



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2016

CORAM:

THE HONOURABLE Mr.JUSTICE T.RAJA

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W.P.(MD)Nos.7152, 7153, 7188 and 7213 of 2013
and
M.P(MD)Nos.2, 2, 2, 2, 3, 3, 3 and 4 of 2013

S.Jeba Paulin	...Petitioner in W.P(MD)No.7152 of 2013
K.Sangeetha	...Petitioner in W.P(MD)No.7153 of 2013
V.Maheswari	...Petitioner in W.P(MD)No.7188 of 2013
M.K.Syed Ali	...Petitioner in W.P(MD)No.7213 of 2013

Vs.

- 1.The State of Tamil Nadu,
rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.
- 2.The Medical Services Recruitment Board,
rep. by its Member Secretary,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai - 600 006.
- 3.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 4.The Director of Medical and Rural Health Services,
DMS Building, 359, Anna Salai,
Teynampet, Chennai - 600 006.
- 5.The Director of Medical and Rural Health Services, (ESI),
DMS Building, 359, Anna Salai,
Teynampet, Chennai - 600 006. ...Respondents

PRAYER in all WPs: Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd Respondent in connection with the impugned qualification prescribed in the call letter issued in Na.Ka. No.22/Ma.Pa. The Va/2012 dated 20.03.2013 and quash the same as illegal and arbitrary in so far as the petitioner's case is concerned and consequently direct the 2nd Respondent to issue appropriate advertisement for the post of Radiographer either by earmarking reservation for the Diploma holders or by fixing ration between the Diploma in radio technology holders and Certified Radiological Assistant and thereby consider the petitioner's case within the time limit that may be stipulated by this Court.



For Petitioner
in all Wps : Mr.G.Thalaimutharasu
For Respondents
in all Wps : Mr.R.Anandaraj G.A.,

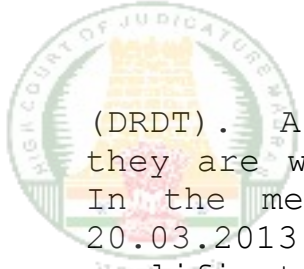
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COMMON ORDER

The petitioners/S.Jeba Paulin, K.Sangeetha, V.Maheswari and M.K.Syed Ali have filed these writ petitions challenging the impugned qualification prescribed in the call letter issued in Na.Ka. No.22/Ma.Pa. The Va/2012 dated 20.03.2013 to quash the same as illegal and arbitrary in so far as the petitioners' case are concerned with the consequential direction to the 2nd Respondent/Medical Services Recruitment Board rep. by its Member Secretary, Chennai, to issue appropriate advertisement for the post of 'Radiographer' either by earmarking reservation for the Diploma holders or by fixing ration between the Diploma in radio Diagnosis Technology holders and Certified Radiological Assistant.

2. Learned counsel for the petitioners would submit that the petitioners/S.Jeba Poulin and V.Maheswari after acquiring Higher Secondary Course, have also acquired Diploma in Radio Diagnosis Technology from Tirunelveli Medical College Hosptial, Tirunelveli, in May 2012 and January 2012 respectively and they have also registered their educational qualification with the District Employment Exchange, Tirunelveli, and they were provided with Registration Nos.TND 2002 F 00004673 and TTD 2012 F 00017702 respectively and the petitioners/K.Sangeetha and M.K.Syed Ali after acquiring Higher Secondary Course, have also acquired Diploma in Radio Diagnosis Technology from the Government Rajaji Hospital, Madurai, and the petitioner/Sangeetha has registered her educational qualification with the District Employment Exchange, Thoothukudi and she was provided with Registration No.TND 2004 F 00000102 and the petitioner/M.K.Syed Ali has registered his educational qualification with the District Employment Exchange, Madurai and he was provided with Registration No. MDD 2009 M 00000771.

3. In this State, there is only a Certified Radiological Assistant Course with the duration of one year and the said course is the only criteria for appointment to the post of Radiographer. Due to the development and advancement of science, the Director of Medical Education, the 3rd respondent herein, made a proposal for advancement of study in Radiology and thereby brought 2 Diploma courses, namely, Diploma in Radio Diagnosis Technology (DRDT) and Diploma in Radio Theraphy Technology (DRTT) and the said proposal was also accepted by the 1st respondent herein, resultantly, the Government of Tamil Nadu issued G.O.Ms.No.185, Health and Family Welfare (PME) Department, dated 23.06.2009. Subsequent to the said G.O, the petitioners acquired Diploma in Radio Diagnosis Technology



(DRDT). After registering their names in the Employment Exchange, they are waiting for a call letter for the post of Radiographer. In the meantime, the 2nd respondent has issued a letter dated 20.03.2013 for appointment to the post of Radiographer fixing the qualification for the post as (a) A pass in HSC with Science subjects in the State of Tamil Nadu or equivalent; (b) A pass in certified Radiological Assistant Course conducted by the Department of Medical Education, Government of Tamil Nadu and in private institutions approved by Government of Tamil Nadu which are conducting CRA course. Since the petitioner in W.P(MD)No.7152 of 2013/S.Jeba Paulin is placed in Serial No.512, the petitioner in W.P(MD)No.7188 of 2013/V.Maheswari is placed in Serial No.513, the petitioner in W.P(MD)No.7153 of 2013/Sangeetha is placed in Serial No.511 and the petitioner in W.P(MD)No.M.K.Syed Ali is placed in Serial No.246 of the State Seniority, they have also been issued with call letters dated 20.03.2013. On receipt of the same, they have participated in the certificate verification conducted by the second respondent on 12.04.2013. As per the conditions mentioned in the Call Letters, the petitioners produced all the certificates. But, the respondents orally rejected them for the reason that the petitioners do not possess the qualification, i.e., Certificate in Radiological Assistant. Knowing fully well that the Diploma in Radio Diagnosis Technology is advanced to CRA Course, the respondents rejected the case of the petitioners mechanically. Therefore, they are constrained to challenge the same.

