

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.03.2016

Pronounced on : 07-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 6385 of 2016

and

W.M.P. No. 5678 of 2016

1. Dr. Srivathsa
 2. Dr. S. Ezhilarasan
 3. Dr. S. Lavanya
 4. Dr. S. Preethiswary
 5. Dr. C. Prabu
 6. Dr. C.R. Sathya
 7. Dr. S.C. Sivaranjai
 8. Dr. R. Gokul
 9. Dr. K.A. Vivek
 10. Dr. P. Arun
 11. Dr. P. Thirunavukarasu
 12. Dr. T. Deepak Kumar
 13. Dr. S. Senthil Raja
- .. Petitioners

Versus

1. State of Tamil Nadu
represented by its Secretary
Health and Family Welfare Department
Fort St. George
Chennai - 600 009
 2. The Director
Directorate of Medical Education
162, E.V.R. Periyar Salai, Kilpauk
Chennai - 600 010
 3. The Director
Directorate of Medical and Rural Health Services
Chennai - 600 006
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuing a Writ of Mandamus directing the respondents to grant additional bonus marks to the Petitioners - Assistant Surgeons serving in Government Medical College Hospital, Tiruvannamalai District and thereafter publish the rank list for the counselling for admission to Post Graduate Medical Courses 2016-17 accordingly.

For Petitioners : Mr. N. Surya Senthil
For Respondents : Mr. S. Pattabiraman
Government Advocate

ORDER

The petitioners, who are working as Assistant Surgeons in Government Medical College Hospitals within Tiruvannamalai District, have come forward with this writ petition seeking for issuance of a Mandamus to the respondents to grant them additional bonus marks for having served in the rural/remote area i.e., Government Medical College Hospital, Tiruvannamalai District and thereafter publish the rank list for the counselling for admission to Post Graduate Medical Courses 2016-17.

2. According to the petitioners, they are working as Assistant Surgeons in various Departments of the Government Medical College, Tiruvannamalai since 2013. During the course of their work, the respondent herein has published the prospectus for admission to Post Graduate Degree/Diploma Courses for the academic year 2016-2017. In response, the petitioners have submitted their application for pursuing higher studies. According to the petitioners, as per clause 38 of the Prospectus, those candidates serving in Government Medical College Hospitals of Tiruvarur, Nagapattinam and Ramanathapuram District are entitled to get two marks as bonus per year to a maximum of ten marks. According to the petitioners, Tiruvannamalai District, where they are employed as Assistant Surgeons is also classified as a Remote/Difficult area as per Annexure VIII of the prospectus issued by the second respondent. Therefore, the petitioners claim that they are also entitled for additional 2 bonus marks per year. In this context, the petitioners have submitted a common representation dated 07.02.2016 to the respondents for grant of bonus marks in their favour. As there is no response, the petitioners have come forward with this writ petition.

3. The learned counsel for the petitioners would submit that as per annexure VIII to the prospectus, Tiruvannamalai District is also indicated as a remote/difficult area and therefore, the petitioners are entitled for 2 bonus marks per year. According to the counsel for the petitioners, inspite of the representation made by the petitioners on 07.02.2016, the respondents have not considered the same to grant additional

bonus marks in their favour. In this context, the learned counsel for the petitioners relied on the order dated 25.03.2014 passed in WP Nos. 6519 to 6521 of 2014 and prayed this Court to extend the benefit of the order dated 25.03.2014 in favour of the petitioners as well.

4. On the contrary, the learned Government Advocate appearing for the respondents, relying on the counter affidavit, would contend that the the petitioners have applied for admission to the Tamil Nadu Post Graduate Degree/Diploma/6 years M.Ch (Neuro Surgery) Courses 2016-2017 as service candidates. They wrote the entrance examination on 14.02.2016. The merit list was published on 19.02.2016. As the petitioners have completed their C.R.R.I. on 30.03.2013, they were awarded 3 additional marks to the total marks secured by them in the entrance examination. Over and above the marks awarded to them for having completed their C.R.R.I., the petitioners seek for award of additional marks on the ground that they are serving in a remote/difficult area. In this context, the learned Government Advocate placed reliance on GO Ms. No.368, Health and Family Welfare (B2) Department dated 30.12.2010 wherein it was indicated that Thiruvavarur, Nagapattinam and Ramanathapuram Districts in the State are identified as remote/difficult area and those who are working there will be awarded 2 additional marks per year. In the present case, the petitioners are not entitled to the benefit of the said Government Order since they are working in Tiruvannamalai District, which is not indicated or included in the said Government Order. Annexure VIII of the prosepctus cannot be relied on by the petitioners for the simple reason that it is categorically indicated that Porur, Chengam, Arani and Tharangambadi Taluks within Tiruvannamalai Districts alone are classified as remote/difficult area and the petitioners, who are working in the head quarters namely Tiruvannamalai cannot be extended with the said concession. Therefore, it is submitted by the learned Government Advocate that the reliance placed by the learned counsel for the petitioners on the order dated 23.05.2014 in WP Nos. 6519 to 6521 of 2014 has no application to the case and he prayed for dismissal of the writ petition.

