



W.P.No.26785 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.26785 of 2022
and
W.M.P.No.25837 of 2022

Dr.Hema

... Petitioner

Vs

- 1.The District Collector,
Puducherry.
- 2.The Deputy Collector (Revenue) North
Puducherry.
- 3.The Tahsildar cum Executive Magistrate,
Taluk Office,
Oulgaret Taluk, Puducherry.
- 4.Centralised Admission Commission,
Rep. By Co-ordinator (Admission),
Government of Puducherry, Pondicherry
Engineering College Campus,
Pondicherry – 605 014.

... Respondents

[R4 Suo motu impleaded vide order
dated 30.09.2022]

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in connection with the



W.P.No.26785 of 2022

proceedings No.0001/TOO/A/Proceedings/2022 dated 27.09.2022 and quash the same and direct the respondents to issue the Nativity Certificate and OBC Certificate in favour of the petitioner and permit the petitioner to take part in the counselling for joining PG course in any of the Medical College within the Union Territory of the Pondicherry.

For Petitioner : Mr.R.Singaravelan
Senior Counsel
for Ms.V.Ambika

For Respondents : Mr.V.Balamurugan
Government Pleader (Pondy)

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in connection with the proceedings No.0001/TOO/A/Proceedings/2022 dated 27.09.2022 and quash the same and direct the respondents to issue the Nativity Certificate and OBC Certificate in favour of the petitioner and permit the petitioner to take part in the counselling for joining PG course in any of the Medical College within the Union Territory of the Pondicherry.

2. The petitioner married a boy at Thirukoilur in the State of Tamil Nadu and have been working at Puducherry as a duty Doctor in Varnashri Private Clinic at Madukarai, Puducherry upto 14.11.2021 just a week before the petitioner get married. Then the petitioner had been in an Institute's



W.P.No.26785 of 2022

Study Centre called 'DMAS' at Puducherry and had been preparing for NEET exam. The petitioner have claimed that, she has been continuously residing only at Puducherry. When that being so, the petitioner after completing the NEET PG Examination 2022 had applied for getting admission in PG Medical course in the State of Puducherry. Whereas the said request of the petitioner has been turned out by the order dated 27.09.2022 by the respondent Government stating that, the petitioner since had married to a boy at Thirukoilur in the Tamil Nadu State, she is not the resident of Puducherry especially at Oulgaret Municipal limit and therefore, she is not entitled to get residence certificate and OBC certificate, that order is challenged in this writ petition.

3. When this writ petition came up for hearing on 30.09.2022, after hearing both sides, this Court passed the following order:

“The learned Senior Counsel appearing for the petitioner has submitted that, by the impugned order, the request of the petitioner to issue Nativity Certificate has been rejected on the ground that the petitioner even though born in Puducherry, had went outside and married outside Puducherry.

2. In this regard, learned Senior Counsel would also submit that, this issue has already been settled by a learned



W.P.No.26785 of 2022

Judge of this Court in a similar writ petition in W.P.No.28123 of 2016 in the matter of ***Tmt.Rahina T.P. v. The Deputy Collector and others*** dated 06.07.2022, where, the learned Judge, having considered the instructions issued in this regard by the respondent Government, has held as follows:

"(10)In the counter affidavit filed, the Deputy Tahsildar [Revenue], Mahe, had referred to certain instructions issued to the authorities wherein it has been stated that Native and Residence Certificates are not interchangeable. The instructions extracted in the said counter affidavit reads as follows:-

"Instructions have been issued to the certificate issuing authorities to issue Nativity Certificate as per the norms prescribed in the G.O.Ms.No.48, dated 12.12.2002.

Of late, it has been noticed by this Department that most of the departments while calling for applications for direct recruits, are mentioning that the applications should be submitted by the applicants along with NATIVITY / RESIDENCE certificates. The terms "Nativity" and "Residence" are entirely different and distinct in connotation. Residence Certificate is being issued to the applicant, mentioning the actual and physical period of residence in the Union Territory of Pondicherry, which can be even be less than five years. Whereas Nativity Certificate is being issued, to those, who, inter-alia, are residing in the Union Territory of Pondicherry continuously for 5 years preceding the date of application. From the above, it is clear that Nativity and Residence Certificates are not interchangeable.

All the Heads of Departments are therefore requested to insist upon production of only Nativity Certificates and not residence certificates while calling for applications from the applicants for job purposes, if the intention is to restrict the selection to the natives of Union Territory of Pondicherry."

(11) A reading of the above instructions would also amplify the fact that the Nativity Certificate and Residence Certificate are different from each other and a person who is born in Puducherry could still claim Nativity Certificate even if he or she is not residing in Puducherry continuously for a period of five years provided they are able to establish their intention to get back to Puducherry. The above makes it clear that the rejection on the ground of absence from Puducherry temporarily or married outside Puducherry cannot by itself form a ground for rejection of a claim for Nativity Certificate.



