



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

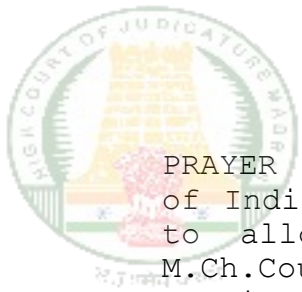
W.P.No.509 of 2022

Dr.D.Suresh

... Petitioner

Vs.

- 1 The Government of India
Rep. by its Secretary to Government
Ministry of Health and Family Welfare,
Room No348, A Wing Nirman Bhavan,
New Delhi- 110 011.
- 2 The Director General of Health Services,
Ministry of Health and Family
Welfare, Government of India, Room No. 348,
A Wing, Nirman Bhavan, New Delhi- 110 011.
- 3 The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Health and Family Welfare Department,
Fort St George, Secretariat, Chennai- 600 009.
- 4 The Director of Medical Education,
Kilpauk, Chennai- 600 010.
- 5 The Selection Committee,
Directorate of Medical Education, Kilpauk,
Chennai- 600 010.
- 6 The Medical Counselling committee,
Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India, Room No.348, A Wing,
Nirman bhavan, New Delhi.
- 7 The National Board of Examinations in Medical Sciences,
Medical Enclave,
Ansari Nagar, Mahatma Gandhi Marg (Ring Road)
New Delhi- 110 029.
- 8 The National Medical Council,
Rep. by its Secretary, Pocket 14 Sector 8
Dwaraka New Delhi- 110 077. ... Respondents



PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus, directing the Respondents to allocate 50 percent super Speciality seats in DM / M.Ch.Course in Government Medical Colleges in favour of in-service Doctors of Tamil Nadu for the Academic Session 2021-22 in pursuant to the orders passed in G.O. Ms. No. 462 Health and Family Welfare (MCA.1) Department dated 07.11.2020 in consideration of representation submitted by the petitioner dated 16.10.2021.

For Petitioner : Mr. P.Wilson, Sr.C for
Mr.G.Sankaran

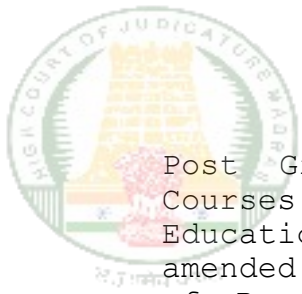
For Respondents: Mr.Pragadish, Standing Counsel
for RR-1, 2 & 6
Mr.C.Jayaprakash, GA for RR-3 to 5
Mrs.Subharanjani Anand, for R-8

O R D E R

This writ petition has been filed for a direction to the respondents to allot 50% super speciality seats in D.M./ M.Ch. Course in Government Medical Colleges in favour of in-service Doctors of Tamil Nadu for the Academic Session 2021- 22, pursuant to the orders passed in G.O. (Ms) No. 462, Health and Family Welfare (MCA.1) Department, dated 07.11.2020 in consideration of representation dated 16.10.2021 submitted by the petitioner.

2. The facts of the case are as follows:

The petitioner has completed MBBS course during the year 2013 and he was selected and appointed as Assistant Surgeon in Tamil Nadu Medical Service thorough MRB on 17.03.2015 and during the year 2020, he completed his post graduate course in M.S. (General Medicine) as in-service candidate. Subsequently, the petitioner was appointed as Assistant Professor (General Medicine) in Madras Medical College. The petitioner is aspiring for the admission to Super Speciality Course, viz., DM/M.Ch. course during the academic year 2021-22. In respect of State quota, 50% of seats were earmarked for in-service candidates. The Selection Committee conducted selection by way of preparation of two selection lists i.e. firstly, for in-service candidates and secondly, for open quota subject to the condition that in-service candidates are also entitled to compete in the open quota. However, as per the directions issued by the Ministry of Health and Family Welfare, Government of India, vide letter dated 04.05.2017, the Director General of Health services is the designated authority for conducting counselling for NEET in respect of super speciality courses (DM/Mch & NDB SS). The 7th respondent, vide its Notification dated 28.06.2019 authorised to conduct common counselling for admission to Super Speciality Courses and DM/M.Ch. courses from the year 2019 onwards. Admission to



Post Graduate Medical Courses including Super Speciality Courses are governed by Regulation 9 of Post Graduate Medical Education Regulations, 2000 (for short '2000 Regulations') as amended from time to time. With reference to scope and ambit of Regulation 9, orders have been passed by the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh Vs. Dinesh Singh Chauhan (2016 (9) SCC 749). Since the State Government denuded with power to frame regulations regarding method of admission to PG Medical courses as per the orders passed in Dinesh Singh Chauhan case, the question of allotment of preferential seats for in-service candidates for admission to PG Medical courses has been discontinued from the year 2017. Subsequently, in another case, another Three Judges Bench had referred similar issue and the Constitution Bench, in the case of Tamil Nadu Medical Officers Association & Ors. Vs. Union of India (2021 (6) SCC 568) for a decision as to whether the State has legislative competence to provide a separate source of entry for in-service candidates (Doctors) seeking admission to Post Graduate Medical Courses in exercise of powers under Entry 25 List-III, in the light of the Regulation 9 of the 2000 Regulations.