5. I heard the learned counsel for the petitioners and the learned Government Advocate appearing for the respondents. The learned counsel for the petitioners placed heavy reliance on the order dated 25.05.2014 passed by this Court in WP Nos. 6519 to 6521 of 2014. I had perused the said order dated 25.05.2014 passed by this Court in WP No. 6519 to 6521 of 2014. The relevant paragraphs in the order dated 25.03.2014 is extracted hereunder:-

"13. Now, it has to be seen whether the petitioners are entitled for award of 2 marks as per sub-clauses 2 and 3 of Clause 38 of the prospectus, which is extracted above. Admittedly, the petitioners were originally appointed by issuing G.O. Ms. No.368, Health and Family Welfare Department dated 30.12.2010 which prescribes for posting the candidates in hilly/remote and difficult areas. As mentioned above, the petitioners were appointed on 04.02.2011, 04.02.2011 and 03.02.2011 respectively and from that date, they have completed 3 years of service. It is also to be mentioned that the petitioners, on their appointment, have been posted in Sankarapuram and Thirukoilur, Villupuram District, as the case may be. In this context, it is relevant to refer to the list produced by the petitioners, which was issued by the Directorate of Medical and Rural Health Services, Chennai, reiterating and confirming the places which are identified/classified as 'remote' and 'difficult' areas.

List of Remote and Difficult Area Government Hospitals under the Control of Directorate of Medical and Rural Health Services, Chennai

S.No.	Name of the District	Name of the Institution	Type of Institution
1.	Thiruvannamalai	Porur	Government Hospital
		Chengam	Government Hospital
		Arani	Government Hospital
		Thanipadi	Government Hospital
2.	Villupuram	Gingee	Government Hospital
		Thirukoilur	Government Hospital
		Ulundurpet	Government Hospital
		Sankarapuram	Government Hospital
3.	Tirunelveli	Cheranmadevi	Government Hospital
4.	Nagapattinam	Nagapattinam	Govt. HQ Hospital
		Sirkazhi	Government Hospital
		Nagore	Government Hospital
		Thirukuvalai	Government Hospital
		Tharangambadi	Government Hospital

5.	Thiruvarur	Koothanallur	Government Hospital
		Kodavasal	Government Hospital
		Needamangalam	Government Hospital
		Nannilam	Government Hospital
6.	Ramanathapuram	Mudukulathur	Government Hospital
		Kamuthi	Government Hospital
		Rameswaram	Government Hospital
		Kilakarai	Government Hospital

14. It is evident from the above list that the place where the petitioners are serving is classified as Remote/Difficult Area. Now, the argument of the learned Additional Government Pleader is that it is not a hilly area and therefore, the petitioners cannot be awarded 2 marks. It is true that the place where the petitioners are serving are not hilly area, but in sub-clause 3 of clause 38 of the prospectus, when the candidates who were serving in Thiruvarur, Nagapattinam and Ramanathapuram Districts were awarded additional marks, which were also included in the list of Remote/Difficult area published by the Directorate of Medical and Rural Health Services, Chennai, indicated above, the same has to be extended and applied to the petitioners also who are serving in Villupuram Districts. The other argument of the learned Additional Government Pleader that the area where the petitioners are serving can at best be categorised as rural area cannot be accepted. The classification 'rural area' is distinct and different from the Remote/Difficult area classified by the Directorate of Medical and Rural Health Services, Chennai. Further, the argument of the learned Additional Government Pleader that the petitioners are serving only in a rural area is without any basis and no documentary evidence has been produced in support thereof. When the candidates serving in three Districts indicated in sub-clause 3 of Clause 38 of the prospectus were given certain concessions, the same yardstick has to be applied in the case of the petitioners as well.

