



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.5363 of 2014

and

M.P(MD)Nos.1 to 4 of 2014

M.Jeyanthi Meenambigai

... Petitioner

vs.

1)The Government of Tamil Nadu,
Represented by its Director of
Medical and Rural Health Services,
Chennai-6.

2)The Director,
Professional and Executive Employment Office,
Santhome, Chennai-4.

3)The District Employment Officer,
District Employment Office, Madurai.

4)The Medical Services Recruitment Board,
Rep by its Director,
Government of Tamilnadu,
7th Floor, DMS Building,
No.359, Anna Salai, Teynampet, Chennai-600 006.

5)The Medical Services Recruitment Board,
Rep by its Member Secretary,
Government of Tamilnadu, 7th Floor, DMS Building,
No.359, Anna Salai, Teynampet,
Chennai-600 006.

6)Mrs.D.Gunasundari

... Respondents

Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Notification No.2A/MRB/E4/2014 dated 03.03.2014 on the file of the Respondent No.5 and quash the same as illegal and consequently directing the Respondents No.1 to 5 to appoint the Petitioner as Physiotherapist Grade-II for the year 2014 with consequential benefits.

For Petitioner : No appearance

For R1 to R5 : Mr.R.Anandharaj, Government Advocate

: Mr.K.Mahendran

ORDER

In view of the boycott by some of the lawyers, this Court has issued a Notification No.103/JUDL/2016 dated 04.07.2016, which is given as under:-

WEB COPY 'It is informed that the cases listed in the daily cause list will be taken up for hearing without any adjournment. If there is no representation, such cases will be decided on merits.'

2.While so, when the matter was taken up for hearing, none appeared for the petitioner, however, learned counsel appearing for the 6th respondent, while moving an application to vacate the interim order granted by this Court, submitted that in view of the order of stay granted, the 6th respondent who has been selected for the post of Physiotherapist Grade-II is not able to join duty. Learned Government Advocate appearing for the respondents 1 to 5 also affirmed the said submission, therefore, the matter was taken up for disposal on merits on the basis of the aforementioned notification in the absence of the counsel for the petitioner.

3.M.Jeyanthi Meenambigai has filed this writ petition challenging the impugned Corrigendum to the Notification No.2A/MRB/E4/2014 dated 03.03.2014, issued by the 5th respondent/Member Secretary, Medical Services Recruitment Board, Chennai, in and by which, the 5th respondent on receipt of certain representations from the individuals who were sponsored by the employment exchange who had also attended the certificate verification conducted by the Medical Services Recruitment Board, representing that their names were not included in the provisional selection list when their dates of registration in the employment exchange were earlier to some of the provisionally selected candidates in their communal category, considering the date of registration of the petitioner, 17.11.1999 and the earlier date of registration of the 6th respondent/Mrs.D.Gunasundari, 25.10.1999, has re-examined the provisional selection. Finally, considering the fact that the 6th respondent is senior to the petitioner as per the employment exchange registration seniority, the 5th respondent has selected the 6th respondent provisionally for the post of Physiotherapist Grade-II.

4.The challenge made by the petitioner is that the 6th respondent never participated in the certificate verification, for, on 31.01.2014, the 5th respondent published a list of 156 candidates who have participated in the certificate verification, in which, the name of the 6th respondent did not find place, however, after the disposal of W.P.No.8870 of 2010 dated 11.10.2012, certificate verification was held on 10.12.2013 and another certificate verification was held on 12.02.2014 by the 5th respondent in which, the petitioner also took part, whereas the 6th



respondent has not participated in the second certificate verification, however, she has been wrongly and illegally selected, therefore, the impugned order, it is pleaded, is liable to be set aside.

5. Two separate counter affidavits have been filed by the 2nd respondent and the respondents 4 and 5 respectively. In the counter affidavit filed by the 2nd respondent/The Director, Professional and Executive Employment Office, Chennai, it has been averred that as per the direction of this Court in W.P(MD)No.5363 of 2014, 5 candidates from SC (Arunthathiyar) category including the petitioner were sponsored to the Medical Services Recruitment Board. Subsequently, when vacancy notification was received from the Medical Services Recruitment Board in the year 2014, a list of candidates was sponsored based on seniority, in which, the name of the petitioner was also included and cut-off date of the sponsored candidates was also released for public reference to find out whether there was any omission before the cut off date. Thereafter, the 6th respondent/Mrs.D.Gundasundari represented to the 2nd respondent complaining that her seniority was very well within the cut-off date, however, her name was not sponsored. Since the community of the 6th respondent namely, SC Arunthathiyar was not updated due to technical error, after updating the same, she became eligible to be sponsored in SC Arunthathiyar category and subsequently her name was sponsored.

