
(2014) 07 MAD CK 0032
In the Madras High Court
Case No : W.P. Nos. 6428 to 6430 of 2011

S.R. Kannan

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2015) LabIC 132

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : A.R. Suresh, Advocates for the Appellant; K.V. Dhanapalan, V.P. Raman and N. Anand Venkatesh, Advocates for the Respondent

Judgement

T. Raja, J.—These writ petitions have been filed seeking to issue a writ of declaration declaring the selection of respondents 6 to 9 and 5 to 9 respectively, as Associate Professor in General Surgery as null and void and thereby direct the 2nd respondent herein to select and appoint the petitioners as Associate Professors in General Surgery. Dr. S.R. Kannan sought for the above relief for his selection and appointment to the post of Associate professor in General Surgery at Kanyakumari Government Medical College, Asaripalayam, Nagercoil. Dr. D. Joseph sought for the above relief for his selection and appointment to the post of Associate professor in General Surgery at Kanyakumari Government Medical College, Asaripalayam, Nagercoil and Dr. M. Balasundaram sought for the above relief for his selection and appointment to the post of Associate professor in General Surgery in anyone of the Medical Colleges in Tamilnadu under the control of the 2nd respondent herein.

2. Mr. A.R. Suresh, learned counsel appearing for all the three petitioners would submit that Dr. S.R. Kannan was selected by the Tamilnadu Public Service Commission and was appointed as Assistant Surgeon at Primary Health Centre at Kannanur on 01.02.1989. He was subsequently posted as Assistant Professor in General Surgery on 16.08.2004 and now he is working as Senior Assistant Professor. He would further submit that the petitioner has not got any black mark

in his entire service.

3. Learned counsel appearing for all the three petitioners would further submit that Dr. D. Joseph was selected by the Tamilnadu Public Service Commission and was appointed as Assistant Surgeon on 12.07.1984. He was subsequently posted as Assistant Professor in General Surgery on 16.08.2004 and now he is working as Senior Assistant Professor.

4. Learned counsel appearing for all me three petitioners would further submit that Dr. M. Balasundaram was selected by the Tamilnadu Public Service Commission and was appointed as Assistant Surgeon at Primary Health Center at Keelakattur on 27.04.1989. Subsequently, he underwent the Postgraduate course in MS (Gen) from 01.09.1989 to 31.08.1992 at Thanjavur Medical College, thereafter, he was posted as Assistant Surgeon at Primary Health Centre at Vandaiyariruppu on 07.04.1993 and then, he has served as Senior Assistant Surgeon at PHC Palayapatti and at Government Hospital Orathanadu. Subsequently he was appointed as Tutor at Thanjavur Medical College, Hospital, Thanjavur on 18.02.2002 till 27.09.2005. Thereafter, he underwent super speciality Course of M.Ch. at Madras Medical College. In the meantime, the post of Assistant Surgeon was re-designated as Assistant Professor in General Surgery and he was also posted as Assistant Professor in the department of General Surgery at Thanjavur Medical College Hospital on 16.12.2008. Since, then he has been working as Assistant Professor.

5. Learned counsel appearing for the petitioners would further submit that all the three petitioners have acquired the M.Ch. which is considered as the qualification for Super Speciality Discipline and they were all anxiously waiting for the next avenue of promotion in General Surgery. The qualification and experience for promotion to the post of Associate Professor in General Surgery that has been prescribed by the Indian Medical Council, namely, M.S. General Surgery, one year as senior resident in surgery and five years experience in the cadre of Assistant Professor. He would further submit that all the three petitioners possessed the necessary experience. However, the post of Associate Professor in non selection post is given based on the seniority in Civil Medical List, keeping in view the rank assigned to the Doctors selected by the Tamil Nadu Public Service Commission. Therefore, the Civil Medical List seniority is the only criteria to the post of Associate Professor. The seniority number of Dr. S.R. Kannan in the Civil Medical List is 1911/10, the seniority number of Dr. D. Joseph in the Civil Medical List is 1182/10 and the seniority number of Dr. M. Balasundaram in the Civil Medical List is 2751/10 respectively and the Speciality Specific Seniority (SSS) numbers of the petitioners, namely, Dr. S.R. Kannan, Dr. D. Joseph and Dr. M. Balasundaram are 33, 15 and 74A respectively.