15. A perusal of the G.O. Ms. No. 368, Health and Family Welfare Department dated 30.12.2010, based on which the petitioners were appointed, would indicate that those who serve in the place of posting atleast for 3 years or 5 years would be entitled for incentives besides that such service rendered by them would be taken into account for award of additional/bonus marks for admission to Post Graduate courses. In anticipation of securing admission in Post Graduate Courses, the petitioners have served the remote/difficult areas. While so, definitely, the petitioners are entitled to the additional marks sought for in this writ petition especially when they have completed three years of service anticipating that such service rendered by them will entitle them to get additional marks for admission to post graduate degree/diploma course. Such an anticipation on the part of the petitioners is a legitimate expectation and it cannot be denied.

16. In the light of the above, I hold that the petitioners herein are entitled to get 2 more marks for each year of service as per sub-clauses 2 and 3 of clause 38 of the prospectus. If additional marks are awarded, definitely, in the rank list published by the fifth respondents, the ranking given to the petitioners will improve which would enable them for being considered for admission to the post graduate degree or diploma courses.

17. At this juncture, the learned Additional Government Pleader would contend that he apprehend that the order would open the flood gate inasmuch as similarly placed persons will resort to approach this Court and in which event, the process of selection will be hampered. Such a contention urged by the learned Additional Government Pleader cannot be countenanced for the simple reasons that this order is meant only for the petitioners who have approached this Court with these writ petitions. Secondly, in this order, this Court only decided the entitlement of the petitioners who have served the remote/difficult areas and directed the respondents to award additional marks especially when the area in which the petitioners served comes within the purview of remote/difficult areas categorised by the Directorate of Medical and Rural Health Services, Chennai. Furthermore, the counselling for admission

to Post graduate degree/diploma courses commenced today and any other claim, if any, made will be dealt with separately and in such event, the principles of laches will come in to play. Even though there is no time limit for filing writ petition, it is made clear that this Court cannot entertain writ petitions praying identical relief sought for in this case because, a person who waits for another person to get an order and then approaching this Court will not be extended the same relief. Therefore, I am of the view that the apprehension raised by the learned Additional Government Pleader is misconceived and it is accordingly allayed.

6. In the above writ petition in WP Nos. 6519 to 6521 of 2014, the petitioners therein were working as Assistant Surgeons in Sankarapuram and Thirukoilur in Villupuram which are prominently mentioned in column No.3 of the annexure to the prospectus as remote/difficult areas. In the present case, the petitioners are admittedly working in the District Headquarters hospital at Tiruvannamalai. In annexure VIII of the prospectus, the name of the Districts are mentioned in column No.2 and the remote/difficult areas are mentioned in column Nos. 3 and name of the Blocks are mentioned in column No.4. In other words, the places mentioned in column No.3 alone are classified as remote/difficult area and not the one mentioned in column No.2. What is mentioned in column No.2 of the Annexure VIII is the District or District Head Quarters as the case may be. In the present case, in column No.2, Tiruvannamalai is mentioned meaning thereby it is the District Headquarters and it cannot be reckoned or construed as a remote/difficult areas. On the other hand, as against column No.2, in column No.3 the hospitals situated at Jamunamaruthur and Nammiampattu in Tiruvannamalai District alone are classified and indicated as remote/difficult areas. Admittedly, when the petitioners are working as Assistant Surgeons in the District Headquarters Hospital at Tiruvannamalai, they are not entitled to award of additional bonus marks. It is needless to mention that the object underlying the award of additional marks is to encourage the medical students to serve in the remote/difficult areas to ensure that access to medical facilities reaches the poor and downtrodden living in the rural areas. An area is being classified as remote/difficult based on various factors and this Court cannot make a re-assessment of the same or to re-classify the areas. When clause 38 of the prospectus categorically stipulates certain areas in Tiruvannamalai District alone as remote/difficult area and the petitioners also written the entrance examination on the basis of the terms and conditions mentioned in the prospectus, it is not now open to them to turn

around and say that the place where they are working is to be construed and classified as a remote/ difficult areas for the purpose of award of bonus marks. In such circumstances, the direction as sought for by the petitioners cannot be granted. Accordingly, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
Health and Family Welfare Department
Fort St. George
Chennai - 600 009.
2. The Director
Directorate of Medical Education
162, E.V.R. Periyar Salai, Kilpauk
Chennai - 600 010.
3. The Director
Directorate of Medical and Rural Health Services
Chennai - 600 006.

+1cc to M/S.N.Surya Senthil, Advocate Sr.14566

WP No. 6385 of 2016

vd(CO)
srg(23/03/2016)

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