

(2017) 06 MAD CK 0133
In the Madras High Court
Case No : 13660 of 2017

SERVICE DOCTORS WELFARE ASSOCIATION

APPELLANT

Vs

PRINCIPAL SECRETARY TO GOVERNMENT

RESPONDENT

Date of Decision : 08-06-2017

Acts Referred:

Constitution of India, Article 32 -
Remedies for enforcement of rights conferred by this Part

Citation : (2017) 06 MAD CK 0133

Hon'ble Judges : T Raja

Bench : SINGLE BENCH

Advocate : T Raja

Final Decision : Dismissed

Judgement

1. Challenging the impugned circulars dated 24.05.2017 issued by the second respondent / the Director, Directorate of Medical Education, Chennai, calling for the Service Doctors to participate in the transfer/posting counselling scheduled to be held from 02.06.2017 onwards, the petitioner Association, who are Medical Officers with PG Degree, have urgently moved this writ petition with an impression that the PG students are given priority over the Medical Officers who have already completed the PG degree.

2. It is emphasised by the learned counsel for the petitioner that the results of the PG degree undergone by the Service Doctors have not yet been declared and therefore, they cannot be given primacy over the Medical Officers in the transfer counselling, before declaration of their results in PG course, for, in the event of their failure in PG Course, they will have to vacate their seats, while ultimately cause grave-prejudice to all the Medical Officers and the respondent department.

3. By taking note of such points raised by the learned counsel for the petitioner, this Court, by order dated 02.06.2017, has directed the respondents to follow the guidelines for transfer and promotion as per G.O.(2D).No.131, dated

20.11.2017 read with Government Letter No.569/B1/2017-1, dated 25.01.2017.

4. Aggrieved by the said interim direction, the service Doctors, who are seniors as per the CML seniority list than the members of the petitioner Association, have filed impleading petitions in WMP.Nos.15180 and 15500 of 2017 and thereby it is contended that the members of the petitioner Association were recruited by way of walk-in selection through the Medical Services Recruitment Board during the year 2015-2016 without completing two years of Government Service as on 31.03.2017, therefore, they cannot be given primacy over their seniors.

5. It is further contended by the impleaded parties that when the members of the petitioner Association were all working in the Government Service only on temporary basis and their services have not even been regularised till date and some of them are even non-service PG candidates who may leave Government Service after completion of their bond service, the respondent department, keeping in mind that the service of the Medical officers with PG degree are very essential to the Medical Department and that they have contractual obligation to serve in the Medical Department till their superannuation, issued the present circulars dated 24.05.2017 calling for the Service Doctors to participate in the transfer/posting counselling scheduled to be held from 02.06.2017 onwards, therefore, he prayed for not to modify such circulars issued by the respondent department.

6. It has been well settled by this Court as well as the Apex Court that the seniority of serving Medical officers having MBBS degree and PG degree will be decided only on the basis of the seniority rank in the Civil Medical List (CML) upto the stage of Associate Professor. For the purpose of promotion till the post of Associate Professor, only the CML seniority list is being taken, however, the members of the petitioner Association have not made anywhere in the pleading that they are seniors to the serving doctors, who are already working in the Government Service with contractual obligation to serve till the age of superannuation after completion of their PG course, therefore, on this count, the writ petition is liable to be dismissed, it is pleaded.

7. Continuing his arguments, he has submitted that it is well settled law by this Court as well as the Hon'ble Apex Court in umpteen number of judgements that the writ petition filed by an association in service matter is not maintainable inasmuch as the service rights are individual cause of action, therefore, an association cannot represent the individual service rights.

8. Although, in reply, it is submitted that the petitioner Association has come to this Court seeking implementation of G.O.Ms.No.131, Health and Family Welfare A1 Department, dated 20.11.2017, this Court is not inclined to entertain the writ petition for the following reasons:

9. As rightly pointed out by the impleading parties that the affidavit filed in the writ petition by the petitioner Association has not thrown any light as to whether

they are all seniors than the service Doctors working in the Tamil Nadu Medical Service. Secondly, the members of the petitioner association are all working in the Government service only on temporary basis and their services have not been regularised till date, besides, some of them are non-service Post Graduates, who may leave the Government Service after completion of their bond service at any point of time.

10. On the other hand, the services of the service-Post Graduates are very essential to the Medical Department and further, the respondent department also has taken note of the fact that all the service Doctors are working for a long time and they have joined the PG course in Government Medical Colleges by executing a bond with the Government of Tamil Nadu to the effect that they will continue to be in the Government service till attaining the age of superannuation after completing their courses. Therefore, this Court, by considering the fact that the service doctors are undergoing PG Course in various Government Colleges and also serving in various rural areas and they are all permanent government servants, finds no arbitrary action on the part of the respondent in issuing the impugned circulars dated 24.05.2017.

11. Moreover, the counter affidavit filed by the official respondents fails to speak about the CML seniority list, as a result, this Court had to pass the interim direction as stated above. However, the impleaded parties has brought to the notice of this Court that for transfer and promotion, CML seniority list has to be followed. Therefore, I do not find any infirmity in the impugned circulars, since, as stated by the learned counsel for the impleaded parties, only the CML seniority is being followed for transfer/posting of Medical Officers.

12. Besides, the Hon"ble Apex court in Mahinder Kumar Gupta and others v. Union of India, Ministry of Petroleum and Natural Gas [(1995) 1 SCC 85], has held that the writ petition filed by an Association is not maintainable since the Association has no fundamental right under Article 32 of the Constitution of India. Therefore, the present writ petition filed by the Service Doctors Welfare Association, represented by its Secretary, cannot be entertained by this Court.

13. In fine, for the reasons stated above, the writ petition fails and the same is dismissed. Consequently, interim direction already granted by this Court stands vacated. No Costs. Connected other miscellaneous petitions are also closed.