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W.P.No.31575 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

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THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.No.31575 of 2022
and WMP.Nos.31022 & 31024 of 2022

1.B.Amlin Torah
2.Godfrey Shelgin

.. Petitioner

Vs.

1.The Secretary to Government
Health & Family Welfare Department
Fort St.George, Chennai - 600 009.

2.The Director of Public Health
and Preventive Medicines
DMS Buildings
Teynampet, Chennai - 600 006.

3.The Chairman
Medical Services Recruitment Board (MRB)
7th Floor, DMS Buildings
358, Anna Salai
Teynampet, Chennai - 600 006.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent authorities to grant regular appointment as Asst. Surgeon in the existing vacancies considering the Covid-19 pandemic duty rendered by the petitioners and their eligibility in the Medical Recruitment Board



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Examination 2018, in the existing vacancies by following the order dated 30.04.2021 passed by the Hon'ble Supreme Court of India in suo motu W.P.No.3 of 2021 and the Central Government Notification dated 3.5.2021 Ref.File No.Z.20015/43/2021-ME1, within a time limit to be fixed by this Court.

For Petitioners : Mr.S.Thanka Sivan

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader [R1&R2]
Mr.M.Loganathan
Standing Counsel for R3

ORDER

This Writ petition has been filed for a mandamus seeking for a direction to the respondents to grant regular appointment to the petitioners as Assistant Surgeons, considering the Covid-19 duty rendered by them during the last two Covid-19 waves and considering the fact that they have already passed the Medical Recruitment Board Examination for the year 2018, within a time frame to be fixed by this Court.

2. Heard the learned counsel for the petitioners. Mr.Stalin Abimanyu, learned Additional Government Pleader, accepts notice on behalf of the respondents 1 & 2 and Mr.M. Loganathan, learned standing



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counsel accepts notice on behalf of 3rd respondent. By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3. The question of issuing a positive direction as sought for in this writ petition, will not arise at this stage. The only limited relief that can be granted to the petitioners is to direct the respondents to consider the representation seeking for grant of regular appointment as Assistant Surgeons.

4. The petitioners contend that they were directed to do Covid-19 duties during the last two waves. They also contend that they had earlier passed the examination conducted by the Medical Recruitment Board in the year 2018. According to them, they had passed the examination but were not selected as Assistant Surgeons pursuant to the Medical Recruitment Board Examination conducted in the year 2018.

5. The petitioners also rely upon a judgment of the Hon'ble Supreme Court in '*Suo Motu Writ Petition (Civil) No.3 of 2021*' in '*In Re: Distribution of Essential Supplies and Services During Pandemic*'.



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In particular, the observation made by the Hon'ble Supreme Court in paragraphs 66 & 67, is relied upon by the petitioners for the purpose of substantiating their claim that having rendered Covid-19 service on the last two waves as Health Care Professions who had combated the Covid-19 pandemic, their case for appointment as Assistant Surgeons ought to have been considered as per the aforementioned judgment of the Hon'ble Supreme Court.

6. According to the petitioners, though the order was passed by the Hon'ble Supreme Court on 30.04.2021, the said order was ignored in the subsequent notification issued by the Medical Recruitment Board and no preference was granted to similarly placed petitioners, who had done Covid-19 duties. It is further contended by the petitioners that by the notification dated 03.05.2021, Ministry of Health and Family Welfare, MEP Section, Government of India in Clause 17 therein, has recommended to the State/UT Governments to consider giving preference in regular Government appointments of Health professionals through the respective Public Service Commission/other recruitment bodies, for those Health Professionals under this special scheme, who complete a minimum of 100 days of Covid related duty. The petitioners



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contend that having been completed more than 100 days of Covid-19 related duties, they ought to have been appointed as Assistant Surgeons.

7. As observed earlier, this Court cannot grant any positive direction as sought for in this writ petition.

8. The learned Additional Government Pleader appearing for the first and second respondents and the learned standing counsel for the third respondent/Board, in unison, submit that the petitioners are not entitled to be appointed as Assistant Surgeons, as according to them, the petitioners were appointed only on contract basis and they do not have any vested right for appointment as Assistant Surgeons. According to them, having failed to get selected in the year 2018, they cannot now seek for regular appointment as Assistant Surgeons.

9. The above contention of the learned counsels is disputed by the learned counsel for the petitioners, who would reiterate that the petitioners are entitled for being appointed as Assistant Surgeons.

10. This Court is of the considered view that no prejudice will



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be caused to the respondents if the petitioners' representation seeking for regular appointment as Assistant Surgeons, is considered on merits and in accordance with law, within a time frame to be fixed by this Court.

11. Both the petitioners have given several representations. The last representation given by the first petitioner was on 18.11.2022 and the last representation given by the second petitioner was on 17.10.2022. However, this Court is of the considered view that the respective petitioners will have to give a separate representation to the respondents to enable them to consider the same on merits and in accordance with law.

12. For the foregoing reasons, this Court directs the respective petitioners to submit a separate representation to the first and second respondents seeking for grant of regular appointment as Assistant Surgeons, considering the Covid-19 duty rendered by them during the two Covid-19 waves and their eligibility in the Medical Recruitment Board Examination 2018, in the existing vacancy, within a period of two (2) weeks from the date of receipt of a copy of this order. The petitioners are required to furnish the copy of the judgement of the



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Hon'ble Supreme Court and Central Government notification cited supra to the respondents. On receipt of the said representations along with necessary documents, the first and second respondents are required to give due consideration to the judgment of the Hon'ble Supreme Court dated 30.04.2021 in '*Suo Motu Writ Petition (Civil) No.3 of 2021- in -In Re: Distribution of Essential Supplies and Services During Pandemic*' and the Central Government notification dated 03.05.2021, and decide as to whether the same is applicable to the case of the petitioners or not, and only thereafter, the first and second respondents shall pass final orders on merits and in accordance with law, within a period of eight (8) weeks.

13. With the aforesaid directions, this Writ Petition is disposed of. No costs. Connected miscellaneous petitions are closed.

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Speaking Order/Non-speaking Order
Index : Yes / No
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ABDUL QUDDHOSE.J.,

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