

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2020

PRONOUNCED ON: 25.09.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.10868 of 2020 and
W.M.P.No.13189 of 2020

Dr.P.Vijila

... Petitioner

-Vs-

1 The Secretary to Government
Health and Family Welfare Department
Secretariat, Fort St.George Chennai.

2 The Director
Directorate of Medical Services Chennai.

3 The Director of Public Health
and Preventive Medicine Chennai - 6.

4 The Secretary
Medical Recruitment Board Chennai - 6.

5 The Secretary of Selection Committee
Office of the Director of Medical Education
Kilpauk Chennai - 10.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to regularise the services of the petitioner as Assistant Surgeon with effect from 2013 in the light of the petitioners successfully clearing the 2013 examination conducted by the fourth respondent viz. Medical Services Recruitment Board with all attendant benefits and further direct the respondents to consider the petitioner for admission to the post graduate degree courses under the service quota.

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For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.V.Kathirvelu,
Special Government Pleader - for R1to 3&5
Mr.M.Loganathan - for R4

O R D E R

The matter was taken up through Web-hearing.

2. The petitioner is a doctor who completed her M.B.B.S., in 2009 and later acquired P.G.Diploma Certification in D.G.O. She belongs to SC community. In April 2013, on the basis of her qualification she was appointed as Assistant Surgeon (Speciality) under Non-service quota and posted to work at the Government Hospital, Srirangam in Trichirapalli. She reported for work on 09.05.2013 at the said hospital and has been working as Assistant Surgeon since then.

3. In May 2013, for the first time the Medical Recruitment Board, the fourth respondent herein conducted examination for recruitment and regularisation of the Assistant Surgeons who were temporarily appointed without regular selection. The petitioner herein admittedly participated in the examination and after being successful, her name was also included in the provisional list by the fourth respondent Board in its proceedings dated 12.06.2013. After the publication of the provisional list, she was directed to appear for certificate verification by the Board on 28.06.2013. According to the petitioner, at that time she was in the advanced stage of pregnancy and she had deputed her husband Dr.Vijay to appear before the fourth respondent Board with necessary certificates and documents required by the Board. According to the petitioner, she had also addressed a letter explaining her absence during the time of certificate verification. The husband of the petitioner claims to have appeared before the fourth respondent Board on the stated date and time and on such verification, he was informed that suitable orders would be issued in due course of time.

4. According to the petitioner, thereafter nothing was heard from the Board and whenever the Board was enquired about, she was informed that her case would be considered for regularisation. Finally she was informed on 08.08.2017 that the regularisation of her service as Assistant Surgeon was not possible as her name was not sponsored by the fourth respondent Board. The petitioner was at a loss to understand as to why the fourth respondent had not forwarded her name for regularisation despite

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her selection in the competitive examination.

5. The petitioner's case is that after 2013 examination, another examination was conducted in 2016, several of the petitioner's juniors appeared in the said examination and their services came to be regularised thereafter. In the absence of regularisation of service, the petitioner is not able to avail the benefit of service quota when she appeared for the NEET Post Graduate examination held in 2019. In the said circumstances, the petitioner is before this Court.

6. Notice was issued to the respondents and Mr.M.Loganathan entered appearance for the fourth respondent and a counter affidavit was filed. In the counter affidavit, it has been specifically stated in paragraph 5 that in the certificate verification held on 28.06.2013, the petitioner had not attended and in her absence, the eligibility of the petitioner as Assistant Surgeon (Speciality) could not be assessed. In effect, in the counter affidavit it is stated that no-one appeared on behalf of the petitioner in the certificate verification. However, this statement of fact has been specifically denied on behalf of the petitioner.

7. In the counter affidavit it is further stated that in the subsequent examination conducted in 2016, which is termed as Special Qualifying Examination, though the petitioner had applied for her participation, ultimately she did not appear in the examination. In the said circumstances, the petitioner's case for regularisation could not be taken up by the competent authority.

8. By way of reply affidavit, the petitioner replied to the counter affidavit. The petitioner stated that every year vacancies arise in the petitioner's speciality and several vacancies could not be filled up. In the reply, it is further specifically denied that during the certificate verification, the petitioner was not represented. In fact it is averred in the reply statement that from 2013 till date she was never informed about her absence during the certificate verification held immediately after 2013 examinations. It is also averred that from 2014 to 2020, in view of paucity of qualified hands of the petitioner's speciality purely on the basis of walk-in interview, the vacancies were filled up on the basis of mere certificate verification. Even after the walk-in appointments, there were still 150 vacancies available as on date and in order to tide over the situation, the Government has issued a Government Order dated 29.07.2020 to regularise all those Assistant Surgeons (Speciality) who were recruited through walk-

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in interviews even without subjecting them to any qualifying examination.

9. As far as the case on hand is concerned, the petitioner herein stands in a much better footing than the doctors who were recruited through walk-in interview method from 2014 to 2020 as she has participated in the competitive examination held in 2013 and had come out successful.

10. While the matter stood thus, the learned counsel for the fourth respondent would submit that on 18.09.2020 the petitioner was called for certificate verification and her certificates were verified and the matter would be taken forward accordingly.

11. At this, the learned counsel for the petitioner Mr. Vijay Shankar would submit that the above narrative would demonstrate that the petitioner's claim for regularisation has been unjustly denied all these years. If really there was no representation on her behalf during the certificate verification held on 26.06.2013, the petitioner could have been informed all these years. Therefore, he would submit that there was something amiss about the non-communication of her absence during the certificate verification in 2013. The very fact that she is now called for certificate verification would strengthen the claim of the petitioner that she is entitled to be regularised from the date of her appointment.

12. Learned counsel would submit that in the subsequent examination conducted in 2016 the petitioner did not choose to appear since she had already cleared the competitive examination in 2013 itself and the question of again participating in the Special Qualifying Examination held on 20.11.2016 did not arise. The learned counsel would further submit that in view of the huge backlog vacancies in the Speciality of the petitioner, all the norms have been relaxed for regularisation of the doctors in the speciality of Obstetrics and Gynaecology (O.G.), and in which case the petitioner's case has to be placed on a better pedestal than others who are recruited through walk-in interview and who are being regularised without even subjecting them to qualifying examination in terms of the latest Government Order dated 29.07.2020.

13. Considered the submissions of the learned counsel appearing for the parties. The fact of the matter is now the petitioner has been subjected to certificate verification on 18.09.2020 and according to the learned counsel for the fourth respondent, further action would be initiated towards regularisation of the petitioner's service. According to the

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learned counsel, the fourth respondent herein has to take a call on the ultimate prayer of the petitioner.

14. In consideration of the above development, the fourth respondent is directed to sponsor the candidature of the petitioner pursuant to the certificate verification held on 18.09.2020 and on the petitioner being sponsored by the fourth respondent, the first respondent is directed to pass appropriate orders granting regularisation of the petitioner as Assistant Surgeon (Speciality) on par with the benefit of regularisation granted to other similarly placed doctors whose services have been regularised in pursuance of 2013 competitive examination conducted by the fourth respondent Board.

15. The above direction is issued by taking into account the facts as narrated above and also the admitted position being that the petitioner was successful in the 2013 competitive examination and was denied regularisation only because of the non-verification of her certificates by the fourth respondent. The first respondent is directed to pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

16. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

- 1 The Secretary to Government,
Health and Family Welfare Department
Secretariat, Fort St.George Chennai.
- 2 The Director, Directorate of Medical Services Chennai.
- 3 The Director of Public Health and Preventive Medicine
Chennai - 6.
- 4 The Secretary, Medical Recruitment Board
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MP (CO)

CB(06/11/2020)



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