WEB COPY



W.P.No.26785 of 2022

(12) Therefore, the order impugned in the writ petition is liable to be quashed and the same is quashed. The writ petition stands allowed. The matter is remitted to the Deputy Tahsildar [Revenue], Mahe, to ascertain the intention of the petitioner and pass appropriate orders based on such intention. Such an exercise shall be completed within a period of two months from the date of receipt of a copy of this order. It is made clear that the post that has been reserved pursuant to the interim order, shall not be filled up till such time, the enquiry is completed by the Deputy Tahsildar [Revenue], Mahe. No costs. Consequently, connected miscellaneous petition is closed."

3. In the said decision, at paragraph No.11, the learned Judge has held that, the Nativity Certificate and Residence Certificate are different from each other and a person, who is born in Puducherry could still claim Nativity Certificate even if he or she is not residing in Puducherry continuously for a period of five years provided they are able to establish their intention to get back to Puducherry.

4. In the case in hand, the petitioner admittedly born in Puducherry and since she got married outside Puducherry i.e. Thirukoilur in the State of Tamil Nadu, subsequently, she returned back to Puducherry, now she is professing her medical profession in the State of Puducherry, therefore, the criteria fixed by the respondents for granting the Nativity Certificate since fulfilled *prima facie* by the petitioner, this Court feels that the impugned order would not stand in the legal scrutiny subject to the response of the respondents by way of filing counter affidavit.

5. Learned Senior Counsel appearing for the petitioner



WEB COPY



W.P.No.26785 of 2022

brought to the notice of this Court that the petitioner has already completed the NEET examination and she is in the ranking list to get admission in the Medical College for PG courses and the counselling has already been started and therefore, the learned Senior Counsel would submit that unless the interest of the petitioner is protected, the petitioner would lose the chance of getting admission in this academic year even though she became eligible by getting rank in the NEET examination.

6. Having regard to the said *prima facie* case, the following interim order is passed:

- (i) Since the Centralized Admission Committee in Puducherry is the authority concerned to conduct counselling for PG admission for medical courses, this Court feels that the said authority since is not a party herein and who is a necessary party to be heard to have a complete and effective adjudication of the issue raised in this writ petition, this Court is inclined to *suo motu* implead Centralized Admission Committee represented by Co-ordinator (Admission), Government of Puducherry, Pondicherry Engineering College Campus, Pondicherry - 605 014, as one of the party respondents.
- (ii) Registry is directed to carry out necessary amendment in all the concerned records.
- (iii) There shall be a direction to the fourth respondent (now



W.P.No.26785 of 2022

impleaded) to keep one seat vacant till the petitioner turn comes to participate in the counselling and once the turn comes to the petitioner to participate in the counselling, she shall be permitted to participate in the counselling and to her choice, she shall be permitted to choose the PG course accordingly. However, final allotment order shall not be given and it shall be kept in abeyance until further orders are passed by this Court.

7. Mr.J.Kumaran, learned Additional Government Pleader [Puducherry], takes notice for the respondents and he needs two weeks time to file counter.”

4. Pursuant to the said order, though the counselling was going on according to Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioner, the petitioner ranking also has already reached, despite that, the orders passed by this Court has not been complied and the petitioner has not been called for to participate in the counselling to choose a seat according to the ranking of the petitioner.

5. However, Mr.V.Balamurgan, learned Government Pleader (Puducherry) appearing for the respondents has filed counter affidavit on behalf of the 3rd respondent, where, he relied upon the following passage:



WEB COPY



W.P.No.26785 of 2022

“I humbly submit that in order to reaffirm the facts of the case the Revenue Inspector of Oulgaret Firka, conducted a field enquiry and confirmed her discontinuance in residential status after marriage. It is ascertained that the petitioner after marriage was not ordinarily residing in Puducherry but had shifted to husband's place at Thirukovilur, Tamil Nadu. Enquiry also revealed that the petitioner has no intention to return to Puducherry.”

6. Therefore, the learned Government Pleader would submit that, if the petitioner not resided in Puducherry after November 2021 because of the marriage, atleast the petitioner must have an intention to return back and settled at Puducherry i.e. one of the criteria fixed in this regard and the field enquiry reveals that, since the petitioner has not shifted her residence to Puducherry once again, she may not have even that intention to come back at Puducherry, therefore she is not entitled to get a seat in PG Medicine in the State of Puducherry that is the reason why the stand taken by the respondents that the petitioner is not entitled to get a Nativity certificate or OBC certificate for the resident of Puducherry for the purpose of getting admission in the PG Medicine is to be justified.

7. However, Mr.R.Singaravelan, learned Senior Counsel for the



W.P.No.26785 of 2022

petitioner has pointed out that, it is an admitted fact that, till November 2021 the petitioner had been residing in Puducherry, only after marriage for a brief spell she visited the matrimonial house and again returned back to Puducherry to join in a coaching centre to take coaching for joining the PG NEET 2022 examination. Therefore, for the whole period i.e. five long years and even prior to that several years from the birth, the petitioner had been the resident of the Puducherry and has been continuously residing only in Puducherry, these factors cannot be disputed by the respondents.

8. Even this has been clearly stated by the petitioner in the affidavit filed in support of the petition also and in this regard it is pointed out by the learned Senior Counsel that, in the counter affidavit also the following averment has been made by the 3rd respondent.

