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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.20793 of 2021

Dr.N.Kayalvizhi
Assistant Surgeon
Government Leprosy Rehabilitation Promotion Unit
Tambaram Sanatorium, Chennai 600 047. .. Petitioner

-Vs-

- 1.The Secretary to Government
Ministry of Health an Family Welfare
Room No.348, 'A' Wing, Nirman Bhavan
New Delhi- 110 011
- 2.The Principal Secretary to Government
Health and Family Welfare Department
Secretariat, Fort St. George
Chennai-600 009.
- 3.The Director of Medical Education
Kilpauk, Chennai-600 010. .. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents pursuant to the petitioners representation to include the Dispensary at Oonamanchery Village located inside premises of the Tamil Nadu Police Training Academy in G.O.Ms.No.86 Health and Family Welfare (MCA-1) Department Dated 06.03.2019 under the classification of Rural Area to enable the doctors who have rendered services therein to avail 5 percentage of incentive / weightage marks per year for admission of Post Graduate Medical Degree / Diploma Courses for the year 2021-22.

For Petitioner : Mr.A.Ramesh, Senior Counsel
for Mr.G.R.Hari

For Respondents : Mr.P.Yuvaraj
Central Government Standing Counsel-for R1
Mr.A.Selvendran,
Government Advocate - for RR 2 and 3



O R D E R

This writ petition has been filed for the issue of a writ of Mandamus directing the respondents to consider the representations made by the petitioner, wherein the petitioner has requested to grant incentive marks for the services rendered by her in the dispensary located inside the Tamil Nadu Police Training Academy at Oonamanchery village, on the ground that it is in a remote / rural / difficult area.

2. The case of the petitioner is that she was posted in a primary health centre at Maraimalainagar and was working there till 2011. Thereafter she was transferred to the Government Hospital, Tambaram and she rendered her services as Assistant Surgeon till 2017. Thereafter, the petitioner was posted at a dispensary located inside the Tamil Nadu Police Training Academy at Oonamanchery effective from 08.04.2017. The petitioner worked there till 05.05.2021. Thereafter she has now been posted at the Government Leprosy Rehabilitation Promotion Unit, Tambaram effective from 06.05.2021 onwards.

3. The grievance of the petitioner is that the dispensary at Oonamanchery village located inside the Tamil Nadu Police Training Academy is in a rural area and it is virtually in the midst of a forest. According to the petitioner, the doctors who are practicing at the nearest Primary Health Centre at Kelambakkam are being given the incentive marks on the ground that it is situated in a rural area. However, the place where the petitioner was serving as a doctor is almost 14 Kms away from Tambaram. According to the petitioner, the closest bus stop from the dispensary is located 3 Kms away and therefore the dispensary is not only in a rural area, but must also be considered to be in a remote area. Therefore according to the petitioner, this dispensary must be brought within the category of a remote / rural / difficult area and the petitioner is entitled for the incentive marks.

4. The petitioner has been appearing in the NEET examination from the year 2019 onwards under the OBC category and she was not able to get the course that is desired by her. Therefore, if the dispensary where the petitioner was working is brought under remote / rural / difficult area, the petitioner will get the incentive marks and thereby she will stand a better chance to get the course that she desires. The petitioner was making various representations in this regard. Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

5. The third respondent has filed a counter affidavit. The affidavit explains the entire background upto the appointment of the Expert Committee pursuant to the orders



passed by this Court. This Committee was headed by Retired Justice A.Selvam and was assigned with the task of identifying the remote / rural / difficult areas. The Committee gave its recommendations to the Government. Accordingly, G.O.Ms.No.86 dated 06.03.2019 came to be passed. In the said Government Order, the criteria for identifying the place as remote / rural / difficult area and urban area was delineated. Subsequently, the Primary Health Centres were identified in these areas and the percentage of marks to be awarded as incentive was also fixed.

6. The happenings subsequent to the issuance of the Government Order is explained from Para 20 of the counter and the same is extracted hereunder.

"20. It is submitted that against the Government Order G.O.Ms.No.86 Dt.06.03.2019, various Writ Petitions in W.P.No.8071, 8254, 8318, 8474 of 2019 have been filed before Hon'ble High Court of Madras. As per the order of Hon'ble High Court of Madras in W.P.No.8071, 8254, 8318, 8474 of 2019 order dated 27.03.2019 are as follows.

"27.....(i).The impugned G.O.86, dated 06.03.2019, can be revisited by the Committee, if any representation has already been received or may be received on or before 31.05.2019 from the stakeholders.

(ii).Every stakeholder interested in the reclassification of the areas can submit their representations on or before the said date, i.e., 31.05.2019 before the said Committee.

(iii).The Committee is directed to consider all the objections received scrupulously and wherever changes are required, the same may be made in terms of the guidelines laid down by the Honble Supreme Court. The said exercise has to be completed on or before 31.07.2019.

