

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.05.2018
CORAM
THE HONOURABLE MR.JUSTICE S.BASKARAN
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1193 of 2018
& C.M.P.Nos.9569 and 9570 of 2018

Dr.Shanmugasundaram

.. Appellant/petitioner

Versus

The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010.

.. Respondent/Respondent

Prayer: The Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 25.05.2018 passed by the learned Single Judge, in W.P.No.12902 of 2018 on the file of this Court.

WP.No.12902/2018:Writ Petition filed under Art 226 of the Constitution of India for a Writ of Mandamus directing the respondent to consider the representation of the petitioner dated 22.05.2018 by calling for counselling forth with for the P.G. Course in Tamil Nadu Medical Colleges and post him in the P.G. Course any of the Medical Colleges in Tamil Nadu under SERVICE QUOTA

For Appellant : Mr.R.Sankarasubbu
For Respondent : Mr.Manishankar, Addl. Advocate General
assisted by Mr.T.N.Rajagopalan,
Govt. Pleader

JUDGMENT

(Judgment of the Court was delivered by RMT.TEEKAA RAMAN, J.,)

The unsuccessful writ petitioner is the appellant herein. This appeal is filed against the order dated 25.05.2018 passed by the learned Single Judge, in W.P.No.12902 of 2018 on the file of this Court.

2. The prayer in the writ petition is to direct the respondent to consider the representation of the writ petitioner

dated 22.05.2018 by calling for counselling forthwith for the P.G.Course in the Tamil Nadu Medical Colleges and post him in the P.G.Course in any of the Medical Colleges in Tamil Nadu under Service Quota. It appears that on the very next day, i.e., on 23.05.2018, the petitioner has filed the writ petition before the Vacation Court. The learned Single Judge has passed the following order:

"6. On perusing the records and affidavit and materials on record, it is clear from the prospects that the last date for submission of application and for receiving the same is 26.03.2018 at 5.00 p.m. Thereafter, the petitioner who has applied for the PG Course is well aware that his application was not accepted till 26.03.2018 at 5.00 p.m. The petitioner kept quiet almost for two months. Since the date, only on 22.05.2018, the petitioner has made a representation to the respondent and immediately on 22.05.2018, he has filed this writ petition before this Court seeking for a direction to consider the petitioner's representation dated 22.05.2018 and to consider his case to call for the counselling forthwith.

7. Certainly, this Court is not able to accept the callous attitude of the petitioner when the petitioner is very well aware that his application was not accepted till last date i.e., 26.03.2018, as fixed in the prospectus, he ought to have approached this Court at the earliest point of time. However, having waited till the last date for the counselling to get over, the petitioner has to suffer for his lethargic and careless attitude.

8. In the above facts and circumstances of the case, this Court is not accepting the plea of the petitioner's counsel and this petition fails as devoid of merits. Consequently, the writ petition is dismissed and the connected miscellaneous petition is closed. No costs."

Aggrieved by the above said dismissal order passed by the learned Single Judge, the writ petitioner has preferred this appeal.

3. The learned counsel for the appellant / writ petitioner urged the fact that A.R. Number has been given and his application has been duly filed before 26.03.2018. However, he was not called for counselling and hence he made a representation on 22.05.2018 and moved this Court by filing writ petition on 23.05.2018. According to the learned counsel for the appellant, for want of nativity certificate, his application was rejected.

4. The learned counsel for the appellant has drawn the attention of this Court to Clause 2 (b) of the eligibility criteria in the general instructions of the prospectus and also Clause 9 relating to service candidates and he also drew the attention of this Court to Clause 13 (f) relating to procedure for filling and submission of application and contended that insisting upon the nativity certificate as contemplated under the said Clause 2 (b) is not applicable to the service candidates. He also contended that the writ petitioner has completed the required three years of practice in the State of Tamil Nadu and as such, he ought to have been called for counselling and hence he seeks for a mandamus to call him for counselling.

5. The learned Additional Advocate General assisted by the learned Government Pleader, submitted that as per the direction of the Supreme Court, the counselling has been completed and it was closed yesterday (30.05.2018) and hence, in view of the specific guidelines issued by the Supreme Court, the extension of the counselling on any ground is not entertainable.

6. After perusing the impugned order passed by the learned Single Judge, we also concur with the views expressed by the learned Single Judge. Besides that, the learned counsel for the appellant emphasised upon the said Clause 2 (b) of the eligibility criteria, which reads as follows:

"II. Eligibility Criteria

2.

(b) Candidates of Tamil Nadu Native who have completed MBBS in other States should furnish a Certificate of Nativity in Tamil Nadu issued by the competent authority only and supported by a copy of Passport / Aadhar / Voter's ID / Driving Licence. If the copy of the supporting document is not produced, then the application will be summarily rejected."