“I humbly submit that on scrutiny of the above facts and other documents supporting the claim of the applicant, it is observed that she was continuously residing in Puducherry till her marriage and later shifted to her husband place at Thirukovilur, of Kallakurichi District, Tamil Nadu. However, she has been maintaining her recordal evidence in Puducherry itself.”



W.P.No.26785 of 2022

9. By relying upon this stand taken by the respondents even in the counter affidavit, the learned Senior Counsel would submit that, since it was observed by the respondents that the petitioner was continuously residing in Puducherry till her marriage and later shifted to her husband's place at Thirukoilur, Kallakurichi District, Tamil Nadu, however, she has been maintaining her recordal evidence in Puducherry, this itself makes it very clear that, the petitioner had been continuously residing even after the marriage only at Puducherry, that itself shows not only the intention, in practical also, the petitioner has shifted her residence once again back to Puducherry and she wants to continue in Puducherry.

10. I have considered the said submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

11. The respondent has relied upon a G.O. issued by the Government in G.O.Ms.No.48 Revenue Department dated 12.12.2022 and the said G.O. reads thus:

“(b) Nativity by continuous residence: The applicant should



WEB COPY



W.P.No.26785 of 2022

have been residing continuously for five years in the Union Territory prior to the date of the application.”

It says that, nativity by a continuous residence, that means “the applicant should have been residing continuously for five years in the Union Territory prior to the date of the application”.

12. In the case in hand, the petitioner admittedly had been continuously residing till November 2021 even after marriage, except for few days, since she have visited to matrimonial home for ceremonial functions, the petitioner returned back to Puducherry and started taking the coaching for participating in the PG NEET 2022 examination.

13. In practical, it must be seen that, assuming that the person is continuously residing in Puducherry, intermittently for any other reasons for personal or official, if she has moved to a day or for a week or a month or even for a few months, that cannot be construed, that the party has not resided in Puducherry continuously for five years.

14. The continuous residence of five years rule must be interpreted



W.P.No.26785 of 2022

that, normally such five years residence must be in Puducherry. Therefore, the intermittent attending of personal or official work outside the State of Puducherry, for which he or she has to come out of Puducherry, cannot be treated as if that he was not continuously residing for five years period. Therefore, the petitioner's outstation from Puducherry to join the matrimonial home for ceremonial functions either on the date of marriage or immediately after marriage for few days, or one or two weeks may not be treated that the petitioner had shifted her residence to Thirukoilur.

15. Since it is a definite case of the petitioner that, she settled at Puducherry and she wants to settle continuously at Puducherry and she wants to get Nativity Certificate for which past one or two years she has been in Puducherry and she is going to pursue the course for next two or three years, thereafter also her intention is to stay upto completion of her study or to join in any hospitals or institutions only at Puducherry, at the most, the respondents can seek for an affidavit to that effect from the petitioner to be filed and in this regard, in fact such affidavit has already been filed on behalf of the petitioner. Therefore, no further requirement is needed from the point of view of the respondents to state that the petitioner



W.P.No.26785 of 2022

is not the resident of Puducherry, in order to have any intention to reside or to go back to reside at Puducherry and therefore the criteria fixed by the respondent Government since has been fulfilled by the petitioner she is entitled to participate in the counselling which is going on for admitting students in the PG Medicine in the State of Puducherry.

16. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That there shall be a direction to the respondents CENTAC to permit the petitioner to participate in the counselling which is going on for admission in PG Medical Course forthwith on production of copy of this order.

(ii) Accordingly, the petitioner is at liberty to select a seat according to the ranking of the petitioner based on the available seats and once she is selected in the seat wherein the petitioner shall be permitted to be admitted and a admission letter or admission order, whatever name be called, be issued by the respondents forthwith.

(iii) It is made clear that, apart from the affidavit already



W.P.No.26785 of 2022

WEB COPY

been given, as referred to above, confirming the definite intention of the petitioner, by the father of the petitioner already, the petitioner shall execute an affidavit to that effect which shall be given to the respondents at the time of giving the admission card.

17. After passing the orders, the learned Government Pleader for the respondents submits that, since it is a case with peculiar facts and circumstances, the order passed by this Court in this writ petition shall not be treated as a precedent in future. The said submission of the learned Government Pleader is recorded, accordingly this order need not be treated as a precedent.

18. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.11.2022

Index : Yes / No
Speaking Order : Yes / No
Note : Issue order copy on **21.11.2022**
Sgl

To



W.P.No.26785 of 2022

1.The District Collector,
Puducherry.

2.The Deputy Collector (Revenue) North
Puducherry.

3.The Tahsildar cum Executive Magistrate,
Taluk Office,
Oulgaret Taluk, Puducherry.

4.The Co-ordinator (Admission),
Centralised Admission Commission,
Government of Puducherry, Pondicherry
Engineering College Campus,
Pondicherry – 605 014.



WEB COPY



W.P.No.26785 of 2022

R. SURESH KUMAR, J.

Sgl

W.P.No.26785 of 2022

18.11.2022