6. That apart, the petitioners were also redesignated by the Medical Council of India as Assistant Professors in General Surgery. When the matter stood as above, due to the want of adequate promotional opportunities and since, stagnation occurred at various levels, several Doctors could not get their due

promotions. Therefore, the Tamilnadu Government Doctors Association made a request to the State Government, the first respondent herein for providing Government Doctors with Dynamic Assured Career Progressor. Accepting the reasonable request, the Government also issued G.O. Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009 prescribing the guidelines and terms and other service conditions to Government Doctors. As per the said G.O.Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009, the medical officers working in the medical college hospitals, institutions and dispensaries under the control of Directorate of Medical Education are brought under the Director of Medical Education unit. The Director of Medical Education will maintain the seniority list of Doctors in that unit and seniority will be of two categories, namely (i) general seniority for all those Doctors with MBBS and Diploma Degree (ii) specialist seniority speciality wise seniority for those with Master Degree and or Super Speciality Degree. Both the general seniority and speciality seniority will be based on their seniority in Civil Medical List. After getting the seniority in their speciality then-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 seniority in Civil Medical List would be relevant only for the limited purpose of fixing Inter se seniority relative to those joining that speciality in the Directorate of Medical Education side.

7. Again referring to the G.O.Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009, the learned counsel appearing for the petitioners submits that once a person joins any speciality under Director of Medical Education, his inter se seniority in the speciality would depend on the person's seniority in the Civil Medical List. The Civil Medical List would continue to decide the speciality specific seniority, till the Associate Professor level. Therefore, from the above Government Order, he pleaded that the Civil Medical List seniority is the basis for the preparation of SSS and the petitioners are eligible for the post of Associate Professor. According to the Civil Medical List published by the second respondent herein, the petitioners' name were shown as 1911/10 for Dr. S.R. Kannan, 1182/10 for Dr. D. Joseph and 2751/10 for Dr. M. Balasundaram and the seniority range of the petitioners in the SSS list are Dr. S.R. Kannan, Dr. D. Joseph and Dr. M. Balasundaram are 33, 15 and 74A respectively. Under this background, it was submitted that when the petitioners attended the counselling for promotion on 05.02.2011 for the post of Associate Professor in General Surgery, they were informed by the second respondent that they were not selected to the post of Associate Professor in General Surgery stating that they have got additional Super Speciality qualification.

8. Learned counsel appearing for the petitioners highlighting the case of the petitioners would submit that the additional qualification of securing M.Ch. has become disqualification for the petitioners. As a result, knowledge bank has been put against them from being considered even in the General Surgery to the post of Associate Professor in General Surgery. The petitioners with great hope after

acquiring the MBBS, MS and also M.Ch. in addition to the practical experience are not allowed to move forward atleast to the post of Associate Professor in General Surgery despite the fact that they have possessed better qualification than others. They are not allowed to move forward to the promotional post of Associate Professor even in the department of General Surgery and they were all retained only in the hospitals located in the remote places where there are no facilities for acquiring the two years experience to acquire themselves as Speciality Doctors as they have already obtained M.Ch. degree.

9. The learned counsel appearing for the petitioners would further submit that to become a super speciality Doctor, one has to acquire M.Ch. and in addition to the acquisition of M.Ch. Degree, two years teaching experience also should be acquired in the relevant super speciality subject. But, unfortunately, the petitioners having been placed in far off places, where there is no super speciality hospital or college, they were unable to acquire two years teaching experience which is not a fault on the part of the petitioners. The respondent departments were not able to provide the places for them to acquire two years teaching experience, when they have already acquired M.Ch. in the year 1991, 2000 and 2009 respectively. In view of that, the petitioners have been put to great prejudice and he further stated that the respondents also at the time of admitting them in M.Ch. course wrongly obtained an undertaking from them not to claim promotion and teaching experience in the super speciality field after completing the M.Ch. Therefore, when, first of all, the respondent department placed the petitioners only in the remote hospitals, where there are no facilities to acquire experience in super speciality department, secondly, they have also obtained an undertaking not to claim as a matter of right the promotion and also teaching experience, in view of the two reasons, the petitioners have been unfortunately deprived off a better promotional chance to move forward. The petitioners wanted to be in the Speciality category as Associate Professors in General Surgery, in view of the fact that, they acquired more than sufficient qualification. Even that reasonable hope was also dashed by the respondent.

10. Concluding his argument, the learned counsel appearing for the petitioners has stated that when many of the petitioners' juniors have been allowed to become Associate Professor in General Surgery, the respondents cannot discriminate the petitioners, as it smacks off arbitrariness. In support of his submission, he has also placed reliance of an un-reported order of this Court in the case of K.P. Manimaran v. The State of Tamil Nadu and two others passed in W.P. No. 11266 of 2003 dated 29.09.2003 to say that acquisition of additional qualification cannot be considered as a disqualification for promotions.

