

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7113 of 2018 and
W.M.P.Nos.8809 & 8810 of 2018

Dr. Shanmugapriya

... Petitioner

vs.

1. The Government of Tamilnadu,
The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Director of Medical Education,
The Directorate of Medical Education,
No.162, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.

3. The Selection Committee,
rep. by its Secretary,
Post Graduate Medical Admission,
No.162, Periyar E.V.R.High Road,
Kilpauk,
Chennai-600 010.

4.The Medical Council of India,
Rep. by its Secretary,
Pocket 14, Sector 8,
Dwarka Phase I,
New Delhi- 1100 77. सत्यमेव जयते

5.The Dean,
Perundurai Medical College,
Perundurai, Erode District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a certiorarified Mandamus, to call for the records of the first respondent issued in the Prospectus under the head of IV Service candidates in 9(i) and (ii) to Post Graduate Degree/Diploma Courses in Tamil Nadu Government Medical Colleges for the academic year 2018-19 issued in G.O.(D) No.411, Health and Family Welfare(MCA-I) Department,

dated 15.03.2018 and quash the same and direct the respondents 1 to 3 to consider the petitioner as service candidate for admission of Post Graduate Medical Courses for the year 2018-19 with 30% weightage marks.

For Petitioner : Mr.R.Gandhi, Sr. Counsel
for Mr.M.Kamalanathan
For RR 1 to 3 & 5 :
Mr.S.T.S.Moorthi,
Addl.Advocate
General,Assisted by

For R4 : Mr.C.Munusamy, Spl.G.P.
Mr.V.P.Raman

O R D E R

This writ petition has been filed for issuance of a certiorarified Mandamus, to call for the records of the first respondent issued in the Prospectus under the head of IV Service candidates in 9(i) and (ii) to Post Graduate Degree/Diploma Courses in Tamil Nadu Government Medical Colleges for the academic year 2018-19 issued in G.O.(D) No.411, Health and Family Welfare(MCA-I) Department, dated 15.03.2018 and quash the same and direct the respondents 1 to 3 to consider the petitioner as service candidate for admission of Post Graduate Medical Courses for the year 2018-19 with 30% weightage marks.

2. According to the petitioner she being an M.B.B.S. Graduate, registered with the Tamil Nadu Medical Council was appointed as a Tutor/Medical Officer on regular basis with effect from 02.02.2015 and posted in the Trauma and Accident Emergency Department in Perundurai Medical College Hospital, which is located in a remote locality of Karumandi Sellipalayam Village 3 Kms away from Perundurai.

3. Perundurai Medical College was established by the State Government for conducting Research, Managerial, Supervisory training and for conducting professional course and it is wholly managed by the State Government. Perundurai Medical College, being the institution of the State in terms of Article 236 of the Constitution of India, accepted to grant admission to M.B.B.S. Students, who want to pursue Post Graduate Degree/Diploma Courses in Medicine in terms of Medical Council of India Regulations and that 50% of the seats for the Post Graduate Diploma Courses have been reserved for the in-service candidates and that the petitioner being a Government employee would be entitled to 10% of the marks obtained for each year of service in remote and / or difficult areas up to the maximum

of 30% of the marks obtained in National Eligibility cum Entrance Test (NEET). The petitioner appeared for NEET examination and secured 495 marks out of 1000 and she is entitled for the weightage of 30% marks, as she is working in a remote place, in the Government quota for every year of her experience to be added with the NEET Examination marks. Therefore, the petitioner's marks should be calculated as 643.5 (495+148.5) and she would be entitled to be admitted in the Tamil Nadu Post Graduate Medical Examination.

4. It is further stated by the petitioner that the Government issued G.O.Ms.No.75, Health and Family Welfare Department dated 09.03.2018 notifying remote and difficult areas, but omitted to include Perundurai Medical College and that even though the said Government Order was modified by G.O.Ms.No.96, Health and Family Welfare Department, dated 23.03.2018, the area has not been identified and that the totality of the circumstances has to be taken into account and Perundurai Medical college has to be construed as a difficult area in order to extend the benefit of 30% marks to be added to the marks secured in the NEET Examination and consider the admission of the petitioner.

