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W.P.No.31966 of 2022

W.P.No.31966 of 2022
and W.M.P.Nos.31407 and 31408 of 2022

ABDUL QUDDHOSE, J.

The matter is listed under the caption 'for being mentioned'.

2. Learned counsel for the petitioner would submit that there are factual corrections in the order dated 29.11.2022 passed by this Court in the writ petition. Accordingly, the factual corrections found in paragraph Nos.1, 3, 4, 6, 8, 9, 10 and 12 under the earlier order dated 29.11.2022 in W.P. No.31966 of 2022 are corrected and paragraph Nos. 1, 3, 4, 6, 8, 9, 10 and 12 are substituted by this Court as follows :-

"This Writ petition has been filed for a mandamus seeking for a direction to the respondents to grant *incentive marks and give preference* to the petitioners *for appointment as* Assistant Surgeons, considering the Covid-19 duty rendered by them, within a time frame to be fixed by this Court.

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 *incentive marks and preference in appointment as Assistant Surgeons in the existing vacancies.*



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4. The petitioners contend that they were directed to do Covid-19

duties from 24.04.2021 and that they have served in Covid duty for twelve months.

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 *for 12 months from 24.04.2021*. 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 contend that having been completed more than 100 days of Covid-19 related duties, they ought to have been appointed as Assistant Surgeons.

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



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petitioners were appointed only on contract basis and they do not have any vested right for 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 *grant of incentive marks and preference in appointment*.

10. This Court is of the considered view that no prejudice will be caused to the respondents if the petitioners' representation seeking *incentive marks and preference in appointment* is considered on merits and in accordance with law, within a time frame to be fixed by this Court.

12. For the foregoing reasons, this Court directs the petitioners to submit a fresh representation to the first and second respondents seeking for grant of *incentive marks and preference in appointment*, considering the Covid-19 duty rendered by them, within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of the said representation, the first and second respondents shall pass final orders on merits and in accordance with law, within a period of eight (8) weeks thereafter. The petitioners are directed to send a copy of the

judgment of the Hon'ble Supreme Court dated 30.04.2021 in '*Suo Motu*



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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, for the respondents consideration".

3. Except for this clarification, the remaining part of the order dated 29.11.2022 in the aforesaid W.P. shall stand unaltered.

4. Registry is directed to carry out the same and issue a fresh order copy to the petitioner.

24.01.2023

Note : Issue order copy on 25.01.2023

sra/vsi2



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W.P.No.31966 of 2022

Abdul Quddhose, J.

vsi2

W.P.No.31966 of 2022
and W.M.P.Nos.31407 and 31408 of 2022

24.01.2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<https://www.mhc.tn.gov.in/judis>



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W.P.No.31966 of 2022

DATED: 29.11.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.31966 of 2022
and
W.M.P. No. 31408 of 2022

1. Dr. J.R. Sibirajan
2. Dr. G. Elavarasan
3. Dr. G. Gokulnath
4. Dr. M. Naveenraj
5. Dr. M. Karthick

...Petitioners

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, to issue a
<https://www.mhc.tn.gov.in/judis>



Writ of Mandamus directing the respondent authorities to grant due incentive marks and preference to the petitioner in the recruitment process for appointment as Asst. Surgeon in the existing vacancies considering the Covid-19 pandemic duty rendered by the petitioners, by following the order dated 30.4.2021 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, prior to proceeding to further with the Notification dated 11.10.2022 issued by the 3rd respondent for filling up 1021 vacancies of Asst. Surgeons.

For petitioners : Mr.S. Thankasivan
For respondents : Mr.Stalin Abimanyu
Addl. Govt. Pleader for 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 all three 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 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 three 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'***. In particular, the observance 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 all the three waves as Health Care Professional 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.



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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 during all the three waves. 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 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 recruited as Assistant Surgeons.

10. This Court is of the considered view that no prejudice will 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. The petitioners have given several representations including the last representation on 16.11.2022. However, this Court is of the considered view that the petitioners will have to give a fresh representation to the respondents to enable them to consider the same on merits and in accordance with law.



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12. For the foregoing reasons, this Court directs the petitioners to submit a fresh 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 all three 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. On receipt of the said representation, the first and second respondents shall pass final orders on merits and in accordance with law, within a period of eight (8) weeks thereafter. The petitioners are directed to send a copy of 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, for the respondents consideration.

13. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2022

(2/2)

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2



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To
1. The Secretary to Government
Health & Family Welfare department,
Fort St. George,
Chennai – 600 009.

ABDUL QUDDHOSE, J.

vsi2

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.

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29.11.2022

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