

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.Nos.25827, 25785 and 27568 of 2023

In W.P.No.25827 of 2023 :

1. Dr.D.Hariharan
2. Dr.M.Srithar
3. Dr.Kishor S.
4. Dr.Praveen B.

.. Petitioners

Versus

1. The Union of India
Represented by its Secretary to Government,
Ministry of Health and Family Welfare,
Room No. 201-D, Nirman Bhawan,
New Delhi – 110 011.
2. The State of Tamil Nadu
Represented by its Principal Secretary to Government,
Health and Family (MCA-1) Department,
Fort St. George, Chennai – 600 009.
3. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
4. Medical Services Recruitment Board (MRB),
Represented by its Chairperson,
7th Floor, DMS Buildings,
358, Anna Salai,
Teynampet, Chennai – 600 006.

5. National Medical Commission,
Represented by its Secretary,
Pocket 14, Sector – 8, Dwaraka Phase I,
New Delhi – 11 077.

.. Respondents

In W.P.No.25785 of 2023 :

1. Dr.T.Ajay
2. Haji Abdul Salam
3. Akalya K
4. Amilthan R
5. Ari Raja Nizhanth
6. Atchaya K
7. Bharath S
8. Bharathwaj R
9. Bhavashree M
10. Chinna Durai D
11. Dinesh Kumar S
12. Jaganneethi
13. Karthik K
14. Karthikeyan R
15. P.Kathiravan
16. Mohana E
17. Moniha R
18. Prabusankar A G
19. Priyatharisini V
20. Rangesh T K S
21. N.Silamparasan
22. A.Sowmya
23. Sujin Kumar G
24. Suresh K
25. Vijay Sooriya M

.. Petitioners

Versus

1. The Principal Secretary,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George,
Chennai – 600 009.

2. The Director of Public Health and Preventive Medicine,
359, Anna Salai,
Teynampet, Chennai – 600 006.

3. The Director of Medical Education,
Poonamalle High Road,
Kilpauk, Chennai – 600 010.

4. The Member Secretary,
The Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai – 600 006.

.. Respondents

In W.P.No.27568 of 2023 :

1. Dr.A.Thamilkkovan
2. Dr.R.Sukanya

.. Petitioners

Versus

1. Government of Tamil Nadu, rep by its
Principal Secretary to Government,
Health and Family Welfare (B1) Department,
Secretariat, Chennai – 600 009.

2. The Director of Medical Education,
Chennai – 600 010.

3. The Member – Secretary,
Medical Services Recruitment Board,
DMS Building, 7th Floor,
359, Anna Salai, Teynampet,
Chennai – 600 006.

.. Respondents

Prayer in W.P.No.25827 of 2023 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Declaration declaring G.O. (Ms).No.278, dated 17.08.2023 issued by the second respondent and the consequential letter bearing Ref No.081353/ME2/1/2023, dated 23.08.2023, issued by the 3rd respondent as illegitimate, illegal and *ultra vires* the

Constitution of India insofar as it fails to accord weightage marks to post graduate doctors who worked in Government Medical Institutions during the COVID – 19 pandemic in reckoning the ranks secured by them for the post of Assistant Surgeon in the examinations held by the fourth respondent pursuant to its Notification No.11/MRB/2022, dated 11.10.2022.

Prayer in W.P.No.25785 of 2023 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the impugned notification G.O.MS:278, dated 17.08.2023 issued by the 1st respondent and quash the same as ultra vires and unconstitutional and consequently direct the 4th respondent to publish the final results of the Computer Based Examination held 25.04.2023 for the post of Assistant Surgeon.

Prayer in W.P.No.27568 of 2023 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in G.O.Ms.No.278 Health and Family Welfare (B1) department, dated 17.08.2023 to the limited extent of Para 5(10(i) thereof and the consequential order passed by the 2nd respondent in his Ref.No.081353/ME/1/2023, dated 23.08.2023 in its entirety, quash the same and issue consequential directions to the respondents herein to grant incentive marks to the petitioners for their service rendered during COVID – 19 pandemic period as Post Graduates between March, 2020 and May, 2021 and issue revised order to that effect.

