

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2016

PRONOUNCED ON : 12.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6403 of 2016

V.Radha Jayalakshmi

... Petitioner

Vs.

- 1.The Secretary to Govt,
Higher Education (J-2) Department,
Fort St.George, Chennai-9.
- 2.The Secretary to Govt.,
(Public Health & Family Welfare Dept.,)
Fort St.George, Chennai-9.
- 3.The Director of Medical Examinations,
162, Periyar E.V.R.Salai,
Chennai-600 010.
- 4.The Director of Govt., Examinations,
College Road, Chennai-600 006.
- 5.Medical Council of India,
Rep. by its Secretary,
Pocket-14, Sector-8, Dwaraka Phase-I,
New Delhi-110 077.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents herein to consider the representation of the petitioner dated 03.10.2015 seeking admission to her minor son S.Poovarasan to first year of Medical Degree Course in any of the Govt. Medical Colleges in this state, as per G.O.Ms.184, Higher Education J2 Dept. dated 09.06.2005.

For Petitioner : Mr.V.Srinivasan

For respondents : Mr.V.Jayaprakash Narayanan,
Spl. Govt.Pleader

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the

respondents herein to consider the representation of the petitioner dated 03.10.2015 seeking admission to her minor son S.Poovarasan to first year of Medical Degree Course in any of the Govt. Medical College in Tamil Nadu, as per G.O.Ms.184, Higher Education J2 Dept. dated 09.06.2005.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2.1.The petitioner's son Poovarasan has passed Xth Standard in March, 2013 and secured 456 out of 500 marks viz., 91.20% of marks. He has passed +2 standard in March, 2015, securing 1107 out of 1200 marks i.e., 92.25% of marks. His medical cut-off mark is 181.25. He applied for admission to MBBS course for the academic year 2015-16 to the Selection Committee, Directorate of Medical Education, Chennai, for which he was denied admission stating that he secured lesser cut-off mark. It is further stated by the petitioner that medical cut-off mark is arrived at from the marks obtained in Science subjects ie., physics, chemistry and Biology. The subject Biology is given more weightage than the other two subjects. All three science subject question papers for this academic year are so tough and twisted, more tougher than Entrance Test Question Papers. This is admitted by the Director of Government Examinations as reported in the Tamil Daily 'Dinamlar' dated 01.04.2015.

2-2.It is further stated by the petitioner that the School Education Department Officers have advised Teachers to coach students in old pattern ie., previous year question papers and from minimum materials and as per Blue Print. The question papers now went against the norms and it is evident that the said question papers are not set out by the Teachers who are handling subjects in class rooms. The advisers and Examiners are two different categories having no co-ordination between them and the students are the ultimate losers. The number of Book back questions appeared in present year +2 science public examination question paper is 17%, whereas it is more than 60% in previous years. This made present year students score lesser marks than the previous year students. The present year question paper is exceptional and hence, the petitioner made a request to the School Education Department to award bonus marks and to conduct improvement examination to improve marks so as to qualify themselves for MBBS course; but, the same was not accepted by the Department of Government Examinations. Nearly 600 out of 2655 medical seats have been captured by the old students. The petitioner made several representations to the authorities concerned; but, despite the same, the petitioner's son was not given MBBS admission.

2-3.It is further stated by the petitioner that the petitioner's son is hailing from a rural area and he had a traumatic experience on seeing toughest science question papers in the examination hall, as other rural students

experienced. He could secure 199 out of 200 marks in Mathematics (fourth optional subject), whereas only 170 in Biology which subject mark is crucial for MBBS admission. It is tougher than the entrance examination question paper. According to the petitioner, since the present year question paper is exceptional and extra-ordinary, the petitioner's son has every right to claim exception to normal admission procedures and to get admitted in MBBS Course. Hence, the petitioner has come forward with the present writ petition before this Court, seeking to direct the respondents to consider her representation dated 03.10.2015 to admit her son Poovarasan to first year MBBS Course.

