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W.P.No.22939 of 2024

In the High Court of Judicature at Madras

Reserved on : 12.8.2024	Delivered on : 14.8.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.22939 of 2024
& WMP.Nos.24997 & 24999 of 2024

J.Balamurugan

...Petitioner

Vs

1.The Principal Secretary to
Government, Department of
Health & Family Welfare,
Government of Tamil Nadu,
Fort St.George, Chennai-9.

2.The Medical Recruitment Board,
rep.by its Member Secretary,
7th Floor, DMS Building, 359,
Anna Salai, Chennai-6.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to award incentive marks to the petitioner in accordance with G.O.Ms.No. 107 dated 26.4.2024 for selection to the post of pharmacist and consequently select and appoint the petitioner as pharmacist.

For Petitioner	:	Mr.V.Vijayashankar
For R1	:	Mrs.M.Sneha, Special Counsel
For R2	:	Mr.L.Murugavelu, Standing Counsel



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ORDER

The above writ petition has been filed seeking a direction to the respondents to award incentive marks to the petitioner in accordance with G.O.Ms.No.107 dated 26.4.2024 for selection to the post of pharmacist and consequently select and appoint the petitioner as pharmacist.

2. The case of the petitioner is as follows :

(i) He completed diploma in pharmacy and he joined service in the year 2012 in Jawaharlal Institute of Post Graduate Medical Education & Research (JIPMER), Puducherry-6. He was appointed on consolidated pay, which continues till date. He claims to be belonging to backward class community.

(ii) The second respondent issued a Notification on 10.8.2022 inviting applications for filling up 986 posts of pharmacist. The petitioner applied and also wrote the written examination on 27.4.2023.

(iii) The grievance of the petitioner is that he is entitled to incentive marks, which are being awarded as per G.O.Ms.No.107 dated 26.4.2024 since he has worked in the government medical institution during Covid pandemic period. However, when the result of the written examination was declared, the petitioner found that



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nearly 12 candidates were awarded the incentive marks whereas the petitioner, who was identically placed, was not awarded any incentive marks. It is under these circumstances, the petitioner has filed the above writ petition seeking for a direction to the respondents to award the incentive marks to him in accordance with G.O.Ms.No.107 dated 26.4.2024.

3. When the matter came up for hearing on 07.8.2024, this Court passed the following order :

"Mrs.M.Snekha, learned Special Counsel takes notice on behalf of the 1st respondent.

2. Mr.L.Murugavelu, learned Standing Counsel takes notice on behalf of the 2nd respondent.

3. This writ petition has been filed by the petitioner seeking for incentive marks in accordance with G.O.Ms.No.107, dated 26.04.2024, wherein, the petitioner has applied for the post of Pharmacist pursuant to the notification issued by the 2nd respondent dated 10.08.2022.

4. The learned Special Counsel appearing on behalf of the 1st respondent submitted that the Government Order that has been relied upon by the petitioner may not apply to the petitioner, since admittedly the petitioner is working at JIPMER, Pondicherry. The learned Special Counsel also wanted to check the authenticity of the Covid Duty Certificate that has been produced by the petitioner and which is found at Page No.127 of the typed set of papers.

5. The learned Standing Counsel appearing on



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behalf of the 2nd respondent submitted that the entire selection process is complete and therefore, nothing survives in this writ petition.

6. This Court wants to specifically ascertain the stand of the 1st respondent in this case before passing final orders in this writ petition. The learned Special Counsel shall take written instructions in this regard.

7. Post this case immediately after admission on 09.08.2024."

4. Pursuant to the said order dated 07.08.2024, the learned Special Counsel appearing for the first respondent took instructions and filed a typed set of papers containing the relevant Government Orders in respect of various designations touching upon the awarding of incentive marks and also various Government Orders, which deal with the Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS) that can be availed from all government empanelled hospitals.

5. Heard both.

6. Mr.V.Vijayashankar, learned counsel for the petitioner submitted as follows :

(i) The petitioner possessed the educational qualification prescribed under the said Notification. His name is, in fact, registered



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with the Tamil Nadu Pharmacy Council. Therefore, even though the petitioner is working at the JIPMER, Puducherry, that, by itself, will not deprive the petitioner from being awarded the incentive marks as per G.O.Ms.No.107 dated 26.4.2024. If the Government attempts to confine G.O.Ms.No.107 dated 26.4.2024 to only those hospitals within the State of Tamil Nadu, it will amount to violation of Article 16 read with Article 14 of The Constitution of India.