In W.P.No.25827 of 2023 :

For Petitioners : Mr.Suhrith Parthasarathy

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.Rajesh Vivekanandan, for R1

: Mr.Ramanlaal, Additional Advocate General,
Assisted by Mr.T.K.Saravanan,
Government Advocate, for RR-2 and 3

: Mr.J.Ravindran, Additional Advocate General,
Assisted by Mr.L.Murugavelu, for R4

In W.P.No.25785 of 2023 :

For Petitioners : Mr.Vineeth Subramaniam
for Mr.V.Pavel

For Respondents : Mr.Ramanlaal, Additional Advocate General,
Assisted by Mr.T.K.Saravanan,
Government Advocate, for RR-1 to 3

: Mr.J.Ravindran, Additional Advocate General,
Assisted by Mr.L.Murugavelu, for R4

In W.P.No.27568 of 2023 :

For Petitioners : Mr.R.Thamaraiselvan

For Respondents : Mr.Ramanlaal, Additional Advocate General,
Assisted by Mr.T.K.Saravanan,
Government Advocate, for RR-1 and 2

: Mr.J.Ravindran, Additional Advocate General,
Assisted by Mr.L.Murugavelu, for R3

COMMON ORDER

(Order made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

A. The brief facts of the case :

The brief facts leading to the filing of these petitions are as follows:-

On 11.10.2022, the Medical Services Recruitment Board (MRB),
Government of Tamil Nadu, issued Notification No.11/MRB/2022, in and by
which, it invited applications for direct recruitment to 1021 vacancies in the

post of Assistant Surgeon (General) in the scale of pay of Rs.56,100-1,77,500. The selection was by a process of written examination consisting of two papers, namely, Tamil Language Test and the Main Paper. All the writ petitioners had applied and participated in the selection process. The examination was conducted on 25.04.2023. On 23.06.2023, the Tamil Eligibility Test Result and the Final Answer Keys were released by the MRB. The objections to the key answers were also considered and the keys are finalised.

1.1. While so, on 13.07.2023, a group of Doctors approached this Court by way of W.P.No.20742 of 2023, seeking for award of weightage marks for the duty rendered by them in COVID - 19 pandemic wards. Considering the fact that no scheme was put in place by the Government of Tamil Nadu, an interim stay was granted against issuing any appointment orders.

1.2. Thereafter, on 17.08.2023, the Government of Tamil Nadu issued G.O.(Ms).No.278, dated 17.08.2023, in and by which, it was decided to implement the direction of the Hon'ble Supreme Court of India in *Suo Motu* W.P.(Civil) No.3 of 2021 to grant incentives to those Health Professionals who worked for COVID - 19 related duty in regular Government appointments. Accordingly, 2-5 marks were awarded to the Medical Officers as per the criteria contained in paragraph No.5 of the Government Order in respect of the above selection upon furnishing of the COVID Duty Certificate as directed in the

Government Order.

1.3. Aggrieved by the said Government Order, certain Doctors, who have made their applications but have not done any COVID – 19 duty in Government Hospitals, have filed W.P.Nos. 25785 and 27568 of 2023. It is their contention that they participated in the selection with a legitimate exception that no such weightage will be granted. However, after the notification was made and the selection process was midway, the rules of the game have been changed. It is their further contention that even private Doctors working in their clinics were also responsible for identifying COVID - 19 cases and some private Hospitals had also COVID – 19 wards. Therefore, the impugned Government Order is also discriminatory.

