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W.P.No.12445 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.12445 of 2023
and
WMP.No.12269 of 2023

Dr.M.Hari Prasatth

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Health,
Fort St. George, Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine,
Chokkalingam Nagar,
Teynampet, Chennai,- 600 006.
3. The Deputy Director of Health Service,
Thiru.Vi.Ka. Street,
Viluppuram District.
4. The Secretary,
Selection Committee,
Directorate of Medical Education,
EVR Road, Kilpauk,
Chennai - 600 010.

...Respondents

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Mandamus directing the Respondents to treat the date of



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joining of the petitioner in the post of Assistant Surgeon as on 30.03.2020 and compute three years of Service from 30.03.2020 to get 30% incentive marks for the three completed years from 30.03.2020 to 31.03.2023 so as to enable the petitioner to get admission in the Post Graduate MD/MS/M.Ch (Neuro- Surgery) Courses for the academic year 2023 - 2024 under “Service category”.

For Petitioner : Mr.K.Raja

For Respondents : Mr.V.Manoharan, AGP, for R1 to R3
: Ms.Sneha, for R4

ORDER

This Writ petition has been filed seeking direction to the Respondents to treat the date of joining of the petitioner in the post of Assistant Surgeon as on 30.03.2020 and compute three years of Service from 30.03.2020 to get 30% incentive marks for the three completed years from 30.03.2020 to 31.03.2023 so as to enable the petitioner to get admission in the Post Graduate MD/MS/M.Ch (Neuro-Surgery) Courses for the academic year 2023 - 2024 under “Service category”.

2. The case of the petitioner is that the petitioner completed his MBBS Degree Course in the year 2017 and was appointed as Assistant Surgeon in Labour Mobile Medical Unit, Villupuram, in the office of the 3rd



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respondent, pursuant to the proceedings of the 2nd respondent dated 30.03.2020. However, the petitioner was informed about the said appointment only through Telephone on 31.03.2020 and the appointment order was not communicated to the petitioner and the same was received by the 3rd respondent only on 03.04.2020, pursuant to which, the petitioner was allowed to join the duty on 03.04.2020. Subsequently, the petitioner was transferred to Government Primary Health Centre, Kariyalur, vide order dated 30.05.2020. Thereafter, the petitioner applied for PG Degree Course in the 4th respondent for the year 2023-2024 and appeared for National Eligibility cum Entrance Test (in short 'NEET') and secured 385 marks. While such being the case, the 1st respondent issued Government order in G.O.Ms.No.423 Health and Family Welfare (MCA-1) Department dated 26.09.2019, awarding incentive marks to the in-service candidates for their service rendered in the difficult Hill/ Difficult Plain/ Remote/ Rural for admission to the Post Graduate Medical Courses by considering their working places by classifying the institution into five categories and the awarding of incentive marks which is to be counted for a period of three years from 2020-21, 2021-22 and 2022-23. Pursuant to the above Government order, the 4th respondent issued Guidelines vide notification



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Ref.No.2745/SCS II(1)/22-7 dated 15.09.2022, for awarding incentive marks to the Service P.G. Candidates for the year 2022-23 and 50% reservation of PG Seats. Further, as the petitioner is working as Assistant Surgeon from 03.04.2020, he will be completing the three years period on 02.04.2023 which is two days after the cut off date of 31.03.2023 prescribed in Notification dated 15.09.2022. Further, as the petitioner rendered his service in Difficult hill area, he was awarded 20% marks and as the petitioner has not completed 3 years as on 31.03.2023, as he was in short of 2 days, he was not awarded marks for the 3rd year. Therefore, the petitioner made a representation dated 13.03.2023 before the respondents seeking to treat the date of joining as 30.03.2020 and accordingly award incentive marks for 3 years as on 31.03.2023. However, till date no orders have been passed on the said representation. Hence, this Writ petition.

3. Learned counsel for the petitioner submitted that, though the petitioner was appointed as Assistant Surgeon in the office of the 3rd respondent, pursuant to the proceedings of the 2nd respondent dated 30.03.2020. However, due to Covid 19 situation, the appointment order was not communicated to the petitioner, where for others, the appointment order



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was communicated on the same day and they joined duty on 31.03.2020 and the petitioner was informed about the same only through Telephone on 31.03.2020 and thereafter, the petitioner was allowed to join the duty only on 03.04.2020. While so, the petitioner was denied marks for the 3rd year, as per the Government order dated 26.09.2019 and as per the guidelines issued by the 4th respondent, vide proceedings dated 30.03.2020, as the petitioner was running short of 2 days. The delay caused by the respondents cannot be put on the petitioner to deny the marks to which the petitioner, like other similarly placed persons is entitled to. The details of the incentive marks earmarked to the in-service Medical officers are as follows:

