

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.11.2017
CORAM :
THE HONOURABLE Mr.JUSTICE T.RAJA
W.P.No.28342 of 2017

Mr.A.Kolamuthu

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariate, Chennai-600 009.
- 2.The Medical Service Recruitment Board,
rep. by its Member Secretary,
7th Floor, DMS Building,
No.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,
7th Floor, DMS Building,
No.359, Anna Salai,
Teynampet, Chennai-600 006.
- 5.The Director of Medical and Rural Health Services (ESI),
7th Floor, DMS Building,
No.359, Anna Salai,
Teynampet, Chennai-600 006.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in connection with impugned qualification prescribed in the letter issued in Na.Ka.No.22 Ma.Pa.Dhe.Va/2012, dated 20/03/2013 and to quash the same as illegal and arbitrary insofar as the petitioner case is concerned and consequently, to direct the 2nd respondent to appoint the post of Radio Grapher in the available vacancies in the post without waiting for the approval of amendment of the Rules.

For Petitioner : Mr.G.Subramaniyan
For Respondents : Mr.R.A.S.Senthilvel,
AGP (For R1, R2 & R5)
Mr.A.Vivek (For R2)

ORDER

Mr.R.A.S.Senthilvel, learned Additional Government Pleader took notice for the respondents 1, 3, 4 & 5 and the learned standing counsel Mr.A.Vivek took notice for the 2nd respondent.

2.The present writ petition has been filed praying for issuance of a writ of Certiorarified Mandamus to call for the records from the file of the 2nd respondent in connection with impugned qualification prescribed in the letter issued in Na.Ka.No.22 Ma.Pa.Dhe.Va/2012, dated 20/03/2013 and to quash the same as illegal and arbitrary insofar as the petitioner case is concerned and consequently, to direct the 2nd respondent to appoint the petitioner in the post of Radio Grapher in the available vacancies without waiting for the approval of amendment of the Rules.

3.When the matter is taken up, the learned counsel for the petitioner and the learned Additional Government Pleader as well as the learned standing counsel appearing for the 2nd respondent submitted that the issue raised in this writ petition is squarely covered by the decision of this Court in W.P.(MD). Nos.7152, 7153 & 7213 of 2013, dated 02.08.2016, (S.Jeba Paulin and others vs. State of Tamil Nadu and others), wherein the Madurai Bench of this Court has allowed the said writ petitions, with a direction to the respondents to appoint the petitioners therein in the available vacancies without waiting for approval of amendment of the rule. The relevant portion in the said order dated 02.08.2016 reads as follows_

"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."

4.Following the above said decision, the present writ petition is also allowed, with a direction to appoint the petitioner in the available vacancies without waiting for approval of amendment of the Rule.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssv

To

- 1.The Principal Secretary,
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- +1 cc to the Govt Pleader sr 80491
+1 cc to Mr.G.Subramanian Advocate sr 80079
+1 cc to M/s.G.Subramaniam Advocate sr 79811

W.P.No.28342 of 2017

rsi(co)
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