

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.8681, 8692, 8698, 8705 and 8712 of 2019
& M.P.Nos.9223, 9227, 9229, 9236, 9237, 9239, 9247, 9249,
9250, 9264 to 9266, 9273, 9274 and 9276 of 2019

1. Dr.Vinoth
2. Dr.Mohan
3. Dr.K.S.Kesavaraj
4. Dr.C.B.Vignesh .. Petitioners in W.P.No.8681/2019
5. Dr.A.Shanmugapriya
6. Dr.P.Kalaivani
7. Dr.K.Vidhya
8. Dr.M.Arul Sruthi .. Petitioners in W.P.No.8692/2019
9. Dr.M.Balakamesh
- 10.Dr.V.Suguna
- 11.Dr.S.Sathyaprakash .. Petitioners in W.P.No.8698/2019
- 12.Dr.P.Parthiban
- 13.Dr.S.Karthiga
- 14.Dr.M.Niruba
- 15.Dr.S.Ravi .. Petitioners in W.P.No.8705/2019
- 16.Dr.M.Manimaran
- 17.Dr.P.Salamon Raja
- 18.Dr.A.Archana
- 19.Dr.V.Kanagavel .. Petitioners in W.P.No.8712/2019

Vs.

1. The Government 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,
The Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.

3. The Selection Committee
rep. by its Secretary,
Post Graduate Medical Admission,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
4. The Medical Council of India
rep. by its Secretary,
Pocket 14, Sector 8,
Dwarka Phase-1,
New Delhi - 110 077.
5. The Chairman,
The Committee appointed for identification
of areas/categories for marks in Tamil Nadu
Medical PG Entrance Exams,
TNMSC Building, Pantheon Road,
Egmore, Chennai.
6. The Managing Director,
Tamil Nadu Medical Services Corporation,
Chennai-600 008.

Prayer in all W.Ps: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records pertaining to the first respondent in G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019 and quash the same in so far as it relates to classify the institution to which the petitioners belong in the category of not eligible for incentive marks and consequentially direct the respondents to award incentive marks to the petitioners.

* * *

For Petitioners in W.P. :Mr.V.Ayyadurai, Senior Counsel
Nos.8705 & 8712/2019 for Mr.V.Parthiban

For Petitioners in W.P. :Mr.D.Selvam
Nos.8681, 8692 & 8698/19

For Respondents :Mrs.Narmadha Sampath,
in all W.Ps. Additional Advocate General
assisted by Mr.V.Kadhirvelu,
Special Govt. Pleader (Hr. Edn.)
for RR 1 and 2 and 6

Mr. Abdul Saleem for RR 3 & 5

Mr.V.P.Raman,
Standing Counsel for R4 in all WPs

C O M M O N O R D E R

All the petitioners in these writ petitions are Doctors and they lay challenge to the G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019 (in short, "G.O.86, dated 06.03.2019") to certain limited extent and seek consequential directions to the respondents. With the consent of the learned counsel on either side, these writ petitions have been taken up for final hearing together and disposed of by means of this common order.

2. According to the petitioners, they are all working as Senior Assistant Surgeons/Assistant Surgeons in various Government Hospitals/PHCs located in District Headquarters or Taluk Headquarters, mostly in urban areas, such as Cuddalore, Dharmapurai, Dindigul, Erode, Kanchipuram, Namakkal, Virudhunagar, Madhuranthagam, Tambaram, M.Reddiappatti, Thirumangalam and Melur. The hospitals, where they are serving, have been included in Annexure - V of the impugned Government Order in the category of institutions, which are not eligible for incentive marks as contemplated in Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000 (in short, 2000 Regulations).

3. It is their claim that the Doctors working in a similarly placed hospitals at Ooty, Nagapattinam, Kelambakkam, Oragadam, etc. which are either located near National Highways or well-connected with transport facilities have been extended the benefits of incentive marks, whereas, the petitioners are denied the same benefits. Hence, the Tamil Nadu Government Doctors Association has given a representation to the third respondent/ Selection Committee on 01.01.2019 to redo the demarcation and requested that the doctors attending CEMONC like Comprehensive Emergency Obstetric and Newborn Care 24 X 7 Emergency cesarean section, etc., Trauma and Casualty should also be given the benefit of incentive marks. But their representation was not considered by the respondents. Since they are rendering service almost 24 hours in shifts, the classification done by the respondents and thereby denying incentive marks to them violate their rights. Hence, they pray to quash the impugned G.O.

