

In the High Court of Judicature at Madras

Dated : 29.3.2019

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The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.1161 of 2019 & CMP.No.8158 of 2019

Dr.Thanveer Ahmed

...Appellant

Vs

1.State of Tamil Nadu, rep.by the
Secretary to Government,
Health & Family Welfare
Department, Secretariat,
Fort.St.George, Chennai-9.

2.The Selection Committee,
Directorate of Medical Education,
162, Periyar EVR High Road,
Chennai-10.

3.The Secretary, Medical Council
of India, Pocket 14, Sector 8,
Dwaraka, New Delhi-110077.

...Respondents

APPEAL under Clause 15 of the Letters Patent against the
order passed in W.P.No.8071 of 2019 dated 27.3.2019.

Writ Petition filed under Article 226 of the Constitution of
India praying for a Writ of Mandamus directing the 1st
respondent to reclassify Aravatla PHC in Nariampattu Block of
Tirupathur health unit district as Difficult area in Plains in
the impugned G.O.(MS) NO 86 dated 6-3-2019 issued by the 1st
Respondent.

For Appellant : Mr.M.V.Swaroop
For Respondent-1 : Mrs.Narmadha Sampath, AAG
assisted by Mr.V.Kathirvelu, SGP
For Respondent-2 : Mr.Abdul Saleem, SGP
For Respondent-3 : Mr.V.P.Raman

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal is filed by the unsuccessful writ petitioner challenging the order dated 27.3.2019 passed by the learned Single Judge in W.P.No.8071 of 2019.

2. The said writ petition was filed by the appellant, who is a doctor by profession presently working in Aravatla Government Primary Health Centre, Pernambut Block, Tirupathur-Vellore District, seeking a direction to the first respondent to reclassify Aravatla Primary Health Centre, Nariampattu Block, Tirupathur Health Unit District as 'difficult areas in plains' so as to be entitled for 9% of the NEET marks per completed year of service as incentive marks as ordered by the Government in G.O.Ms.No.86 Health and Family Welfare Department dated 06.3.2019.

3. The case of the appellant is that the place, in which he is now serving, squarely falls within the ambit of 'difficult area in plains', since the Primary Health Centre (PHC) where he is working is situated inside a reserve forest, that there is poor accessibility that the coverage area extends into the hills in the reserve forest and that therefore, he is entitled to be awarded 9% of the NEET marks per year of service in the PHC. Thus, it is further submitted that the first respondent erroneously classified the PHC where the appellant is working to fall within the rural area thereby reducing the appellant's entitlement for the incentive marks at 9% of the NEET marks per year.

4. The learned Single Judge had gone into the contentions advanced by the appellant and noted that it is not in dispute that the PHC where the appellant is working is in and around Koundinya Wildlife Sanctuary, that it is only 13 Kms away from Pernambut, that road facilities are available and that though it is not categorized as 'difficult area in plains', it is not a remote area as per the said Government Order. The learned Single Judge further held that Aravatla PHC is closer to Pernambut, Pallikonda and Gudiyatham Taluks and is classified as 'rural area'. Accordingly, the prayer sought for by the appellant came to be rejected.

5. Nevertheless, the learned Single Judge thought it fit to direct the Committee to consider the representations, if any, received from the stakeholders so that the said Government Order could be revisited for the ensuing academic session and not for the present academic session. Challenging the order passed in the said writ petition, the appellant is before us by way of this appeal.

6. We have heard Mr.M.V.Swaroop, learned counsel for the appellant, Mrs.Narmadha Sampath, learned Additional Advocate General assisted by Mr.V.Kathirvelu, learned Special Government Pleader accepting notice for the first respondent, Mr.Abdul Salemm, learned Special Government Pleader accepting notice for the second respondent and Mr.V.P.Raman, learned Standing Counsel accepting notice for the third respondent. We have also heard Dr.K.Kolandaswamy, Director of Public Health and Preventive Medicine, who is also one of the esteemed Members of the Committee constituted by the Government to classify the areas in Tamil Nadu under various categories such as (i) difficult areas in hills, (ii) difficult areas in plains, (iii) remote area, (iv) rural area and (v) urban area (municipal/corporation areas).