1.4. The writ petitioners in W.P.No.25827 of 2023 have also applied for the post. Upon the G.O. being issued, they also approached the concerned authority for the issuance of COVID Duty Certificate to them so as to claim weightage. However, by the communication impugned in the writ petition, dated 23.08.2023, their request was rejected on the ground that the COVID - 19 duty performed by them as Post-Graduate Students, which is part of their 36 month training period is not being considered for incentive marks. Hence, they challenge the said communication and the Government Order in as much as it excludes their duty in COVID - 19 wards for grant of incentive marks. It is

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their contention that it was not their regular duty, but, they were made to work in COVID – 19 wards in view of the exigency. Therefore, when the purpose is to incentivise the Health Care Professionals, they should also have been granted the marks and as such, to the said extent, the impugned orders are to be interfered.

B. The case of the respondents :

2. The Writ Petitions are resisted by the respondents by filing detailed counter-affidavits. As regards the claim of the private Doctors, the case of the respondents is that it was decided to extend the incentive for the Medical Officers who worked in Government Hospitals. Further, about 84% of the COVID -19 patients in the State were treated only in the Government Hospitals. These doctors who were unsuccessful in the earlier selection process, and whose list was readily available with the Government responded on short notice and call and volunteered by putting their life at risk and rendered selfless and yeoman service in the COVID - 19 Wards. The Hon'ble Supreme Court of India had directed the Central Government and the State Governments to suitably incentivise these Health Care Professionals. Pursuant to which, this Court had passed an Interim Order. Therefore, it was decided to grant incentive marks as stated in the Government Order. It does not in any manner alter the eligibility criteria nor any tinkering is made to the selection process. The results are yet to be declared and the select list is yet to be published. Further, there is

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no verifiable mechanism in respect of any claim by the Doctors in private Hospitals. Further, it is not the case of the writ petitioners that they have done COVID - 19 duty in private hospitals nor any such particulars are furnished.

2.1. As far as the Post-Graduate students are concerned, it is part of their training. Their services cannot be considered as that of Medical Officers. In any event, the duty in COVID - 19 wards is also considered as part of their training. They had to be at the Hospital performing their duties as Post-Graduate students. Therefore, the incentive which is meant for the Medical Professionals who volunteered to perform COVID - 19 duty is not extended for them.

C. The Submissions :

3. Heard *Mr.Suhrith Parthasarathy*, learned Counsel appearing for the petitioners in W.P.No.25827 of 2023; *Mr.Vineeth Subramaniam*, learned Counsel appearing for the petitioners in W.P.No.25785 of 2023; *Mr.R.Thamaraiselvan*, learned Counsel appearing on behalf of the petitioners in W.P.No.27568 of 2023; *Mr.AR.L.Sundaresan*, learned Additional Solicitor General of India appearing on behalf of the first respondent in W.P.No.25827 of 2023; *Mr.Ramanlal*, learned Additional Advocate General appearing on behalf of the respondents 2 and 3 in W.P.No.25827 of 2023, respondents 1 to 3 in W.P.No.25785 of 2023 and the respondents 1 and 2 in W.P.No.27568 of 2023;

Mr.J.Ravindran, learned Additional Advocate General appearing on behalf of the fourth respondents in W.P.No.25827 of 2023, the fourth respondent in W.P.No.25785 of 2023 and the third respondent in W.P.No.27568 of 2023.

3.1. *Mr.Vineet Subramaniam*, learned Counsel appearing for the private Doctors, would contend that rules of the game cannot be changed in the course of the game and for that purpose, relied upon the judgment of the Hon'ble Supreme Court in ***Sivananda C.T. and Ors. Vs. High Court of Kerala and Ors.***¹, more specifically referring to paragraph Nos.17, 44, 45, 49 and 52 of the said judgment. He would submit that already the examinations are over and even the results are partly declared. He would further contend that when the direction of the Hon'ble Supreme Court of India is in respect of all the Health Care Professionals, granting incentives to the Doctors who worked in Government Hospitals alone is discriminatory.

