate General in the case of **M.Bhaskar** cannot be applied to the case in hand since the five years' teaching experience as on the crucial date was not able to be fulfilled by the petitioners due to the act of the Court and also due to the administrative delay, which cannot be put against the petitioners.



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

41. It is quite unfortunate that the Government had earlier given an impression that the grievance expressed by the petitioners and similarly placed persons is under due consideration and based on the same, orders were passed in W.P.No.26560 of 2024 dated 12.9.2024. But, all of a sudden, the Government went back on their earlier decision, which resulted in the said review application filed before this Court and it was disposed of by this Court on 30.9.2024. Even when the said review application was disposed of, this Court made it clear that the main writ petition in W.P.No.26560 of 2024 would be taken up for hearing on merits. In spite of it, the process started from 01.10.2024, which is the next date after the said review application was disposed of and the communication was made to the second respondent on 02.10.2024. But, after giving two months' time for filing an appeal against the panel, the impugned Government Order came to be issued on the very next date i.e. 03.10.2024.

42. When this Court posed a question to the learned Advocate General as to why the first respondent did not wait for the appeal period to come to an end for considering the objections, the only answer that was provided was that the post of Dean cannot remain

35/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

vacant considering the administrative exigency and that therefore, it was filled up immediately. He fairly submitted that the Government was not against any party, that the only difficulty that was faced by the Government was the mandate of five years' teaching experience as Professor as on the crucial date, that this was not fulfilled by the petitioners and that therefore, the Government was not inclined to relax the Rules, which were prescribed by the NMC.

43. The impugned promotion order was issued by making it clear that it would be subject to the final outcome of W.P.No.26560 of 2024. Hence, those, who were appointed as Deans through the impugned Government Order, cannot claim any vested right as they were all aware of the fact that the matter is subjudice. Accordingly, the very promotion order is subject to the outcome of these writ petitions.

44. In the light of the above discussions, this Court holds that the act of the Court and the administrative delay should not be put against the petitioners, who would have otherwise fulfilled the requirement of teaching experience like that of the candidates in the other 22 specialities, who got their promotion and transfer orders on

36/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

time. Consequently, the petitioners must be held to be eligible for promotion to the post of Dean in the Government Medical Colleges in line with their respective CML seniority by including them in the appropriate position below their immediate senior.

45. Yet another submission that was made by the learned Advocate General appearing on behalf of the official respondents is that the petitioners were aware of the fact that their promotion to the post of Professor had taken effect only from May/October 2019 and that they have never chosen to challenge the same even though a cause of action was available to them. Hence, it was contended that they have approached this Court with a long delay in questioning the date, from which, their promotion to the post of Professor is being given effect to and as a result, when they questioned their non selection to the post of Dean on the ground that they did not have sufficient teaching experience as on the crucial date, they are indirectly questioning their promotion taking effect much later than others at this length of time and hence, the same is not sustainable.



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

46. This Court is not able to agree with the submissions made by the learned Advocate General appearing on behalf of the official respondents. As held by this Court, the petitioners never had a cause of action to question the promotional posting orders as Professors since they never anticipated that it is going to be put against them when they go into the next promotion to the post of Dean. In fact, the Government itself gave them an impression that the requirement is going to be considered by relaxing the period, during which, they were not able to be promoted and posted to the post of Professor owing to reasons beyond their control. Therefore, the real cause of action had arisen only when the Government later took a policy decision and came to the conclusion that the five years' experience period has not been fulfilled and that therefore, the petitioners are not entitled for promotion to the post of Dean. Hence, this Court holds that there is absolutely no delay on the part of the petitioners in questioning the decision taken by the Government and they got the earliest cause of action to question the delay in granting the order of promotion and posting to the post of Professor only after the impugned Government Order was issued by the first respondent.

38/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

47. The learned Advocate General submitted that nearly six vacancies are going to arise during March and July 2025 and another set of vacancies are going to arise in November of this year and February of next year. Therefore, the present position need not be disturbed.

48. Just because there is a silver lining for the petitioners to participate in the next promotion counselling, the same cannot take away the rights of the petitioners to be considered and included in the panel for the year 2024-2025 that was prepared by the first respondent in G.O.Ms.No.1037 dated 01.10.2024. There is no certainty that the petitioners will be able to get the promotion in the next selection and therefore, a mere hope should not take away the right that has already accrued in favour of the petitioners. The upshot of the above discussions is that the impugned Government Order is liable to be interfered.

49. For the foregoing reasons, the writ petitions are allowed, the impugned Government Order in G.O.(D) No.1044 dated 03.10.2024 issued by the first respondent is set aside and there shall be a

39/41



WP.Nos.26560, 31048
31109 & 31335 of 2024

WEB COPY

direction to respondents 1 and 2 to give promotion to the petitioners to the post of Dean in the Government Medical Colleges by placing them at the appropriate position in the panel for the year 2024-2025 as per their respective seniority in the CML within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMPs are closed.

26.2.2025

Index : Yes
Neutral Citation : Yes

To

- 1.The Principal Secretary to Government of Tamil Nadu, Health & Family Welfare Department, Secretariat, Fort St.George, Chennai-9.
- 2.The Secretary to Government of Tamil Nadu, Health & Family Welfare Department, Secretariat, Fort St.George, Chennai-9.
- 3.The Director of Medical Education & Research, Kilpauk, Chennai-10.
- 4.The Dean, Kanyakumari Government Medical College, Asaripallam, Kanyakumari-629201.

RS

40/41



WEB COPY



WP.Nos.26560, 31048
31109 & 31335 of 2024

N.ANAND VENKATESH,J

RS

W.P.Nos.26560, 31048, 31109
& 31335 of 2024 &
all connected pending WMPs

26.2.2025

41/41