7. The first and foremost issue to be pointed out is that classification of the location of various PHCs in the State of Tamil Nadu has been done by an Expert Body. This Expert Body was constituted pursuant to the directions issued by a Division Bench of this Court in the case of State of Tamil Nadu Vs. Dr.P.Pravin [W.A.Nos.1051 & 1117 to 1124 of 2018 dated 17.5.2018]. The Division Bench, while issuing directions, took note of the fact that every year, the admission process gets derailed on account of identification and categorization of the various PHCs and villages and therefore, suggested to the Government that a Committee of Experts, headed by a Retired Judge of this Court, should be formed and that the matter should be thoroughly examined.

8. The Government, in tune with the suggestions/directions issued by the Division Bench in the said judgment, constituted a Committee headed by

- (i) a Retired Hon'ble Judge of this Court;
- (ii) the Managing Director, Tamil Nadu Medical Services Corporation, Chennai-3;
- (iii) the Director of Medical Education, Chennai-10;
- (iv) the Director of Medical and Rural Health Services, Chennai-3;
- (v) the Director of Public Health and Preventive Medicine, Chennai-6;
- (vi) one Demography Expert from the University of Madras/Anna University/Department of Statistics as decided by the Chairman; and
- (vii) the Additional Director of Medical

Education/Secretary Selection Committee,
Office of the Director of Medical Education,
Chennai-10.

9. Among the Members of the said Committee, the Director of Public Health and Preventive Medicine alone is present in Court.

10. The learned Additional Advocate General would submit that a thorough exercise was done by the Committee nearly around three months, during which, the location of each PHC was carefully analyzed and only thereafter, the classification was done.

11. Mr.M.V.Swaroop, learned counsel for the appellant would contend that the learned Single Judge, having accepted that the PHC where the appellant is working is a reserve forest and is a hillock, ought to have granted the relief sought for.

12. Though it is not disputed that the PHC where the appellant is working is inside a reserve forest and is a hillock, the Court, while exercising jurisdiction under Article 226 of The Constitution of India, cannot substitute its opinion to that of the opinion of Experts. We find from the said Government Order that the classification was done under the category 'difficult area in plains' by not only considering the location of the PHCs in a reserve forest, but there are other factors as well.

13. The Director of Public Health and Preventive Medicine, who is present in court, submits before us that a thorough exercise was conducted, that each and every aspect was gone into including the fact as to the mode of transportation, which the appellant is using, etc., and that it is not as if the Committee was not apprised of the ground realities.

14. In any event, the Expert Body constituted by the Government, based on the observations/recommendations of the Division Bench of this Court, had taken a decision in the matter. Even on facts, we cannot substitute our opinion to that of the opinion of the Expert Committee. Nevertheless, it is always open to the appellant to submit his representation, which, even as per the directions issued by the learned Single Judge, will be considered by the Committee. Obviously, nothing can be done for this academic year as the merit list is to be published on 31.3.2019.

15. For the above reasons, we find no good grounds to interfere with the order passed by the learned Single Judge.

16. Accordingly, the above writ appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu, Health & Family Welfare

Department, Secretariat, Fort.St.George, Chennai-9.

2.The Selection Committee, Directorate of Medical Education, 162, Periyar

EVR High Road, Chennai-10.

3.The Secretary, Medical Council of India, Pocket 14, Sector 8, Dwaraka,

New Delhi-110077.

+1cc to Mr.V.P.Raman, Advocate sr.30289

+1cc to Mr.M.V.Swaroop, Advocate Sr.31697 [23/04/2019]

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CMP.No.8158 Of 2019

srg 03/04/2019