11. Opposing the above submissions made in the writ petitions, Mr. K.V. Dhanapalan, the learned Additional Government Pleader appearing for the respondents R1 to R3 in all the writ petitions and for R5 in W.P. Nos. 6428 and 6429 of 2011 heavily contended that the petitioners have been claiming that they have acquired all the eligibility to become Associate Professor, but the

G.O.Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009, streamlines two categories of seniority, namely, general seniority and speciality seniority, which are based on their seniority in Civil Medical List required to be followed. Infact, after getting seniority in the speciality, the petitioners' future promotion would be based on the speciality specific seniority and they would not have further lien on their seniority in the Civil Medical List for the purpose of promotion.

12. Learned Additional Government Pleader would further submit that, orders were also issued in Government letter (D) No. 76, Health and Family Welfare Department, dated 31.01.2011, specifying certain guidelines for conducting transfer/promotion counselling for the year 2011 in which one of the conditions shows that the speciality seniority number will be allotted to the faculties in the concerned speciality based on the Civil Medical List number. Only based on these guidelines, the Director of Medical Education, the second respondent herein has conducted the transfer/promotion counseling from 1st and 2nd of February, 2011 and from 4th, 5th and 7th of February, 2011 respectively. No doubt, in the said counselling, all the petitioners attended, however, on perusal of the records, it was revealed that the petitioners have completed their M.S. (General Surgery) and again they completed the Post Graduate Degree i.e., M.Ch. (Urology) (Dr. S.R. Kannan), M.Ch. (Neurology) (Dr. D. Joseph) and M.Ch (Paediatric Surgery) (Dr. M. Balasundaram). Therefore, as the petitioners are having super speciality M.Ch. their names could not be considered for the post of Associate Professor in the respective department. That apart, none of them has acquired the requisite qualification as on 15.03.2011, i.e., two years of teaching experience in Urology, Neurology and Paediatric Surgery respectively. In view of want of requisite qualification, their names have not been considered for the post of Associate Professor. As a result, the petitioners have come before this Court questioning their non promotion and demanding highly un-reasonable prayer, particularly, when they do not possess two years teaching experience.

13. Learned Additional Government Pleader pleaded that for the reason that the petitioners' name appeared in the general seniority speciality list they were assigned Speciality Specific Seniority (SSS) numbers and the numbers of the petitioners Dr. S.R. Kannan, Dr. D. Joseph and Dr. M. Balasundaram are 33, 15 and 74A respectively. But, the petitioners have not furnished the fact that their names stand in the respective speciality list. In the remarks column, it is stated that no teaching experience has been possessed by them. Therefore, it is not open to the petitioners to say that their juniors have been considered for further promotion to the post of Associate Professor in the respective department which is highly un-acceptable for yet another reason that when the juniors after possessing M.Ch. have also acquired the teaching experience in the respective speciality, it is not open to the petitioners to say that the petitioners have been discriminated and the juniors have been promoted as Associate Professors, when the petitioners have not acquired the two years experience along with M.Ch. degree to get full eligibility to be considered for the post of Associate Professors.

Hence, the petitioners are not entitled to maintain the present writ petition, he pleaded.

14. Learned Additional Government Pleader has further stated that the contentions made by the learned counsel appearing for the petitioners that they were all posted by the respondent department in far off hospitals and medical colleges, where there are no facilities for the petitioners to pursue and acquire the two years experience is also liable to fail for the reason that, when the counselling is being held everywhere allowing all the senior and junior medical officers to opt for transfer and promotion on the basis of the qualification, the petitioners who are also entitled to seek transfer to their own better places by participating in the counselling, where the facilities are available to acquire the two years teaching experience as their juniors have acquired, till date have not even endeavoured to take sufficient steps to get them posted or transferred in the requisite places, so as to acquire the two years teaching experience, therefore, when the allegations made by the petitioners clearly shows that their juniors were able to acquire two years teaching experience along with M.Ch. qualification, the petitioners have to blame themselves, but, not the department for their inability to acquire the two years experience to become fully eligible to the post of Associate Professor in their respective speciality.

