

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7511 of 2015

&

M.P.No.1 of 2015

Dr.B.Anbarasan

... Petitioner

vs.

1.The Secretary

Health and Family Welfare Department
Government of Tamil Nadu
Chennai - 9

2. The Directorate of Medical Education
Kilpauk, Chennai - 10

3. The Selection Committee
Directorate of Medical Education
Kilpauk, Chennai - 10

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 to 3 to award 3 marks to the petitioner for completing 3 years of service pursuant to the order of appointment no.R.No.85900/E5/A3/2011-128 dated 26.03.2012 in terms of Clause 38 of the prospectus which would take the petitioner's total marks to 66.24 and accordingly consider the petitioner for selection to the post graduate / diploma course for the Academic Year 2015-2016 in MD/MS/M.Ch (NS).

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.P.Rajalakshmi
Government Advocate

ORDER

Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mrs.P.Rajalakshmi, the learned Government Advocate appearing for the respondent.

2. The petitioner has filed this writ petition praying for issuance of writ of mandamus to direct respondents 1 to 3 to award three marks to the petitioner for completing three years of service, pursuant to the order of appointment dated 26.03.2012, in terms of clause 38 of the Prospectus for admission to Post Graduate Degree/Diploma/MCH (Neuro-Surgery) Courses as issued by the third respondent and for a consequential direction to consider the petitioner for selection to the Post Graduate Degree/Diploma Courses for the academic session 2015 - 2016 in MD/MS/M.ch (NS).

3. The facts which are necessary for the disposal of the writ petition is as follows:

The petitioner completed M.B.B.S degree in the year 2009 and registered his name as Medical Practitioner in the Tamil Nadu Medical Council. The petitioner also enrolled his name in the Professional Executive Employment Exchange, Chennai. The Government of Tamil Nadu proposed to fill up 835 vacancies of Assistant surgeons in rural areas, out of which 723 vacancies were to be filled with M.B.B.S candidates and the remaining 112 vacancies are to be filled with Post Graduate candidates in the required specialty. The selection was under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules and the appointments were purely on temporary basis. The petitioner's name was sponsored by the Professional Executive Employment Exchange and the petitioner was directed to appear for counselling on 26.03.2012 by proceedings dated 06.03.2012. The petitioner appeared for the counselling and he was selected and he was posted in the Primary Health Centre at Thudiyalur, Coimbatore District. The order of appointment dated 26.03.2012 grants 15 days time to the petitioner to enable him to join the place of posting. The petitioner received the order of appointment, which was sent by post on 30.03.2012 at 01.00 pm. The petitioner is said to have immediately reported for duty at Thudiyalur Primary Health Centre on 31.03.2012. However, since the incumbent Medical Officer who was serving in the Primary Health Centre was yet to be relieved and he would be relieved only on 03.04.2012, the petitioner was advised to join duty on 04.04.2012. Accordingly, the petitioner reported for duty and joined on 04.04.2012. Thereafter, the petitioner has been transferred to the Primary Health Centre, Kalveerampalayam, Coimbatore where he is presently working. Subsequently, during 2013, Tamil Nadu Public Service Commission held a special qualifying examination to regularize the persons like the petitioner who were appointed on temporary basis under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. The petitioner appeared for the test and secured 335 marks. The above facts are pertaining to the service career of the petitioner. It is further stated that the first respondent invited application for

filling up the Post Graduate Degree and Diploma Courses in Medical Colleges for the academic year 2015-2016. 50% of the total seats in each specialty are exclusively reserved for service candidates. In addition, service candidates are also eligible to apply in the open category. Clause 10(a) and (b) of the prospectus requires a service candidate to have completed minimum of 2 years of continuous service as on 31.03.2015 for being considered as a service candidate. The petitioner has completed 3 years and 362 days and he is eligible to be considered as the service candidate. The petitioner appeared for the written examination held on 01.03.2015 and the results were published and the petitioner has secured 57.24 marks out of 90 marks in the examination. The issue involved in the writ petition pertains to award of marks to service candidates in terms of Clause 38 of the prospectus.

