IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.20841 of 2018
and
WMP.Nos.24465 & 24466 of 2018

1. Dr.P.Suresh Kumar
2. Dr.S.Thirunavukkarasu
3. Dr.T.Sivakumar
4. Dr.S.Ramanikanth
5. Dr.S.Renganathan
6. Dr.Sangeetha .. Petitioners

Vs.

1.The Government of India,
Rep. by its Secretary to Government,
Ministry of Health and Family Welfare,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.

2. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 009.

3. The Director of Medical Education,
Kilpauk, Chennai – 600 010.

4. The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi – 110 007. .. Respondents

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PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of declaration, to declare the impugned Clause 6 of Schedule-I of Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 as unconstitutional, ultra vires, discriminatory and illegal in so far as prescription of upper age limit of 40 years for appointment to the post of Senior Resident is concerned.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.G.Karthikeyan (for R1)
Asst.Solicitor General of India

Mr.K.Karthikeyan (for R2 & R3)
Government Advocate (Edn.)
Mr.V.P.Raman (for R4)
Standing Counsel for MCI

O R D E R

(Order of the court was made by S.MANIKUMAR, J.)

Instant Writ Petition is filed for a Writ of Declaration, to declare the impugned Clause 6 of Schedule-I of Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 as unconstitutional, ultra vires, discriminatory and illegal, insofar as prescription of upper age limit of 40 years for appointment to the post of Senior Resident, is concerned.

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Supporting the prayer sought for, petitioner has averred as follows:

(i) Petitioners are working as Government Doctors in Tamil Nadu Medical Service, qualified with PG Degree and presently working in Medical College

Institutions coming under the Directorate of Medical Education (DME). They have aggrieved against the amendment made in clause 6 of Schedule-1 of 'Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 with effect from 08.06.2017, with reference to prescribing upper age limit of 40 years to be posted as Senior Residents. Since all the Petitioners are similarly placed persons, and aggrieved against the amendment to the relevant clause of Minimum Qualification for Teachers in Medical Institutions Regulations, 1998, they have joined together and filed the Writ Petition for the relief as prayed for.

(ii) Petitioners state that as per Section 33 of Indian Medical Council Act, 1956, the Medical Council of India (MCI) may, with the previous sanction of Central Government, make regulations generally to carry out the purposes of the Act. Accordingly, MCI, with previous sanction of Central Government framed regulations called 'Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998' with an object for appointment of Medical Teachers, with minimum qualification and experience in various departments of Medical Colleges and Institutions imparting Graduate and Post Graduate Medical Education which is a necessary requirement to maintain the standard of teaching. Schedule-I to the Regulations relates to minimum qualification for appointment as a teacher in various departments of a Medical College or an Institution imparting Graduate and Post Graduate education.

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(iii) Insofar as Doctors appointed in Tamil Nadu Medical Services they are governed by the Special Rules for Tamil Nadu Medical Service framed by Government of Tamil Nadu in exercise of powers under Central Act.

(iv)As per the special Rules of Tamil Nadu Medical Service, the post of Senior Resident/Assistant Professor comes under Class-I Category 2 and the method of appointment is given as below:

Category 2:	Assistant Surgeons in General line	Appointment by direct recruitment; or by promotion from Junior Assistant Surgeons, Class I who possess the DM&S qualification. Appointment by direct recruitment and by promotion to category 2, shall be made in the ratio of 5:1. Provided that Junior Assistant Surgeons shall be eligible for appointment by promotion irrespective of the fact whether they are approved probationers or probationers subject to the condition that they shall complete the period of afresh in the category completed their probation in the post of Junior Assistant Surgeons.

(v) Further, as per Special Rules for Tamil Nadu Medical Service as amended

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as per G.O.Ms.No.299, Health and Family Welfare Department dated 03.09.2013, the Senior Resident/Assistant Professor is prescribed as follows:

Senior Resident/Assistant Professor:

> Must have obtained the degree of MBBS of any University or Institution recognized by University Grants Commission (UGC) and must have done PG work iii a teaching institution for a period of not less than two years or must possesses a Super Specialty Degree.

(vi) Accordingly, as per the Special Rules, a Senior Resident Assistant Professor must be a MBBS degree holder and must have done PG work in teaching institution for a period not less than two years or he must possesses a Super Speciality Degree. Therefore, a Doctor with MBBS qualification in Government service after completing PG Diploma course (2 years) becomes Senior Resident/Assistant Professor.