3.The respondents 2 & 3 have filed a joint counter, stating that the petitioner's son's cut-off mark is 181.25 and he belongs to MBC. In the 2015-16 session, the last candidate allotted in Government Medical College under MBC Quota has got 196.00 cut-off mark, with community rank of 581 in the merit list and the last candidate allotted in Government Quota seat in Self-Financing Medical College has got 195.00 cut-off mark with community rank 927 in the merit list. The petitioner's son community rank is 3839, which is far below to get an admission in MBBS Course for the academic year 2015-2016. The statement of the petitioner that the question paper of the qualifying examination (+2 examination) for 2015-16 was difficult, is not justifiable. This relates to the Directorate of Government Examinations and in no way connected to the Selection Committee. It is further stated in the counter that the preliminary works for admission to MBBS/BDS Courses for 2016-17 have already been started and the same procedure will be followed by inviting applications from the candidates who have passed their qualifying examination in the year 2016-2017. The petitioner's son can apply for that academic year and he may get an admission in MBBS Course, if he comes under the zone of consideration. Further, the petitioner's son is totally ineligible to get admission in MBBS Course for the year 2015-2016, since, in terms of the orders of the Honourable Supreme Court of India, the cut-off date for admission to MBBS Course has already been over on 07.10.2015 itself. Thus, the respondents 2 & 3 sought for dismissal of the writ petition.

4.Heard submissions made on either side and perused the materials available on record.

5.It is the only submission of the learned counsel for the petitioner that this year question paper was exceptional and very tough, when compared to last year question paper; that nearly 600 out of 2655 medical seats have been captured by the old students, who faced easy question paper. According to the petitioner, since the present year question paper was tough, bonus marks have to be given to the petitioner's son. In this regard, the petitioner has also made representation to the respondents. Since the petitioner's representation was

not considered by the respondents, the petitioner seeks a direction to the respondents to consider her representation.

6. In this regard, it would be appropriate to place a reference in the decision rendered by a Division Bench of this Court reported in WLR-2015-0-742 [Minor Kabhilaan Vs. State of Tamil Nadu], wherein it has been observed as follows:-

"29. A Division Bench of this Court, while considering the eligibility of candidates of previous years for admission to engineering courses in the year 2007, in S. Narasimhan (supra), considered the identical issues, as pleaded in the instant petitions. The ground raised therein was that the syllabus of higher secondary education has been changed from the academic year 2005-2006 and thus, those candidates who appeared in Plus Two examination in previous years had studied different syllabus, whereas, the students who appeared in 2007 examination, had studied a new syllabus, which was very tough; thus, without the method of equalisation, the students who had passed the qualifying examination before 2007, should be made ineligible for admission to engineering courses, which was rejected observing as under:

"14. Keeping in view the sentiments expressed above, particularly in the decision of the Supreme Court, we are unable to persuade ourselves to come to a conclusion that a level playing field is not available and the students who have passed prior to 2007 should be deprived of an opportunity of pursuing Engineering courses. For the purpose of granting relief to some of the students of the year 2007 likely to be affected, we cannot think of shutting the door for ever in respect of the students of preceding years. We do not find any rhyme or reason in such contention. In such view of the matter, the latter portion of the relief claimed by the petitioner to the effect that the students who had passed during the previous years should be made

ineligible is required to be rejected."

.....

32. A Full Bench of the Bombay High Court, in Komal Kamlakar Chitnis and Others (supra), had held that examination of a particular Board or University irrespective of the years a candidate has passed is always treated at par for all purposes and the students passing the same examination in different years cannot be constituted as a different class merely by virtue of the fact that they have given the same examination in different years.

33. For the reasons mentioned hereinabove, we are of the considered view that the Higher Secondary examination conducted by the State Board is the same examination, irrespective of the years. All the candidates, who have obtained qualifying examination certificate, as defined under the provisions of Section 2 (g) of the Act, irrespective of the years of obtaining certificate, are eligible to compete for admission to the MBBS/BDS courses in the current year."

A reading of dictum laid down in the above said judgment would clearly show that a different yardstick cannot be applied for the students passing the same examination in different years. When that being the position, now this Court cannot give any direction to consider the representation of the petitioner to award bonus marks on the ground that the present year question papers is tough when compared to previous year question paper.

7. Hence, this Court is not inclined to give any direction as sought for by the petitioner in this writ petition. The writ petition is liable to be dismissed.

In fine, the writ petition is dismissed. No costs.

ssv

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Govt,
Higher Education (J-2) Department,
Fort St.George, Chennai-9.
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162, Periyar E.V.R.Salai,
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- 4.The Director of Govt., Examinations,
College Road, Chennai-600 006.
- 5.The Secretary,
Medical Council of India,
Pocket-14, Sector-8, Dwaraka Phase-I,
New Delhi-110 077.

+ 1 cc to Mr.V.Srinivasan, Advocate Sr 22868

+ 1cc to The Govt.Pleader, Sr 23192

KR/25/4/16

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