4. Clause 38 of the prospectus reads as follows:

38. One mark for each completed year after the completion of CRRI shall be awarded as marks for experience for both service and non service candidates to a maximum of Ten marks as on 31.03.2015. Service candidates shall be awarded, one mark per year of service in rural areas and two marks per year of service in hilly areas and two marks per year of service in Government Hospitals, Primary Health Centres and Government Medical College Hospitals of Thiruvarur, Nagapattinam and Ramanathapuram Districts limited to a maximum of 10 marks. Altogether the total marks awarded for experience will be restricted to 10 marks to all candidates including candidates from rural, hilly and remote/difficult areas and the three districts mentioned above.

1) Marks awarded for Entrance Examination: Maximum 90 marks.

2) Experience marks for all candidates(both service and Non-Service) limited to a maximum of 10(i+ii+iii)

i) One mark per year for experience after CRRI(All candidates)

ii) Marks for Service candidates served in rural, hilly and remote/difficult areas:-

a) Rural area -1mark per year

b) Hilly area -2 marks per year

c) Remote/difficult area -2 marks per year

iii) Two marks per year of Service for candidates who have worked in Government Hospitals, Primary Health Centres and Government Medical College Hospitals of Thiruvarur, Nagapattinam and Ramanathapuram Districts. (only Service candidates as defined in Clause10)

vi) Non-Service candidates are not eligible to get marks in (ii) & (iii)

Fractional values of a year will not be counted for awarding marks for experience in i, ii & iii."

In terms of the above clause, service candidates shall be awarded one mark per year of service in rural areas and two marks per year of service in hilly areas and two marks per year of service in Government Hospitals, Primary Health Centres and Government Medical College Hospitals of Thiruvarur, Nagapattinam and Ramanathapuram Districts limited to a maximum of 10 marks. The petitioner's case is that having completed his M.B.B.S. Course in 2009, he is entitled to be awarded 6 marks for completing 6 years, which is also in accordance with clause 38 of the prospectus, which provides that one mark for each completed years after the completion of CRRI should be awarded and insofar as his service is concerned, it is stated that the petitioner is entitled for three marks by computing the length of service from the date of appointment, namely 26.03.2012.

5. The respondents appears to have not accepted such interpretation and were not inclined to award three marks, but were inclined to award only two marks stating that the petitioner joined only on 04.04.2012 and that will be taken for all purposes for the award of marks. Therefore, the petitioner would state that if two marks are awarded to him, his total mark will be 65.24 when he is entitled for three marks with the total of 66.24. The learned counsel for the petitioner submitted that the order of appointment was issued on 26.03.2012 and 15 days time was granted for joining the duty. The petitioner received the copy of the order by post on 30.03.2012 and said to have reported on 31.03.2012 and was ready to join duty. The petitioner was prevented from joining because the existing incumbent was yet to be relieved and he was relieved only on 03.04.2012 and the petitioner joined on 04.04.2012. Therefore, the learned counsel would submit that for all purposes the date should be reckoned as 26.03.2012. If the same is done, the petitioner is entitled to three marks.

6. In this regard, reliance has been placed on the decision of the Hon'ble Supreme Court in Chairman, Puri Gramya Bank and Another Vs. Ananda Chandra Das and Others reported in (1994) 6 Supreme Court Cases 301. This decision has been relied on for the purpose that if more than one are selected to the post, the seniority is as per the ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster and by mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the selection Board and the arranged one as per roster. This interpretation was also applied by this Court in the case of S.Mary Sherly Vs. Secretary to Government, Education department, Chennai and others reported in (2013) 3 MLJ 56. The learned counsel for the petitioner submitted

that in respect of the other candidates for the last academic session, identical issue came up for consideration in W.P.Nos.6685 to 6687 of 2014 and the case of the petitioners therein were identical to the petitioner's case and the writ petitions were allowed by order dated 25.03.2014. Therefore, the learned counsel for the petitioner would state that the petitioner is entitled to three marks.

7. The learned Special Government Pleader appearing for the respondent by relying to the position note submitted that the petitioner submitted his application to Post Graduate Degree/Diploma Course and was assigned with AR No.5113 and Entrance Exam No.14136 and he attended entrance examination on 01.03.2015 and scored 57.2 marks out of 90 marks. It is submitted that as per Clause 38(2)(i) and 38(ii)(a) of the Prospectus he was awarded 6 + 2 marks. Thus, the total marks awarded to the petitioner is 65.24. It is submitted that the petitioner was awarded two marks for two completed years of service as the petitioner had joined duty only on 04.04.2012. In this regard, the learned Special Government Pleader referred to Rule 11 of the Tamil Nadu Pension Rules, 1978 regarding commencement of qualifying services and it is submitted that qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

