

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.8101 of 2019
W.M.P.No.8690 of 2019

Dr.D.Sumeethra @ Phoornima

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Medical Education,
No.162, E.V.R.Periyar High Road,
Kilpauk, Chennai - 600 010.
3. The Additional Director of Medical Education/Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, E.V.R.Periyar High Road,
Kilpauk, Chennai - 600 010.
4. The Regional Administrative Medical Officer,
ESI Scheme, Coimbatore - 5.
5. The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi - 110 077.

.. Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to permit the petitioner to participate in the selection for admission to Post Graduate Medical Course based on the Prospectus for admission to Post Graduation Degree/Diploma courses for 2019-2020 session, by accepting the application submitted by the petitioner.

For Petitioner : Mr. Sankaran G.

For R1, 2 and 4 : Mrs.Narmadha Sampath,
Additional Advocate General
assisted by Mr.V.Kadhirvelu
Special Government Pleader
(Hr.Edu.)

For R3 : Mr.Abdul Saleem

For R5 : Mr.V.P.Raman

O R D E R

The instant Writ Petition has been filed for the issuance of a Writ of Mandamus, to direct the respondents to permit the petitioner to participate in the selection for admission to Post Graduate Medical Course based on the Prospectus for admission to Post Graduation Degree/Diploma courses for 2019-2020 session, by accepting the application submitted by the petitioner.

2. The petitioner is a Doctor, who has completed MBBS course in the year 2011 and subsequently, appointed to the post of Assistant Surgeon through Medical Services Recruitment Board (MRB) in ESI Dispensary on 18.09.2013. The petitioner participated in the selection for admission to Post Graduation Medical Degree Course in the academic year 2018-19 and the selection was made based on the marks secured in the NEET-PG Examination as per Regulation 9(iv) of the Post Graduate Medical Education Regulations, 2000. She was also allotted PG seat in M.D., (Pathology) during 2018-19 at Coimbatore Medical College as per the allotment order issued by the Selection Committee dated 21.05.2018. The petitioner had also reported to the College on 22.05.2018.

3. She further submits that, however, due to health reasons, the petitioner could not continue the Course and submitted a representation to the Dean of the Coimbatore Medical College on 31.05.2018 and surrendered the seat offered to her and the same was accepted on the same day. Now, the petitioner is seeking permission to participate in the selection for admission to Post Graduate Medical Course based on the prospectus for admission to Post Graduate Degree/Diploma courses for 2019-2020 session, by accepting the application submitted by her.

4. The learned counsel appearing for the third respondent accepted the notice and appeared before this court

contending that as per Clause 27 of the prospectus for admission to Post Graduation Degree Courses 2018-19, if the candidates, who discontinue the course on or after the last date of allotment of seats i.e. 31.05.2018 shall pay the Discontinuation Fees, besides foregoing tuition fees as specified in Clause 26, to the Deans of the respective Colleges, by means of Demand Draft and the amount so payable is Rs.15.00 lakh for P.G. Degree. Citing the provisions contained in the prospectus, the learned counsel appearing for the third respondent contended that as the withdrawal or surrender of the seat by the petitioner was done on 31.05.2018, she will not be qualified to apply for two subsequent academic years as a penalty.

5. A perusal of Clause 28 would go to show that the admission to Post Graduate Degree/Diploma courses for 2018-2019 will close on the cut-off date of admission (i.e. on 31.05.2018) as per the Guidelines issued by the Medical Council of India, DGHS and the Tamil Nadu Dr.M.G.R. Medical University, Chennai. Therefore, it is contended by the learned counsel appearing for the petitioner that the petitioner having withdrawn or surrendered the seat only on 31.05.2018 - the cut-off date as fixed by the Medical Council of India, she would be eligible to apply again.

6. Be that as it may, the prospectus provides for Not-Eligible criteria in Clause 6(a) stating that the candidates who join a Post Graduate Degree/Diploma courses in any branch and discontinue the course on any grounds after the cut-off date fixed by the Medical Council of India are not eligible to apply for two subsequent academic years.

7. The learned counsel appearing for the petitioner contended that only if the surrender or discontinuation is after the cut-off date, Not-Eligible criteria would attract, whereas, the petitioner had surrendered the seat before the cut-off date fixed by the Medical Council of India. Therefore, the respondents cannot quote Clause 27 and made the petitioner ineligible to apply for the course.

8. Admittedly, the petitioner had also paid discontinuation fees of Rs.15.00 lakh pursuant to the order of the Dean of the College.

9. The learned counsel appearing for the third respondent would also produce a copy of the Notification said to have been issued on 24.05.2018 at 3.00 p.m., which was only uploaded on the website. It is indicated therein that the candidates, who are willing to discontinue the course, in which, they have joined through allotment made by the Selection Committee, the Director of Medical Education, was instructed to

discontinue them on or before 25.05.2018. When admittedly, the above Notification is uploaded in the website on 24.05.2018 at 3.00 p.m only indicating last date of withdrawal or discontinuation is 25.05.2018, it is not possible for the candidates especially in service to keep track of the same and respond immediately. Therefore, eventhough the prospectus would instruct the candidates to visit the website at least two times a day for updates from the date of application till the end of admission process without fail, it should be made possible for the candidates to keep themselves updated of the latest notification and there should be at least some "time allowance" for the candidates to act according to the latest notification.

10. In this case, the petitioner was working in ESI Dispensary, R.S.Puram, Coimbatore. It cannot be expected of her to withdraw her candidature on the very next day, especially, she reported health issues as a ground for withdrawal. In the conspectus of the case, this Court is of an opinion that the candidate, who is eligible for getting admission to the Post Graduation Medical Course should not be deprived of her chance by undergoing disqualification of two subsequent academic years for no fault of her.

11. Considering the fact that today, i.e. 20.03.2019, is the last date for submission of the online application, this Court is inclined to permit the petitioner to apply for Post Graduation Medical Course based on the prospectus for admission to Post Graduate Degree/Diploma courses for 2019-2020 session. The respondents are directed to accept the application that may be submitted through online and also to receive filled up forms with enclosures as the petitioner is the service candidate, for which the last date is 22.03.2019 and consider the same on merits for granting admission.

12. With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed. It is made very clear that this order is not a precedent to any other candidates, who have discontinued the course for various reasons, as this order is passed only exclusively based on the facts of this case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
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Chennai - 600 009.
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5. The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi - 110 077.

+1cc to Mr. Sankaran G., Advocate sr.no.26395
+1cc to M/s.Abdul Saleem, Advocate sr.no.26416

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