



WEB COPY

W.P.No.481 of 2021
and W.M.P.No.11108 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.481 of 2021
and W.M.P.No.11108 of 2022

Dr.P.Kathiravan, M.B.B.S., D.Ortho,
No.1/2/3, Srinivasa Apartments,
Ponnusamy St, Ullagaram,
Chennai - 600 061.

...

Petitioner

versus

- 1.The Government of India,
Rep. by its Secretary to Government,
Ministry of Health and Family Welfare,
Room No. 348, A Wing,
Nirman Bhavan, New Delhi - 110 011.
- 2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare,
Secretariat, Fort St. George,
Chennai - 600 009.
- 3.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 4.The Secretary,
National Medical Commission, Formerly
Medical Council of India,
Pocket 14, Sector 8,



Dwaraka, New Delhi - 110 007.

5.The Management of Karpaga Vinayaga

Institute of Medical Science and
Research Center, P.O, GST Road,
Chinna Kolambakkam,
Palayanoor, Maduranthakam,
Tamil Nadu - 603 308.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 5 to permit the petitioner to continue in service at the same college or in a different college in consonance with the impugned Notifications bearing No.MCI-12(1)/2019-Med.Misc./138769 dated 16.8.2019 & No.MCI-12(2)/2018- Med.Misc./142810 dated 31.10.2018.

For Petitioner : Mr.M.J.Jaseem Mohamed

For Respondent No.1 : M/s.P.J.Anitha
Central Government Standing Counsel

For Respondent Nos.2 & 3: Mr.E.Sundaram
Government Advocate

For Respondent No.4 : M/s.Subharanjani Ananth

For Respondent No.5 : Mr.S.Udhaya Kumar

ORDER

Heard Mr.M.J.Jaseem Mohamed, learned counsel for the petitioner, M/s.P.J.Anitha, learned Central Government Standing Counsel for the 1st respondent, Mr.E.Sundaram, learned Government Advocate for the respondents 2 and 3, M/s.Subharanjani Ananth, learned counsel for the 4th



respondent and Mr.S.Udhaya Kumar, learned counsel for the 5th respondent and perused the materials available on record.

2. The petitioner was working as a Senior Resident in various Medical Colleges since January 2003. The petitioner has qualified MBBS and Post Graduate Diploma in Orthopaedics. He has also done one year Senior Resident in the year 1985. Since then he has been practising as a Consultant in Orthopaedic Surgeon. The petitioner was recently appointed in the 5th respondent Institution on 16.09.2013. Some of the Inspectors appointed by the 4th respondent, who come under the control and purview of the Board of Governors have misinterpreted the Notification dated 31.10.2018 of the Medical Council of India and construed that the age criteria for a Senior Resident should be below 40 years. This caused difficulty to the petitioner to continue the services. When the petitioner was working in the 5th respondent Institution, there was a Medical Council of India (MCI) Inspection done during August 2019 by citing the Notification dated 31.10.2018. The petitioner was not recognised for Senior Resident.



3. Mr.M.J.Jaseem Mohamed, learned counsel for the petitioner submitted that the petitioner continued to work as a Senior Resident in the year 2003 in many of the MCI recognised Institutions. The Inspectors who came later did not consider the explanation given by the petitioner and they prompted the management to terminate the petitioner's services and hence he gave resignation letter. Thereafter, the petitioner joined the Bharath Medical College and Hospital, as Senior Resident by citing the Notification dated 31.10.2018. The MCI Inspection Authorities insisted the management that they should produce a specific direction from MCI to allow the petitioner to continue his employment, which has caused unnecessary hardship to the petitioner. As per the Notification dated 19.08.2019, issued by MCI, P.G. Diploma Holders will be considered for the post of Senior Resident with an age gap of 45 years for further appointments.

4. It is further submitted that the petitioner himself has resigned and joined afresh in some other College as a Resident from the year 2018 alone. In spite of several representations, the respondents did not take any attempt to rectify the lacuna clogging the age criteria. Since the impact of



the Notification is wrongly understood, the petitioner's services are at a stake. Aggrieved over the same, the petitioner has filed this Writ Petition.

5. M/s.Subharanjani Ananth, learned counsel for the 4th respondent submitted that as per its Notification dated 31.10.2018, the Senior Resident ought to have been a person who is below the age of 45 and he should also hold P.G. degree in (MD/MS/DNB). Admittedly, the petitioner does not hold the above qualification. The petitioner admitted that his educational qualification is MBBS with Diploma in Orthopaedics and his age is above 40 years and even at the time of making his claim, he was 45 years. Despite the subsequent Notification has raised the age of 45 years, the petitioner still suffers disqualification as he had attained 67 years now. The petitioner has resigned from the 5th respondent College and he is an unnecessary party and the 4th respondent cannot consider his fresh appointment in the year 2018 as that of the continuing service in the category of Senior Resident.

6. Mr.M.J.Jaseem Mohamed, learned counsel for the petitioner submitted that even though the qualification for Senior Resident is fixed as



below 40 years and one more essential qualification is an acquisition of

P.G.degree as per the Notification dated 31.10.2018, a saving clause has been issued to the following effect:-

“Notwithstanding the repeal of the aforesaid provisions, an appointment made on the basis of such provisions, shall continue to be in force until superannuation of such appointees (including transfer/reappointments in different colleges/institutes).”

7. Though the second Notification dated 16.08.2019 includes the Diploma also as one of the qualifications, the petitioner does not fall under the qualifying age gap. In fact, the Senior Resident has been defined in the Notification dated 16.08.2019 as a person who is doing his/her residency in the concerned Post Graduate subject after obtaining Post Graduate degree / Diploma (MD/MS/DNB) and is below 45 years of age.

8. Even though the 4th respondent has stated that the petitioner does not fall within the maximum age of 45 years also, that can be read in terms of the date on which the petitioner has been appointed as a Senior



Resident instead of construing the same in respect of the date on which the Notification has been issued.

9. Since the petitioner's representations are still pending without any orders, the respondents are directed to consider the same and pass appropriate orders on its own merits and in accordance with the above Notification dated 31.10.2018, within a period of six (6) weeks from the date of receipt of a copy of this order.

With the above observation, this Writ Petition **disposed**. No costs. Consequently, connected Miscellaneous Petition is closed.

12.03.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To

WEB COPY

- 1.The Secretary to Government,
Government of India,
Ministry of Health and Family Welfare,
Room No. 348, A Wing,
Nirman Bhavan, New Delhi - 110 011.
- 2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare,
Secretariat, Fort St. George,
Chennai - 600 009.
- 3.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 4.The Secretary,
National Medical Commission, Formerly
Medical Council of India,
Pocket 14, Sector 8,
Dwaraka, New Delhi - 110 007.
- 5.The Management of Karpaga Vinayaga
Institute of Medical Science and
Research Center, P.O, GST Road,
Chinna Kolambakkam,
Palayanoor, Maduranthakam,
Tamil Nadu - 603 308.



WEB COPY

W.P.No.481 of 2021
and W.M.P.No.11108 of 2022



R.N.MANJULA, J.

sri

W.P.No.481 of 2021
and W.M.P.No.11108 of 2022

12.03.2024