6. Learned Government Advocate appearing for the respondents 1 to 5 also would submit that even as per the employment exchange registration, the 2nd respondent has found that the 6th respondent is much senior to the petitioner.

7. Drawing the notice of this Court to the dates of employment exchange registration of the petitioner and the 6th respondent, it is submitted that the petitioner's date of registration was made on 17.11.1999 in General/Women category under SC Arunthathiyar community, whereas the 6th respondent has registered her name with the employment exchange on 25.10.1999 under General/Women category, but under the same SC Arunthathiyar community prior to the date of registration of the petitioner, therefore, the challenge made by the petitioner in this writ petition is wholly misconceived.

8. Yet another counter affidavit filed by the respondents 4 and 5 also shows that when there was only one vacancy for the post of Physiotherapist Grade-II in SC Arunthathiyar, to fill up the one post kept vacant, 5 candidates were sponsored by the employment exchange in the ratio of 1:5, in which, the 6th respondent was not included by the 2nd respondent/Director, Professional and Executive Employment Office, Chennai. However, vide Notification No.2/MRB/E4/2014 dated 21.02.2014, 34 posts of Physiotherapist



Grade-II have been notified and the 2nd respondent was informed to furnish a list of eligible candidates to fill up the said 34 vacancies in the ratio of 1:5, pursuant thereto, the 2nd respondent has forwarded a list of 156 candidates including the name of the petitioner, therefore, she was called for certificate verification. Subsequently, the 2nd respondent sponsored a list of candidates in his letter Reference No.TN2013SQ0000817 dated 03.02.2014 sponsoring the name of the 6th respondent as a candidate belonging to SC Arunthathiyar community, therefore, when the 6th respondent was also called for certificate verification, she attended the same on 12.02.2014.

9.It is further submitted that after certificate verification and scrutiny of all documents in the MRB Notification No.2/MRB/E4/2014 dated 21.02.2014, it has been published that 30 candidates have been provisionally selected to the post of Physiotherapist Grade-II, however, since certain representations were received from the individuals who were sponsored by the employment exchange who had also attended the certain verification stating that their dates of registration in the employment exchange were earlier to some of the provisionally selected candidates in their communal category, but their names were not shown in the provisional selection list, the 5th respondent re-examined the provisional selection list carefully and sought clarification from the employment exchange. As per the clarification received from the employment exchange the 5th respondent/Member Secretary, Medical Services Recruitment Board, Chennai, issued a Corrigendum to the Notification No.2A/MRB/E4/2014 dated 03.03.2014, deleting the names of S.M.Sarathambal and M.Jeyanthi who were included in the provisional list and also specifically mentioning that T.Sindhu and D.Gunasundari are included, whose dates of registration being 16.06.1997 and 25.10.1999 under General MBC category and Women SC Arunthathiyar category respectively. On this basis, it was further contended that when the petitioner's date of employment exchange registration seniority is 17.11.1999, much prior to the said date, the 6th respondent has registered her name with the employment exchange namely, on 25.10.1999. Although both the candidates belonged to Non Priority/Women SC Arunthathiyar category, the 6th respondent is found to be senior to the petitioner in the date of employment exchange registration, therefore, she has been selected to the post of Physiotherapist Grade-II, hence, when the selection has been fairly done, it is pleaded, the challenge made by the petitioner cannot be acceded.

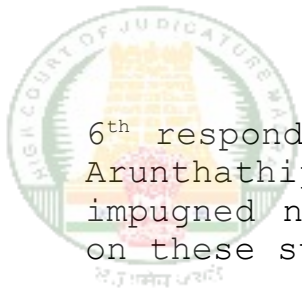
10.Supporting the case of the respondents 1 to 5, the 6th respondent also filed a vacate stay petition along with the counter affidavit. Learned counsel for the 6th respondent would submit that it is not in dispute that both the petitioner and the 6th respondent belonged to SC Arunthathiyar community. When the 6th



respondent had registered her name with the 2nd respondent employment exchange on 25.10.1999, admittedly, the petitioner also registered her name with the same employment exchange on 17.11.1999, so the dates of registration of both the petitioner and the 6th respondent would clearly show that the 6th respondent is senior to the petitioner in the employment exchange registration seniority.

