

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019
CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.NO. 24215 OF 2019 AND
W.M.P.NOS.23986, 23988 & 23989 OF 2019

Dr.P.Niveditha

...Petitioner

versus

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Health and Family Welfare Departemnt,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Director of Medical Education,
Kilpauk, Chennai-600 010.

3. The Director of Public Health and Preventive
Medicine, No.359, Anna Salai,
Chennai-600 006.

4. The Director of Medical and Rural Health Service,
Chennai-600 006.

5. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.

6. Dr.Kanagashree I

7. Dr.Gomathy Sivakumar

8. Dr. Rekha A

9. Dr.Kannan K

10. Dr.Sasikumar N S

..Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 4th respondent Ref.47574/ E6/3/2013 dated 27/06/2018 culminating in the circular dated 24.05.2019 issued by the 2nd respondent and quash the civil medical list illegally allotted to the respondents No.6 to 10 and consequently allot the Civil Medical List number based upon the Seniority with regard to the date of regularization in service of the respondents No.6 to 10 or in the alternative direct the official respondents to take the

date of appointment as seniority for conducting the present transfer counseling.

For Petitioner: Mr.N.L.Rajah, S.C. for
Mr.V. Jayachandran

For Respondents: Mr.J.Pothiraj, Spl.GP-R1
Mr.V.Kadirvelu, Spl.G.P.-R2 to R4
Ms.C.N.G.Niraimathi for R5

ORDER

In fact, the issue involved in the present Writ Petition has been considered by this Court in a batch of similar Writ Petitions in W.P.Nos.21215 and 21216 of 2019, etc. and vide a Common Order in detail dated 14.08.2019, this Court has disposed of the Writ Petitions, which is extracted as under:

"1. The entire litigation has its present origin when the Government has issued G.O.(4D) No.2 Health and Family Welfare (A1) Department, dated 15.2.2019, sanctioning the posts Departments wise and Colleges wise as per the norms of the Medical Council of India in Tamil Nadu Medical Service including teaching posts in Directorate of Medical Education. The Government vide the said G.O., has taken a comprehensive decision in regard to streamlining of transfer/posting/promotion of Doctors belonging to various categories of posts of Medical Officers in the State of Tamil Nadu. The order was issued in supercession of its earlier orders governing the field. Pursuant to the said Government Order, a Circular was issued on 24.5.2019 by the Directorate of Medical Education in regard to Specialty transfer counselling for Medical Officers in the cadre of Assistant Professor/Senior Resident/Tutor/Junior Resident who are under the control of the Directorate of Medical Education in Tamil Nadu Medical Service. The counselling was scheduled to be held between 30.05.2019 and 06.06.2019. The Circular issued various instructions for transfer counselling as under:

"Instructions for Transfer Counselling:

1. Deans and Heads of Medical Institutions under the control of the Directorate of Medical Education are hereby requested to circulate this to all the Medical Officers working under their control.
2. The Medical Officers those who have been identified as excess of posts sanctioned

in concerned institutions as per G.O. cited above and whose names have been furnished in the Annexure II have to attend this transfer counselling without fail. Otherwise the appropriate posting order will be issued based on the available vacancies.

3. The Medical Officers whose names are not found in Annexure II but willing to move out from present station may also attend this transfer counselling.
4. The Deans/Heads of the Institutions has to prepare the Service particulars for the Medical Officers as furnished in the Annexure III duly attested by the HOI and it has to be handed over to the Medical Officers concerned who is attending the transfer counselling. The formats necessarily need to be certified for its veracity by the personnel of the Office (Assistant, Office Superintendent, Junior Administrative Officer/Administrative Officer) and by the Dean/Head of the Institution concerned.
5. No Medical Officers will be considered for Transfer counsellings without Certified Service Particulars duly attested by the HOI.
6. Counselling is subject to availability of the vacancies in that particular specialty on the day of counselling.
7. The Medical Officers should report at this Directorate one hour before the scheduled time.

Note: Transfer counselling for Medical Officers from other Directorates and posting counselling for service Post Graduate will be conducted shortly."