(ii) The object behind G.O.Ms.No.107 dated 26.4.2024 is to grant incentive marks to those, who have rendered their services during the Covid pandemic in any government medical institution and it does not confine only to those medical institutions within the State of Tamil Nadu. Hence, the petitioner, whose name is registered with the Tamil Nadu Pharmacy Council and who has been working at the JIPMER, Puducherry, will be entitled to the incentive marks.

(iii) The alternative submission made is to the effect that the JIPMER, Puducherry is one of the empanelled medical hospitals, to which, the CMCHIS applies. This is yet another ground, which adds strength to the case of the petitioner to seek for the incentive marks. The petitioner secured 65 marks in the written examination and the cut-off marks for the backward class community is 65.58 marks. According to the petitioner, he is entitled to an incentive of five marks since he has been working in the government medical



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institution during the Covid pandemic for more than two years.

Further, even if the respondents are inclined to grant an incentive of two marks, the petitioner will come within the zone of consideration by taking the total marks to 67.

(iv) In order to substantiate his submissions, the learned counsel for the petitioner relied upon the following decisions :

*"(a) of the Apex Court in the case of **Director General, CRPF Vs. Janardan Singh [reported in 2018 (7) SCC 656]** and more particularly paragraphs 14 to 22; and*

*(b) of the Division Bench of this Court in the case of **National South Indian River Interlinking Agriculturist Association, rep.by its State President Vs. Mr.P.Ayyakannu Vs. Government of Tamil Nadu [reported in 2017 SCC Online Madras 1551]** and more particularly paragraph 32."*

7. Per contra, the learned Special Counsel appearing for the first respondent submitted as follows :

(i) The Government Order in G.O.Ms.No.107 dated 26.4.2024 will apply only to those Government medical institutions within the State of Tamil Nadu and it does not have a cross border effect. By pointing out to the relevant Government Order namely G.O.Ms.No.107 dated 26.4.2024 and the previous Government Orders, which started from G.O.Ms.No.278 dated 17.8.2023, her



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contention is that the Medical Services Recruitment Board (MSRB) is expected to cross verify the details given by the applicants and then only, the incentive marks will be added before declaring the results. Such a cross verification will be possible with the hospitals located only within the State of Tamil Nadu and it will become impossible to verify if such claims are made by persons working in other hospitals beyond the borders of the State of Tamil Nadu.

(ii) The CMCHIS covers even the JIPMER, Puducherry. Reliance is placed on various Government Orders and her further contention is that they do not cover a pharmacist and that they cover only certain posts/designations. In view of the same, the petitioner cannot take advantage of the fact that the JIPMER, Puducherry is covered under the CMCHIS. The payments made under the CMCHIS fund does not cover the petitioner unless the petitioner was engaged in one or the other designation, which has been specifically mentioned in the various Government Orders.

(iii) The judgments relied upon by the petitioner will not apply to the facts of this case since the petitioner was not prevented from participating in the selection process. The petitioner cannot claim the incentive marks as a matter of right unless he satisfies the requirements under the relevant Government Order. Consequently, she sought for dismissal of this writ petition.



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8. The learned Standing Counsel appearing for the second respondent submitted that the selection is already over, that 943 names have been selected under the provisional list and that the process of appointment will be done by the first respondent through the Tamil Nadu Pharmacy Council. He adopted the arguments of the learned Special Counsel appearing for the first respondent.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record.

10. The short issue that arises for consideration in this case is as to whether the petitioner is entitled to the incentive marks as per G.O. Ms.No.107 dated 26.4.2024 and as to whether the same will have to be added to the marks obtained by the petitioner in the written examination.

11. The Notification dated 10.8.2022 was issued by the second respondent by inviting applications for direct recruitment on temporary basis to the post of pharmacist in the Tamil Nadu Medical Subordinate Service. The educational qualification prescribed was that the candidate must possess a diploma in pharmacy or bachelor of pharmacy or Pharm.D. The candidate must also be registered with



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the Tamil Nadu Pharmacy Council and it must be kept alive by renewing the same every year. When the said Notification dated 10.8.2022 was issued, there was no Government Order providing for any incentive marks. As such, there was no bar for the petitioner to apply for the selection to the post of pharmacist since he possesses both the qualifications prescribed under the said Notification.

