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W.P.No.35175 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.35175 of 2023
and W.M.P.No.35159 of 2023

M.Nivetha

... Petitioner

-Vs-

1. The Principal Secretary to Government
Health and Family Welfare Department,
Fort St. George, Chennai – 600 009.
2. The Director,
Directorate of Medical Education,
Poonamallee High Road,
Chennai – 600 010.
3. The Director of Public Health and
Preventive Medicines,
DMS Campus, Teynampet,
Chennai – 600 006.
4. The Director of Medical &
Rural Health Services,
DMS Campus, Teynampet,
Chennai – 600 006.
5. The Chairman Medical Services
Recruitment Board (MRB)
7th Floor, DMS Buildings,
358, Anna Salai, Teynampet,
Chennai – 600 006.



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6. The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Buildings,
359, Anna Salai,
Teynampet,
Chennai -600 006.

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the sixth respondent to provide incentive of five marks as per the G.O.(Ms).No.278 Health and Family Welfare (B1) Department dated 17.08.2023 to the petitioner in examination for the post of Assistant Surgeon conducted by the sixth respondent vide notification No.11/MRB/2022 dated 11.10.2022 and consequential relief.

For Petitioner : Mr.V.Karthikeyan
For Mr.S.Joel
For Respondents
For R1 to R4 : Mr.S.Rajesh
Government Advocate
For R5 & R6 : Mr.C.Murugavelu

ORDER

This writ petition has been filed for direction to direct the sixth respondent to provide incentive of five marks as per the G.O.(Ms).No.278 Health and Family Welfare (B1) Department dated 17.08.2023, to the petitioner in the examination for the post of Assistant Surgeon.



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2. The petitioner had completed her M.B.B.S. Course during the academic year 2011-2016. Thereafter, she enrolled in the Medical Counsel of India. She also completed M.S. Anaesthesiology in Shyam Shah Medical College, Rewa Madhya Pradesh, during the academic year 2019-2022. While pursuing her post graduate degree, she had rendered service in universal Covid-19 pandemic from 24.03.2020 to 08.05.2022 at Shyam Shah Medical College, Rewa Madhya Pradesh. She was also issued with certificate to that effect.

3. While being so, the sixth respondent called for application for the vacancies of 1021 post of Assistant Surgeon, General, by notification dated 11.10.2022. The petitioner had applied for same and appeared for the examination conducted on 25.04.2023. However, she has not been selected since, she was not awarded incentive of five marks as per the G.O.Ms.No.278 Health and Family Welfare (B1) department, dated 17.08.2023. The said government order was issued in pursuant to the interim order dated 13.07.2023, passed by this Court in W.P.No.20742 of 2023 and the order passed by the Hon'ble Supreme



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Court of India in Suo Moto W.P.No.3 of 2021. Since the petitioner had pursued post graduate course in other State viz., Shyam shah Medical College, Rewa Madhya Pradesh, Andrapradesh, the petitioner was not allowed to enter her certificate for rendering service during Covid-19. The Medical Services Recruitment Board had created a web portal to choose the college/medical institution/local bodies in which, the aspirants have served and shall upload the relevant certificate who rendered their services during Covid-19.

4. The learned Government Advocate appearing for the respondents would submit that now the sixth respondent published the marks scored by the candidates (for those qualified in the Tamil eligibility test). Accordingly the petitioner scored only 58.13 marks. Even if the petitioner has granted incentive five marks for the service rendered during Covid-19, the petitioner is not eligible for appointment to the post of Assistant Surgeon. The petitioner belongs to SC communal category and cut of marks for SC communal is 66.54 marks. Even added five marks to 58.13, it comes 63.13. Therefore, no purpose would be served if the incentive of five marks awarded to the petitioner.



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5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. Similar issue raised in this writ petition has already been dealt with by the Hon'ble Division Bench of this Court in the case of ***Dr.D.Hariharan and ors Vs. Union of India*** and ors reported in **2023 SCC Online Mad 7198**, in the batch of writ petitions in ***W.P.No.25828 of 2023 etc.***, which was filed challenging the G.O.Ms.No.278 dated 17.08.2023, insofar as it fails to accord weightage five marks, who worked in the Government Medical Institution during Covid-19 pandemic. The Honb'le Division Bench of this Court framed questions and one of it is, whether the post graduate students who were in Covid-19 duty during their training period can claim the incentive marks and it held that the post graduate students in government hospitals will also be eligible for the incentive marks.

7. On perusal of the certificate issued by the Dean, Shyam Shah Medical College, Rewa Madhya Pradesh, dated 01.12.2023



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revealed that the petitioner rendered duty for the period from 24.03.2020 to 08.05.2022 viz., during the Covid-19 pandemic. The petitioner was selected for the post graduate degree in M.S. Anaesthesiology, through NEET and she was allotted seat in Shyam Shah Medical College, Rewa Madhya Pradesh. She successfully completed her post graduate degree and during her post graduate, she had rendered her service during Covid-19 pandemic from 24.03.2020 to 08.05.2022. It was duly certified by the Head of the Department and Dean of the Shyam Shah Medical College, Rewa Madhya Pradesh. Therefore, she is also eligible to get incentive marks.

8. In view of the above discussions, the sixth respondent is directed to provide incentive of five marks to the petitioner in the examination for the post of Assistant Surgeon conducted in pursuant to the notification No.11/MRB/2022 dated 11.10.2022, forthwith. It is made clear that this direction is not for the petitioner's appointment to the post of Assistant Surgeon. After awarding five incentive marks to the petitioner, if she is eligible to be appointed to the post of Assistant Surgeon, the sixth respondent is directed to pass orders accordingly.



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Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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(2/2)

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts

To

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rts

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