

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.04.2016

Pronounced on : 04-04-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 7957 and 7958 of 2016
and

W.M.P. Nos. 7085 and 7086 of 2016

Dr. M. Shalini .. Petitioner in WP 7957

Dr. G. Sri Balajee .. Petitioner in WP 7958

Versus

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Public Health & Preventive,
Medicines,
Chennai - 600 006.
3. The Director,
Directorate of Medical & Rural Health Services,
Chennai - 600 006.
4. The Director,
Directorate of Medical Education,
162, E.V.R. Periyar Salai, Kilpauk,
Chennai - 600 010.
5. The Secretary,
Selection Committee ,
Directorate of Medical Education,
162, E.V.R. Periyar Salai, Kilpauk,
Chennai - 600 010.

.. Respondents in
both the Writ Petitions

Petitions filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 4 and 5 to award additional/bonus marks to the petitioner for the services rendered in the rural area as per clause 38 of the Prospectus for admission in the Post Graduate Degree/Diploma Courses for the academic year 2016-2017 and revise the rank list

for the counselling for admission to Post Graduate Courses for the academic year 2016-2017.

For Petitioners : Mr. T.R. Rajagopalan, Senior Advocate
for Mr. S.R. Suresh Kumar
in both the Writ Petitions

For Respondents : Mrs. P. Rajalakshmi
Government Advocate

COMMON ORDER

The relief sought for in both the writ petitions are one and the same. The respondents in both the respondents are also one and the same. The learned Senior counsel for the petitioner as well as the learned Government Advocate appearing for the respondents have advanced common arguments in both the cases besides the dispute involved are identical and similar with each other. Therefore, by consent of counsel for both sides, the writ petitions are taken up for hearing together and are disposed of by this common order.

2. Both the petitioners herein have completed M.B.B.S. degree course and registered their name as Medical Practitioner in the Tamil Nadu Medical Council. The petitioners have also registered their name in the professional executive employment exchange, Chennai. While so, on 31.03.2013, the Medical Recruitment Board issued a notification calling for application for various posts including Assistant Surgeon. In response, the petitioners have submitted their application and appeared for the examination conducted by the Medical Recruitment Board and secured required eligible marks for appointment to the post of Assistant Surgeon. Thereafter, the petitioners have also been appointed as Assistant Surgeon by the second respondent on 13.09.2013 respectively under Rule 10 (a) (i) of the General Rule for Tamil Nadu State and Subordinate Services under Category II of Class I of Tamil Nadu Medical Service and in the light of GO Ms. No.23, Health and Family Welfare Department dated 29.01.2013. As far as the petitioner in WP No. 7957 of 2013 is concerned, she was appointed in Rasipuram Urban Primary Health Centre which is under the control of the Pillanallur Block Medical Officer (Rural Primary Health Centre) from 13.09.2013 to till date. The petitioner in WP No. 7958 of 2016 was appointed in Palani Urban Primary Health Centre which is under the control of Pappampatty Block Medical Officer (Rural Primary Health Centre from 13.09.2013 to till date.

3. According to the petitioners, the fifth respondent invited applications for admission to Post Graduate Degree/Diploma Course for MD/MS/MCH/ Neurosurgery for the academic year 2016-2017 to which they have applied and appeared

for entrance examination on 14.02.2016. The petitioners have secured 58.76 out of 90 and 57.97 out of 90 marks respectively. Out of the marks secured by the petitioners, 5 marks has been awarded to them for having completed CRRI training taking the total marks secured by them to 63.76 and 62.96 respectively. According to the petitioners, as per clause 10 of the prospectus issued by the fifth respondent, it has been categorically stated that additional marks would be awarded for the service candidates for the services rendered by them. It is the case of the petitioners that they are coming under the purview of Service candidates for the purpose of allotment of seats inasmuch as they are working as Assistant Surgeon in the Urban Primary Centre. The grievance of the petitioners is that they have completed two years of service in the Primary Health Centres which are situated in rural areas for which they are entitled to get 1 mark for each year of service. However, the petitioners have not been awarded such additional marks and hence, they have come forward with these writ petitions.

4. The learned senior counsel appearing for the petitioners, at the outset, invited my attention to the prospectus issued by the fifth respondent for the year 2016-2017. Particular reference was drawn to Annexure VIII of the Prospectus which contains a list of Hill area Primary Health Centres under the DPH. According to the counsel for the petitioners, even though the petitioners were appointed in Urban Primary Health Centre at Rasipuram and Palani respectively, they were actually working under the Pillanallur and Pappampatty Rural Block Primary Health Centre and it is classified as Rural area in clause 38 of the prospectus. In this context, the learned counsel for the petitioners relied on the order dated 25.03.2014 passed by this Court in WP Nos. 6519 to 6521 of 2014 wherein this Court held that when the place where the petitioners are service is classified as remote/difficult area, the petitioners therein are entitled for award of additional bonus marks.

5. The learned Government Advocate appearing for the respondents, relying on the counter affidavit filed by the first respondent and opposed the writ petition by contending that the petitioners were posted and working in Urban Primary Health Centres and therefore they are not entitled for additional bonus marks. According to the learned Government Advocate as per clause 38 (a) of the prospectus for admission to Post Graduate Degree/Diploma, one mark will be awarded to candidates for each year of their rural services. As the petitioners have rendered two years of service rendered in an Urban Primary Health Centre they are not entitled for award of bonus marks. The candidates serving in rural area alone are eligible to get one additional mark per year. As the petitioners are working in Urban Primary

Health Centres, the petitioners are not entitled for award of additional bonus marks. In this context, the learned Government Advocate relied on the order passed by me on 07.03.2016 wherein I held that the petitioners therein are working in Thiruvannamalai District Headquarters Hospital and it cannot be reckoned or construed as a remote/difficult area. Relying on the above order passed by this Court on 07.03.2016 in WP No. 6385 of 2016, the learned Government Advocate prayed this Court for dismissal of these writ petitions.

