

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.05.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Writ Petition No.13879 of 2015

M.P.Nos.1 and 2 of 2015

Ayush Medical Welfare Association (AMA),
represented by its President,
Dr.K.M.Sentamizhselvan

... Petitioner

Vs.

1. The Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
St. George Fort, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-3.
3. The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
Anna Salai, Teynampet,
Chennai 600 006.
4. The Secretary,
Indian Medicine and Homeopathy,
Arumbakkam,
Chennai 600 106.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records of the entire records connected with the notification No.6/2015, dated 26.03.2015, issued by the Secretary, Tamil Nadu Public Service Commission, 2nd respondent herein, quash the same and consequently, direct the Secretary, Government of Tamil Nadu, Health and Family Welfare Department, Fort St. George, Chennai-9, 1st respondent herein to conduct the recruitment, as per G.O.Ms.No.1, Health and Family Welfare (C2) Department, dated 02.01.2012.

For Petitioner	:	Mr.E.Sathiyaraj
For Respondents	:	Mr.S.V.Duraisolaimalai, Additional Government Pleader

O R D E R

Ayush Medical Welfare Association (AMA), represented by its President, Dr.K.M.Sentamizhselvan, has sought for a Writ of Certiorarified Mandamus, to call for the entire records connected with the notification No.6/2015, dated 26.03.2015, issued by the Secretary, Tamil Nadu Public Service Commission, Chennai, 2nd respondent herein, quash the same and consequently, to direct the Secretary, Government of Tamil Nadu, Health and Family Welfare Department, Fort St. George, Chennai-9, 1st respondent herein to conduct the recruitment, as per G.O.Ms.No.1, Health and Family Welfare (C2) Department, dated 02.01.2012.

2. Notification No.6/2015, dated 26.03.2015, is for the direct recruitment to the posts of Assistant Medical Officer (Siddha), Assistant Medical Officer (Ayurveda), Assistant Medical Officer (Unani) and Assistant Medical Officer (Homeopathy), posts falling under the Tamil Nadu Public Service Commission. The last date for submission of the application through online is 24.04.2015. Date and time of Written Examination are as follows:

Paper-I	31.05.2015 F.N.	10.00 A.M. to 01.00 P.M.
Paper-II	31.05.2015 A.N.	02.30 P.M. to 04.30 P.M.

3. As per the supporting affidavit, recruitment to the abovesaid posts, have to be made by the Medical Services Recruitment Board, Chennai, formed by the Government in G.O.Ms.No.1, Health and Family Welfare (C2) Department, dated 02.01.2012. Therefore, the said Board alone is competent to make recruitment of Doctors. According to the petitioner, Notification No.6/2015, dated 26.03.2015, is contrary to G.O.Ms.No.1, Health and Family Welfare (C2) Department, dated 02.01.2012.

4. Notwithstanding the above, the petitioner has contended that under the impugned notification, no priority has been given for employment seniority and mode of recruitment is also different than the recruitment made by the Board. Moreover, syllabus given by the 2nd respondent herein, is not only difficult and irrelevant.

5. Material on record discloses that in 2012, when the Government had some difficulty in making prompt appointments, G.O.Ms.No.1, Health and Family Welfare (C2) Department, dated 02.01.2012, has been issued, constituting a separate Recruitment Board, for the Health and Family Welfare Department, on the lines of Teachers Recruitment Board. At Paragraph 3 of the said Government Order, it is stated that in the year 2012, there were 250 categories of posts, other than the posts, under the purview of the Tamil Nadu Public Service Commission, with a sanctioned strength of

approximately 54,000 under the control of Health and Family Welfare Department. In order to fill up the posts in a speedy manner, the Government have decided to constitute a separate Board, viz., Medical Services Recruitment Board (MSRB).

6. In G.O.Ms.No.23, Health and Family Welfare (B-2) Department, dated 29.01.2013, the Government have directed the Medical Services Recruitment Board (MSRB) to appoint 2159 temporary Medical Officers [911 General (MBBS), 1163 Specialty and 85 Dental], after suitably amending the Tamil Nadu Public Service Commission Regulations. At Paragraph 5(i), the methodology for selection of candidates, is as follows:

"To make temporary appointment of Assistant Surgeons through Medical Services Recruitment Board in relaxation of General Rules 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules by conducting a competitive examination, as done by the Tamil Nadu Public Service Commission since, as per the announcement of the Hon'ble Chief Minister, the Medical Services Recruitment Board will replace the Tamil Nadu Public Service Commission, as the source of appointment of Assistant Surgeon in Tamil Nadu Medical Service in future."