Sl.No	Category	Award Marks per year
1	Difficult Areas in Hills	10% Marks per year
2	Difficult Areas in Plains	9% Marks per year
3	Remote Area	8% Marks per year
4	Rural Areas	5% Marks per year
5	Urban Areas (Municipal/Corporation Areas)	No Incentive Marks

4. It is the further submission of the learned counsel for the petitioner that, if the petitioner's joining date is taken as 03.04.2020 for awarding incentive marks, the petitioner will be awarded 20% mark and his total



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NEET mark will be 462, and if the petitioner's joining date is taken as 31.03.2020 for awarding incentive marks, the petitioner would be entitled for incentive marks for 3 years and his total NEET mark will increase, which will greatly help petitioner in getting admission for PG Degree course. Hence, he prayed for appropriate orders.

5. Learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that, as per the guidelines issued by the 4th respondent, pursuant to the Government order dated 26.09.2019 issued by the 1st respondent, the petitioner is entitled for incentive marks for every completed year and as there was a shortage of 2 days for the last year, the petitioner was not awarded with mark.

6. Learned counsel appearing for the 4th respondent fairly submitted that, admittedly, the petitioner's appointment order was made ready on 30.03.2020, however, the same was despatched only on 03.04.2023 and the petitioner was telephonically communicated only on 31.3.2020.

7. Heard learned counsel on either side and perused the material documents placed on record.



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8. Admittedly, the petitioner completed his MBBS Degree Course in Annapurna Medical College, Salem in the year 2017 and was appointed as Assistant Surgeon in the 3rd respondent's office, as per the proceedings of the 2nd respondent dated 30.03.2020. The major grievance of the petitioner is that, the appointment order, though was made ready by the 2nd respondent on 30.03.2020 and the same was communicated to all the similarly situated persons on the same day and they joined duty on 31.03.2020, however, the same was communicated to the petitioner only on 31.03.2020, that too only telephonically and the said appointment order was received by the 3rd respondent only on 03.04.2020, pursuant to which, the petitioner joined duty on 03.04.2020 itself. When the appointment order has been made ready on 30.03.2020 and all similarly situated persons have been communicated enabling them to join on 31.03.2020, communicating the appointment order with a delay by the respondents which enabled the petitioner to join duty only on 3.4.2020, cannot be put against the petitioner. Had the respondents communicated the order on 30.03.2020 as that of similarly situated persons but the petitioner had joined on 03.04.2020, things would be in a different plane. However, immediately on receiving the appointment order, which



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was dispatched belatedly, the petitioner had joined duty on 03.04.2020. The delay caused by the respondents in communicating the order to the petitioner, which has resulted in the shortfall of 2 days which disabled the petitioner to get additional 10% incentive marks cannot be put against the petitioner. The act of the respondents cannot deny the petitioner of the marks to which he would otherwise be duly eligible. The above facts are undisputed and learned counsel appearing for the respective respondents fairly admit to the delay on the part of the respondents.

9. As per the Government order dated 26.09.2019 and the guidelines dated 15.09.2022 issued by the 4th respondent, the petitioner being the Service candidate, who served in the Difficult areas in hill as per the category mentioned in the above Government order and guidelines, is entitled for 10% incentive mark for each year. The delay in communication of the appointment order has ended in denial of 10% additional marks for the petitioner for the last/3rd year, which is wholly the fault of the respondents and no fault can be attributed to the petitioner and the petitioner is entitled to the 10% incentive mark for the 3rd year, though there is shortfall of 2 days, which is the result of the delay caused by the



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respondents.

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10. For the reasons aforesaid, the respondents are directed to award incentive marks for the 3rd year of service to the petitioner, as per the above said Government order dated 26.09.2019 and the guidelines dated 15.09.2022 issued by the 4th respondent. The said exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

11. This Writ petition stands allowed with the aforesaid observations and directions. No costs. Consequently, connected Miscellaneous petition is closed.

22.06.2023

skt

NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

Note to office: Issue order copy on 11.07.2023.

To

1. The Government of Tamil Nadu,

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Rep. by its Secretary,
Department of Health,
Fort St. George, Chennai - 600 009.

2. The Director of Public Health and Preventive Medicine,
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3. The Deputy Director of Health Service,
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M.DHANDAPANI., J.

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