12. The process of awarding the incentive marks started after orders were passed by the Apex Court on 30.4.2021 in Suo Motu W.P.No.3 of 2021 wherein the Apex Court directed the Central and the State Governments to come up with an effective policy, which must acknowledge the efforts taken by all those, who worked during the Covid pandemic and to create incentives for them. Based on the said order dated 30.4.2021, the Central Government issued a Notification dated 03.5.2021, in which, at Clause 17, the Central Government recommended to the State Governments and the Union Territories to consider giving preference in regular government appointments to all health professionals under a special scheme for those, who have completed a minimum of 100 days of Covid related duty.

13. The said order dated 30.4.2021 passed by the Apex Court



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and the subsequent Notification of the Central Government dated 03.5.2021 were taken note of by a learned Single Judge of this Court and an interim order was passed in W.P.No.20742 of 2023 on 13.7.2023. This Court recorded the fact that no scheme has been put in place by the State of Tamil Nadu and hence, the recruitment process conducted by the MSRB was stayed.

14. The said order of this Court dated 13.7.2023 was immediately acted upon and G.O.Ms.No.278 dated 17.8.2023 came to be issued. This is the first Government Order that was issued covering only doctors/medical officers, who worked in the government medical institutions during the Covid pandemic. After G.O.Ms.No.278 dated 17.8.2023 was issued, another Government Order in G.O.Ms.No.299 dated 12.9.2023 was issued covering health inspectors Grade II. Thereafter, G.O.(D) No.1374 dated 07.11.2023 was issued covering lab technicians Grade III. Similarly, G.O.Ms.No.371 dated 18.11.2023 was issued covering post graduate students also by inserting the words '**medical officers including post graduate students**' in G.O.Ms.No.278 dated 17.8.2023. The last in this list is G.O.Ms.No.107 dated 26.4.2024, which covers pharmacists, who have worked in the government medical institutions during the Covid pandemic period.



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15. The specific stand that was taken by the first respondent is that these Government Orders are confined only to the government medical institutions within the State of Tamil Nadu. It was further affirmed that these Government Orders were not applied to any person, who has been serving in the government medical institutions beyond the borders of the State of Tamil Nadu.

16. This stand taken by the first respondent assumes a lot of significance since it is the first respondent, who must clarify as to whether the relevant Government Order will confine itself to the government medical institutions within the State of Tamil Nadu or it will take within its fold the government medical institutions beyond the borders of the State of Tamil Nadu. Now that the clarification has been given by the first respondent, it must be taken that the relevant Government Order in G.O.Ms.No.107 dated 26.4.2024 is made applicable only to the government medical institutions within the State of Tamil Nadu and to only those, who worked as pharmacists in these hospitals during the Covid pandemic period.

17. The learned counsel for the petitioner submitted that the petitioner should not be deprived of the incentive marks since the relevant Government Order does not specifically state that it is



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confined only to the government medical institutions within the State of Tamil Nadu and apart from that, if any such classification is made to that effect, it will violate Article 16 read with Article 14 of The Constitution of India.

18. It must be borne in mind that the petitioner was not prevented from participating in the selection process on the ground that he is working at the JIPMER, Puducherry. While dealing with such a classification, the Court is expected to apply a dual test in examining the validity of such classification and they are (i) whether the classification is rationale and based on an intelligible differentia, which distinguishes persons or things that are grouped together from others that are left out of the group; and (ii) whether the basis of differentiation has any rational nexus with or relation to its avowed policy and object.

19. To understand the above two tests, let us hypothetically take a case where the petitioner is prevented from participating in the selection on the ground that he is working at the JIPMER, Puducherry. This would mean that the Government has distinguished those persons within the State of Tamil Nadu, grouped them together and left out everyone else working beyond the borders of the State of



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Tamil nadu. The differentiation of participants in the selection based on their place of work within and outside the State of Tamil Nadu can be safely held to be not founded on any intelligible differentia. That apart, where a person has satisfied the qualifications that have been prescribed in the Notification, then the object that is sought to be achieved is to select the best candidates, who possess such qualifications and therefore, the differentia will not have a rational nexus with the object that is sought to be achieved through the Notification.

20. This Court is not dealing with a case of this nature for the simple reason that the petitioner was permitted to participate in the selection since he possesses necessary qualifications in spite of the fact that he is working beyond the borders of the State of Tamil Nadu.