11.It is further submitted that as per the procedure followed by the 5th respondent, selection to the post of Physiotherapist Grade-II would be made based on employment exchange registration seniority subject to verification of all documents, hence, based on the employment exchange registration seniority, when the 6th respondent was called for to attend the certificate verification, the 6th respondent appeared before the 5th respondent on 12.02.2014 and produced all the originals and she was also informed that selection list would be published based on the employment exchange registration seniority. Accordingly, the 5th respondent published a provisional selection list on 21.02.2014, but quite surprisingly, the name of the 6th respondent was not available in the said list, however, on verification, it was found that the 6th respondent's juniors were provisionally selected, therefore, the 6th respondent gave a representation on 26.02.2014 to the 5th respondent/Member Secretary, Medical Services Recruitment Board, Chennai, mentioning that she is a senior most person as per the employment exchange registration seniority compared to other SC Arunthathiyar category candidates.

12.Learned counsel for the 6th respondent further submitted that considering the representation of the 6th respondent, the 5th respondent issued the impugned Corrigendum dated 03.03.2014, permitting the 6th respondent to attend the certificate verification held on 12.02.2014, therefore, the main contention of the petitioner that the 6th respondent had not participated in the certificate verification held on 12.02.2014 is wholly misconceived, because, the two separate counter affidavits filed by the 2nd respondent and the respondents 4 and 5 respectively, clearly show that the 6th respondent's representation dated 26.02.2014 has been rightly considered and only after thorough verification of the seniority of both the petitioner and the 6th respondent, the impugned Corrigendum has been rightly issued. Even as per the 6th respondent's date of registration in the employment exchange, the petitioner cannot deny that the 6th respondent is senior to her, hence, when the 6th respondent on the basis of the impugned Corrigendum dated 03.03.2014, was permitted to attend the certificate verification on 12.12.2014, she should have been placed in the provisional selection list, however, since a mistake had occurred on the side of the Medical Services Recruitment Board, the 6th respondent was not included in the list, but on proper indication of the error by the representation of the



6th respondent dated 26.02.2014, the 6th respondent belonging to SC Arunthathiyar category, has been rightly appointed, therefore, the impugned notification cannot be found fault with. I find merits on these submissions.

13. Moreover, it is not in dispute that both the petitioner and the 6th respondent belonged to SC Arunthathiyar category. It is also not in dispute that the petitioner registered her name with the 2nd respondent employment exchange on 17.11.1999, whereas the 6th respondent also registered her name with the same 2nd respondent employment exchange on 25.10.1999. It is further not in dispute that as per the procedure followed by the 5th respondent, selection to the post of Physiotherapist Grade-II would be made based on the employment exchange registration seniority subject to verification of all original documents and there is no interview as such. When the 5th respondent/Medical Services Recruitment Board called the 6th respondent to appear for certificate verification on 12.02.2014, the 6th respondent appeared on the said date and produced all the records. This has been made clear by the separate counter affidavit filed by the 2nd respondent and the joint counter affidavit filed by the respondents 4 and 5.

14. Subsequently, when the name of the 6th respondent was not included in the provisional selection list published by the 5th respondent, the 6th respondent has made a representation dated 26.02.2014 to the 5th respondent, stating that after participating in the certificate verification held on 12.02.2014 in the office of the 5th respondent, her name was not shown in the provisional list. The 5th respondent after considering the dates of employment exchange seniority of both the petitioner and the 6th respondent, found that the 6th respondent is much senior to the petitioner, thus rightly appointed the 6th respondent, therefore, this Court is not able to find any error in the impugned order, hence, the writ petition fails and the same is dismissed. No costs. The interim order granted on 27.03.2014 in M.P(MD)No.2 of 2014 is vacated. Accordingly, M.P(MD)No.2 of 2014 is dismissed and M.P(MD)No.4 of 2014 to vacate the interim order is allowed. M.P(MD)Nos.1 and 3 of 2014 are closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar



To

1) The Director of Medical and Rural Health Services,
Government of Tamil Nadu,
Chennai-6.

2) The Director,
Professional and Executive Employment Office,
Santhome, Chennai-4.

3) The District Employment Officer,
District Employment Office,
Madurai.

4) The Director,
Medical Services Recruitment Board,
Government of Tamilnadu, 7th Floor, DMS Building,
No.359, Anna Salai, Teynampet, Chennai-600 006.

5) The Medical Services Recruitment Board,
Rep by its Member Secretary,
Government of Tamilnadu, 7th Floor, DMS Building,
No.359, Anna Salai, Teynampet,
Chennai-600 006.

+1cc to M/S.K.Mahendran, Advocate, SR NO: 36908

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 37157

JA-GSV-PM-21.7.2016/7P:8C

W.P (MD) No.5363 of 2014

14.07.2016