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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.69 of 2015 and M.P. No.1 of 2015

Dr. D. Joseph
Assistant Professor in General Surgery
Kanyakumari Government Medical College
Kanyakumari District

Appellant/petitioner

vs.

- 1 The State of Tamil Nadu
represented by the Principal Secretary to Government
Health and Family Welfare
Fort St. George
Chennai 600 009
- 2 The Director of Medical Education
Kilpauk
Chennai 600 010
- 3 The Director of Public Health
Teynampet, Chennai 600 018
- 4 The Secretary
Medical Council of India
Pocket - 14, Sector - 8
Dwaraka
New Delhi 110 077
- 5 The Dean
Kanyakumari Government Medical College
Asaripallam
Nagercoil
- 6 Dr. R. Govinda Babu
Assistant Professor in Surgery
Stanley Medical College
Chennai



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7 Dr. S.R. Rajakumar
Assistant Professor in Surgery
Kanyakumari Government Medical College
Asaripallam
Nagercoil

8 Dr. Maruthupandian
Assistant Professor in Surgery
Madurai Medical College
Madurai

9 Dr. G. Uthirakumar
Assistant Professor in Surgery
Stanley Medical College
Chennai

Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 10.07.2014 passed in W.P. No.6429 of 2011.

W.P. No.6429 of 2011:

Petition presented under Article 226 of the Constitution of India, to issue a Writ of declaration, declaring the selection of respondents 6 to 9 as Associate professor in General Surgery as null and void and thereby direct the 2nd respondent herein to select and appoint the petitioner as Associate professor in General Surgery at Kanyakumari Government Medical College, Asaripalayam, Nagercoil. (Prayer amended as per order dated 21.3.2011 in M.P.No.3/2011 in W.P.No.6429 of 2011)

For appellant Mr. A.R. Suresh

For RR 1-3 & 5 Mr. P.H. Arvind Pandian, Addl. Adv. Gen.
assisted by
Mr. P.S. Sivashanmugasundaram
Special Government Pleader

R4, 7 & 8 No Appearance

JUDGMENT

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

With the consent of the learned counsel for the appellant and the learned counsel for respondents 1,3 and 5, the writ appeal is taken up for final disposal.

2 This writ appeal is directed against the order dated 10.07.2014 passed in W.P. No.6429 of 2011.



3 The issue as to whether an Assistant Professor working in General Surgery may be considered for appointment to the post of Associate Professor in General Surgery, came up for consideration in W.A. No.1315 of 2014 and this Court, having examined all the facts of the case, disposed of the said writ appeal by judgment dated 16.02.2015, in the following terms:

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

10 With the above observations, we modify the order passed by the Writ Court and dispose of the writ appeal accordingly. No costs. Consequently, connected miscellaneous petitions are closed."

4 The facts involved in the instant case are identical to the facts involved in the aforesaid case. Thus, the writ appeal is disposed of in the same terms. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad



To

1 The Principal Secretary to Government
Health and Family Welfare
Fort St. George
Government of Tamil Nadu
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5 The Dean
Kanyakumari Government Medical College
Asaripallam
Nagercoil.

1 cc to Mr. A.R. Suresh, Advocate, SR.No.19714
1 cc to Government Pleader, Sr.No9951

W.A. No.69 of 2015

ug(co)
pmk.21.4.2015