

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2017

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.5608 of 2017

and

W.M.P.No.5976 of 2017

S.Sujatha

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare Department,
4th Floor, Secretariat, Fort St.George,
Chennai - 600 009.

2. The Member Secretary,
Medical Service Recruitment Board (MRB),
7th Floor, DMS Buildings,
No.359, Anna Salai,
Teynampet, Chennai - 600 006.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, declaring the impugned notification of the 2nd respondent in Notification No.11/MRB/2016 dated 20.10.2016 in so far as the clause regulation to qualification in 5A for the post of Assistant Surgeon (Specialty), 2016 as illegal, ultra vires to Act 45 of 1994 and unconstitutional and consequentially directing the 2nd respondent to process the application of the petitioner and select the petitioner to the post of Assistant Surgeon for the vacancy in the impugned notification of the 2nd respondent in Notification No.11/MRB/2016 dated 20.10.2016.

For Petitioner : Mr.K.M.Vijayan,
Senior Counsel
for M/s.K.M.Vijayan Associates

For Respondents : Mr.K.Rajendra Prasad
Government Advocate (For R1)
Mr.A.Vivek
Standing Counsel (For R2)

O R D E R

This writ petition has been filed by the petitioner seeking for issuance of writ of Declaration to declare the impugned notification of the second respondent, the Member Secretary, Medical Services Recruitment Board (MRB), Chennai in Notification No.11/MRB/2016 dated 20.10.2016 in so far as the clause regulation to qualification in 5A for the post of Assistant Surgeon (Specialty), 2016 as illegal, ultra vires to Act 45 of 1994 and unconstitutional and consequentially directing the 2nd respondent to process the application of the petitioner and select the petitioner to the post of Assistant Surgeon for the vacancy in the impugned notification of the 2nd respondent in Notification No.11/MRB/2016 dated 20.10.2016.

2.Mr.K.M.Vijayan, learned senior counsel, assailing the impugned notification would submit that the petitioner has completed her Bachelor of Medicine and Bachelor of Surgery in the year 1999 and also registered her name with the Tamil Nadu Medical Council on 12.06.2000 and in addition thereto, also cleared the National Board of Examinations for Radio Diagnosis in the month of April 2007. The Government of Tamil Nadu Medical Services Recruitment Board (MRB) issued a notification in Notification No.11/MRB/2016 dated 20.10.2016 inviting application through online for the post of Assistant Surgeon (Specialty) on temporary basis on direct recruitment. Therefore, the petitioner applied for the post in Column No.20 Radio Diagnosis for the total 21 vacant post. The second respondent has given different maximum age limit, namely, 57 years as on 01.07.2016 to SCs, SC(A)s, STs, MBC & DCs, BCs, and BCMs including Ex-Servicemen belonging to these communities in Sl.No.(a) and in Sl.No.(b)(i) 35 years as on 01.07.2016 for others, namely, candidates not belonging to other than the categories referred to Sl.No.1 above and 48 years as on 01.07.2016 for Ex-Servicemen belonging to 'others'. This has completely taken away the vested right of the petitioner to take part in the walk-in-interview scheduled to be held upto 09.11.2016 for Direct Recruitment to the post of Assistant Surgeon (Specialty) on temporary basis in Tamil Nadu Medical Service. Therefore, the way in which the maximum age relaxation given to several categories of persons is an arbitrary exercise of power and hence, the same is liable to be set aside.

3.Referring to Sections 6 and 8 of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or posts in the Services under the State) Act, 1993, the learned counsel for the petitioner would vehemently contend that when power is given to the Government to make rules for carrying out the

purpose of the Act, that power has not been properly exercised. When all the rules made under this Act are published in the Tamil Nadu Government Gazette and again unless they are coming to force on a particular day, such a rule cannot have any legal sanctity and it is further contended that Sub-section (3) of Section 8 also makes it clear that every rule made or notification or order issued under this Act shall, as soon as possible, after it is made or issued be placed on the table of the Legislative Assembly and if before the expiry of the session in which it is so placed, the Assembly makes any modification in any such rule or notification, or the Assembly decides that the rule or notification or order should not be made or issued, the rule or notification or order shall thereafter have the effect only in such a modified form or be of no effect, as the case may be. While so, it is not known whether such procedure has been followed in this case. Therefore, the impugned notification dated 20.10.2016 inviting the applications through online mode upto 09.11.2016 for walk-in selection for Direct Recruitment to the various posts of Assistant Surgeon (Specialty) on temporary basis in Tamil Nadu Medical Service is required to be interfered with.