15. Learned Additional Government Pleader would further state that the petitioners while they acquire the M.Ch. degree, they are given two additional increments for securing super speciality qualification. That apart as per G.O.Ms. No. 13 Health and Family Welfare (B2) Department dated 11.01.2008, they are given concession of two years teaching experience, instead of five years as given to other less qualified medical officers. The petitioners after acquiring M.Ch. qualification, as on today are enjoying the said two additional increments for super speciality. Whiles, it is not open to them to ask for posting or promotion in the General Surgery department, where the Government have also spent huge money by giving them admission in M.Ch. As an employer, the Government have got the right of utilizing their services in the super speciality field for the benefit of the sick, the poor and the needy patient. Therefore, the petitioners having completed M.Ch. in the respective speciality course as service candidates, it is mandatory to use their speciality to the poor people who are unable to pay fees and to undergo treatment in the super speciality hospitals. Moreover, they being the teaching faculties, their services are also needed for the students in the interest of academic purposes. Therefore, for these reasons, the petitioners were not considered for promotion to the post of Associate Professor in General Surgery. On these basis, he prayed for the dismissal of the writ petitions.

16. Mr. Anand Venkatesh, learned counsel appearing for the respondents R7 to R9 in W.P. Nos. 6428 and 6429 of 2011 and for the respondents R5 to R8 in W.P. No. 6430 of 2011, would submit that the petitioners having acquired M.Ch. in super speciality discipline in Urology, Neurology and Paediatric Surgery as Government candidates, have made the Government to spend huge money for

their education i.e., M.Ch. course. That apart, they have also received two advance increments along with enjoying the benefit of M.Ch., therefore, once they acquire M.Ch, they cannot compete in another discipline which are below to their qualification, hence the contentions made by the learned Additional Government Pleader, the Government as an employer has got every right to utilize their services in their respective disciplines should be accepted. Besides, after the implementation of the G.O.Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009, a person who qualifies super speciality, his seniority will be maintained in such super speciality only. In the case of the petitioners also their names found place in their respective super specialities. But, they conveniently did not come forward to file their seniority in their respective super specialities. Once a separate seniority has been prepared in their respective specialities, the petitioners cannot rely upon the seniority list prepared for the implementation of G.O.Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009. Moreover, none of the petitioners have challenged the G.O.Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009 and the same has been upheld by this Court.

17. Learned counsel further stated that when the petitioners after acquiring M.Ch. degree long time ago has miserably failed to acquire two years teaching experience, the only point for consideration is as and when the petitioners acquires the two years teaching experience, they will be placed in the super speciality seniority list. Therefore, they cannot have any apprehension that their promotional chances have been completely closed once and for all.

18. The Medical Council of India also has stated in the counter-affidavit that it is for the State Government to verify the assertion of the petitioners that they are eligible for the post of Associate Professor.

19. The petitioners having acquired M.Ch., the Post Graduate Degree in Urology, Neurology and Paediatric Surgery respectively, they have been enjoying the benefits given for persons possessing M.Ch. Degree. Now, the petitioners are admittedly enjoying two additional increments and other benefits for having acquired the super-speciality degrees. Whiles, they can be neither allowed to become Associate Professors in General Surgery as their super speciality is Urology, Neurology and Paediatric Surgery respectively, nor they will be allowed to become Super Speciality Doctors in view of not acquiring two years experience as prescribed by the Medical Council of India rules, therefore, the petitioners cannot claim that they are qualified for further promotions to the post of Associate Professors in General Surgery.

20. As rightly submitted by the learned Additional Government Pleader, after the issuance of G.O.Ms. No. 354 Health and Family Welfare (B2) Department dated 23.10.2009, the Director of Medical Education has prepared only two categories of seniority. They are, general seniority meant for all those Doctors with MBBS and Diploma Degree, secondly, the Specialist seniority meant for speciality Doctors with Master Degree and or Super Speciality Degree. Both general

seniority and super speciality are based on their seniority in Civil Medical List.

21. After getting the seniority in the speciality, their future demands would be based on the speciality specific seniority hence they can not come in the CML seniority List for the purpose of promotion. In this connection, orders have been issued in Government letter (D) No. 76, Health and Family Welfare Department, dated 31.01.2011 giving the specific guidelines for conducting transfer/promotion counselling for the year 2011 in which one of the conditions mentioned shows that SSS number will be allotted to the faculties in the concerned speciality based on the Civil Medical List.