2. The Doctors who were aggrieved by the above Circular have filed number of Writ Petitions before this Court, challenging the Circular on various grounds. This Court, while entertaining the Writ Petitions at the beginning, has granted interim orders of injunction, restraining the respondents from proceeding further with the counselling in respect of the individual Writ Petitions, by passing first of its order on 04.06.2019. Thereafter, a spate of Writ Petitions came to be filed by the so-called aggrieved Doctors with

varied prayers, but touching upon the present transfer counselling to happen in pursuance of the Circular dated 24.5.2019. All the Writ Petitions were entertained and notices were ordered and the interim orders were also passed in several of those Writ Petitions. In the result, the entire exercise of transfer/posting/promotion counselling came to be stalled from the date when initially the order of interim injunction was granted by this Court on 04.06.2019. When the Writ Petitions were taken up for hearing, subsequently several learned Senior counsels and learned counsels appeared on behalf of the writ petitioners and on behalf of the respondents herein, learned Advocate General appeared.

3. During the course of arguments, the learned counsels appearing for the writ petitioners pointed out several lacunae in the present counselling to be undertaken by the Government and strong objections were raised in regard to the fairness of the counselling exercise to be conducted by the Government in pursuance of the Circular impugned. In fact, one of the learned counsels who appeared in a batch of Writ Petitions, thus, suggested formation of a Committee of independent persons/retired officials of the Government. The suggestion was forwarded to the Government by this Court, but in response to the same, the Government has expressed its inclination to form a Committee by the serving officials of the Government who are in the know of things, who can be part of the Committee.

4. On the basis of the above suggestion which was also acceptable to all the learned counsels appearing for the petitioners, this Court, vide order dated 31.07.2019 has directed to form a Committee comprising the following members, viz.,

1. Dr.P.Umanath, I.A.S.,
M.D., TNMSC
2. Dr.Senthilraj, I.A.S.,
P.D.TANSACS
3. Director of Medical Education
4. Director of Medical and Rural Health Service.

5. This Court, having considered the above, passed a detailed order on 31.07.2019 as under:

This Court, vide its earlier order

dated 18.07.2019, directed the Government to consider the suggestions for appointing independent persons to constitute a Committee suggested by the learned counsels appearing for the petitioners in some of the writ petitions. In response to the direction, today, the learned Advocate General appearing on behalf of the Government, would submit that by letter vide Ref.No.26844/B1/2019-1, dated 24.07.2019, the Government has come forward with a suggestion of having the following Members in the Committee who are serving Officers of the Government, viz.,

1. Dr.P.Umanath, I.A.S.,
M.D., TNMSC
2. Dr.Senthilraj, I.A.S.,
P.D.TANSACS
3. Director of Medical Education
4. Director of Medical and Rural Health Service

2. In effect, the Government has not inclined to constitute a Committee comprising with independent Members as suggested by the learned counsels for some petitioners.

3. The learned Advocate General would submit that as per the suggestion, the Government in the aforementioned letter, is inclined to constitute a Committee and the said Committee may be directed to receive the objections/suggestions of the Doctors/Associations across the Board and formulate broad guidelines to be followed for effecting postings/promotions/ transfers of Doctors to various hospitals in Tamil Nadu. In this regard, the Committee would hear the grievances of all the stakeholders concerned from 01.08.2019 till 6.08.2019 during fixed hours to be notified on the Health Department website, i.e. 'www.tnhealth.org'. After completion of the exercise of hearing the concerns of the Doctors concerned, the Committee would formulate necessary guidelines to be followed for the present counselling exercise to be undertaken in the State of Tamil Nadu for effecting postings/promotions/transfers of Doctors. The formulated guidelines can be placed

before this Court on the next date of hearing and any further submissions of the learned counsels for the parties can be heard and orders can be passed by disposing of all the pending matters, in order to enable the Government to go ahead with its exercise.

4. At this, Shri N.L.Raja, learned Senior Counsel and other counsels have submitted that the Committee's guidelines to be formulated on the basis of various inputs to be given by the Doctors/Associations be placed before this Court so that any objections in regard to such formulation of guidelines, could be pointed out and if necessary, rectified and thereafter, this Court can pass any orders as it deems fit in the circumstances of the case.

