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W.P.No.8823 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2024

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THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.8823 of 2018
and WMP.No.10689 of 2018

Dr.R.Srilatha

... Petitioner

Vs.

1. The Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
New Delhi 110 011.
2. The Medical Council of India,
Sector-8, Pocket-14, Dwarka,
New Delhi 110 077.
3. The Government of Tamilnadu,
Rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai.
4. The Director,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus by directing all the respondents to implement the Schedule II of Main Clause C6 of Sub Clause (ii) of the Annual Original Regulation 1999 as amended upto August 2017 issued by the Medical Council of India the 2nd respondent herein of the PG Diploma Doctors working as Senior Resident with the letter and spirit, which confirmed in the recent answers found in particularly FAQ 3 and FAQ 9 of the clarified amended regulation dated 06.07.2017 in order to cull out the recent anomaly of the recent notification dated 05.06.2017 of schedule 1 of clause 6 of ascertaining new qualification of the PG doctors as senior resident in the broad speciality.

For Petitioner : Mr.C.Kanagaraj

For Respondents :

for R1 : Mr.N.Ramesh,
Central Government Standing Counsel
for R2 : M/s.Subharanjani, Standing Counsel
for RR3 and 4 : Mr.K.Tippu Sultan, Government Advocate

ORDER

This Writ Petition has been filed seeking a Writ of Mandamus to direct the respondents to implement the Schedule II of Main Clause C6 of



Sub Clause (ii) of the Annual Original Regulation 1999 as amended up to August 2017 issued by the Medical Council of India, the 2nd respondent herein of the PG Diploma Doctors working as Senior Residents with letter and spirit and to cull out the recent anomaly of the notification dated 05.06.2017 of schedule 1 of clause 6 ascertaining new qualification of the PG doctors as Senior Residents in the broad speciality in the interest of justice.

2. The learned counsel for the petitioner submits that the petitioner completed Diploma in Physical Medicine and Rehabilitation and was appointed as Assistant Surgeon at Government PHC in the fourth respondent office under the grade pay scale of Rs.5400/- and presently working as Senior Resident in Physical Medicine and Rehabilitation Department.

3. The learned counsel submits that as far as Master Degree entry appointments are concerned, who were appointed as Assistant Surgeon/Assistant Professor entirely on different pay band III grade pay scale of Rs.5,700/- and their venues of promotion also quick, within 3 years



they will be promoted as Senior Assistant Professors and within 2 years

they will be promoted as Associate Professors subject to the vacancies.

They will be refitted as professor with pay band IV after completing

10 years of service and then promoted as Head of the Department.

4. The learned counsel further contends that in contra, the Diploma holder Doctors like the petitioner, who were appointed as Senior Residents are retired as Senior Residents.

5. It is submitted that during the month of February 2016, a circular has been issued by the fourth respondent, i.e., Directorate of Medical Education stating that the Medical Officers, who have with Diploma can be shifted to the various Institutions like Directorate of Medical and Rural Health Services and Directorate of Public Health and Preventive Medicine, by citing the MCI Regulations. At that juncture, the petitioner and others made a representation to the respondents that those Diploma holders holding the post more than 5 years will not be disturbed. But there is no reply from the respondents. Subsequently, W.P.No.3035 of 2017 was filed and when the Writ Petition came up for hearing, the third and fourth



respondents gave an undertaking that the Diploma holder Doctors like the petitioner in their respective Department cannot be disturbed and the unfilled vacancies alone can be filled up with the P.G. Degree Holders.

6. The learned counsel further contends that the only difference for M.S. (Master of Science) and the Diploma holders are one year alone than the Master Degree holders. But in the length of service concern, the petitioner is betterly placed in experience than the Master Degree holders and who can continue as Senior Resident as per the original Regulation laid in Schedule II of C6 (ii) and the same is confirmed in the amended Regulation dated 05.6.2017. The second respondent in the new amendment clearly attempted to displace the petitioner by creating anomaly in the Diploma holder Senior Resident working Doctors and thereby bringing the Master Degree holders against the sanctioned posts and available vacancies. The petitioner apprehends that he will be transferred from the post of Senior Resident to some other Department contrary to the undertaking given by the State Government before the Court, which violates Article 14 and 19(1)(g) of the Constitution of India.



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7. The learned counsel further submits that there are 700 Doctors like the petitioner, who are having Diploma Degree, were working across the State. According to the reliable source of information, the State Government has unauthorisedly selected 475 Master Degree holders in the month of June 2017 through walk in interview without following the procedures. The State Government may appoint the Master Degree Holders by creating new posts but not against the sanctioned strength.

8. The grievance of the petitioner is that the respondents are taking steps to disturb the Diploma holder Doctors working as Senior Residents in the concerned Department, which will cause irreparable loss to the petitioner.

9. The learned Government Advocate appearing for the respondents 3 and 4 basing on the communication received by him vide Ref.No.72425/E3/1/2024, dated 06.08.2024 submits that the Government has formulated a Committee to examine the issue for accommodation of Diploma Doctors in Government Medical College



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Institutions and the Committee has reported that with reference to the claims of the Diploma qualified Doctors, who have served as a specialist in the absence of PG Degree Qualified candidates, the Committee recommends that Director of Medical Education and Research should ensure that they are given first preference in any post in that domain like Senior Resident in the same speciality in the same station provided that the same is not claimed by the PG Degree qualified doctors in the same speciality. In case of claims by Post Graduates, those speciality Seniors are to be allotted in the ratio of 50:50. It is also admitted that considering the contribution for the post of Junior Resident in such Institutions or posts which do not require any additional qualification in addition to MBBS, the Diploma Graduates may be given the first preference over and above any other category.

10. The learned Government Advocate further submits that basing on the report submitted by the Committee, the petitioner and other Diploma Doctors have been accommodated in the Government Medical Colleges and as such, the request of the petitioner and similarly situated persons have already been complied with. Hence, he requested that by recording the same, the Writ Petition may be disposed of.



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11. Having considered the facts of the case and the specific contentions of the learned Government Advocate for the respondents 3 and 4 that the request of the petitioner and similarly situated persons, who are Diploma Doctors, have already been considered by the State Government basing on the report of the committee, in my considered view, no further detailed adjudication is required in the present Writ Petition.

12. Accordingly, this Writ Petition is disposed of placing the contentions of the learned Government Advocate on record that the State Government has already considered the request of the petitioner.

No costs.

Consequently, connected miscellaneous petition is closed.

22.08.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



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New Delhi 110 011.
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