

(2008) 03 MAD CK 0102

In the Madras High Court

Case No : Writ Petition No. 35866 of 2007 and M.P. No. 1 of 2007

Dr. Poovendran

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Tamil Nadu Medical Services Special Rules, 1970 — Rule 21

Citation : (2008) 03 MAD CK 0102

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : Hema Sampath for R. Meenal, for the Appellant; K. Kannadasan, A.A.G. Assisted by Shanmugavalli Sekar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—This writ petition is filed against the impugned proceedings of the third respondent Director of Public Health and Preventive Medicine dated 09.11.2007, by which, based on the order passed in W.P. No. 46644 of 2006 filed by Dr.S. Thivya, the third respondent has withdrawn the permission granted to the petitioner to join service after completion of P.G. Course.

2. By the Government letter dated 18.07.2008, the Government has granted permission to the writ petitioner to complete his P.G. Course and thereafter to join in service for which he was selected as Assistant Surgeon (General / Specialties) in the Tamil Nadu Medical Service, for the year 2003-04.

3. The said order of this Court in W.P. No. 46644 of 2006 referred in the impugned order was disposed on 04.09.2007 by recording the undertaking from the Tamil Nadu Public Service Commission as per the guidelines issued by them. Further, it remains a fact that similar impugned order like the one impugned in this writ petition was challenged by some of the candidates who were selected in the Medical Service as stated above, in Madurai Bench of Madras High Court in

W.P.(MD).Nos.9694 & 9695 of 2007 and by an order dated 22.11.2007, this Court considered granting of such relaxation to the petitioners under Rule 21-A of the Special Rules for Tamil Nadu Medical Services and held that it is against public interest, since by virtue of such relaxation, the post of Doctors to be filled up has virtually come to a standstill and in view of the same, the writ petitions were dismissed.

4. It was against the said order of dismissal, Writ Appeals in W.A.(MD).Nos.89 to 91 of 2008 was filed before the Madurai Bench of Madras High Court and the Hon''ble First Bench taking into consideration that there is no power on the part of the authority to grant relaxation to join duty, relied upon the Judgment of the Hon''ble Apex Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, wherein the Hon''ble Apex Court has laid down that the prospectus is binding upon all persons concerned, and dismissed the writ appeals. The Hon''ble First Bench has also held that it is not permissible for the Court to make any modification and/or relaxation in the conditions stipulated by the prospectus. It was also held that granting time for six months or one year will cause serious prejudice to the general public. The operative portion of the said Judgment is as follows:

5. More over, there is no power in the Authorities to grant relaxation of the condition to join duty. The binding nature of the instructions to the candidate is well settled. The Supreme Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, has clearly laid down that the prospectus is binding on all persons concerned and following the same, a Division Bench of this Court has also observed in Rathnaswamy, Dr. A. v. Director of Medical Education 1986 WLR 207 that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same principle is reiterated in the case of Dr. M. Ashiq Nihmathullah v. The Government of Tamil Nadu and Ors. 2005 WLR 697. It is not permissible for the Court to make any modification and/or relaxation in the conditions stipulated by the prospectus. Further, granting of any relief in this petition would mean that the post in question will have to be kept vacant for another six months or one year causing serious prejudice to the general public.

5. In view of the said fact that similar impugned order has been upheld by the Hon''ble First Bench of this Court, the writ petition is dismissed. However, the third respondent Director of Public Health and Preventive Medicine, is directed to permit the petitioner to join as per the selection already made and intimated, within a period of 10 days from the date of receipt of a copy of this order. Consequently the connected M.P. is closed. No costs.