5. Shri K.M.Vijayan and Shri M.C.Swamy, learned Senior Counsels and few other learned counsels have also made submissions by contending that the Doctors who have no objection for the present counselling initiated by the Government, may be allowed to participate in the counselling regardless of the above exercise to be undertaken by the Committee as suggested by the learned Advocate General. However, this Court is of the view that such request need not be considered at the moment for the simple reason that the Committee is to be directed to look into the entire issue afresh and also is directed to come up with comprehensive guidelines by addressing various concerns and grievances of all the stakeholders and in such event, it may not be advisable to permit one set of Doctors to participate in the present counselling initiated by the Government, as that would further precipitate the issue on hand.

6. In the said circumstances, this Court is of the considered view that the Committee as suggested by the Government comprising the Members, viz., Dr.P.Umanath and others as mentioned above, shall be constituted and the Committee is directed to notify the timings and place of its sitting on the following days, viz., from 01.08.2019 to 06.08.2019 and shall receive all

objections/suggestions from all the stakeholders, Doctors/Associations in regard to the postings/promotions/ transfers of Doctors and on completion of such exercise by 06.08.2019, the Committee shall formulate broad guidelines and submit the same to this Court for further orders to be passed in the matter. The Committee, in the course of hearing, shall take into consideration of the legitimate grievances of the Doctors/Associations across the Board and shall strive to arrive at parameters to be adopted, leaving no room for serious objections further from any quarters. The Committee shall also prepare a report after formulation of the guidelines and submit the same before this Court on the next date of hearing."

6. As per the above direction of this Court, and on constitution of the Committee, the Committee received objections from all stakeholders and when the matters were listed on 7.8.2019, a detailed Report of the Committee was also made available to this Court and the copies of the same were also furnished to the respective learned counsels appearing for the various writ petitioners.

7. When these matters are taken up for hearing today, the learned counsels appearing for the writ petitioners who were aggrieved by the impugned action of the Government, had expressed certain reservations about the overall recommendation of the Committee and pointed out certain areas which need to be rectified and recommendations need to be altered or modified.

8. Along with the aggrieved individual Doctors, there were also Writ Petitions filed by the Doctors who were in fact, not affected by the present counselling exercise and they want the counselling to go ahead as their participation in the counselling is being affected by intervention of this Court. According to the learned Senior Counsels, Shri K.M.Vijayan and Shri M.C.Swamy and few other learned counsels who represented the Doctors who have no objection in regard to the present counselling exercise, unnecessarily their participation in the counselling has not been taken forward by the Government in view of the interim

orders passed by this Court. In fact, the learned Senior Counsel, Shri K.M.Vijayan would submit that many of the specialty disciplines are not covered under the present challenge by the so-called aggrieved Doctors and yet, even those transfer/posting/promotion of those categories of specialty disciplines has also been deferred and withheld.

9. According to the learned Senior counsel, as many as 1400 Doctors have participated in the counselling before the interim order could be passed by this Court and their claims are completely not linked to the present challenge by the so-called Doctors. In substance, these learned counsels would submit that they have no problem with the present counselling and therefore, would impress upon this Court to vacate the interim orders passed by this Court so that further course of action would be taken forward by the Government in pursuance of the counselling already held up till the date of interim order passed by this Court.

10. The learned Advocate General who appeared on behalf of the respondents would submit that the Committee which was constituted under the directions of this Court, has invited as many as 224 objections from various Doctors Associations and on consideration of all the objections and after much deliberation, the Committee has made recommendations as found in the Report, which are extracted hereunder:

"Recommendations:

After deliberating all these issues, the Committee took note of the details placed before it by Director of Medical Education and Director of Medical and Rural Health Services. It has received 224 written submission from various stakeholders. The petitioners involved in writ petitions and representatives from various Government Doctors Associations have been personally heard and their suggestions/views for improving the current HR Management were also discussed. After considering the representations as well the views of the Head of the Directorates, compliance with MCI norms and the needs of our public health system for proper delivery of specialist care, the Committee makes the following recommendations for the

consideration of the Government.