8. After hearing the learned counsel for the parties and perusing the materials placed on record, the short issue which falls for consideration is as to whether the petitioner is entitled to three marks for the services rendered by him in a rural area or whether the respondents are justified in awarding only two marks for such service. The petitioner is sought to be non-suited by relying on Rule 11 of the Tamil Nadu Pension Rules, 1978. In my view, the reliance placed on Rule 11 is thoroughly misconceived. The concept for which Rule 11 could be relied on would be to consider qualifying service for the purpose of computation of pension and in that regard commencement of qualifying service under Rule 11 (1) shall be the date on which the incumbent take charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. It is a settled legal principle that prospectus governing a selection is the rule for the selection. Therefore, not only the petitioner is bound by the terms and conditions in the prospectus, but equally the respondents are also bound by the terms and conditions. Clause 38 of the prospectus merely states that service candidate shall be awarded one mark per year of service in Rural areas. The prospectus does not define that for computation of the period of one year of service, the interpretation under Rule 11 of the Tamil Nadu Pension Rules shall be applied. The plea raised by the respondents that

Rule 11 has to be read into Clause 38 of the prospectus is a plea to be rejected.

9. The object behind awarding one mark for service in rural area is to encourage the candidates who have opted to join the Government Service and serve the public and agreeing to work in a rural area. Therefore, the interpretation given to a year of service in rural area should be bearing in mind the object for which it has been introduced. The interpretation given by the respondents for computing year of service to commence from 04.04.2012 being the date of joining is a perverse interpretation. The mark assigned to service candidate is with a view to encourage service candidates to get themselves qualified for Post Graduate degree so that they would be in a position to serve the public by working in Government Hospitals. If the interpretation given by the respondents are accepted, it will virtually whittle out the object behind Clause 38 of the Prospectus. Therefore, the contention raised by the respondent in this regard stands rejected.

10. Coming to the facts of this case, it is not in dispute that the petitioner was appointed pursuant to an order dated 26.03.2012. The said order permitted the petitioner to join duty within a period of 15 days. Therefore, as pointed by the Hon'ble Supreme Court in *Chairman, Puri Gramya Bank and Another Vs. Ananda Chandra Das and Others* cited supra, the earlier date of reporting to duty earlier would not alter the ranking given by the Selection Board. Here in the instant case, the ranking assigned by the Selection committee for Medical Education. Therefore, if such interpretation is applied to the instant case, then for all purposes, the date of appointment, namely 26.03.2012 should be taken as the date for computing the year of service in rural area.

11. The facts of the present case are peculiar since the petitioner though received the order of appointment by post on 30.03.2012, promptly reported for duty the next day, namely 31.03.2012. However, he was not allowed to join the duty on the said date since there was an existing incumbent he was yet to be relieved from duty. He was relieved on 03.04.2012 and the petitioner joined duty on 04.04.2012. These issues are internal arrangement for the purpose of discharging the duty as a Medical officer. It could hardly have any bearing on computation of year of service in rural area with regard to the requirement specified under Clause 38 of the Prospectus. Further more, in respect of identical facts, this Court allowed W.P.Nos.6685 to 6687 of 2014 by order dated 25.03.2014. In fact, those writ petitions were allowed following an earlier order in W.P.No.35510 of 2007 dated 07.01.2008. The respondents have accepted those orders and permitted those candidates to attend the counselling and they were given additional marks by accepting the interpretation put forth by

the petitioners in those cases. Therefore, there is no ground to treat this petitioner differentially apart from the independent reasons assigned by this Court in the writ petition.

12. In the result, this writ petition is allowed. There will be a direction to the respondent to award three marks to the petitioner as he has completed three years of service in rural areas in terms of Clause 38 of the Prospectus and permit him to participate in the counselling for selection to Post Graduate degree/diploma course for the Academic Session 2015-2016 in MD/MS/M.ch (NS). No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gpa

To

- 1.The Secretary
Health and Family Welfare Department
Government of Tamil Nadu
Chennai - 9
2. The Directorate of Medical Education
Kilpauk, Chennai - 10
3. The Selection Committee
Directorate of Medical Education
Kilpauk, Chennai - 10

1 cc to Mr.V. Vijay Shankar, advocate sr. 15903

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GJ (CO)
kk 20/3