



W.P.No.32085 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.32085 of 2022 &
W.M.P.No.31512 of 2022

Dr.A.Padmapriyadharshini

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of 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 petitioner and the eligibility in the Medical Recruitment Board Examination 2018, in the



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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 03.05.2021 Ref File No.2.20015/43/2021-MEI, within a time limit to be fixed by this Court.

For Petitioner	...	Mr.K.J.Sivakumar
For Respondents 1 & 2	...	Mr.Stalin Abimanyu, Additional Government Pleader
For Respondent 3	...	Mr.M.Loganathan Standing Counsel

ORDER

This Writ petition has been filed for a mandamus seeking for a direction to the respondents to grant regular appointment to the petitioner as Assistant Surgeon, considering the Covid-19 duty rendered by her during all three Covid-19 waves and considering the fact that she has already passed the Medical Recruitment Board Examination for the year 2018, within a time frame to be fixed by this Court.

2. 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 the third respondent.



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By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3. Heard Mr.K.J.Sivakumar, learned counsel for the petitioner, Mr.Stalin Abimanyu, learned Additional Government Pleader, appearing for the respondents 1 & 2 and Mr.M. Loganathan, learned standing counsel appearing for the third respondent.

4. 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 petitioner is to direct the respondents to consider the representation seeking for grant of regular appointment as Assistant Surgeon.

5. The petitioner contends that she was directed to do Covid-19 duties during the three waves. She also contend that she had earlier passed the examination conducted by the Medical Recruitment Board in the year 2018. According to her, she had passed the examination, but was not selected as Assistant Surgeon pursuant to the Medical Recruitment Board Examination conducted in the year 2018.



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6. The petitioner also relies 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 observation made by the Hon'ble Supreme Court in paragraphs 66 & 67, is relied upon by the petitioner for the purpose of substantiating her claim that having rendered Covid-19 service on all the three waves as Health Care Professions who had combated the Covid-19 pandemic, her case for appointment as Assistant Surgeon ought to have been considered as per the aforementioned judgment of the Hon'ble Supreme Court.

7. According to the petitioner, 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 persons, who had done Covid-19 duties during all the three waves. It is further contended by the petitioner that by the notification dated 03.05.2021, Ministry of Health and Family



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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 petitioner contends that having completed more than 100 days of Covid-19 related duties, she ought to have been appointed as Assistant Surgeon.

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

9. The learned Additional Government Pleader appearing for the first and second respondents and the learned standing counsel appearing for the third respondent/Board, in unison, submit that the petitioner is not entitled to be appointed as Assistant Surgeon, as according to them, the petitioner was appointed only on contract basis and she do not have any vested right for appointment as Assistant Surgeon. According to them, having failed to



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get selected in the year 2018, she cannot now seek for regular appointment as Assistant Surgeon.

10. The above contention of the learned counsels is disputed by the learned counsel for the petitioner, who would reiterate that the petitioner is entitled for being recruited as Assistant Surgeon.

11. This Court is of the considered view that no prejudice would be caused to the respondents, if the petitioner's representation seeking for regular appointment as Assistant Surgeon, is considered on merits and in accordance with law, within a time frame to be fixed by this Court.

12. The petitioner has given a representation on 26.11.2022. However, this Court is of the considered view that the petitioner will have to give a fresh representation to the respondents to enable them to consider the same on merits and in accordance with law.

13. For the foregoing reasons, this Court directs the petitioner to submit a fresh representation to the first and second respondents seeking for



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grant of regular appointment as Assistant Surgeon, considering the Covid-19 duty rendered by her during all three Covid-19 waves and her eligibility in the Medical Recruitment Board Examination 2018, in the existing vacancy, within a period of two 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 weeks thereafter. The petitioner is directed to send a copy of the judgment of the Hon'ble Supreme Court dated 30.04.2021 passed 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.

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

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Index: Yes/ No
Speaking Order/Non-speaking Order

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To

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ABDUL QUDDHOSE, J.

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