1. Considering that the number of posts for which the promotion orders are to be issued and counseling need to be conducted is disproportionately very high with reference to the number of posts under disputes and a large number of doctor have been deprived of promotion, the committee recommends the Government to ensure that counselling process goes ahead with reference to such remaining posts. This would ensure that 95% of qualified doctors whose posts and qualifications are not in dispute would get the promotions and above that the patients visiting Government hospitals get adequate care. The Government may impress on the relevant judicial fora on the significance of this issue and its critically in ensuring the completion of this exercise.

Hence the Committee herewith recommends that the promotion order may be issued for the post of Professors in the following specialties; Anesthesia, General Surgery, Orthopedics, Urology and Dental Surgery; and the promotion orders for the post of Associate Professor in the following specialiites. Cardiothoracic Surgery, ENT, Neuro Surgery and Vascular Surgery

without affecting the writ petitioners involved in above those specialties. The resultant vacancies have to be estimated for feeder categories i.e., Associate Processors and Assistant Professors and fresh counselling may be conducted to above said specialties.

2. With reference to the claims of

* doctors who have not qualified any specialty but occupying posts in such domain

* doctors who have only a Diploma but occupying a particular for which PG Degree is preferred and is available

* doctors who have a PG Degree but insisting on working in some other specialty of his choice.

The Committee recommends that such claims are surely not in public interest as well the interest of State Government as per the relevant regulatory requirements under MCI. The Committee requests the government that such claims that doctors should not be disturbed even if they are

not qualified to occupy a post should not be entertained since this would be detrimental to public health system.

3. With reference on the claims of Diploma qualified doctors, who have served a specialty in the absence of PG Degree qualified candidates, the Committee recommends that DME should ensure that they are give 1st preference in any post in that domain like Senior Resident in the same specialty in the same station provided that the same is not claimed by the PG Degree qualified doctors in the same specialty. In Case of claims by Pgs, that specialty Srs are to be allotted in the ration of 50:50 for this year. Also considering their contribution for the posts of JR in such institutions or posts which not require any additional qualification in addition to MBBS, the Diploma graduates may be give the first preference over and above any other category.

4. On the issue of the dispute between service Pgs and new recrutiies by the MRB, the committee felt that this needs to be resolved by ensuring the following:

a. Considering the fact that MRB/Bond hold service PG have already put in teaching experience in their domain, it may not be possible to evict them from their existing position and show then as vacancy to service Pgs. However, if any of them fall under any of the category mentioned in Para (2) above, they will be transferred and they may be allotted in counseling.

b. Since the service candidates come out on a fixed time frame each year, filling up of vacant posts should be done only 3 months prior to the passing out date of service PGs, not later than 28th of February. Subsequent arising vacancies should be filled up only by service candidates.

c. The MRB should structure its recruitment schedule in such a way that its selection process and fresh graduates joining in Government service should be schedules after the service candidates counseling is over as per the recommendations (a) above.

d. In no situation a post should be kept vacant for more that 3 months in anticipation of any PG

Candidates coming out since it will lead to a situation of posts being pre-booked and kept vacant, thus comprising patient care.

e. Whenever MRB walk-in candidates are being selected under the justification that sufficient candidates are not available in the specialty, it shall be ensured that they will be posted only in vacancies in their specialty.

5. Although the general posts are do not require additional qualification over MBBS, the Committee concludes that 2 specialties with Diplomas in Anesthesia and Ortho have significant skills, which can take care of casualty operations better than other specialties. Hence, it is recommended that priority shall be given to D.A and D Ortho in such posts, over other specialties as well as only MBBS qualified doctors in teaching hospitals, after fulfilling the needs of non teaching institutions.

6. The Committee requests the DMS to expedite the process of resolving disputes on CML seniority and allot CML number on any pending requests. In the meanwhile it is recommended that such requests of CML Seniority where the issue is of pure administrative nature and not due to the fault of individual, the concerned doctor may be allowed to take part in the counselling next to CML allotted doctor who have joined immediately prior to doctor who has raised the issued.