3. As per the judgment in T.N. Medical Officers Association case, the State is clothed with power to earmark 50% of seats for in-service candidates (Doctors) seeking admission to Post Graduate Medical courses including super speciality courses. Though the said scheme was followed till the year 2016, till the pronouncement of the decision in Dinesh Singh Chauhan case, by reserving 50% seats for in-service candidates, who provided medical care to the general public under the aegis of the State. It is the stand of the petitioner that in larger public interest, the provision, which was available prior to Dinesh Singh Chauhan case should stand restored subsequent to the decision of the Constitution Bench in T.N. Medical Officers Association case.

4. The fourth respondent viz., Director of Medical Education issued a Circular dated 06.10.2020 stating that 50% of seats have been earmarked for in-service candidates working in Tamil Nadu Medical Services and the remaining 50% seats are under the purview of Director General of Health Services, New Delhi. In spite of the same, the Director General of Health Services having not allowed 50% of seats for in-service candidates in the State of Tamil Nadu, some of the Doctors, who are in-service, filed writ petitions seeking direction to the respondents to notify 50% of vacancies as earmarked for in-service candidates (Doctors) for admission to super speciality courses. Pending the writ petition, the State Government issued G.O. Ms. No. 462 Health and Family Welfare (MCA.1) Department dated 07.11.2020 in and by which 50% of Super Speciality seats in D.M./M.Ch courses in Government Medical Colleges were reserved for in-service candidates in Tamil Nadu and the remaining 50% of seats were allocated to Government of Tamil Nadu /DGHS from the academic year 2020-21.



However, the Information Bulletin issued by the 7th respondent, for the conduct of NEET-SS-2021 examination, which was held for the academic year 2021-22 on 13th and 14th of November, 2021, there is no provision for reservation of 50% seats for in-service candidates for admission to super speciality courses in Government Medical colleges in the State of Tamil Nadu, as envisaged the aforesaid Government Order.

5. In the above backdrop, the petitioner has made a representation dated 16.10.2021 seeking implementation of the above said Government Order and for allocation of 50% of P.G. Super Speciality seats in Government Medical Colleges to in-service Doctors for the academic year 2021-22. Since no action was taken by the respondents on the said representation, the present writ petition has been filed for the relief supra.

6. The learned counsel for the petitioner submits that the issue having already been settled by the Hon'ble Apex Court in T.N. Medical Officers Association case there is no legal impediment for the implementation of the aforesaid Government Order during the academic year 2021-2022 and, therefore, prays that direction may be issued to the respondents to implement G.O. Ms. No. 462 Health and Family Welfare (MCA.1) Department dated 07.11.2020 for the academic year 2021-22, within the stipulated time as fixed by this Court.

7. The learned Government Advocate appearing for the respondents 3 to 5 submitted that the representation of the petitioner will be considered and the Government Order will be implemented, if there is no legal impediment to do the same.

8. The learned Counsel for the respondents 1, 2 and 6 submitted that the Government Order has to be implemented by the 4th respondent.

9. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents, and perused the materials available on record.

10. The petitioner is a Doctor by profession; he has completed P.G. Medical course; he is presently working as Assistant Professor (General Medicine) in Madras Medical College. He has applied to join the Super Speciality course viz., DM/M.Ch. Course for the present academic year 2021-22. In respect of the State Quota, 50% of seats were already earmarked for in-service candidates, which has not been properly appreciated by the 7th respondent, which resulted in the petitioner filing the representation and no action having been taken on the said representation, the petitioner has approached this Court by way of the writ petition.



11. Initially, reservation for in-service candidates were available till the year 2016 and the decision in Dinesh Singh Chauhan case the reservation was not given. The ratio in Dinesh Singh Chauhan's case was tested before the Constitution Bench in T.N. Medical Officers Association case and the Hon'ble Apex Court, after exhaustive consideration of the Regulation 9 of the 2000 Regulations, held that the State Government is not denude of power to provide for reservation in Post Graduate degree courses for in-service Government Doctors. In the aforesaid context, the Constitution Bench held as under :-

".....

8) that the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned in-service doctors obtaining entry in degree courses through such separate channel to serve the State in the rural, tribal and hilly areas at lease for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper:

* * * * *

42. Because of the reasons, we hold that there is no bar in clause 9 of the postgraduate medical education Regulations, 2000 as it prevailed on 15th February 2012 and subsequently, amended on 5th April, 2018 on individual states in providing for reservation of in-service doctors for admission into postgraduate medical degree courses. But to take benefit of such separate entry channel, the aspiring in-service doctors must clear the NEET examination with the minimum prescribed marks as stipulated in the 2000 Regulations. We respectfully differ from the views expressed by the Bench of three Hon'ble Judges of this court in the case of the State of Uttar Pradesh and others Vs. Dinesh Singh Chauhan (2016) 9 SCC 749 to the extent it has been held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of 2000 Regulations. In our opinion, that is not the correct view under the constitution. The



reference is answered accordingly.''