(vii) Petitioners further state that in so far as service under Tamil Nadu Medical Service is concerned, appointment in government service is being made to the post of Assistant Surgeon, entry level post, for being posted in the Director of Public Health and Preventive Medicine side (DPH). Doctors who acquire PG Diploma qualification, their services are utilized by being posted under the Directorate of Medical Service (DMS) in District and Taluk Headquarters Hospital. Further, rural service is insisted for the Doctors appointed under Tamil Nadu Medical Service on appointment. That apart a minimum period of service is

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prescribed to become eligible for admission to PG Medical courses as service candidate. As per the Rules, after acquiring the PG degree qualification, a teacher or Senior Resident is re-designated as Assistant Professor in the respective speciality from the date of passing PG degree in the speciality. Therefore, service post graduates, on completion of PG degree are being posted as a Senior Resident/Assistant Professor in DME side in the concerned speciality department, in accordance with the qualification.

(viii) All the Petitioners have got admission PG degree courses in the years 2014-15, 2015-16, 2016-17 and 2017-18 prior to 08.06.2017, on which date there was no provision in Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 prescribing below 40 years of age for the post of Senior Resident. Accordingly, the petitioners have joined the PG Medical Courses after considerable years of service in Government in DPH and DMS side, to be posted as Senior Resident/Assistant Professor in DME side for their career prospects in teaching line, including promotion to higher post in DME side, after completing the teaching experience in the concerned speciality department as required under the MCI Rules. The fact remains that at the time of joining the PG Medical Course by the Petitioners, there was no age limit prescribed for the post of Senior Resident and therefore the Petitioners was selected for PG degree courses by undergoing the process of selection to become Senior Resident/Assistant Professor on completion of the course, though they crossed the 40 years age limit on the

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date of completion of the PG course.

(ix) While so, MCI has notified amendment to Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 by substituting clause 6 of Schedule with effect from 08.06.2017, by which the Senior Resident (broad specialities) is defined as follows:

Senior Resident	Senior Resident is one who is doing his/her residency in the concerned Post graduate subject after obtaining PG degree (MD/MS) and is below 40 years of age.

(x) Accordingly, as per the provisions of Minimum Qualification for Teachers in Medical Institutions Regulations, 1996, as amended, there is a cap in the age by prescribing upper age as 40 years to be posted, as a Senior Resident. In such event, the Petitioners, though now posted as Senior Resident/Assistant Professor in DME side, would be prejudiced in the event of their services not counted as Senior Resident/Assistant Professor for the purpose of teaching experience and for promotional opportunities.

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(xi) It is also stated that the fact remains that the Minimum Qualification for Teachers in Medical Institutions Regulations, 1998, as amended, relating to clause 6 prescribing upper age limit for the post of Senior Resident has not been adopted by Government of Tamil Nadu, nor incorporated in the special Rules for

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Tamil Nadu Medical Services, considering the fact any such application of upper age limit to the post of Senior Resident would be highly prejudicial to the interests of several number of PG qualified Doctors serving in DMS and DPH side for several years, aspiring to be posted as Senior Resident/Assistant Professor in DME side. Further, as per the norms prescribed in Tamil Nadu Medical Service, the Doctors appointed in Government service are initially posted in DPH side or DMS side, more particularly the qualified Doctors being utilized in DMS side in District and Taluk Headquarters Hospital in speciality departments and the Doctors are encouraged to serve in rural/hilly/remote areas by awarding incentive marks for admission to PG Medical courses. In the said circumstances, when the services of the government doctors in the State of Tamil Nadu being utilized in DPH and DMS side on compulsion and further as per Special Rules, entry to the post of Senior Resident/Assistant Professor is from the category of Assistant Surgeon, any restriction of age limit for being posted as Senior Resident/Assistant Professor in DME side would not only be prejudicial to their interest but also affect the entire medial administration In the said circumstances, the Government of Tamil Nadu have forwarded a proposal to the Government or India in letter No.39030/MCA-2/2017-2 dated 27.11.2017 to drop the criteria of age limit of less than 40 years for appointment of Senior Resident by making it clear that it is not suitable to Tamil Nadu Medical Service and it affects the Doctors' basic rights for acquiring Post Graduation and prospects. Further, it is indicated that any such restriction is highly counterproductive to the policy decision of the Government of India, New

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Delhi, for creating more number of Specialists/ Medical Faculties in India to serve the poor patients, especially when Medical Council of India has relaxed the age limit for faculty in Medical Colleges to 70 years as upper limit.