(iv).The final report of the Committee and the consequential order may be put in the public domain. The intimation placing the same in the public domain shall also be published in popular English and Vernacular dailies immediately thereafter. This is to avoid eleventh hour challenge by the persons aggrieved, so that the litigious Doctors



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could find a solution one way or the other well in advance without causing much inconvenience to the Selection Committee at the wee hours. It is made clear that the reclassification, if any, made by the Committee and the Government will have no retrospective effect for the current Academic Year 2019-2020.

(v). Once the list is drawn and published, unless and otherwise, there is any development or improvement with respect to any particular area, which requires reclassification, the same may be continued for a period of at least three years.

21. Based on the Hon'ble High Court orders the notification has been published in leading dailies for calling representations from the stakeholders and accordingly 292 representations have been received for re-classification the areas for awarding incentive marks. Out of 292 representation, the committee consider all the representations and recommended only two representations for amendment in G.O.No.86 dated 06.03.2019. However the petitioner did not given any representation before the Hon'ble Justice A.Selvam Committee.

22. Based on the Committee report, the Government accordingly issued orders for necessary amendment in G.O.86, dated 06.03.2019 vide G.O.Ms.No.423 dated 26.09.2019. It is submitted that the petitioner's work location the Tamil Nadu Police Training Academy, Oonamanchery village does not mentioned in the Hon'ble Justice A.Selvam Committee report and also in G.O.86 dated 06.03.2019, G.O.Ms.No.423 dated 26.09.2019.

23. However the Committee constituted under G.O.Ms.No.536 had spent considerable time deliberating and identifying areas as remote / hilly / difficult etc., in their report. The incentive system needs to be viewed with reference to the factors like, the heavy workload, with a large number of patients to see and patients who require more care; improper housing and poor recreational facilities; professional isolation and difficulty in taking time off to prepare for examinations; few opportunities for continuing education; challenges in maintaining professional boundaries; security issues in rural areas; limited job opportunities for spouses; lack of



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educational institutions for children; and travelling distances for further education. Therefore, the importance of awarding these incentive marks cannot be underscored in any manner."

7. Heard Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner, Mr.P.Yuvaraj, learned Central Government Standing Counsel appearing for the first respondent and Mr.A.Selvendran, learned Government Advocate for the second and third respondents.

8. The specific case that has been put forth by the petitioner is that the dispensary that is located inside the Tamil Nadu Police Training Academy at Oonamanchery Village was not even taken into consideration when the exercise was undertaken by the Committee. Therefore, there was no occasion for the Committee to decide on the status of this dispensary. It is only for this purpose, the petitioner was making representations and the same did not evoke any response. A careful reading of G.O.Ms.No.423 dated 26.09.2019 shows that the Government has decided to maintain the same status for a period of three years from 2020-21 based on the places recommended by the Committee and published by virtue of the Government Order.

9. It is therefore clear from the above Government Orders that any addition / modification / deletion will happen only after the expiry of three years from 2020-21.

10. From the counter affidavit filed by the third respondent and on going through the Government Orders it is clear that the Government merely implements the recommendations made by the Committee. Therefore, even if representation is made to the Government, the same has to be necessarily placed before the Committee in order to enable the Committee to take a decision and thereafter based on the recommendation of the Committee, the Government will add the concerned dispensary / primary health centre etc., in the list of hospitals in rural / remote / difficult area. The Government cannot suo motu take a decision in this regard and add any hospital under this list.

11. In view of the above finding, there shall be a direction to the petitioner to make a fresh representation to the third respondent by giving the entire facts and materials and the justification for bringing the dispensary located inside the Tamil Nadu Police Training Academy at Oonamanchery Village under the rural / remote / difficult area category. On receipt of the representation, the same shall be placed before the Committee and the same shall be considered and a decision shall be taken by the Committee. Based on the decision taken by the Committee, the Government shall proceed further. If ultimately



the Committee identifies the dispensary to be located in a rural / remote / difficult area, the same shall be notified and in which case the petitioner will be entitled for the incentive marks. The decision shall be taken as expeditiously as possible. This writ petition is disposed with the above directions. No costs.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

KST

To

- 1.The Secretary to Government
Ministry of Health an Family Welfare
Room No.348, 'A' Wing, Nirman Bhavan
New Delhi- 110 011
 - 2.The Principal Secretary to Government
Health and Family Welfare Department
Secretariat, Fort St. George
Chennai-600 009.
 - 3.The Director of Medical Education
Kilpauk, Chennai-600 010.
- +2CCs to Mr.G.R.Hari, Advocate, SR.No. 53012
+1CC to The Government Pleader, SR.No. 53521

W.P.No.20793 of 2021

GSM(CO)
B.VC (27/10/2021)