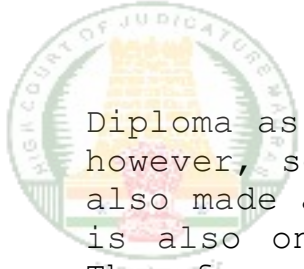
4. It is not in dispute that the certificate course, namely, Radiological Assistant Course is having only one year. Whereas, the Diploma in Radio Diagnosis Technology (DRDT) and Diploma in Radio Therapy Technology (DRTT) are having two years course. Moreover, the first respondent also while issuing G.O.Ms.No.185, Health and Family Welfare (PME) Department, dated 23.06.2009 has made it clear that Radio Diagnosis Technology (DRDT) and Diploma in Radio Therapy Technology (DRTT) are the important qualification for the post of Radiographer. Pursuant to the issuance of the said G.O., only, the petitioners acquired the qualification, hence, the second respondent cannot proceed with the recruitment process to the post of Radiographer without any valid advancement or notification. Moreover, on the ground that the petitioners are having over qualification, the respondents cannot discard their eligibility. Therefore, when the petitioners are admittedly more qualified and more eligible than the Certificate Holder, they cannot be rejected. When the respondents have admitted the case of the petitioners that the petitioners have done two year Diploma Course in Radio Diagnosis Technology (DRDT), they shall accept the rich experience acquired by the petitioners, which is far better than the Certificate Holder who has only studied the subject only one year. Concluding his arguments, it is pleaded that when the petitioners were already issued with Call Letter and subsequently they were allowed



to participate in the selection process finding that they are having better qualification and more qualified to the Job, the respondents cannot reject them ignoring their eligibility. Hence, all the writ petitions deserve to be allowed by setting aside the impugned order, it is pleaded.

5. A detailed common counter affidavit has been filed by the respondents 1, 3, 4 and 5 and separate counter affidavit has been filed by the second respondent.

6. Learned Government Advocate appearing for the respondents canvassing Rule position for the post of Radiographer, has contended that as per the existing special Rule for the Tamil Nadu Medical Subordinate Service, the method of appointment and qualification prescribed for the post of Radiographer shows that A pass in CRA Examination provided that preference shall be given to a candidate who in addition possesses a degree of B.A., B.Sc., M.Sc., M.A., B.Sc., (Hons.,) or B.A., (Hons.,) with Physics as main subject. With regard to the method of appointment promotion from Dark Room Assistants, Direct Recruitment and Recruitment by transfer from any other service in the ratio of 3:1:1 i.e., three for promotion, one for Direct Recruitment and one for Transfer from any other service. When no further amendment has been issued to this rule till date, as per existing Rule in Tamil Nadu Medical Subordinate Service, the petitioners are not eligible to be selected as Radiographer. Adding further, he would submit that when the Director, Employment and Training, Guindy, Chennai - 32 has furnished the list of 565 qualified candidates for the post of Radiographer in Tho.Pa.No.7715/2012 dated 17.01.2013, the certificate verification for these candidates had been fixed from 08.04.2013 to 12.04.2013 only during the verification of the certificate belonging to the petitioners, the respondents came to know that the petitioners have possessed Diploma qualification. When the Diploma has not been included as qualification for appointment to the post of Radiographer in the abovesaid Rule, they have been informed that they are not coming within the selection zone. However, out of 243 vacant for the post of Radiographer, 195 eligible candidates have been selected and list of selected candidates also had been forwarded to the appointing authority and posting order has also been issued. Subsequently, the candidates also on receipt of the posting order joined duty. However, as per the order passed by this Court on 26.04.2013 four posts of Radiographer are kept vacant for these petitioners. Since the counter affidavit filed by respondents clearly shows that out of 243 post of Radiographers, only 195 eligible candidates have been selected and they have also joined duty, the remaining 48 vacancies are lying vacant. Therefore, when the respondents have also agreed in the counter affidavit that the petitioners are having higher qualification, namely, Radio Diagnosis Technology (DRDT), this Court finds that they are eligible to be appointed, since the Rules do not contemplate the



Diploma as one of the qualifications for the post of Radiographer, however, secondly they have also agreed that the third respondent also made a proposal for amending the Rule by bringing the Diploma is also one of the qualifications for the post of Radiographer. Therefore, when the proposal has already been sent by the third respondent and the petitioners have also taken part in the selection process and thirdly when there are 48 vacancies available now, the respondents are directed to appoint the petitioners in the available vacancies without waiting for approval of amendment of the rule.

7. With the above directions, these writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary,
Health and Family Welfare Department,
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DMS Building, 359, Anna Salai, Teynampet,
Chennai - 600 006.

+1cc to Mr.G.Thalamuthrasu, Advocate in SR.41461

+1cc to the Special Government Pleader in SR.41536

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