3.2. *Mr.R.Thamaraiselvan*, the learned Counsel appearing for the Private Doctors in the other writ petition, while adopting the submissions would point out that the Government Order cannot change the rule for the present selection and submits that it is arbitrary.

3.3. *Mr.Suhrith Parthasarathy*, the learned Counsel submitted that

¹ 2023 INSC 709

already the other incentive mark which is being granted to the Post-Graduate students stands withdrawn. Their case is better than the other Medical Officers because they had no option than to serve in the COVID - 19 wards. The services which these Post-Graduate students have put in is the same as that of the Medical Officers and as a matter of fact, the data would show that more number of patients were treated by the Post-Graduate students. They underwent the same trauma, risk and put in the same selfless service as that of the Medical Officers. He would submit that the classification made by the respondents is unreasonable and does not have a nexus with the object sought to be achieved. Pointing out to the earlier judgments of this Court in ***Dr.Jayakrishnan and Ors. Vs. The State of Tamil Nadu and Ors.***, in W.P.No.26556 of 2022 etc., he would submit that the duties rendered by these Post-Graduate students are held to be as same as the Medical Officers appointed temporarily. Pointing out to paragraph No.72 of the judgment of the Hon'ble Supreme Court of India in ***Suo Motu W.P. (Civil) No.3 of 2021***², he would submit that the direction was to incentivise all the Health Care Professionals and he would pray to allow the writ petition.

3.4. Per *contra*, *Mr.J.Ravindran*, the learned Additional Advocate General appearing on behalf of the Government of Tamil Nadu, reiterating the submissions made in the counter-affidavit, would contend that neither there was any alteration of eligibility criteria nor selection process. Only the directions of

² 2021 SCC OnLine SC 355

the Hon'ble Supreme Court of India were implemented. The results are yet to be published and no prejudice is caused to any person whatsoever. He would submit that there is *intelligible differentia* in leaving out the private doctors as 84% of the patients were treated only in Government Hospitals and further, there is no verifiable mechanism in respect of private Doctors. Reiterating the stand in the counter-affidavit, he would submit that the service rendered by Post-Graduate students was only part of their training. Reliance was placed on ***Secretary (Health), Department of Health & Family Welfare and Anr. Vs. Dr. Anita Puri and Ors.***³ to contend that grant of such minimum incentive marks will not render the selection arbitrary.

3.5. *Mr.A.Ramanlal*, the learned Additional Advocate General appearing for the MRB, would again submit that there is not even any pleading by the private Doctors that they performed COVID - 19 duty even in any private Hospital. Even in the affidavit, no such particulars are mentioned. He would submit that the Post-Graduate students were actually given incentive in a different context, where after considering their COVID - 19 duty, the mandatory bond period of equivalent length of time was waived by the Government. Thus, the authorities which included experts in the field after taking into account the relevant considerations have conferred incentive marks on the Medical Officers who rendered service in the COVID - 19 wards in the Government Hospitals

³ (1996) 6 SCC 282

and there is no infirmity in the same.

D. Questions arise for consideration :

4. We have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for our consideration :

(i) Whether the impugned Government Order granting incentive marks is bad in law in as much as it is issued after the commencement of the recruitment process ?

(ii) Whether the impugned Government Order granting incentive marks is bad in law in as much as it is discriminatory in not considering the services of doctors in private hospitals and clinics ?

(iii) Whether the Post-Graduate students who were in COVID - 19 duty during their training period can claim the incentive marks ?

E. Question No. (i):

5. To answer this question, it is pertinent to extract the relevant portion of paragraph No.72 of the judgment of the Hon'ble Supreme Court of India in *Suo Motu* W.P. (Civil) No.3 of 2021 (cited *supra*) which reads as follows :

“ 72.(ii) While we are dealing with a terrible second wave of the COVID-19 pandemic, there must be an effective policy to ensure that the nation truly acknowledges their effort and creates incentives for them. We hope it will be remedied soon by the Central

and State Governments through the introduction of appropriate guidelines and measures;”

(Emphasis supplied)

Thus, it can be seen that the implementation of the directives of the Hon’ble Supreme Court of India had to be done immediately and if the incentives are not granted in the present recruitment, then the same is of no avail. Therefore, there is justification in introducing the incentive immediately.