(xii) The Government of Tamil Nadu have forwarded a proposal to Government of India in continuation of the meeting held on 19.07.2017 with a request to drop the relevant clause relating to restriction of age limit for appointment to the post of Senior Resident/Assistant Professor. However, the Government of India have not taken any decision in this regard and the proposal is still pending for consideration.

1. Though the fact remains that the Government of Tamil Nadu have not adopted the age restriction for appointment to the post of Senior Resident and no such age restriction is incorporated in Special Rules for Tamil Nadu Medical Services, considering the fact that of the petitioner's services in DME side in the concerned speciality department ought to have been considered as regular service in teaching experience for their career advancement for further promotion to the post of Associate Professor/Professor, In the above said circumstances, petitioners have challenged the relevant provisions in the Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 prescribing upper age limit for the post of Senior Resident as it remains to be unconstitutional,

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arbitrary and illegal.

2.

3. On the basis of the proceedings in No.V.11012/03/2011-MEP, dated 12.06.2019, Ministry of Health and Family Welfare, New Delhi, addressed to the Principal Secretary, Health and Family Welfare Department, Government of Tamil Nadu, Chennai, Mr.G.Karthikeyan, learned Assistant Solicitor General of India, for Government of India, Ministry of Health and Family Welfare, New Delhi, submitted that the Ministry has decided to raise the maximum age for appointment of the Senior Resident from 40 years to 45 years. Said proceedings reads thus:

"No.V.11012/03/2011-MEP

Government of India
Ministry of Health & Family Welfare
*****

Nirman Bhavan, New Delhi
Dated the 12th June, 2019

To,
The Principal Secretary Health & Family Welfare Department Government of Tamil Nadu Secretariat, Chennai - 600009.

Subject: W.P. No. 20841 in the matter of P. Sureshkumar Vs. Union of India before the Hon'ble High Court of Madras challenging the Clause 6 of the Minimum Qualifications for Teachers in Medical Institution Regulations, 1998 - reg.

Sir,
1 am directed to refer to letter No.- 31334/MCA2/2018-6 dated 06.03.2019 on the subject mentioned above and to say that Medical Council of India with the prior approval of the Central Government vide notification dated 05.06.2018

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had amended the Minimum Qualifications for Teachers in Medical Education Regulations, 1998 wherein the upper age limit for appointment of Senior Residents in medical colleges was capped to 40 years.

2. The regulation has been challenged in the Hon'ble High Court of Madras in WP No. 20841 in the matter of P. Sureshkumar Vs. Union of India The Hon'ble Court vide its order dated 31.10.2018 directed the State to resend, tire said letter dated 27.11.2017 to MoHFW for a decision. Accordingly, the said letter was forwarded by the State to this Ministry vide letter dated 15.11.2018. This Ministry had referred the request of the Government of Tamil Nadu to the Board of Governors (BoG) appointed in supersession of MCI for consideration

3. The BoG vide its letter dated 23.05.2019 recommended to raise the maximum age limit for appointment of Senior Residents in medical colleges from 40 to 45 years by amending the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998.

4. Accordingly, it has been decided in this Ministry to to raise the maximum age limit for appointment of Senior Residents from 40 to 45 years.

Yours faithfully
(Amit Biswas) Under Secretary to the Govt of India
Telef ax:011 -23061120"

4. Mr.G.Sankaran, learned counsel for the petitioner, submitted that though a decision has been taken by the Ministry of Health and Family Welfare, Government of India, New Delhi, vide proceedings dated 12.06.2019, raising the maximum age limit for appointment to the post of Senior Resident from 40 years to 45 years, unless and until it is notified by both Medical Council of India, as well as the Ministry of Health and Family Welfare, Government of India, New Delhi, the same would come into effect.

5. At this juncture, Mr.V.P.Raman, learned standing counsel for Medical

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Council of India, vide proceedings No.MCI-12(1)/2019-TEQ/123024-25, dated 10.06.2019, Medical Council of India, has requested the Secretary to the Government of India, Ministry of Health and Family Welfare, New Delhi, to approve the draft notification and that the Central Government is yet to revert. Above said letter dated 10.06.2019 of the Medical Council of India, addressed to the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi, and the draft notification are extracted hereunder:-

" BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA

No.MCI-12(l)/2019-TEQ/123024-25 *Dated:10.06.2019*

The Secretary to the Govt, of India,
Ministry of Health &F.W.,
Nirman Bhawan,
New Delhi-110011.

