

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.35421 of 2019

Sudha

Petitioner

vs.

1. The Secretary,
Medical and Health Department,
St. George Fort,
Chennai - 9.
2. The Director,
Medical and Rural Health Services,
DMS Campus,
Thenampettai, Chennai - 600 006.
3. The Director,
Director of Medical Education,
Poonthamalli High Road, Kilpauk,
Chennai - 10.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to include the petitioner's 2 years Post Basic B.Sc., course period should be construed as the petitioner service period and to be regulated as extraordinary leave with salary.

For Petitioner : Mr.R.K.Gandhi

For Respondents: Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

ORDER

This writ petition has been filed for issuance of writ of mandamus directing the respondents to include the two years Post Basic B.Sc., Course undergone by the petitioner as a service period and grant other consequential benefits.

2.The case of the petitioner is that she was appointed as staff nurse on contract basis at Government Mental Health

Hospital, Kilpauk, Chennai and her services were regularized by the 2nd respondent from 15.06.2006. The further case of the petitioner is that, she got permission from the 2nd and 3rd respondent to study Post basic B.Sc., (Nursing) course and she underwent the course during the period 2014-2016. The petitioner was able to get seat only in a private nursing college. According to the petitioner, this course is available in two Government Colleges and 66 private Nursing Colleges and since the petitioner did not get seat in the Government College, she had joined a private Nursing College and permission was duly granted by the 2nd and 3rd respondents. According to the petitioner, respondents are treating the course period of two years as service period insofar as those candidates who joined Government Colleges. Insofar as the candidates who joined private Colleges, they are not eligible for salary/other service benefits for the study period on par with other service candidates studying in Government Medical Colleges. The Government in G.O.Ms.No.63, dated 07.03.2017 took into consideration the request made by certain candidates and the relevant portions in the Government order is extracted hereunder:

2.The Medical Officerts in Tamil Nadu Medical Service (Service Candidates) undergoing Post Graduate Degree/Diploma/M.Ch.Super Specialty Courses from the year 2013-2014 and 2014-2015 in Self Financing Institutions, selected through Selection Committee/Single Window System have represented that they are working in various Government Medical Institutions under various Directorates and are selected for undergoing Post Graduate Degree/Diploma/M.Ch.Super Specialty Courses for the year 2013-2014 and 2014-2015 in Self-financing Private Medical Colleges, through Selection Committee/Single-Window system. As per clause 53 in the Prospectus for admission in Post Graduate Degree / Diploma / M.Ch.Courses, they are not eligible for study leave and as such they are not eligible for salary/other service benefits for their study period on par with other 'Service Candidates' studying in Government Medical Colleges. They have, therefore, requested the Government to grant study leave as per rule 84 of the Tamil Nadu Leave Rules and sanction of salary/other service benefits on par with other service candidates undergoing Post Graduate Degree/Diploma/M.Ch.Super Specialty Courses in Government Medical Colleges. They have also stated that they are willing to work till their superannuation after completion of their courses by way of signing bond.

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4.The Government have examined the request of the Medical Officers who are undergoing Post Graduate Degree / Diploma / M.Ch.Courses in Self Financing Institutions, on selection through Selection Committee/Single Window System along with the recommendation of the Director of Medical Education and ordered as follows:

To treat the study period of the 29 Medical Officers in Tamil Nadu Medical Service undergoing Post Graduate Degree/Diploma/M.Ch.Courses from the year undergoing Post Graduate Degree/Diploma/M.Ch.Courses from the year 2014-2015 in Self Financing Institutions as "On Duty" for the purpose of salary, with retrospective effect from the year of joining by creation of 29 supernumerary posts from the year 2013-2014 (approximate annual expenditure - Rs.1.80 crore (Rupees One Crore Eighty Lakh Only) per annum and creation of 82 supernumerary posts from the year 2014-2015 (approximate annual expenditure - Rs.4.92 crore (Rupees four Crore Ninety Two Lakh Only) per annum subject to the following conditions:

- i. They should work in the Government till their superannuation after completion of their Post Graduate Degree / Diploma / M.Ch.Courses and an undertaking in this regard be obtained from them.
- ii. The stipend received by the candidates from the respective institutions has to be deducted from the salary to be disbursed.
- iii. To obtain an undertaking from the candidates that they will not approach any court demanding reduction in fees in case of Annamalai University after getting salary and duty benefit and
- iv. Any future increase in fee as fixed by the fee Committee or Annamalai University will be met only by them.

5.The expenditure towards pay for the posts created in Para 4 above shall be debited to the following Head of Account

"2210-Medical and Public Health-05 Medical

Education, Training and Research-105-
Allopathy-I-Non-Plan-AA Chennai Medical
College-01-Salaries"

(DPC 2210 05 105 AA 0103)

6.The expenditure sanctioned in Para 4 above shall constitute an item of "New Instrument of Service" and the approval of Legislature will be obtained in due course. Pending approval of the Legislature, the expenditure may be initially met by drawal of an advance from the Contingency Fund. The Director of Medical Education is directed to calculate the actual amount required for the period up to next Supplementary Estimates and apply for sanction of the same as advance from the Contingency fund to Finance(BG.I) Department, directly in Form-A appended to the Tamil Nadu Contingency Fund Rules, 1963 along with a copy of this order. Orders for sanction of an advance from the Contingency Fund will be issued from Finance (BG.I) Department. The Director of Medical Education is requested to send necessary explanatory notes to include the above expenditure in the Supplementary Estimates for the year 2017-18 to Finance Department at the appropriate time without fail.

3.The petitioner, after joining the Self Financing College of Nursing, completed the course without salary and allowances for the entire course period for two years.

4.The grievance of the petitioner is that she has not been granted the benefit of salary or inclusion of the two years course period in the service record and according to the petitioner, the same is in violation of the above Government Order. The petitioner therefore, has given representations to the respondents on 30.07.2018 & 22.10.2019 seeking for inclusion of the two years course period as service period and also for the payment of salary during the course period on par with the staff nurse who had studied at the Government Colleges. Since, there was no response from the respondents, the present writ petition has been filed before this Court seeking for appropriate directions.

5.Heard Mr.R.K.Gandhi, learned counsel appearing on behalf of the petitioner and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing on behalf of the respondents.

6.Taking into consideration the facts and circumstances of the case and also the limited relief that has been sought for in this writ petition, there shall be a direction to the

2nd & 3rd respondents to consider the representations made by the petitioner dated 30.07.2018 & 22.10.2019 and gather the particulars and forward the same to the 1st respondent within a period of six weeks from the date of receipt of copy of this order. The 1st respondent, on receipt of the records from the 2nd & 3rd respondents, shall consider the request made by the petitioner strictly in accordance with G.O.Ms.No.63, dated 07.03.2017 and in accordance with law and pass appropriate orders within a period of six weeks thereafter. The petitioner is directed to make a fresh representation to the 2nd & 3rd respondents along with the copy of the earlier representations dated 30.07.2018 & 22.10.2019 and also a copy of this order.

7.This writ petition is disposed of with the above directions. No Costs.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ssr
To

1. The Secretary,
Medical and Health Department,
St. George Fort,
Chennai - 9.
2. The Director,
Medical and Rural Health Services,
DMS Campus,
Thenampettai, Chennai - 600 006.
3. The Director,
Director of Medical Education,
Poonthamalli High Road, Kilpauk,
Chennai - 10.

+lcc to the Government Pleader SR.447

+lcc to Mr.R.K.Gandhi, Advocate SR.27(25/02/2020)

CB(06/02/2020)

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