5.1. COVID - 19 pandemic brought in an extreme and abnormal situation. Even the spouse and children of a person who died of COVID - 19 did not even come near and the body was packed in a bag and disposed off. The right of free movement throughout the country, right to assemble, right to celebrate weddings with friends and relatives were all curtailed. Places of worship, where worship and rituals should not stop even in war time, stood locked and closed. The inviolable law of limitation prescribing the last date for approaching Courts stood extended. Therefore, there was departure from normalcy in every aspect and that stood extended even to certain legal principles and of course, the approach is *ad hoc* and *ad hominem* applicable only in respect of the pandemic. The present grant of incentive marks is also a fall out of the COVID - 19 pandemic and therefore, we hold that the normal rule of changing the game during the course of the game also requires a different consideration in this context and the said rule cannot come in the way of grant of incentive marks to these Medical Officers who put their life at risk. Gratitude and recognition for

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service to mankind is very much part of our constitutional jurisprudence and if the incentive is not granted in the present selection, then it can never be.

5.2. Secondly, the rule relating to altering the rules of the game during the course of the game, was considered in detail by the Hon'ble Supreme Court of India in ***K.Manjushree Vs. State of Andhra Pradesh***⁴ and it is essential to extract paragraph Nos. 27-32 which read as under :

*“ 27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24-7-2001 and 21-2-2002 and held that what was adopted on 30-11-2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them — **P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214]**, **Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721 : 1985 SCC (L&S) 919]** and **Durgacharan Misra v. State of Orissa [(1987) 4 SCC 646 : 1988 SCC (L&S) 36 :***

⁴ (2008) 3 SCC 512

(1987) 5 ATC 148].

28. In Ramachandra Iyer [(1984) 2 SCC 141 : 1984 SCC (L&S) 214] this Court was considering the validity of a selection process under the ICAR Rules, 1977 which provided for minimum marks only in the written examination and did not envisage obtaining minimum marks in the interview. But the Recruitment Board (ASRB) prescribed a further qualification of obtaining minimum marks in the interview also. This Court observed that the power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm. This Court held that as there was no power under the Rules for the Selection Board to prescribe the additional qualification of securing minimum marks in the interview, the restriction was impermissible and had a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidates at written test and interview. This Court observed: (SCC p. 181, para 44)

“44. ... Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtained minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by ASRB on the ground that he has not obtained qualifying marks at viva voce test. This was impermissible and contrary to Rules and the merit list prepared in contravention of Rules cannot be sustained.”

29. In Umesh Chandra [(1985) 3 SCC 721 : 1985 SCC (L&S) 919] the scope of the Delhi Judicial

Service Rules, 1970 came up for consideration. The Rules provided that those who secured the prescribed minimum qualifying marks in the written examination will be called for viva voce; and that the marks obtained in the viva voce shall be added to the marks obtained in the written test and the candidate's ranking shall depend on the aggregate of both. 27 candidates were found eligible to appear for viva voce on the basis of their having secured the minimum prescribed marks in the written examination. The final list was therefore, expected to be prepared by merely adding the viva voce marks to the written examination marks in regard to those 27 candidates. But the final list that was prepared contained some new names which were not in the list of 27 candidates who passed the written examination. Some names were omitted from the list of 27 candidates who passed the written examination.

