

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.4761 of 2018

- 1.M.Hemalatha
- 2.R.Divya
- 3.M.Theivamani
- 4.K.Malathy
- 5.F.Sayera Banu
- 6.A.Mohan
- 7.T.Priya
- 8.N.Pradeepa
- 9.A.Arul
- 10.P.Mahendran

... Petitioners

Vs

- 1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 9.
- 2.The Director of Medical Education,
Kilpauk, Chennai - 10.
- 3.The Secretary,
Medical Services Recruitment Board,
7th Floor, D.M.S.Building,
No.359, Anna Salai,
Chennai - 6.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents to include the Course of B.Sc. (Radiotherapy) also as a requisite qualification for appointment to the post of Radiotherapy Technician by considering their representation dated 16.02.2018 and pass such further orders.

For petitioners : Mr.R.Jayaprakash

For R1 & R2 :Mr.V.Jayaprakash Narayanan, Spl.GP
For R3 : Mr.A.Vivek

O R D E R

The petitioners have filed this writ petition seeking for issuance of a writ of mandamus to direct the respondents to include the Course of B.Sc. (Radiotherapy) also as a requisite qualification for appointment to the post of Radiotherapy Technician by considering their representation dated 16.02.2018.

2. Learned counsel appearing for the petitioners submitted that the petitioners have completed their degree Course in B.Sc. (Radiotherapy Technology) in Madras Medical College, affiliated to The Tamil Nadu Dr.M.G.R. Medical University and it is a three years course. After completion of the same, they have also registered their names in the Department of Employment and Training under Professional and Executives Employment Exchange. Whiles, the third respondent issued a Notification dated 06.03.2018 calling for application for filling up of 25 posts of Radiotherapy Technician to the entire State of Tamil Nadu and for the said post, one has to possess a two years Diploma Course in Radiotherapy Technology, conducted by the Board of Para Medical Education under the Directorate of Medical Education, Government of Tamil Nadu. Therefore, on seeing the said Notification, the petitioners, who have completed 3 years degree Course in B.Sc. (Radiotherapy Technology), have submitted their representations dated 16.12.2018 to the respondents requesting them to consider the candidates who have completed B.Sc. (Radiotherapy Technology) also as an eligible candidate to apply for the said post, for, the candidates with 3 years degree Course are much qualified than two years Diploma Course. However, the said representation has not been considered till date.

3. It is also further submitted by the learned counsel for the petitioners that the Atomic Energy Regulatory Board (AERB), Government of India, Radiological Safety Division, issued a Circular dated 31.08.2016 with the list of Institutions/Universities conducting Radiotherapy Technologist Training, including the name of the Madras Medical College & Govt. General Hospital, Chennai, affiliated to The Tamil Nadu Dr.M.G.R. Medical University, Chennai, where the petitioners have completed their three years degree course in B.Sc. (Radiotherapy Technology). Therefore, it is argued that since the College where the petitioners have studied have also been approved by the AERB to conduct Radiotherapy Technologist Training, a direction may be given to the respondents to accept the applications to be submitted by the petitioners, who have admittedly completed their three years degree course in B.Sc. (Radiotherapy Technology), for, the said qualification possessed by the petitioners is much better than one prescribed in the said Notification.

4. Arguing further, learned counsel for the petitioners submitted that when a similarly placed person, namely, Ms. Rose Mary submitted a representation requesting the third respondent Board whether she can also apply for the said post as she has possessed B.Sc. (Radiotherapy Technology), the Member Secretary of the third respondent Board, vide reply dated Nil, intimated her to go through the detailed notification, besides stating that if she fulfills the minimum eligibility norms as per the Notification, she may apply for the said post through MRB website. On the basis of the said undated communication, it is further contended that the petitioners, who have completed three years degree course in B.Sc. (Radiotherapy Technology), are unable to apply for the said post, as, in the online mode, the link was enabled only to those candidates, who have completed two years Diploma Course in Radiotherapy. Therefore, he pleaded, a direction may be given to accept the qualification possessed by the petitioners as they are better qualified than the candidates who have studied Diploma, two years course, Radiotherapy Technology.

