



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.543 of 2022

Dr.R.Arunkumar

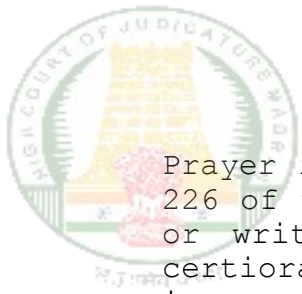
.. Appellant

Vs

1. The State of Tamil Nadu,
rep. by the Secretary,
Health & Family Welfare Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary,
Medical Council of India,
Pocket - 14, Sector - 8,
Dwarka Phase-I,
New Delhi - 110 077.
3. The Registrar,
The Tamil Nadu Dr. M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai,
Tamil Nadu - 600 002.
4. The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.
5. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.

.. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 20.01.2022 in W.P.No.83 of 2022.



Prayer in W.P.No.83 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue an order or direction or writ and in particular writ in the nature of a writ of certiorarified Mandamus calling for the records relating to the impugned letter bearing Ref.No.2538 / SCSII (I) 2021 dated 03.12.2021 on the file of the Selection Committee Directorate of Medical Education, the 5th Respondent herein and quash the same and consequently direct the 5th Respondent to award full 30 percentage incentive mark as contemplated under the G.O. (MS) No.86 / Health and Family Welfare (MCA-I) Department, dated 06.03.2019 and include the name of the Medical College Hospital situated at Thandalai village, Panchayat, Thiruvarur District, as it is situated in the Rural areas in Annexure IV of clause 10 of the above G.O. and select him as per his mark to PG Degree / Diploma Course in Tamil Nadu Government Medical Colleges and Government Seats in self Financing Medical College Affiliated to the Tamil Nadu Dr.MGR Medical University 2021-2022.

For the Appellant : Mr.U.Karunakaran

For the Respondents : Mr.J.Ravindran
Addl. Advocate General
assisted by
Mr.P.Muthukumar
State Government Pleader
for respondent Nos.1, 4 and 5

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

By this writ appeal, a challenge is made to the order dated 20.01.2022, whereby the writ petition preferred by the writ appellant was dismissed.

2. The writ petition was filed to challenge the letter dated 03.12.2021 issued by the Selection Committee, Directorate of Medical Education, denying incentive marks to the writ appellant pursuant to the government order dated 06.03.2019. The prayer was to include the Government Thiruvarur Medical College and Hospital located in Thandalai Village Panchayat under rural area for award of incentive marks to the writ appellant.

3. Learned counsel for the writ appellant submitted that pursuant to the government order dated 06.03.2019, the writ appellant was entitled to get incentive marks as he is serving in a Medial College and Hospital situated in rural area. When it was denied, the writ petition was filed to challenge the letter dated 03.12.2021 with a prayer to award the incentive



marks for admission in the Post- Graduate course. The learned Single Judge dismissed the writ petition on the ground that the Medical College and Hospital of Thiruvavarur District is not in the rural area, ignoring that it is located in the Village Panchayat and, accordingly, challenge to the order has been made to seek a direction to award incentive marks to the writ appellant for admission in the Post-Graduate course.

4. Elaborating the arguments, learned counsel submitted that a Committee headed by Hon'ble Mr. Justice A.Selvam, a retired Judge of this Court, was constituted by the Government even prior to the issuance of the government order dated 06.03.2019. The denial of incentive marks to the writ appellant is said to be pursuant to the recommendation of the said Committee, though it could not have made a recommendation pursuant to the government order issued subsequent to the constitution of the Committee. Accordingly, the learned Single Judge should have considered the facts of the case. The Medical College and Hospital in which the writ appellant is serving comes under the Village Panchayat, thus, should have been treated to be in rural area. Therefore, incentive marks should have been awarded to the writ appellant for admission in the Post-Graduate course. Thus, a prayer is made to award incentive marks to the writ appellant by setting aside the order of the learned Single Judge dated 03.12.2021.

5. We have considered the submissions made by learned counsel for the writ appellant and also perused the materials available on record.

6. A perusal of the order under challenge would show that the writ appellant has appeared in NEET-PG 2021-2022 held on 11.09.2021. He had obtained 420 marks out of 800. After declaration of the results, the Selection Committee, Directorate of Medical Education has invited on-line applications for admission to PG Degree/ Diploma courses in Tamil Nadu Government Medical Colleges and Government Seats in Self Financing Medical Colleges Affiliated to the Tamil Nadu Dr. M.G.R. Medical University. The Dr. M.G.R. Medical University had also issued prospectus for admission to PG Degree/Diploma courses in Tamil Nadu Government Medical Colleges. For the aforesaid purpose and more specifically for grant of incentive marks, a Committee was constituted under the Chairmanship of Hon'ble Mr. Justice A.Selvam (a retired Judge of this Court) to identify remote/difficult/rural areas for awarding incentive marks to the in-service medical officers for admission to PG Degree/Diploma courses.