22. It is at this point of time when the Director of Medical Education/the second respondent herein has conducted the transfer cum promotion counselling from 1st and 2nd of February, 2011 and from 4th, 5th and 7th of February, 2011 respectively, the petitioners attended the promotion counselling held during this period. But, however, after perusing the records of the petitioners, it was found that they have completed their MS General Surgery and also Post Graduate degree M.Ch. in Urology, Neurology and Paediatric Surgery in respect of a Government candidate. Therefore, finding that all the petitioners are having super speciality i.e., M.Ch. in Urology, Neurology and Paediatric Surgery respectively, keeping in mind that their names could be considered for the post of Associate Professor in the respective speciality and also taking note of the fact that, they have not acquired the two years of teaching experience on the crucial date 15.03.2011 in super speciality discipline such as Urology, Neurology and Paediatric Surgery respectively, they were not considered for the post of Associate professor.

23. First of all, at the outset, it must be mentioned that the ground on which the present writ petitions have been filed by the petitioners show that the next avenue of promotion being Associate Professors in General Surgery, their claim is liable to be rejected for the simple reason, that they have acquired super speciality degree M.Ch. in Urology, Neurology and Paediatric Surgery respectively, as Government candidate, for which the Government spends huge money to impart medical education and at the same time provides stipend to the private candidates and also valuable increments including the stipend equal to the salaries to the service candidates, therefore on completion of two years M.Ch. degree along with two years teaching experience, the Government provided them the super speciality course expecting their services to be utilized in their concerned speciality branch only. Therefore, when the Government as an employer has got the right to expect the specialist Doctors to utilize their skills for the benefit of the poor and the needy people, the non-consideration of the petitioners who have completed their M.Ch. in Urology, Neurology and Paediatric Surgery respectively for the post of Associate Professor in General Surgery, cannot be found fault with.

24. This Court is also able to see that the petitioners, having completed the M.Ch. have been given two additional increments for the acquisition of super

speciality degree in super speciality course. Infact, from the date of acquisition till this date they are enjoying the same, therefore, when they have been claiming the benefits as a super speciality Doctor, this Court is not able to justify their prayer to go back again to the non super speciality discipline for the post of Associate Professor in General Surgery.

25. Infact, when the counseling's are being held all over the State to enable the medical officers like the petitioners to move from one place to another in order to acquire better qualification like teaching experience as the petitioners have failed to possess, it is not known why the petitioners have not taken part in any of the counseling's meant for transfer to their own stations to acquire the two years teaching experience. Infact, the learned counsel appearing for the petitioners repeatedly blamed the Government that they have been transferred out of the metro cities, as a result, they were not able to pursue their two years experience in super speciality hospitals or colleges. When all other persons who have acquired M.Ch., or several other petitioners who have acquired M.Ch. degree were able to acquire two years teaching experience by placing themselves in suitable places where the facilities for teaching experience are available after participating in the counselling held for transfer and promotion, it is not open to the petitioners to say that the respondents deliberately kept them in a far off hospitals where there is no facilities available for acquiring two years of teaching acquired in speciality subjects. Therefore, for all these reasons, this Court finds no merits or substance in these writ petitions.

26. At this point of time, the learned counsel appearing for the petitioners pleaded that two of the petitioners are working in is no facilities available for acquiring two years of teaching acquired in speciality subjects. Therefore, for all these reasons, this court finds no merits or substance in these writ petitions.

26A. At this point of time, the learned counsel appearing for the petitioners pleaded that two of the petitioners are working in Kanyakumari Government Medical College and Hospital and the third petitioner is employed in Thanjavur Medical College and Hospital and admittedly, there is no super speciality facility, available for them to acquire the two years teaching experience in the respective super speciality discipline. Hence, the respective department cannot disqualify them on the ground that the petitioners have deliberately failed to acquire the qualification.

27. The argument of the learned counsel appearing for the petitioners does not impress upon this Court. The reason is even though the petitioners have been transferred, no records have been placed before this Court to show that the petitioners at any point of time wanted to get posted in a place where they can acquire this two years teaching experience. Therefore, the acquisition of this basic two years experience which is required for the petitioners to come into the super speciality category has been discarded intentionally by the petitioners for which the petitioners should blame themselves but not the respondents.

28. In view of the above, this Court is of the considered view that, when all the petitioners have acquired M.Ch., degree alone they should also acquire the full eligibility by getting two years teaching experience. As and when the petitioners acquired the two years teaching experience, the case of the petitioners may be considered for higher promotion as per the rule.

29. Needless to mention that the undertaking given by the petitioners will not stand as an impediment for acquiring the two years teaching experience. In view of all the above reasons, this Court finds no merits and no substance in the writ petitions. Accordingly, all the writ petitions stands dismissed. No costs.