4. Learned Senior Counsel for the petitioners submitted that the present classification of areas is based on revenue classification and hence, the same is arbitrary and unreasonable, as some of the Primary Health Centres (PHCs) located either in the urbanized areas or close to the Taluk Headquarters and well-connected with transport facilities, namely, Sriperumbudur, Kelambakkam, Oragadam, Padappai, Gummidipoondi, etc., have been included in the list of centres eligible for incentive marks.

5. Learned Additional Advocate General, on the other hand, submitted that the fifth respondent Committee, after taking into consideration all aspects, including social and economic conditions, geographical location, the past experience, non-availability of Doctors in a specific PHCs, the public transport connectivity/accessibility, availability of good educational institutions for their wards, employment opportunities of spouse, etc., arrived at the classification, which cannot be found fault with.

6. It is the admitted case of the petitioners that they are all working either in the Government Headquarters Hospital or the Hospitals located in the urban Areas. Their only claim is that they are also attending 24 X 7 working hours pattern or working in shifts for long hours attending Trauma and Casualty patients, besides other time bound surgeries and hence, their services, being difficult one, they should also be given incentive marks, considering them as serving in "difficult area". It is their further claim that some of the Taluk Headquarters hospitals/PHCs, which are well-connected with transport facilities have been included in the Annexures I to IV of the impugned G.O., whereas, merely because they are serving in the District Headquarters / Municipal / Corporation areas, they have been denied the said benefit, which will change their ranking affecting their right prejudicially.

7. It is to be stated that the Doctors serving in suburban and urban areas cannot be equated with the Doctors serving in hilly / difficult / remote / rural areas. The Metropolitan / Corporation / Municipal cities and towns provide various amenities and facilities to the Doctors and their families, which are not available to the latter. One cannot deny the fact that the latter also perform emergency duties with the equipments provided to them, and if the facilities are not available, then only they refer the emergency cases to the District Headquarters Hospitals / Taluk Hospitals. Hence, the claim of the petitioners on this score deserves to be rejected.

8. The hospitals/PHCs, where the petitioner are working do not come within the principles enunciated by the National Health Systems Resource Centre (NHSRC), as recorded by the Hon'ble Supreme Court in the case reported in Narendra Soni V. State of Haryana, (2017) 14 SCC 642.

9. Further, a Division Bench of this Court in The State of Tamil Nadu V. Dr.P.Pravin, (2018) 2 WLR 161, categorically held that "the categorization of bringing in Doctors on the basis of areas of specialization amounts to indirect legislation and also tantamount to amending proviso to Sub-clause IV of Regulation 9 of the Regulations 2000".

10. At this juncture, it is to be stated that the Hon'ble Apex Court in State of Uttar Pradesh V. Dinesh Singh Chauhan, (2016) 9 SCC 749, considered the scope of Regulation 9 and held that Regulation 9 is a self-contained code regarding the procedure to be followed for admission to medical courses and upheld it being just, proper and reasonable and also fulfills the test of Article 14 of the Constitution.

11. It is to be stated that pursuant to the order of the Division Bench of this Court in Dr.Pravin's case, the said task was entrusted to the Committee headed by a retired Judge of this Court. The Committee was constituted in the month of 15.11.2018 and had taken considerably long time to decide the categorization of places. Only the Doctors serving in the institutions located in urban areas, municipal and corporation areas are excluded from claiming this bonus marks. This Court is of the view that the said action cannot be found fault with.

12. In such conspectus of the matter, these writ petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Director of Medical Education,
The Directorate of Medical Education,
No.162, Periyar EVR High Road,
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6. The Managing Director,
Tamil Nadu Medical Services Corporation,
Chennai-600 008.

+1 cc to Mr.V.Parthiban, Advocate, S.R.No.28911

+1 cc to Mr.V.P.Raman, Advocate, S.R.No.28693

+1 cc to Mr.D.Selvam, Advocate, S.R.No.28910

+1 cc to the Government Pleader, S.R.No.29813

W.P.Nos.8681, 8692, 8698,
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RSV(CO)
SSM(29/03/2019) .