5. Placing reliance on the order passed by me in W.P. (MD).Nos.7152, 7153, 7188 and 7213 of 2013, dated 02.08.2016 (S.Jeba Paulin and others Vs. the Principal Secretary, Government of Tamil Nadu, Health and Family Welfare Department, Chennai), it is further argued by the learned counsel for the petitioners that in the said case, when the petitioners therein were not considered on the ground that they have possessed two years Diploma course, instead of one year certificate Course for the post of Radiographer, this Court, by considering that the petitioners therein were far better qualified candidates than the one studied in one certificate course, directed the respondents therein to appoint them in the available vacancies. Therefore, he pleaded, like the above, since the petitioners herein are also having better qualification than the one prescribed in the Notification viz. three years B.Sc. Degree course in Radiotherapy Technology, which is one year more than the Diploma Course, a direction may be given to the respondents to receive the applications to be submitted by the petitioners.

6. Per contra, learned Special Government Pleader appearing for the respondents 1 and 2 submitted that as per the amendment to the Special Rules prescribed in G.O.Ms.No.263, Health and Family Welfare (C2) Department, dated 15.11.2016, for the post of Radiotherapy Technician, the candidates will have to possess two years Diploma Course in Radiotherapy Technology conducted by the Board of Para Medical Education under the Directorate of Medical Education, Government of Tamil Nadu and Government Medical Institution or from any other Institutions recognized by the Government of Tamil Nadu. The said qualification has been fixed in terms of the norms fixed by the Atomic Energy Regulatory Board (AERB).

7. It is also further submitted that the Health and Family Welfare Department, after having examined the proposal of the Director of Medical Education, have accepted fixing of the qualification i.e. "Must have passed two years Diploma in Radiotherapy Technology conducted by the Board of Paramedical Education under the Directorate of Medical Education", for the post of Radiotherapy Technician. But, in the present, the petitioners, having completed three years degree Course in B.Sc. (Radiotherapy Technology), are over-qualified, hence, they are not eligible to be appointed for the said post, he pleaded.

8. Continuing his arguments, it is further contended that a decision relied on by the learned counsel for the petitioner in S.Jeba Paulin's case (cited supra) cannot be applicable to the facts of the present case, for, in the said case, the third respondent therein sent a proposal for amending the Rule by bringing the holders of Diploma also as one of the qualifications for the post of Radiographer apart from the candidates who have completed one year certificate course, and therefore, in the above said case, this Court, by considering such facts, directed the respondents therein to consider the petitioners therein for appointment in the available vacancies. Therefore, it is pleaded, the contention of the petitioners that based on the said orders passed by this Court, they can be also considered for appointment to the said post as they are better qualified, cannot be sustained, for, there is no such proposal made by the Government to accommodate the candidates who have completed three years degree in B.Sc. (Radiotherapy Technician) as well for the said post.

9. In support of his submissions, learned Special Government Pleader has also relied on a judgment of the Hon'ble Apex Court in State of Rajasthan and others Vs. Lata Arun [(2002) 6 SCC 252] for a proposition that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority and it is not for Courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. Therefore, it is contended, while such being the settled legal position, the petitioners cannot seek a prayer to include the qualification of three years degree course in B.Sc. (Radiotherapy Technology) as well for the said post in the Notification.

10. Again, referring to a decision of the Hon'ble Apex Court in P.M.Latha and others Vs. State of Kerala and others [(2003) 3 SCC 541], it is further argued that equity and law are twin brothers and law should be applied and interpreted

equitably but equity cannot override written or settled law. Therefore, on this score, it is further contended that the petitioners, having qualified three years degree course in B.Sc. (Radiotherapy Technician) cannot seek a prayer to include the said qualification as well apart from the Diploma in Radiotherapy Technician, contrary to the Notification. Hence, with these submissions, he prayed for dismissing the writ petition.

11. But, this Court is unable to agree with the above said submissions. Admittedly, the petitioners have completed B.Sc. (Radiotherapy Technology) in Madras Medical College, affiliated to The Tamil Nadu Dr.M.G.R.Medical University, and it is a three years degree Course. It is also not in dispute that the Madras Medical College, where the petitioners have completed the said degree course, is also found place in the list of Institutions/Universities conducting Radiotherapy Technologist training courses which are in accordance with AERB requirements, as could be seen from the instruction issued by the Atomic Energy Regulatory Board (AERB), Government of India, Radiological Safety Division, dated 31.08.2016. For better appreciation, relevant portions of the said instruction of AERB are stated below:-

"2.0 AERB Assessed Training Courses:
List of Institutions/Universities conducting Radiotherapy Technologist training courses which are in accordance with AERB requirements as on August,31 2016 are given in the Annexure-I.