12. By the said order, the Hon'ble Apex Court upheld the power of the State to grant reservation for in-service candidates to Post Graduate degree courses by making a separate channel for the said reservation.

13. In the above circumstances, G.O. Ms. No.462, Health and Family Welfare Department dated 7.11.2020 came to be issued by the Government providing for the following :-

'i. 50% of the Super Speciality seats (DM/M.Ch.) in government Medical Colleges are allocated to in-service candidates of Tamil Nadu and the remaining 50% seats are allocated to the Government of India/Director General of Health Services from the academic year 2020-2021;

ii. 50% of the in-service super speciality seats would be filled up based on the marks obtained in the NEET-SS;

iii. The Secretary, Selection Committee, be designated as the authority to prepare a merit list, to conduct counselling, to fill the 50% of the super speciality (DM/M.Ch) seats in Government Medical colleges by in-service candidates in the state of Tamil Nadu and other related admission works.''

14. In the backdrop of the said decision, the above G.O. Ms. No.462 was challenged before the Hon'ble Apex Court in Civil Appeal No.3840 of 2020 and the Hon'ble Apex Court, by its order dated 27.11.2020, held that the process for admissions to Super Speciality Medical Courses started on 03.08.2020, wherein it was made clear to all the competing candidates that there shall be no reservation to super speciality medical courses. The government order issued by the State of Tamil Nadu on 07.11.2020 reserving 50 percent seats for in-service doctors, therefore, would be detrimental to the interests of the meritorious doctors as 50% of the available seats in the State of Tamil Nadu in Super Speciality Medical Courses will not be available to them. Admittedly, no reservation for in-service doctors was implemented since 2016. As the admission process is at the final stages, the Apex Court declined to permit reservation for in-service doctors for the said year. However, the Apex Court made it clear that without expressing any opinion on the validity of G.O. Ms. No.462 dated 07.11.2020, issued direction for admission to Super Speciality Medical Courses for the academic year 2020-2021 by the competent authority without providing for reservation to in-service doctors for the academic year 2020-2021 as per the information bulletin.

15. In the said scenario, it is the contention of the petitioners that the decision in T.N. Medical Officers



Association case would be squarely applicable to the case on hand as well as the State, when clothed with power to provide reservation for post-graduate degree for in-service candidates, would definitely be within its power to provide for reservation in super speciality courses.

16. From the above order of the Hon'ble Supreme Court in Civil Appeal No.3480 of 2020, it is clear that the Hon'ble Supreme Court has not held that the Government Order is invalid or that the Government has no power to reserve the said posts for in-service candidates. What the Supreme Court had observed is the fact that the admission process having already started, interfering with the said process against what was provided in the information bulletin issued towards the common entrance test, would be against the spirit of the individuals, who had attended the examination on the premise that the seats were all available in the open category. Therefore, at the eleventh hour, the Hon'ble Supreme Court had opined that it would not be in the interest of the candidates, who had taken part in the admission process and, in the said light, the Hon'ble Supreme Court did not pass any order on the said G.O.

17. However, it should not be lost sight of that the Constitution Bench in T.N. Medical Officers Association case had categorically laid down that the State is not denuded of its powers to reserve seats for in-service candidates in the State quota for post-graduate degree courses. That being the position, the Government Order reserving 50% of the seats for in-service candidates in super speciality degree courses under the State quota would in no way be termed to be in excess of the powers of the State Government and the ratio laid down in T.N. Medical Officers Association case in respect of reservation of seats for in-service candidates is squarely applicable to the present case on hand.

18. For the reasons aforesaid, this Court is of the considered view that an affirmative direction can be issued to the 4th respondent to implement the G.O. Ms. No. 462 Health and Family Welfare (MCA.1) Department dated 07.11.2020 for the academic year 2021-22 itself, if there is no legal impediment to do the same. Accordingly, this writ petition is disposed of with the aforesaid observation and direction. No costs. Consequently, connected miscellaneous petition(s) are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



To

- 1 The Secretary to Government
Ministry of Health and Family Welfare,
Government of India
Room No.348, A Wing Nirman Bhavan,
New Delhi- 110 011.
- 2 The Director General of Health Services,
Ministry of Health and Family
Welfare, Government of India, Room No. 348,
A Wing, Nirman Bhavan, New Delhi- 110 011.
- 3 The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St George, Secretariat, Chennai- 600 009.
- 4 The Director of Medical Education,
Kilpauk, Chennai- 600 010.
- 5 The Selection Committee,
Directorate of Medical Education, Kilpauk,
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- 7 The National Board of Examinations in Medical Sciences,
Medical Enclave,
Ansari Nagar, Mahatma Gandhi Marg (Ring Road)
New Delhi- 110 029.
- 8 The Secretary
National Medical Council,
Pocket 14 Sector 8
Dwaraka, New Delhi- 110 077.

+1 cc to Mr.G.Sankaran, Advocate Sr.NO. 2496

+1cc to the Government Pleader, S.R.No.3059 (30/05/2022)

W.P. No.509 of 2022

SSI(CO)
A.SK(19.01.2022)