7. On the compliance with G.O.131, the Committee is of the opinion is that the relevant G.O would not be applicable to this particular counselling, since it is being undertaken after once in a life time restructuring exercise. However, the same should be followed in the regular promotion posting counseling from the next year.

8. On the either of conflict between CML seniority and teaching experience, which is arising due to non-drawing of panels in the intervening years, the Committee recommends that the process which has already happened need not be interfered with, since such change would lead to a fresh batch of litigations and would further delay the process. However, the Committee recommends that all the annual panels shall be drawn every year based on individual specialty

wise seniority and in case panels of different years are clubbed due to unavoidable reasons, such panels should specify candidates with year wise empanelment and seniority by the corresponding panel year. This would ensure that the ones who were qualified in the earlier panel get the opportunity first.

9. In the certain specialties, it is observed that there are more number of PG qualified Medical Officers are available against the sanctioned posts of Assistant Professor/Senior Resident as per the G.O.2. For such specialties all sanctioned posts of Assistant Professors/Senior Residents may be considered as vacant and counseling be conducted afresh. While conducting the counselling for restructuring the post of Assistant Professor, Medical Officers may be allowed to take part in the following order of preference.

1. Medical Officer qualified with PG degree in that particular specialty working under DME based on CML seniority

2. Medical Officer qualified with PG degree in that particular specialty working under DMS based on CML seniority

3. Service Post Graduates with PG degree based on CML seniority

4. Non Service Bond Candidates with PG degree. For restructuring the post of Senior Resident, available vacancies may be filled with both PG Degree qualified and PG diploma qualified in that Particular specialty in 50:50 ratio and Medical Officers may be allowed to take part in the following order of preference.

1. Medical Officer qualified with PG degree/diploma in that particular specialty working under DME based on CML seniority

2. Medical Officer qualified with PG degree/diploma in that particular specialty working under DMS based on CML seniority

3. Service Post Graduates with PG degree/diploma based on CML seniority

4. Non Service Bond Candidates with PG degree/diploma."

11. In fact, the learned Advocate General has taken this Court through the recommendations in detail and would submit that the Committee has done thorough job in formulating the broad guidelines

for the purpose of guidance in order to complete the exercise of counselling initiated by the Government in pursuance of the impugned Circular. This Court has gone through the recommendations and find that the Committee has considered the objections of the Doctors objectively by taking into consideration the ground realities in the matter of transferring, posting and promoting the Doctors belonging to different posts/categories with a paramount view of upholding the interest of patient care. From the recommendations, as found in the Report of the Committee, this Court finds that the Committee has come up with equitable criteria which cannot be faulted with by giving undue consideration to certain individual grievances of the Doctors.

12. According to the Committee's Report, this is the first time such revamping exercise has been done in the Medical Administration of the State in line with the norms fixed by the Medical Council of India. When such exercise is undertaken in order to overhaul the cadre restructuring in the Medical Service, it may give rise to certain teething issues/problems. But such problems cannot be magnified by the so-called aggrieved individual Doctors in order to stall the entire process of the counselling for this year. Any exercise of restructuring of cadre and revamping of the Medical Administration, the effect of revamping or restructuring will always affect a miniscule group of individual Doctors, but that by itself cannot give rise to challenge by those individual Doctors and seek to derail the entire process of counselling exercise to be undertaken by the Government for this year. In fact, as per the Report of the Committee, 95% of the qualified Doctors whose posts and qualifications are not in dispute, would get promotions. In fact, this conclusion by the Committee has been emphasized by the learned Advocate General and he would submit that the aggrieved percentage of the Doctors in the State is only 5%. Therefore, at the instance of such a wafer-thin group of Doctors, the transfer/posting/promotion of the Medical Officers cannot be kept in abeyance.