Subject: *Relaxation for enhancing of age of Senior Resident and inclusion of Diploma for Senior Residents in the Minimum Qualification for Teachers in Medical Institutions Regulation, 1998 - reg. approval of.*

Sir,

I am directed to state that the above matters were considered by the Board of Governors at its meetings held on 26.03.2019, 23.04.2019 & 11.05.2019. The Board of Governors had decided as under:-

Decision (26.03.2019)

"The Board of Governors approved the proposal for relaxation in the age of Senior Residents (Broad speciality) in the Armed Forces from 40 to 45 years. The appropriate amendment to be placed before the Board of Governors at its subsequent meeting for their approval."

Decision (23.04.2019)

"The Board of Governors decided to accept die request of State Government of Tamilnadu and raise maximum age for Senior Resident from 40 years to 45 years in the Minimum Qualifications for Teachers in Medical Institution Regulations, 1998

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for both government and private Medical Colleges and Hospitals.

Decision (11.05.20191

The Board of Governors approved the proposal to include the word "Diploma" after DNB" in the definition of Senior Residents in the Minimum Qualification for Teachers in Medical Institution Regulations, 1998."

In view of the above decision, it is proposed to amend the definition of Senior Resident contained in Minimum Qualification for Teachers in Medical Institution Regulations, 1998:

Existing Definition	*Proposed Definition*
Senior Resident is one who is doing his/her residency in the concerned post graduate subject after obtaining PG degree (MD/MS/DNB) and is below 40 years of age.	*Senior Resident is one who is doing his/her residency in the concerned post graduate subject after obtaining PG degree/Diploma (MD/MS/DNB/Dip.) and is below 45 years of age.*

The above decisions have been taken in pursuance of proceedings before the Hon'ble of Madras and Hon'ble Delhi High Court in W.P. No. 20814 of 2018 and W.P. (Civil) No. 4147 of 2019 respectively.

Accordingly, I am to enclose herewith the draft notification for amendment in Regulations "Minimum qualifications for Teachers in Medical Institutions Regulations, 1998" as amended from time to time in 3 copies in English & Hindi version duly signed.

You are, therefore, requested to kindly approved and authenticate the said proposal as early as possible, so that the same may be notified in the Gazette of India.

Yours faithfully,
Sd/-
(Dr.R.K.Vats)
Secretary General

Copy to:Guard File (TEQ Section)"

6. Mr.G.Karthikeyan, learned Assistant Solicitor General of India, submitted that within three weeks from today, draft notification would be

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approved and accordingly published, giving effect to the decision taken by the Ministry of Health and Family Welfare, Government of India, New Delhi.

7. Placing on record the submissions of the learned standing counsel for Medical Council of India, as well as the Ministry of Health and Family Welfare, Government of India, New Delhi, there shall be a direction to the Secretary to the Government of India, Ministry of Health and Family Welfare, New Delhi, Respondent No.1, to approve the draft notification sent by the Medical Council of India and publish the same in the Government gazette, within three weeks from today.

8. Prayer sought for in the instant Writ Petition is to declare the impugned Clause 6 of Schedule-I of Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 as unconstitutional, ultra vires, discriminatory and illegal in so far as prescription of upper age limit of 40 years for appointment to the post of Senior Resident is concerned.

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9. In view of the decision of the Ministry of Health and Family Welfare, Government of India, New Delhi, to increase the age limit for appointment of Senior Resident from 40 years to 45 years, there is no need to issue any declaration as prayed for.

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10. Principal Secretary to Government, State of Tamil Nadu and Director, Medical Education Department, Chennai, respondent Nos.2 and 3 are directed to give effect to the amendment, stated supra.

11. With the above directions, Writ Petition is disposed of. No Costs. Consequently, the connected miscellaneous petitions are closed.

(S.M.K., J) (S.P., J.)
06.08.2019

Index : Yes
Internet : Yes
ars/pkn.

Note: Issue order copy today

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To

1.The Secretary,
Government of India,
Ministry of Health and Family Welfare,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.

2. The Principal Secretary,

State of Tamil Nadu,
Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 009.

3. The Director of Medical Education,
Kilpauk, Chennai – 600 010.

4. The Secretary,
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Pocket 14, Sector 8,
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HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते

S. MANIKUMAR, J.
AND
SUBRAMONIUM PRASAD, J.

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W.P.No.20841 of 2018
WMP.Nos.24465 & 24466 of 2018
Note: Issue order copy on 08.08.2019

06.08.2019

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