30. *It was found that the Selection Committee had moderated the written examination marks by an addition of 2% for all the candidates, as a result of which some candidates who did not get through the written examination, became eligible for viva voce and came into the list. Secondly, the Selection Committee prescribed for selection, a minimum aggregate of 600 marks in the written examination and viva voce which was not provided in the Rules and that resulted in some of the names in the list of 27 candidates being omitted. This Court held neither was permissible. Dealing with the prescription of minimum 600 marks in the aggregate this Court observed: (**Umesh Chandra case [(1985) 3 SCC 721 : 1985 SCC (L&S) 919] , SCC pp. 735-36, para 14)***

“14. ... There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in Para 7 of the counter-affidavit filed in Writ Petition No. 4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate should

obtain in the aggregate in order to get into the Delhi Judicial Service. ... But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because Clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an additional requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by Clause (6) of the Appendix. ... We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal.”

31. In *Durgacharan Misra [(1987) 4 SCC 646 : 1988 SCC (L&S) 36 : (1987) 5 ATC 148]* this Court was considering the selection under the Orissa Service Rules which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The Rules merely required that after the viva voce test the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission which was the selecting authority prescribed minimum qualifying marks for the viva voce test also. This Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining

the suitability of candidates for appointment of Munsifs.

32. In Maharashtra SRTC v. Rajendra Bhimrao Mandve [(2001) 10 SCC 51 : 2002 SCC (L&S) 720] this Court observed that “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced”. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played and the results of the game were being awaited. That is unacceptable and impermissible.”

5.3. As a matter of fact, whether the rule should be applicable only for change in eligibility criteria or to every aspect of selection process even if it is for a better purpose, is doubted by the Hon’ble Three Judge Bench of the Supreme Court of India in **Tej Prakash Pathak Vs. Rajasthan High Court**⁵, and the matter is pending consideration of the Constitution Bench and the relevant paragraph 15 is extracted for ready reference:

“ **15.** No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned as was done in **C. Channabasavaih v. State of Mysore [AIR 1965 SC 1293]** , etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed

⁵ (2013) 4 SCC 540

before the Hon'ble Chief Justice of India for appropriate orders in this regard.”

5.4. Be that as it may, it can be seen that the legal position as exists today, in a selection process, after the notification, the rules cannot be changed. The *raison d'être* for such a rule is that (a) the candidates have a legitimate expectation that the criteria as notified will be honoured by the state; (b) the eligibility criteria and selection process cannot be permitted to be tinkered with to ensure fairness in selection. In this case, none of the rules mentioned in the notification is altered. Now even applying the rule as such, the case of the private doctors is that they legitimately expected no incentive will be given to these COVID - 19 Warriors. Their pleading in paragraph No.7 of their affidavit reads thus :

“ 7. ...In that notification, nothing was mentioned about any incentive marks or any preference to doctors who worked in covid-19 pandemic in government hospitals. Hence I appeared for the exam ...”

5.5. First of all, these petitioners could have been little more empathetic towards the plight of their counterparts. Second, legitimate expectation should be founded on a sanction of law and cannot be wishful thinking, desire or hope and they could not have thought that the government will not implement the directives of the Hon'ble Supreme Court of India. Useful reference in this regard can be made to the Judgment of the Supreme Court of India in ***Jasbir***

Singh Chhabra and Ors. Vs. State of Punjab and Ors.⁶. Further, it cannot be said that in this case any eligibility criteria or the selection process is altered to as to grant any unfair advantage to any person. Incentives for COVID - 19 duty is part of the merit of eligible candidates. Thus, viewing from any angle, we answer the question that merely because the impugned government order introduces the incentive marks after the notification and examination, the same is not bad in law.