Annexure-I

Sr.No.	Name of the Institute	Course Name	Affiliation
1.	Sri Venkateswara Institute of Medical Sciences University (SVIMS), Tirupati-517507, Andhra Pradesh	Diploma in Radiotherapy Technology	SVIMS, Tirupati (Deemed University)

Sr.No.	Name of the Institute	Course Name	Affiliation
2.	Yashoda Super Speciality Hospital, Hyderabad - 500082, Andhra Pradesh	Diploma in Radiotherapy Technology	Telangana Para Medical Board, Hyderabad, Telangana
...			
....			
59.	Madras Medical College & Govt. General Hospital, Chennai - 600003. Tamil Nadu	B.Sc. in Radiotherapy Technology	The Tamil Nadu Dr. MGR Medical University, Chennai, Tamil Nadu
....			
....			

As could be seen from the above, when the AERB itself recognized the Madras Medical College & Govt. General Hospital, Chennai, affiliated to The Tamil Nadu Dr.M.G.R. Medical University, Chennai, to conduct a three years degree course i.e. B.Sc. (Radiotherapy Technology), it goes without saying that the petitioners, who have completed three years course in B.Sc. (Radiotherapy Technologist) in the said College, are also entitled to apply for the said post called for by the third respondent Board.

12. Besides, it is also seen that in the Notification, the third respondent Board has mentioned awarding of 50% weightage marks to those candidates, who have completed Diploma course in Radiotherapy Technology and the same is also extracted below:-

Minimum Educational qualification required for the post	Weightage of marks		
	Diploma Course in Radiotherapy Technology	HSC/PUC	SSLC/10 th
Diploma Course in Radiotherapy Technology	50%	30%	20%

In view of the above, no doubt, the respondent is afraid of awarding of over and above 50% of weightage marks to those candidates who have completed three years degree course in B.Sc.

(Radiotherapy Technology), like the petitioners herein. It is made clear that such candidates shall also be awarded weightage marks only on par with the holders of two years Diploma Course in Radiotherapy Technology. Learned counsel for the petitioners has also acceded that the petitioners will not claim more than 50% of weightage marks.

13. Although the learned Special Government Pleader for the respondents 1 and 2, producing a copy of the AERB Safety Code, stated that a Radiation Therapy Technologist shall have the qualification of (i) 10+2 or equivalent with science subjects from a recognized board; and (ii) two years' radiation therapy technologies' course or equivalent, based on the minimum course content prescribed by the competent authority, from a recognized institution with in-field training in radiotherapy; the said contention also cannot be sustained, for, the petitioners have completed a three years Course in B.Sc. (Radiotherapy Technology), which is also recognized by the AERB as stated above.

14. Thus, in view of the above, considering the fact that the petitioners have completed three years degree course in B.Sc. (Radiotherapy Technology) and that the Madras Medical College & Govt. General Hospital, Chennai, affiliated to The Tamil Nadu Dr.M.G.R. Medical University, Chennai, where the petitioners have studied the said Course, has been given recognition by the Atomic Energy Regulatory Board, Government of India, Radiological Safety Division, to conduct three years degree course i.e. B.Sc.(Radiotherapy Technology), this Court has no hesitation to direct the respondents to consider the application to be submitted by the petitioners as they are well qualified. Accordingly, the respondents are directed to receive the application to be submitted by the petitioners either in person or register post, if they submit it on or before the last date of submission of application as stated in the said Notification.

15. Accordingly, for the reasons stated above, the writ petition stands disposed of . No Costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rkm

To

1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 9.

2.The Director of Medical Education,
Kilpauk, Chennai - 10.

3.The Secretary,
Medical Services Recruitment Board,
7th Floor, D.M.S.Building,
No.359, Anna Salai,
Chennai - 6.

+ 1 cc to Mr.R.Jayaprakash Advocate,SR.19801

+ 1 cc to Mr.A.Vivek Advocate,SR.19784

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nr 16/03/2018



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