

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.24645 of 2018

1. Dr.G.K.Aarthy
 2. Dr.Divya
 3. Dr.S.Sudharsana
 4. Dr.Hema Prithya
 5. Dr.Murali Kannan
 6. Dr.Divya Barathi
- ...Petitioners

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
 2. The Member Secretary,
Medical Service Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Tenyampet,
Chennai - 600 006.
- Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to consider the representation of the petitioner dated 06.08.2018 for appointment to the post of Assistant Surgeon (General) within the time stipulated.

For Petitioners : Mr.M.Devaraj

For Respondents : Mrs.P.Rajalakshmi
Additional Govt. Pleader for R1
Mr.A.Vivek for R2

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to consider the representation of the petitioner dated 06.08.2018 for appointment to the post of Assistant Surgeon (General) within the time stipulated.

2. Mere submission of the representation would not confer any right on the writ petitioners to claim appointment to the post of Assistant Surgeon (General). All appointments to the post of Assistant Surgeon (General) must be done under the constitutional schemes and by following the recruitment rules in force. The writ petitioners participated in the process of selection. However, the writ petitioners were not selected.

3. The learned counsel for the writ petitioners states that there are certain irregularities in the process of selection. If so, the writ petitioners ought to have challenged the very selection itself. Contrarily, they cannot submit a representation and file a writ petition for a direction to consider the representation and appoint the writ petitioners to the post of Assistant Surgeon (General). The process of selection can be challenged, if there is any malpractice, corrupt activities, illegalities or irregularities. Only in the event of challenging the process of selection in any such acceptable grounds, relief can be granted even to direct the respondents to consider the representation. It is the precondition to issue such directions that the petitioner should establish a legal right. In the absence of any such legal right, no such direction can be issued.

4. Even in case of issuing such a direction by this Court under Article 226 of the Constitution of India, the same will lead to protracted proceedings and the issues are not settled. However, the High Courts are bound to settle the issues and not to grant a direction to consider the representation. Unless, the issues in relation to the irregularities and illegalities in the process of selection are settled, the circumstances would lead to filing of further writ petitions which would not serve the cause of justice. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred abundant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute.

5. In the present case on hand, the writ petitioners have not challenged the process of selection at any acceptable legal grounds. Under these circumstances, it is left open to the writ petitioners to challenge the process of selection, if there is any malpractice, corrupt activities, illegalities and irregularities.

6. With these observations, the writ petition stands dismissed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

kmm/mbi

To

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Member Secretary,
Medical Service Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Tenyampet,
Chennai - 600 006.

+1cc to Mr.M.Devaraj, Advocate SR.No.26912

+1cc to Government Pleader SR.No.26878

W.P.No.24645 of 2018

PA (CO)
GMY (03/05/2019)

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