

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM:

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P. Nos.8725 & 8535/2017 & W.M.P. Nos.9572, 9573 & 9322/2017

1 Dr. P. Ezhilan

2 Dr. R. Mohanraj

3 Dr. J. Athisayamani

4 Dr. K. Jaffrey Petitioners in W.P. No.8725/2017

vs.

1 The State of Tamil Nadu
represented by the Principal Secretary
Health & Family Welfare Department
Fort St. George
Chennai 600 009

2 The Director
Directorate of Medical Education
No.162 EVR Periyar Salai
Kilpauk
Chennai 600 010

3 The Secretary
Selection Committee
Directorate of Medical Education
162 EVR Periyar Salai
Kilpauk
Chennai 600 010

Respondents in W.P.No.8725/2017

Dr. P.S. Aarthi

Petitioner in W.P. No.8535/2017

vs.

1 The Secretary to Government
Health & Family Welfare Department
Fort St. George
Chennai 600 009

2 The Director of Public Health & Preventive Medicines
Chennai

3 The Director
Directorate of Medical Education
162, EVR Periyar Salai
Kilpauk
Chennai 600 010

4 The Secretary
Selection Committee
Directorate of Medical Education
162, EVR Periyar Salai
Kilpauk
Chennai 600 010

Respondents in W.P. No.8535/2017

Wp.8725 of 2017:- Writ of Certiorarified Mandamus calling for records relating to order of the 1st respondent made in G.O.Ms.No.86 Health and Family Welfare (MCA-1) Department dated 23.3.2017 to quash the same and to consequently directing the respondents to restore G.O.Ms.No.29 Health and Family Welfare (MCA-1) Department dated 8.2.2017 and to award bonus marks as prescribed therein in so far as the petitioners are concerned towards consideration of their claim for assignment of merit ranking for the admission to Post Graduate Degree courses in Tamilnadu Government Medical Colleges forthwith thereto

WP. 8535 of 2017:- Writ of Mandamus directing the respondent authorities to grant two incentive marks to the petitioner for one full year of service in hilly area Primary Health Centre Viz. Kothakondapalli Bagalur Block Krishnagiri District in accordance with G.O.Ms.No 368 dated 30.12.2010 and G.O.Ms.No.29 dated 08.02.2017 (Health and Family Welfare(MCA - I) Department) by including Kothakondapalli in Annexure -VII to the Prospectus for Admission to Post Graduate Degree / Diploma Courses in Tamil Nadu Government Medical Colleges Government Seats in Self Financing Medical Colleges Affiliated to the Tamil Nadu Dr. MGR Medical University and Rajah Muthiah Medical College(Annamalai University) 2017-2018 and thereafter commence the counseling for admission for post Graduate Medical Courses 2017-18.

For petitioners in
WP No.8725 of 2017

Mr. L. Chandrakumar

For petitioner in
WP No.8535 of 2017

Mr. A.V. Raja

For all the respondents in Mr. T.N. Rajagopalan
both the WPs Special Govt. Pleader (Edn.)
assisted by
Mr. V. Anandhamurthy
Addl. Govt. Pleader (Edn.)

COMMON ORDER

With consent, these writ petitions are taken up for final disposal.

2 W.P. No.8725 of 2017 has been preferred questioning the legality and validity of G.O. Ms.No.86, Health & Family Welfare (MCA-I) Department dated 23.03.2017 and for a direction to the respondents to restore G.O. Ms.No.29, Health & Family Welfare (MCA-1) Department dated 08.02.2017 (for short "G.O. Ms.No.29") and to award bonus marks to the petitioners as prescribed therein towards consideration of their claim for assignment of merit ranking for the admission to Post Graduate degree courses in Tamil Nadu Government Medical Colleges, forthwith.

3 W.P. No.8535 of 2017 has been preferred seeking a writ of mandamus directing the respondents to grant two incentive marks to the petitioner for one full year of service in the Primary Health Centre in hilly area, viz., Kothakondapalli, Bagalur Block, Krishnagiri District in accordance with G.O. Ms. No.368, Health & Family Welfare Department dated 30.12.2010 and G.O.Ms.No.29 by including Kothakondapalli in Annexure-VI to the Prospectus for admission to post graduate degree/diploma courses in the Tamil Nadu Government Medical Colleges, Government seats in self financing medical colleges affiliated to the Tamil Nadu Dr. MGR Medical University and Rajah Muthiah Medical College (Annamalai University) 2017-2018 and thereafter, commence the counselling for admission for post graduate medical courses 2017-2018.

4 As stated above, though W.P. Nos. 8725 of 2017 and 8535 of 2017 have been preferred seeking a writ of certiorarified mandamus and mandamus respectively, in view of commonality of the issue involved in both the writ petitions, they are considered and decided by this common order.