7. Based upon the said Clause 2(b) read with 9 (a and b) and 13 (f), the learned counsel for the appellant contended that insisting upon the nativity certificate for the service candidates does not arise. After going through the prospectus and the clauses contained therein, we are unable to approve the said contention for more than one reason. The eligibility criteria under Clause 2 (b) is common to both in-service candidates and open category candidates and therefore, we are not in a position to accept the contention put forward by the learned counsel for the appellant that insisting upon the nativity certificate is not applicable to the service candidates and the same, is negatived.

8. The learned counsel for the appellant further contended that the appellant has produced a copy of the nativity

certificate in the typed set of papers filed along with the writ appeal in page no.31 and Aadhar Card in page 30 therein. According to him, the appellant has filed these documents along with his application and had it been filed along with the application, it could not have been rejected. Further, as contended by the learned Additional Advocate General, it is an admitted fact that the appellant has completed his MBBS degree course from Puducherry and he has also registered his professional degree in the Medical Council of India showing the address of the Puducherry Union Territory and also in the appointment and posting order (DPHM & PM), dated 16.03.2015, the address of the candidate (appellant) has been shown with Puducherry address and it is with regard to the year 2015.

9. The learned Additional Advocate General further developed his argument that in the year 2015, the person (appellant) was a resident of Puducherry and therefore five year period is necessary for issuance of nativity certificate and the said certificate is a condition stipulated therein for admission into the courses and in the present facts and circumstances, it cannot be presumed that he was living in the State of Tamil Nadu.

10. The learned counsel for the appellant further contended that the petitioner has tracked the A.R. Number right from the internet and only in the month of May, the petitioner came to know about the fact of non-inclusion of his name for counselling and therefore, the said delay cannot be put against him.

11. Be that as it may, considering the fact that the said Clause 2 (b) is applicable to the petitioner and also he has stated that he was a resident of Puducherry up to the year 2015 and for want of nativity certificate, we are not in a position to grant the relief in this writ appeal.

12. Taking note of the fact that the counselling has already been completed and also taking into account the views expressed by the learned Single Judge with regard to the delay in approaching the Judicial Forum having waited after two months and making the representation on 22.05.2018 and moving the writ petition on the very next day, we are unable to issue any mandamus as prayed for by the writ petitioner and also in view of the strict guidelines issued by the apex court with regard to the counselling for admission of the PG course, the date cannot be extended. We are not in a position to appreciate the contentions put forward by the appellant / writ petitioner.

13. For all the above stated reasons, the writ appeal is dismissed. No costs. Consequently, C.M.Ps. are closed.

-s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

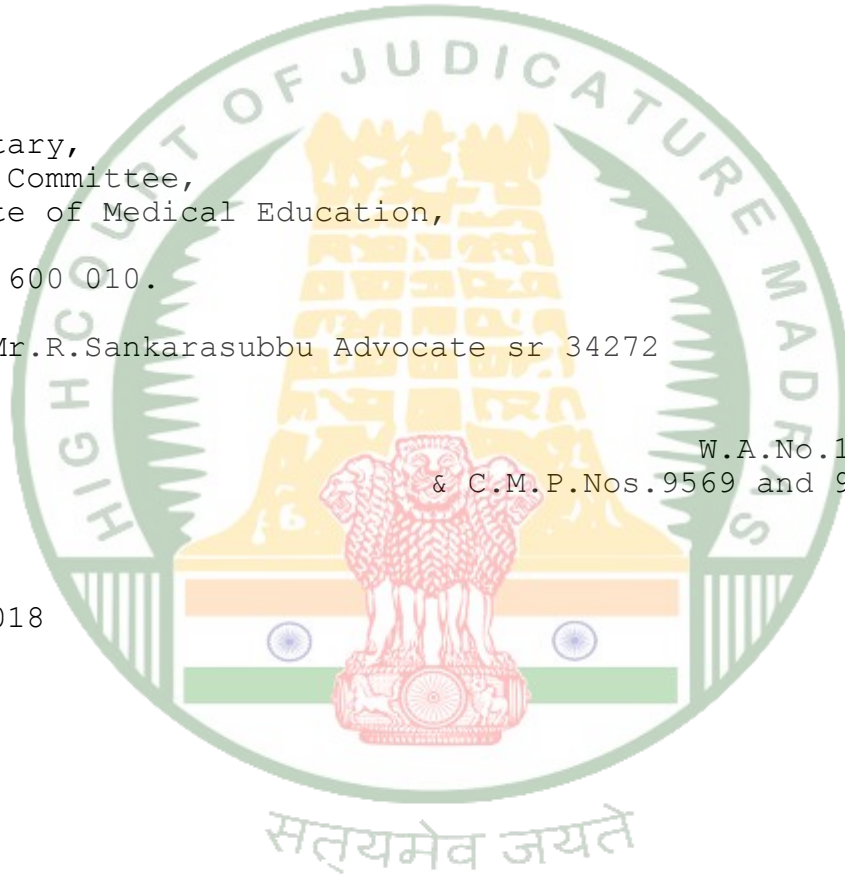
pvs/cs

To
The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010.

+1 cc to Mr.R.Sankarasubbu Advocate sr 34272

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