

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.10382 of 2019
and W.M.P.No.10924 of 2019

Dr.S.Srinath

.. Petitioner

Vs.

1. Government of Tamilnadu,
Rep. by its Secretary to Government (Health),
Fort St.George, Chennai - 600 009.
 2. The Director of Medical Education,
Office of the Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.
 3. The Secretary/Additional Director of Medical
Education Selection Committee,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.
- .. 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 include the petitioner name in the SC Rank list between 42 and 43 published by the respondents viz. Provisional Rank List for PG Degree/Diploma Courses in Tamilnadu Government Medical Colleges, Government Seats in Self Financing Medical Colleges & Rajah Muthiah Medical College (Annamalai University) 2019-2010 Session dated 30.03.2019 followed by Errata to the Merit List for PG Degree Diploma Courses (Govt. Quota) 2019-2010 Updated as on 31.03.2019.

For Petitioner : Mr.G.Veerapathiran

For 1st & 2nd Respondents : Ms.Narmadha Sampath
Additional Advocate General
Assisted by
Mr.V.Kadhirvelu
Special Government Pleader
(Higher Education)

For 3rd Respondent : Mr.Abdul Saleem

O R D E R

A Doctor, who is a PG aspirant, is seeking a direction to include his name in the rank list published by the respondent viz., Provisional Rank List for PG Degree/Diploma Courses in Tamilnadu Government Medical Colleges, Government Seats in Self Financing Medical Colleges & Rajah Muthiah Medical College (Annamalai University) 2019-2020 Session.

2. The petitioner has joined the service after having been selected for the post of Assistant Surgeon through Tamilnadu Medical Recruitment Board. He has been working as Assistant Surgeon in the Government Upgraded Primary Health Centre at Nariampattu Village in Pernambut Block, Ambur Taluk in Vellore District, from 31.03.2017. He belongs to SC community.

3. According to the petitioner, he had completed two years of service as on 31.03.2019. Therefore, when the application was called for, he has applied for the Post Graduate Course through service quota. As per G.O.Ms.No.86, Health and Family Welfare (MCA-1) Department, dated 06.03.2019, the candidates, who have worked in Rural Areas, are entitled to get 5% of marks per year for each of the completed years of service. Since the petitioner had worked in Rural Area, it enables him for getting 5% of marks per year for each of the completed years of service.

4. It is stated that the petitioner secured 626 marks in the NEET PG 2019 Examination. Clause 2(c) of the prospectus clearly specifies that the Cut-off score is 295 for SC/ST/OBC (including person with disability). When the merit list was published on 30.03.2019, though the petitioner had scored 626 marks, his name was not found in the merit list.

5. According to the petitioner, along with said marks, 5% of marks per year has to be added for each of the completed years of service, which would boost his score. Since he cannot find his name in the merit list, the instant Writ Petition has been filed.

6. The learned Additional Advocate General appearing on behalf of the respondents accepted notice and filed a counter affidavit. According to her, the petitioner had absented himself from 01.07.2017 to 03.07.2017 (3 days) on Earned Leave with Medical Certificate and from 04.07.2017 to 15.07.2017 (12 days) and from 11.09.2017 to 08.10.2017 (28 days) on Extra Ordinary Leave with Medical Certificate.

7. It is brought to the notice of this Court that as per Rule 85 (a) of the Fundamental Rules of the Tamil Nadu Government, Extraordinary leave may be granted in special circumstances, (1) when no other leave is by rule admissible, or (2) when, other leave being admissible, the Government servant concerned applied in writing for the grant of extraordinary leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave.

8. Therefore, it is contended that when the petitioner had absented himself for 40 days on Extraordinary Leave with Medical Certificate without getting pay and allowances, he could not be treated as service candidate, as the petitioner would not have had two years of continuous service. The intention of awarding incentive marks to the PG Course itself is only to encourage them to work in the remote areas and by absenting himself, the petitioner had defeated the purpose.

9. It is also pointed out that Clause 9 (a) of the Prospectus for PG Degree/Diploma Courses 2019-2020 session specifies that the candidate should have minimum two years of continuous service as on 31.03.2019, which reads as follows:-

"9 (a) (i) Medical officers selected by the Tamil Nadu Public Service Commission (TNPSC)/Medical Recruitment Board (MRB) through Competitive Written Examination/Special Qualifying Examination and appointed in Tamil Nadu Medical Services should have minimum two years of continuous service, as on 31.03.2019.
(ii) Medical officers serving in Local Bodies in Tamil Nadu should have minimum of two years of continuous service as on 31.03.2019.

The above Clause clearly indicates that any service candidate applying for PG Course should have minimum two years of continuous service as on 31.03.2019.

10. Though it is contended that the Deputy Director of Health Services has certified that the petitioner had availed Extra Ordinary Leave with Medical Certificate, the same is not accepted by the respondents. It is the allegation of the respondents that the petitioner had availed leave only for preparation of examination, when he is bound to be present in the Centre for treating the patients. Hence, the same is to be taken as dereliction of duty and the leave period cannot be included for the period of two years of continuous service.

11. Be that as it may, the petitioner has secured 626 marks in the NEET PG 2019 Examination. As per the prospectus, in 1 (a) (vii) (c) of general instructions, it is stated that

Medical Officers working in any Government institution should get their filled-in online Service Proforma and application form forwarded only through the proper channel with the remarks of the Forwarding Authorities in the format prescribed in the application form. Otherwise the candidate will be considered as a non-service candidate.

12. In this case, the application was made by the petitioner as service candidate being the Medical Officer working in the Government Primary Health Centre. Further, his name had not been included in the merit list for the reason that he had not put in two years of continuous service. Two years of service in Difficult Areas in Hills or Difficult Areas in Plains or Remote Area or Rural Areas would entitle the candidate 10%, 9%, 8% and 5% of marks for each year of service completed respectively with the maximum of 30%. In the instant case, the petitioner had not put in two years of continuous service despite the fact that he had opportunity to do so. His absence from duty automatically dis-entitled him for the incentive marks announced, though the petitioner has worked in the Rural Area. However, he cannot be deprived of the chance of being merit listed, at least, as a non-service candidate. His absence from service would only dis-entitle him from being awarded the incentive marks, but, if it is possible for him to compete with the other candidates as a non-service candidate, he should, at least, be included in the merit list.

13. In view of the above, this Court is of an opinion that as the counselling has already been commenced and is in progress, the first respondent/Secretary to Government, Health and Family Welfare Department, Government of Tamilnadu, is directed to treat the petitioner as the non-service candidate and include his name in the merit list based on the marks secured in the NEET PG 2019 Examination and permit him to take part in the counselling, which is under progress. The first respondent is also directed to complete the above exercise forthwith.

With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.
2. The Director of Medical Education,
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Kilpauk, Chennai - 600 010.
3. The Secretary/Additional Director of Medical
Education Selection Committee,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.

+1 cc to Mr.G.Veerapathiran, Advocate, S.R.No.34874

SSM(10/04/2019)

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