5 In W.P. No.8725 of 2017, all the petitioners are doctors, having completed their M.B.B.S. course. As far as the first petitioner and second petitioner are concerned, besides M.B.B.S. degree, they hold Diploma in Child Health and Diploma in Orthopedics respectively. In W.P. No.8535 of 2017, the petitioner is a doctor, having completed her M.B.B.S. Degree. All these petitioners were appointed as Assistant Surgeons during the year 2013-2014 and they have been rendering service as on date. The gist of the relief sought by the petitioners in both the writ petitions is that the benefit of G.O. Ms.No.29 should be extended to them.

6 The petitioners have appeared for National Eligibility-cum- Entrance Test (for short "NEET") PG examination in 2017. The Post-Graduate Medical Education Regulations, 2000, gives an incentive at the rate of 10% of marks obtained for each year of service in remote and/or difficult areas upto a maximum of 30% of the marks obtained in the NEET. According to the petitioners, as per G.O. Ms.No.29, they have been discharging duties in various hospitals in rural, hilly, remote and difficult areas and therefore, they are entitled to the incentive marks as prescribed in Regulation 9(IV), ibid.

7 Their main plank of contention now is that G.O. Ms.No.29 was put to assail by a set of doctors before this Court in W.P.Nos.6094 to 6098, 6099 to 6103 and 6104 to 6108 of 2017; when the said batch of cases was disposed of by this Court vide order dated 20.03.2017, the relevant portion of a communication dated 20.03.2017 produced by the State of Tamil Nadu, which reads as under, was extracted in the order passed by this Court:

"2. In this regard, I am to state that in G.O. (Ms.) No.29, Health and Family Welfare Department dated 08.02.2017, order have been issued notifying the Rural/Hilly/Remote/Difficult areas for award of bonus marks for experience to the service candidates, at the time of admitting them into Post Graduate medical Degree/Diploma/6 years M.Ch. (Neuro Surgery) and MDS course based on the report of the Director of Public Health and Preventive Medicine/Director of Medical and Rural Health Services and Director of Medical Education.

3. I am also to state that the Government is re-examining the places notified in the said Government Order and an amendment will be issued for that order.

4. I am further to state that the places notified in the Policy/Prospectus during the last year i.e., 2016-2017 will be taken up for the purpose of admitting the Post Graduate Medical/Dental students for the year 2017-2018. I am therefore to request you to apprise the matter before the High Court of Madras as and when the case is taken up for hearing."

recording the said communication and the undertaking given by the State Government that it would not include any new areas as mentioned in G.O. Ms.No.29 for entitlement of incentive marks for admission of post graduate students for the year 2017-2018, the said batch of writ petitions was disposed of; however, the present petitioners are beneficiaries under G.O. Ms.No.29 in the sense that the areas that are notified under the said Government

Order cover the places in which they are working at present; in view of the aforesaid order dated 20.03.2017 passed by this Court based on the undertaking given by the State of Tamil Nadu to the effect that G.O. Ms.No.29 will be kept in abeyance, they are deprived of incentive marks.

8 The moot question that falls for consideration of this Court is whether the petitioners herein are, first of all, eligible to get incentive marks as per G.O. Ms.No.29.

9 As stated above, the petitioners have written their NEET PG examination-2017 and their results were announced on 15.01.2017. It is beyond cavil that the places where the petitioners are working do not fall under any of the four classified areas as prescribed in Regulation 9(IV), *ibid.* When the petitioners applied for NEET PG examination also, they were not serving in any of those four classified areas. Results were announced on 15.01.2017. However, G.O. Ms.No.29 was issued on 08.02.2017.

10 Thus, viewing from any angle, the petitioners will not have the benefit of incentive marks as there was no cause of action for them at any given point of time, i.e., either on the date of they entering into service or on the date when they applied for NEET PG examination-2017 or even when the NEET PG examination-2017 results were published. Even without there being cause of action, they are now claiming incentive marks by virtue of the subsequent Government Order, viz., G.O. Ms.No.29, which, unfortunately, is now kept in abeyance.

11 It is also submitted by the learned Special Government Pleader that today, i.e., 12.04.2017, the merit list of the results which were published on 15.01.2017 is being released. When the petitioners are in no way entitled to get the incentive marks, they cannot claim the same as a matter of right. Needless to point out that any relief that this Court grants should be logical and tenable within the framework of law. The very rationale behind awarding incentive marks itself is only for extending medical service to far-flung hamlets of the State or even the country. However, that avowed object cannot be taken advantage of by the petitioners when such service has not been rendered by the petitioners, viz., not working in a hilly area. Thus, when there is no reason whatsoever to award incentive marks to the petitioners, this Court cannot tend to degenerate misplaced sympathy by awarding them incentive marks. In fact, any such award of incentive marks by virtue of the Court order would be for their private benevolence.

In the light of the foregoing discussion, the writ petitions are liable to be dismissed and are accordingly dismissed, however, sans costs. Connected W.M.Ps. are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

cad

To

- 1 The Principal Secretary
Health & Family Welfare Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
- 2 The Director
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Chennai

सत्यमेव जयते

Common order in
W.P. Nos.8725 & 8535/2017

CA(CO)
VR(21/4/2017)

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