F. Question No.ii :

6. The purpose of the government order as aforesaid is to recognise the services and express societal gratitude to the yeoman service rendered and thus to implement the judgment of the Hon'ble Supreme Court of India. While the services of the Doctors in the private sector were equally laudable, the sheer number of patients treated by the Government Doctors puts them on a separate pedestal. Every citizen of this country witnessed their selfless service either being admitted into one of those COVID - 19 wards or attending to other near and dear suffering or at least witnessed the visuals on television. The wards were overflowing. These souls have to be in their special PPE Suits and it took two hours for them to make one round of checking on every patient in the ward. There was difficulty in even having their food and using rest rooms. Serious patients were moved to ventialators and bodies of those who succumbed lay in

⁶ (2010) 4 SCC 192
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the verandah with the howl and cry of the relatives, near and dear. Day in and day out they withstood this routine, quarantined from their families. 84% of the patients were treated in government hospitals. Further it is also pleaded on behalf of the state that there is no verifiable mechanism to ensure the claim of the private doctors about their COVID - 19 duty. This apart, there is no pleading before us or claim that they also worked in private hospital COVID - 19 ward during the period and that the marks should be granted to them. In the absence thereof and for the aforesaid reasons, the state is very well justified in making the classification of medical officers on duty at the Government Hospitals and the same is not arbitrary or violative of Article 14 and 16 of the Constitution of India and we answer the question accordingly.

G. Question No.iii :

7. It is true that the services rendered by the Post-Graduate students is part of their 36 months period training which they undergo. The said period is supposed to be the practical training towards the subject in which they undergo the study. Because of the abnormal situation arising out of the COVID – 19 pandemic, they were also roped in COVID – 19 duty in the COVID - 19 wards in the Government Hospitals. It is not in dispute that they put in the same kind of duty and underwent the same rigors as that of the other medical officers recruited by the State Government. As a matter of fact, the persons, who were recruited by the State Government for the said purpose of performing COVID –

19 duty in these wards which are set up as part of the disaster management, are categorised as 'Medical Officers'.

7.1. It may be seen that both these temporary appointees as well as the Post-Graduate medical students are registered medical practitioners eligible to be appointed as Assistant Surgeons. Service to the Health Department, Government of Tamil nadu is governed by the Statutory Rules known as Tamil Nadu Medical Service Rules. It contains two parts namely, Branch-I Medical and Branch-II Nursing. As far as the medical cadre is concerned, as per Rule 2, it is divided into Civil Surgeon cadre and Assistant Surgeon cadre. All the entry level posts of Assistant Surgeon in the general line, Non-Clinical Lectures, Tutors / Assistant Professors, Clinical Lecturers, Senior Residents / Assistant Professors and the Women State Family Planning Officer are all grouped under the cadre of Assistant Surgeon. Thus, it can be seen that there is no such post as such called 'Medical Officer'. But, the term "Medical Officer" is widely used in the rules to denote every registered medical practitioner appointed to any post. When it comes to deputing personnel for the Chennai City Police, they are called Medical Officers to the Chennai City Police. The Senior Residents are also termed as "Resident Medical Officers". Similarly, the term "Medical Officer" is generally used in the context of referring to the person who is working in any capacity with the qualified medical degree (in common parlance, the Doctors working in the department).

7.2. As a matter of fact, a perusal of paragraph Nos.71 and 72 of the judgment of the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No.3 of 2021* (cited *supra*), it would be clear that the term used is "Health Care Professionals" and not Assistant Surgeon or Civil Surgeon. The impugned Government Order also uses term "Medical Officers". Therefore, in the context, in which it is used in the present Government Order, we are of the view that the term "Medical Officer" referred to in paragraph No.5 of the Government Order would also include the Post-Graduate students inasmuch as they were also registered Medical Practitioners with eligible M.B.B.S., degree and were treating the patients in the COVID – 19 wards even though under the normal course, they would not have been in the duty in the said wards.