5. The respondents have filed their counter affidavit, wherein, it has been stated that Perundurai Medical College, where the petitioner is appointed, is not a Government College and that it is a self-financed institution and it has been circumstanced by the employees of the Corporation to enable the awardees of the institution to join the college. That apart, fees structure of a Government College and self-financed college is totally different. All the Government colleges are having the same fee structure, whereas, the fifth respondent college is having the fee structure of a self-financing college. The Medical Officers working in Tamil Nadu Medical service comes under the Special Rules for Tamil Nadu Medical Service and they come under the Provident Fund Scheme, whereas, the Medical Officers working under the fifth respondent come under Employees Provident Fund Scheme. Even assuming for the sake of argument that Perundurai Medical College is a Government College, so long as the present place has not been identified as difficult, remote or hilly area, and it is not covered by G.O.Ms.No.75, Health and Family Welfare Department, dated 09.03.2018 or G.O.Ms.No.96, Health and Family Welfare Department, dated 23.03.2018, the petitioner would not be entitled to 30% marks to be added to the NEET Examination. However, the said contention is made without prejudice to the averment that the petitioner is not employed in a Government College and she is employed only in a Self-financed Institution.

6. In support of his contention, Mr.S.T.S.Moorthy, learned Additional Advocate General drew the attention of this Court to

the order passed in W.A.Nos.271 of 1996, 924, 1026 & 1009 of 2006, and contended that for the purpose of admission to the college, this Court has held that Perundurai Medical College comes under the control of the State Government.

7. In reply, learned Senior Counsel appearing for the petitioner submitted that the learned Single Judge of this Court in W.P.No. 6608 of 2010 by an order dated 01.04.2010 has also considered the case of some other Doctors and granted an interim order directing the respondents therein to treat the petitioners as service candidates to be eligible for 50% quota reserved for service candidates for admission to Post Graduate Medical Degree Course/Diploma Course/MDS-5 years/M.Ch (Neuro Surgery) course for the year 2010-2011. It is further submitted that Perundurai Medical College being a Government institution there cannot be any discrimination.

8. Heard both sides.

9. It is not in dispute that the petitioner has joined the services of Perundurai Medical College Hospital in the year 2015 and that she has served in that locality for more than three years. However, pursuant to the interim order in W.P.No.6608 of 2010, the doctors have been permitted to be considered as in-service candidates, but it is not a final order. Insofar as the order dated 09.11.2006 of the Division Bench of this Court (cited supra) is concerned, it has been observed that Perundurai Medical College is coming under the control of the State Government. The words "Under the control of the Government" is completely different from "under the Government". In this case, the petitioner has not established that the institution in which, she is employed has been following the fees structure applicable to Government colleges. Merely because, Perundurai Medical College is coming under the control of the Government, it does not mean that it is a Government college and the fee structure is the one applicable to self-financing colleges and not that of Government colleges. The petitioner has been appointed in Perundurai Medical College Hospital, which is a self-financed college and this Court cannot issue a direction to the Government to consider the request of the petitioner that she should be treated to be as an in-service candidate and that 30% of the marks have to be added to the NEET Examination and her candidature should be considered. It would be stretching too far to hold that Perundurai Medical College is a self-financed college and that the petitioner could be entitled to the relief.

10. Since the petitioner is not employed in a Government Hospital, at no stretch of imagination, she can be considered as an in-service candidate to avail the benefit of 30% of marks on the ground that she was employed in a different area and more

particularly the place has not been covered by any of the Government orders vide G.O.Ms.No.75 and G.O.Ms.No.96, referred to supra.

11. The learned counsel appearing for the petitioner referred to a decision of the Division Bench of this Court reported in 2016-5-L.W-80 in the case of M. Aamira Fathima & Others Vs. The Annamalai University and others, wherein, the University was taken over by the Government. Even though the University has been taken over by the Government, it was held that it cannot be treated as a Government University. Relevant portion of the said decision is extracted hereunder:-.

'53.In view of the detailed discussions made above, we hold that,
(i)Annamalai University is not a Government University,
(ii)the Capitation Fee Act, 1992 will not apply to the University,
(iii)Annamalai University will not come under the purview of the Fee Fixation committee, and
(iv)Annamalai University is empowered to fix the fees as prescribed by the syndicate.'

12. In view of the same, since the petitioner pursued the course in Perundurai Medical College Hospital, which is not a Government Institution and only a self-financed institution, the writ petition is devoid of merits and accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

1. The Government of Tamilnadu,
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Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Medical Education,
The Directorate of Medical Education,
No.162, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.

3. The Secretary
The Selection Committee,
Post Graduate Medical Admission,
No.162, Periyar E.V.R.High Road,
Kilpauk,
Chennai-600 010.

4. The Secretary
The Medical Council of India,
Pocket 14, Sector 8,
Dwarka Phase I,
New Delhi- 1100 77.

5.The Dean,
Perundurai Medical College,
Perundurai, Erode District.

+1 cc to M/s.V.P.Raman Advocate sr 25454
+1 cc to M/s.kamalanathan Advocate sr 25231
+1 cc to the Govt Pleader sr 25650

W.P.No.7113 of 2018

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