13. While making submissions, the learned Advocate General has submitted that in regard to recommendation (6), the Committee appears to have identified a grey area in respect of settlement of CML seniority. The Committee itself has opined that the Directorate of Medical Education is to be

expedited to resolve the dispute and till such resolution is found, the learned Advocate General would submit that for the present counselling, the Doctors, whose rankings have been assigned by the Recruiting Agency, if they have not chosen to join duty within a reasonable period of time due to their pursuing higher specialty education, their date of joining can be the basis for consideration for transfer/posting/promotion for the present year. In fact, the learned Advocate General would submit that the seniority list ought not to have a bearing on the present counselling, but according to him, unfortunately, the same has been made as an issue in certain Writ Petitions. In any case, this Court accepts the submissions made by the learned Advocate General that the Doctors who have not joined duty due to their pursuit of higher education within a period of six months, their seniority need not be restored on the basis of their ranking assigned to them by the Recruiting Agency and this observation of this Court can hold good only for the present counselling as the Committee has recommended that it is entirely within the domain of the Government to expedite the process of resolution to the dispute in respect of settlement of CML seniority of the Medical Officers.

14. Mr.G.Sankaran, learned counsel appearing for the respective petitioners in many of the Writ Petitions, would submit that there are pitfalls in over all recommendations of the Committee and he attempted to draw the attention of this Court to various objections filed in response to the Report submitted by the Committee. However, this Court did not wish to be dragged into individual controversies as that would be beyond pale of the consideration in class litigation like this. This Court is of the view that in regard to the individual grievances regarding assignment of seniority, whether it should be based on the specialty wise, station wise, etc., can be looked into by this Court only when challenges are made individually and adjudicated upon by this Court on the basis of factual matrix of each case. Since this Court is presently called upon to find out an equitable solution which persuaded this Court to appoint the present Committee comprising serving officials of the Government, the Report of the Committee has to be acted upon atleast for the present counselling exercise if not for future counselling which may depend upon the final call to be taken by the Government. Therefore, in

case any writ petitioner for whom, Mr.G.Sankaran, learned counsel is appearing, having any individual grievance, the same can always be projected after the implementation of the Committee's recommendations towards the conduct of counselling for the present year. It is pertinent to note that while dealing with such batch of litigations, the paramount consideration of this Court should be the public interest, namely, patient care in the State. In such view of the matter, the perceived individual grievances of the Doctors have to be pushed to the back-burner and public interest must be allowed to prevail. At the same time, when an individual being aggrieved by any action of the State, it is always open to him to agitate his right before this Court. But it is certainly not open to few individual Doctors to stymie the entire process of counselling which will undermine and affect the entire Medical Administration of the State. In fact, some of the learned counsels who are in agreement with the present counselling exercise, have submitted that the Report also recommends for promotion orders to be issued in certain specialities which are not covered by the challenges in the Writ Petitions. However, this Court feels that such considerations may not be necessary for this Court since this Court is of the considered view that the present counselling exercise need not be stalled any further and the Government ought to be allowed to pursue with the counselling for the present year and complete the same. Any individual grievances of the Doctors concerned, can always be projected in an appropriate forum and reserving such liberty to those Doctors who may still be aggrieved by the recommendation of the Committee, this Court is of the view that the interim orders passed in the Writ Petition which held up the counselling exercise for the present year, need not continue further. Accordingly, all the interim orders passed by this Court, stand vacated. Consequently, the Contempt Petition is closed. The respondents/authorities shall forthwith recommence the counselling exercise for the present year and complete the same on the basis of the recommendations of the Committee within a period of three weeks from the date of receipt of copy of this order.

15. As far as the Doctors who already participated in the counselling are concerned, who were not affected by the challenges, consequential

orders were not issued in view of the interim orders passed by this Court. It is now open to the respondents/authorities to go ahead and issue appropriate consequential orders.

16. In the result, all the Writ Petitions are disposed of as indicated above. No costs. Consequently, connected WMPs are closed.

2. Since the present Writ Petition and the issue involved therein is also similar to the above said batch of Writ Petitions, the above said order passed therein will hold good in respect the present Writ Petition also. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected WMPs are closed.

Suk

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare Departemnt,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Director of Medical Education,
Kilpauk, Chennai-600 010.

3. The Director of Public Health and Preventive
Medicine, No.359, Anna Salai,
Chennai-600 006.

4. The Director of Medical and Rural Health Service,
Chennai-600 006.

5. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.

+1cc to Mr.Jayachandran, Advocate, SR.No.71974

W.P.No.24215 of 2019

Kak(09/09/2019)