



W.P(MD)No.24712 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24712 of 2019

and

W.M.P.(MD)Nos.21332, 21333, 21334 of 2019

R.Subbulakshmi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai – 9.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 10.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the fitment order passed by the 2nd respondent in his proceedings in Ref.No.4053/E3/4/2019 dated 04/11/2019 insofar as Department of Microbiology is concerned and quash the same as illegal and consequentially to direct the respondents to conduct restructuring counselling for Medical Officers in the cadre of Assistant Professor / Senior Resident / Tutor / Junior Resident Under the control of the Directorate of Medical Education for the Department of Microbiology in terms of G.O.(4D) No.2 Health and Family



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Welfare (A1) Dept., dated 15/02/2019 and in the light of common order dated 14/08/2019 made in W.P.No.15215 of 2019 and by considering the petitioner's representation dated 15.11.2019 within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan, Senior Counsel,
For M/s.Ajmal Associates.

For Respondents : Mr.N.Satheeskumar,
Addl. Government Pleader.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Additional Government Pleader for the respondents.

2.The writ petitioner was working as Tutor in the department of Microbiology at Government Medical College, Pudukkottai. She challenges the impugned fitment order whereby she was retained in Pudukkottai itself. Challenging the same, the present writ petition has been filed.

3.The learned senior counsel for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition. His core argument is that the direction issued by a learned Judge of this Court on 14.08.2019 in W.P.Nos.15215 of 2019 etc batch for conducting restructuring



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counselling was not complied with in the case of the department of Microbiology.

4.The respondents have filed counter affidavit and also an additional counter affidavit. The learned Additional Government Pleader for the respondents took me through their contents. He submitted that the direction given in the aforesaid writ petitions was substantially complied. It could not be complied in the case of certain departments on account of filing of some writ petitions. He would also state that in the subsequent transfer counselling held recently, the petitioner had opted to join in Virudhunagar Medical College as Assistant Professor in the department of Microbiology and therefore nothing survives for further consideration in this writ petition. According to him, the writ petition has to be dismissed as infructuous.

5.I carefully considered the rival contentions and went through the materials on record. As submitted by the learned Additional Government Pleader himself, there are three kinds of counselling namely, (i) promotion counselling, (ii) general transfer counselling and (iii) restructuring counselling. In fact, the concept of restructuring counselling was introduced only vide order dated 14.08.2019 made in W.P.Nos.15215 of 2019 etc batch. The said writ



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petitions came to filed in the context of circular issued by the Director of Medical Education pursuant to G.O.(4D) No.2, Health and Family Welfare (A1) Department, dated 15.02.2019. The Government was constrained to issue the said circular, since surplus post graduate candidates were found to be working in the same department. In order to rectify the situation, in the aforesaid batch of writ petitions, the learned Judge directed constitution of a committee. Based on the recommendation made by the said committee, the following directions were issued:-

“9. In the certain specialties, it is observed that there are more number of PG qualified Medical Officers are available against the sanctioned posts of Assistant Professor/Senior Resident as per the G.O. 2. For such specialties all sanctioned posts of Assistant Professors/Senior Residents may be considered as vacant and counseling be conducted afresh. While conducting the counselling for restructuring the post of Assistant Professor, Medical Officers may be allowed to take part in the following order of preference.

1. Medical Officer qualified with PG degree in that particular specialty working under DME based on CML seniority

2. Medical Officer qualified with PG degree in that particular specialty working under DMS based on CML seniority

3. Service Post Graduates with PG degree based on CML seniority.

4. Non Service Bond Candidates with PG degree.

For restructuring the post of Senior Resident, available



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vacancies may be filled with both PG Degree qualified and PG diploma qualified in that Particular specialty in 50:50 ratio and Medical Officers may be allowed to take part in the following order of preference.

1. Medical Officer qualified with PG degree/diploma in that particular specialty working under DME based on CML seniority

2. Medical Officer qualified with PG degree/diploma in that particular specialty working under DMS based on CML seniority

3. Service Post Graduates with PG degree/diploma based on CML seniority

4. Non Service Bond Candidates with PG degree/diploma.”

6.It was further directed that the authorities shall forthwith commence the counselling exercise for the said year and complete the same on the basis of the recommendations of the Committee within a period of three weeks from the date of receipt of copy of that order. As already noticed, without conducting such a restructuring counselling, the impugned fitment, transfer and posting order alone was issued in the case of Pudukkottai Medical College, Pudukkottai. When a direction had been issued by a learned Judge of this Court, so long as it has not been stayed or set aside, it is bound to be complied with in letter and spirit. It is admitted that as far as the department of



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Microbiology concerned, such a restructuring counselling was not conducted.

The grievance of the writ petitioner is that if such a restructuring exercise had been conducted in the department of Microbiology, she would have been accommodated in the post of Assistant Professor in Madurai Medical College. When such an exercise has been conducted for many other departments, not conducting in the case of the few departments alone including Microbiology cannot be accepted. I consciously refrain from interfering with the impugned fitment order because of the subsequent development. The petitioner had admittedly now joined as Assistant Professor in Virudhunagar Medical College. Therefore, I do not want to interfere with the impugned fitment order. However, I direct the second respondent to conduct restructuring counselling for the Microbiology department as mandated vide order dated 14.08.2019 made in W.P.Nos.15215 of 2019 etc batch. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

7.The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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To:

- 1.TheSecretary,
Health & Family Welfare Department,
Secretariat, Chennai – 9.
- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 10.



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G.R.SWAMINATHAN, J.

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