7.3. We are also considering one more aspect in granting such an interpretation i.e., the number of patients treated by these Post-Graduate medical students and the amount of duty they have put in all these Government wards is no less when compared to the temporary Medical Officers who have been recruited. As a matter of fact, the Post-Graduate medical students did not even have an option. As rightly contended by *Mr.Suhrith Parthasarathy*, the learned Counsel, the duties rendered by them have been held to be equivalent to that of the regular Medical Officers in the earlier ruling of this Court in *W.P.No.26556 of 2022* etc. Thus, when the term "Medical Officer" is not

expressly defined in the special rules and when both the rules and the Government Order use the said phrase in a common manner across cadres to mean 'Doctors', we hold that the same would also mean the Post-Graduate students in Government Hospitals in the content of grant of incentive marks for the selfless service rendered by them in COVID – 19 wards putting themselves and their lives to risk.

7.4. However, we do not find any error in the Government Order in G.O. (Ms).No.278, dated 17.08.2023 and it is only the interpretation given by the officials in the consequential order impugned in the Writ Petition, dated 23.08.2023 so as to construe the Government Order as excluding the Post-Graduate on the ground that it is part of the training period is not in order. Besides, this incentive should doubly count in public interest also as these candidates are already Post-Graduates.

7.5. We accordingly answer this question holding that the Post-Graduate students in Government Hospitals will also be eligible for the incentive marks and consequently, quash the impugned letter bearing reference No.081353 / ME2 / 1 / 2023, dated 23.08.2023. We make it clear that not only in respect of the Post-Graduate students who are the petitioners before this Court, but, in respect of all Post-Graduate students who were on COVID – 19 duty in Government Hospitals, can approach the appropriate authority mentioned in the

Government Order for issue of COVID Duty Certificate within a period of 10 days from today and upon being approached, the respondents shall grant them the certificates within 15 days from today and the same shall be taken into account for grant of incentive marks as per the criteria and marks mentioned in the paragraph No.5 of the impugned Government Order.

H. The Result :

8. In the result,

(i) The Writ Petitions in W.P.Nos.25785 and 27568 of 2023 shall stand dismissed;

(ii) W.P.No.25827 of 2023 shall stand partly allowed and is disposed of on the following terms :-

(a) G.O. (Ms).No.278, dated 17.08.2023 issued by the respondents is valid and is in accordance with law;

(b) The impugned letter bearing Ref.No.081353 / ME2 / 1 / 2023, dated 23.08.2023 shall stand quashed;

(c) The petitioners and the other similarly situated applicants, who performed COVID – 19 duty in Government Hospitals should also be considered as “Medical Officers” for the purpose of grant of incentive marks *vide* G.O.(Ms).No.278, dated 17.08.2023 and within 10 days from today, they shall approach appropriate authority under paragraph No.5(1)(i)(e) and upon their applications, the COVID Duty

Certificate in the prescribed format shall be provided to them within 5 days of their application and accordingly, on the basis of the same, as per the criteria mentioned in the paragraph No.5(1)(i) of the Government Order, they shall be awarded incentive marks;

(iii) The parties shall bear their own costs in all the Writ Petitions;

(iv) Consequently, W.M.P.Nos.25276, 25277, 25278, 25220, 25222, 25224, 27016, 27017 and 27018 of 2023 are closed.

(S.V.G., CJ.) (D.B.C., J.)
16.11.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

1. The Secretary to Government,
Ministry of Health and Family Welfare,
Room No. 201-D, Nirman Bhawan,
New Delhi – 110 011.
2. The Principal Secretary to Government,
Health and Family (MCA-1) Department,
Fort St. George, Chennai – 600 009.
3. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
4. The Chairperson,
Medical Services Recruitment Board (MRB),
7th Floor, DMS Buildings,
358, Anna Salai,
Teynampet, Chennai – 600 006.

5. The Secretary,
National Medical Commission,
Pocket 14, Sector – 8, Dwaraka Phase I,
New Delhi – 11 077.

6. The Director of Public Health and Preventive Medicine,
359, Anna Salai,
Teynampet, Chennai – 600 006.

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

W.P.Nos.25827, 25785 and 27568 of 2023

**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.**

grs

W.P.Nos.25827, 25785 and 27568 of 2023

16.11.2023