4. But this Court is not inclined to entertain the writ petition for the sole reason that the petitioner has not come to this Court in time. Firstly, when the notification was issued on 20.10.2016 inviting applications through online mode upto 09.11.2016 for Walk-in selection for various posts of Assistant Surgeon (Specialty) on temporary basis in Tamil Nadu Medical Service by the second respondent fixing the maximum age relaxation, namely, 57 years as on 01.07.2016 to SCs, SC(A)s, STs, MBC & DCs, BCs, and BCMs including Ex-Servicemen belonging to these communities in Sl.No.(a) and in Sl.No.(b) (i) 35 years as on 01.07.2016 for others, namely, candidates not belonging to other than the categories referred to Sl.No.1 above and 48 years as on 01.07.2016 for Ex-Servicemen belonging to 'others', the petitioner having slept over all these four months time had created third party rights. Secondly, the time to select the eligible candidates was over long time ago. Therefore, the petitioner is guilty of long latches. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

cse

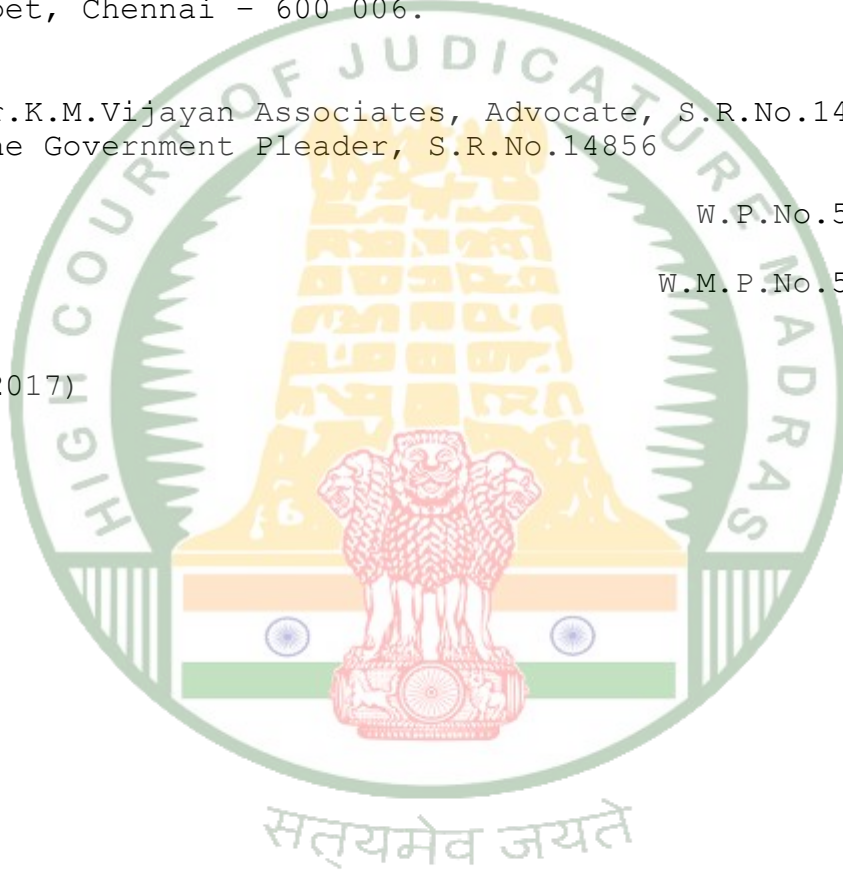
To

1. The Secretary,
Health and Family Welfare Department,
4th Floor, Secretariat, Fort St.George,
Chennai - 600 009.
2. The Member Secretary,
Medical Service Recruitment Board (MRB),
7th Floor, DMS Buildings,
No.359, Anna Salai,
Teynampet, Chennai - 600 006.

+1cc to Mr.K.M.Vijayan Associates, Advocate, S.R.No.14497
+1cc to the Government Pleader, S.R.No.14856

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SK(CO)
CA(13/04/2017)



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