21. The moot question that arises in the instant case is only regarding the applicability of the relevant Government Order, which provides for awarding the incentive marks. When it comes to incentive marks, it must be borne in mind that a candidate, who wants to take advantage of such a Government Order, must strictly comply with the requirements and the concession



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Notification/Government Order should be strictly construed to ascertain as to whether the subject falls within or beyond the Notification. If the subject falls within the Notification, then the Court is expected to give a liberal interpretation to extend the benefit.

22. A close reading of the relevant Government Order would show that it talks about the institutions, which will have to issue the Covid duty certificate and the authorities, who will have to countersign the same. This is in view of the fact that the incentive marks will enure to the benefit of a candidate and enhance the possibility of selection as against those, who are not entitled to such incentive marks and therefore, it definitely requires a cross verification. The authorities, who have been listed in the relevant Government Order, would clearly show that those are institutions and authorities falling within the State of Tamil Nadu.

23. Even though paragraph 6 of the relevant Government Order does not specify that the same will apply only to those government medical institutions within the State of Tamil Nadu, that paragraph has to be read as a whole to understand its purport. If the relevant Government Order is to be made applicable beyond the borders of the State of Tamil Nadu, then there was no need to specify the



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institutions and the authorities who have to sign/countersign in the Covid duty certificate. This gives a clear indication that the relevant Government Order is confined only to the government medical institutions within the State of Tamil Nadu.

24. The cross verification beyond the borders of the State of Tamil Nadu is not dealt with in the relevant Government Order and it is also not practical for the State of Tamil Nadu to include all government medical institutions across India. Since the petitioner is working at the JIPMER, Puducherry, that looks a bit closer to Tamil Nadu. However, take for instance, a person is working in some government medical institution in North India. That will bring more clarity to understand that the relevant order never contemplated extending the benefits to the government medical institutions beyond the State of Tamil Nadu considering the difficulty in cross verifying the status of candidates, who seek for such incentive marks.

25. There is yet another way, in which, this issue can be dealt with. The best person to speak about the scope of the relevant Government Order is the first respondent. This Court has already noted the specific stand taken by the first respondent that the relevant Government Order is applicable only to those government



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medical institutions within the State of Tamil Nadu. In the light of such a stand taken by the first respondent, without the relevant Government Order being put to test, this Court cannot disregard the same and direct the respondents to grant the incentive marks to the petitioner. This is merely an alternative finding rendered even though this Court is convinced with the relevant Government Order, confining itself to those persons, who have been identified as working in the government medical institutions within the State of Tamil Nadu for granting the incentives marks, will not be violative of Articles 14 and 16 of The Constitution of India.

26. The object sought to be achieved in the relevant Government Order is that the persons, who had worked during the Covid pandemic should be given some incentive. To achieve that object, if the State makes an intelligible differentia by issuing a Government Order confining it only to those persons within the State of Tamil Nadu, that does not, in any way, make the classification arbitrary and it should be held to be a classification founded on an intelligible differentia. A State Government granting incentive marks to only those, who were working in the government medical institutions within the State of Tamil Nadu cannot be faulted and that intelligible differentia has a rational nexus to the object sought to be



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achieved by awarding incentive marks to those persons, who have been identified as working in the government medical institutions within the State of Tamil Nadu.

27. The other issue regarding the JIPMER, Puducherry being covered as one of the government empanelled hospital under the CMCHIS does not really take the case of the petitioner any further. On a careful reading of the relevant Government Order, it is seen that only certain designations have been identified under this scheme and it does not cover pharmacists. Therefore, just because the JIPMER, Puducherry is covered under the CMCHIS for certain designations, that, by itself, will not entitle awarding the incentive marks to the petitioner under the relevant Government Order since he does not fall within its scope. In the light of the above discussions, the relief sought for by the petitioner cannot be granted by this Court.

28. Accordingly, the writ petition is dismissed. It is left open to the respondents to proceed further with the counselling and issue appointment orders to those candidates, who have been selected. No costs. Consequently, the connected WMPs are also dismissed.



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14.8.2024

N.ANAND VENKATESH,J

RS

Index : Yes

Neutral Citation : Yes

To

- 1.The Principal Secretary to
Government, Department of
Health & Family Welfare,
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Fort St.George, Chennai-9.
- 2.The Medical Recruitment Board,
rep.by its Member Secretary,
7th Floor, DMS Building, 359,
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P.D.ORDER IN
W.P.No.22939 of 2024 &
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