7. The writ appellant has claimed incentive marks alleging to be serving in the rural area while posted in the Government



Thiruvavarur Medical College and Hospital. The learned Single Judge has not accepted the prayer made by the writ appellant on the ground that the Medical College and Hospital in which the writ appellant serving is located within the radius of 10 kilometers from the District Headquarters of Thiruvavarur. It is even after considering the recommendation of the Committee which has not identified the Medical College and Hospital concerned to fall under the rural area. It was not even identified to be in a rural area in the government order dated 06.03.2019.

8. We find that the claim of the writ appellant along with others was taken by the Committee in general and recommended for award of incentive marks to the Medical Officers by classifying the Medical Colleges into five categories, namely (1) Difficult areas in Hills; (2) Difficult areas in Plains; (3) Remote area; (4) Rural areas; and (5) Urban areas (Municipal/Corporation areas). Different incentive marks have been provided for different areas. As far as the rural area is concerned, 5% of marks per year was provided and the claim of the writ appellant is that he should be awarded incentive marks in category of rural areas.

9. The writ appellant, admittedly, is serving in the Government Thiruvavarur Medical College and Hospital, Tiruvavarur District and he had claimed incentive marks, which according to the report of the Committee he is not entitled, in view of the fact that the college is located within the radius of 10 kilometers from the District Headquarters i.e. the city of Thiruvavarur. The learned Single Judge has taken note of the counter-affidavit submitted by the respondents and has made a reference not only the government order dated 06.03.2019, but also the report of the Committee.

10. At this stage, learned counsel for the writ appellant submitted that a copy of the report of the Committee was not furnished to the writ appellant and, therefore, he was not aware of recommendation made by the Committee and on what basis the incentive marks were denied to him. We do not find any prayer of the writ appellant before the Writ Court to furnish a copy of the report of the Committee before the matter is proceeded further. In the absence of a prayer, despite a specific counter-affidavit in reference to the Committee, we cannot accept the argument of learned counsel for the writ appellant in that regard. It is more so when the learned Single Judge has taken note of the fact that the Committee was constituted to award incentive marks to different categories and taking note of the distance of the Medical College and Hospital from the District Headquarters of Thiruvavarur to be of 10 kilometers, the writ appellant was not found entitled to get the benefit of incentive marks.



11. At this stage, it is required to be clarified that incentive marks have been provided to promote the medical services in certain areas, which include difficult areas in hills; difficult areas in plans; remote area; rural areas. Rural area can not be an area close to the city and in this case, the Medical College and Hospital is located within 10 kilometers from the city area i.e. the District Headquarters of Thiruvavur. If the benefit of rural area is given to a practitioner serving in the Medical College and Hospital close to the city, the very purpose of granting incentive marks to serve in the rural area would be defeated. The purpose to grant incentive marks is to encourage practitioners to serve in rural areas and not the areas, which are close to the city or urban areas. Therefore, keeping in mind the object sought to be achieved for grant of incentive marks, the Committee has made a recommendation adverse to the Medical College and Hospital in which the writ appellant is serving. The report of the Committee was not challenged despite a reference thereupon in the counter-affidavit filed by the respondents to the writ petition. In view of the above, the report of the Committee is taken as final and otherwise, taking note of the distance from the city to the Medical College and Hospital in which the writ appellant is serving, we do not find that a case is made out for grant of incentive marks. Rather, it is meant for practitioners who are practising in the rural areas, which are away from the urban areas.

12. In the light of the aforesaid, we do not find a ground to cause interference in the order passed by the learned Single Judge. Accordingly, the writ appeal fails and is dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.3972 and 3975 of 2022 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
State of Tamil Nadu,
Health & Family Welfare Department,
Fort St. George,
Chennai - 600 009.



2. The Secretary,
Medical Council of India,
Pocket - 14, Sector - 8,
Dwarka Phase-I,
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3. The Registrar,
The Tamil Nadu Dr. M.G.R. Medical University,
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4. The Director of Medical Education,
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Kilpauk, Chennai - 600 010.

5. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.U.Karunakaran, Advocate, S.R.No.18620

W.A.No.543 of 2022

JP[co]
NSK 28/03/2022