7. At Paragraph 6 of the abovesaid Government Order, the Government have stated that the issue of regularising the services of temporarily appointed Assistant Surgeons would be taken up after issuing necessary amendment to the Tamil Nadu Public Service Commission Regulations, 1954.

8. Notification No.12/MRB/E4/2014, dated 29.01.2014, has been issued by the Medical Services Recruitment Board, for provisional selection of candidates for the post of "Therapeutic Assistant", to serve in the Indian Medicine and Homeopathy Department, from the list of candidates sponsored by the Deputy Director, District Employment Office (General) Santhome, Chennai-4.

9. Thereafter, the Government have issued G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.12.2014, and approved "The Rules of Procedure" for Medical Services Recruitment Board. As per the said Government Order, the abovesaid procedure, shall apply to the posts (except the posts coming under the purview of TNPSC) classified under the following services, viz.,

- (i) Tamil Nadu Medical Service
- (ii) Tamil Nadu Medical Subordinate Service
- (iii) Tamil Nadu Public Health Service
- (iv) Tamil Nadu Public Health Subordinate Service
- (v) Tamil Nadu Basic Service, and
- (vi) Tamil Nadu General Subordinate Service.

Mode of Recruitment set out in Sub-Rules (A) and (B) of Rule 3, in the abovesaid Government order, reads as follows:

"(A) RECRUITMENT BY CALLING FOR LIST OF ELIGIBLE

CANDIDATES FROM THE EMPLOYMENT EXCHANGES:

All Direct recruitment posts except the posts coming under the purview of Tamil Nadu Public Service Commission shall be made generally by obtaining State-wide seniority list from the Directorate of Employment and Training. The Medical Services Recruitment Board shall also make recruitments by obtaining District-wise seniority list for the vacancies in respect of posts coming under the basis services and Drivers.

(B) RECRUITMENT BY OPEN ADVERTISEMENT:

(i) In respect of Nurses and any other category of posts as may be ordered by the Government, recruitment shall be made through open advertisement by conducting written examination (through physical or electronic mode) without any reference to the employment exchange.

(ii) In addition, with the orders of the Government, the Medical Services Recruitment Board can recruit the candidates through open advertisement by conducting written examination, in those cases where adequate candidates are not available in the employment exchange."

10. Notification No.6 of 2015, dated 26.03.2015, makes it clear that the posts of Assistant Medical Officer (Siddha), Assistant Medical Officer (Ayurveda), Assistant Medical Officer (Unani) and Assistant Medical Officer (Homeopathy), fall under the purview of Tamil Nadu Public Service Commission and that the said posts are excluded from the Rules of Procedure of the Medical Services Recruitment Board. Mode of recruitment, set out in Rule 3 of the Rules of Procedure for Medical Recruitment Board, cannot be made applicable to the Assistant Medical Officer (Siddha), Assistant Medical Officer (Ayurveda), Assistant Medical Officer (Unani) and Assistant Medical Officer (Homeopathy), as the posts, fall under the Tamil Nadu Public Service Commission.

11. As regards the contention that syllabus is difficult, irrelevant and not related to recruitment, reading of the procedure of selection, set out in Notification No.6 of 2015, dated 26.03.2015, makes it clear that the selection would be made in two successive stages, viz., (i) Written Examination and (ii) Oral Test in the form of an interview. Final selection would be made on the basis of the total marks obtained by the candidate's at the written examination and Oral Test taken together subject to the rule of reservation of appointments. It is also clear that candidates appearance in each paper of the Written Examination and Oral Test is compulsory and a candidate, who has not appeared in any one of the papers in the Written Examination or Oral Test, would not be considered for selection even if he/she secures the minimum qualifying marks in the Written Examination or Oral Test. It is not the petitioner to contend that the syllabus is difficult and irrelevant.

12. As the abovesaid posts fall within the purview of the Tamil Nadu Police Service, the petitioner has no locus to question the competence of the Government in making recruitment through the Tamil Nadu Public Service Commission. The procedure followed for the year 2012, by the Government, for filling up the vacancies, cannot be cited as a Precedent, when the posts, fall under the Tamil Nadu Public Service Commission.

13. In the result, there are no merits in the writ petition and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
St. George Fort, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-3.
3. The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
Anna Salai, Teynampet,
Chennai 600 006.
4. The Secretary,
Indian Medicine and Homeopathy,
Arumbakkam,
Chennai 600 106.

+1cc to Mr.E.Sathiyaraj, Advocate, S.R.No.24966
+1cc to the Government Pleader, S.R.No.24990

Writ Petition No.13879 of 2015

LRS (CO)
CA(08/05/2015)