6. I heard the learned Senior counsel appearing for the petitioners as well as the learned Government Advocate appearing for the respondents. I have carefully examined the material records placed. The learned senior 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 Chengam Arani Thanipadi	Government Hospital Government Hospital Government Hospital Government Hospital
2.	Villupuram	Gingee Thirukoilur Ulundurpet Sankarapuram	Government Hospital Government Hospital Government Hospital Government Hospital
3.	Tirunelveli	Cheranmadevi	Government Hospital
4.	Nagapattinam	Nagapattinam Sirkazhi Nagore Thirukuvalai Tharangambadi	Govt. HQ Hospital Government Hospital Government Hospital Government Hospital Government Hospital
5.	Thiruvarur	Koothanallur Kodavasal Needamangalam Nannilam	Government Hospital Government Hospital Government Hospital Government Hospital
6.	Ramanathapuram	Mudukulathur Kamuthi Rameswaram Kilakarai	Government Hospital Government Hospital Government Hospital 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."

7. In the present case, the fifth respondent has issued the prospectus for the year 2016-2017. According to the learned Senior counsel for the petitioners, even though the petitioners were appointed in Urban Primary Health Centre at Rasipuram and Palani respectively, subsequently, they were actually working in the Primary Health Centre in Pillanallur and Pappampatty Rural

Block Primary Health Centre and it is classified as Rural area in clause 38 of the prospectus. It is seen from the prospectus that Palani in Dindigul District is indicated in column No.2 in Dindigul District. As far as the other petitioner is concerned, she is working in Namakkal Primary Health Centre under the control of Pillanallur Village Block (Rural) Primary Health Centre.

8. In the order passed 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 Rural Health Centres. It is also not in dispute that the petitioners have to be treated as "service candidates" for the purpose of admission to the for the purpose of admission in the Post Graduate Degree/Diploma Courses.

9. 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 when clause 38 of the prospectus categorically stipulates certain areas as remote/difficult area and the petitioners are admittedly working in rural areas, they are entitled for award of bonus marks. In such circumstances, there will be a direction to the respondents 4 and 5 to award additional/bonus marks to the petitioners for the services rendered by them in the rural area as per clause 38 of the Prospectus for admission in the Post Graduate Degree/Diploma Courses for the academic year 2016-2017 and accordingly, revise the rank list for the counselling for admission to Post Graduate Courses for the academic year 2016-2017.

10. With the above direction, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

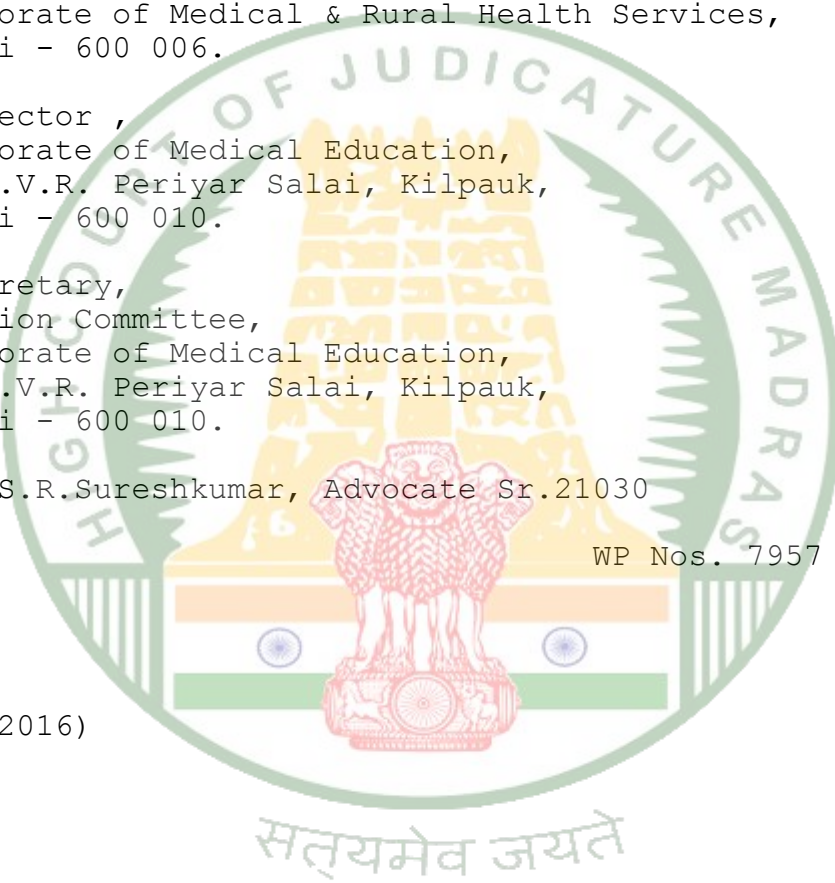
To

1. The Secretary to Government,
Health and Family Welfare Department,
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2. The Director of Public Health & Preventive,
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+2 ccs Mr.S.R.Sureshkumar, Advocate Sr.21030

WP Nos. 7957 & 7958/2016

cnr (CO)
srg (04/04/2016)



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