

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.07.2018
Pronounced on : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.15774 of 2017
and
W.M.P.Nos.17060 and 17061 of 2017

A.Dhamodaran

... Petitioner

Vs.

- 1.The Medical Services Recruitment Board (MRB)
rep. by its Member-Secretary,
Government of Tamil Nadu,
7th Floor, DMS Building,
No.359, Anna Salai, Teynampet,
Chennai - 600 006.
- 2.The Director of Medical and Rural Health Services,
Chennai - 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Impugned Notification No.04/MRB/2017 dated 08.05.2017 issued by the first respondent and quash the same insofar as it relates to the Note column in para 7 of the Notification is concerned and direct the respondents to strictly award 50% weightage marks to Technical Qualification for the post of Plaster Technician Grade-II.

For Petitioner : Mr.A.S.Kaizer

For Respondents : Mr.C.Vevek for R1
Mr.C.Munusamy
Spl. Govt. Pleader for R2

ORDER

This writ petition has been filed to quash the Impugned Notification No.04/MRB/2017 dated 08.05.2017 issued by the first respondent insofar as it relates to the Note column in para 7 of the Notification is concerned and to seek a consequential direction to the respondents to strictly award 50% weightage

marks to Technical Qualification for the post of Plaster Technician Grade-II.

2.The petitioner initially completed Secondary School Leaving Certificate (SSLC) in the year 2002 and further he completed his Higher Secondary Course (HSC) in the year 2006. Thereafter, he underwent Certificate Course in Orthopaedic Technician in 2016. He belongs to B.C Community. According to the petitioner, he had secured 336 marks in SSLC and 577 marks in HSC and as far as the Certificate Course is concerned, he had secured 139 marks out of 200. The Certificate Course was undertaken by him from Vellore Medical College, Vellore. The first respondent Recruitment Board has issued impugned Notification on 08.05.2017, inviting the applications through online for Direct Recruitment to the post of 'Plaster Technician Grade - II'. The total vacancies were notified as 87 and as far as BC category was concerned, the number of vacancies earmarked was 22. The educational qualification as notified was pass in HSC and must have in possession of one year Certificate Course in Orthopaedic Technician conducted by Tamil Nadu Government Medical Institutions. According to the selection process, as notified, the selection will be based on the marks obtained by the candidates in their academic and Technical Qualifications for the post of Plaster Technician Grade - II and also duly following the Rules of Reservation and communal rotation. According to the notification, there will be no oral test (interview). The weightage of marks for both academic as well as technical qualification are prescribed as under:-

Minimum educational qualification required for the post	Weightage of Marks		
	Certificate Course in Orthopaedic Technician	HSC/PUC	SSLC
a. Certificate Course in Orthopaedic Technician with HSC/PUC	50%	30%	20%

3. In the note appended to the above tabular column, it is stated as follows:-

" Note: - In case marks are not specifically awarded for any batch of the Certificate of training course for Orthopaedic Technician then selection for all will be based on the marks scored by the applicants in SSLC and HSC/PUC examinations only"

4. Pursuant to the notification, the petitioner applied through online on 22.05.2017. Ultimately, the petitioner found to his surprise that his name was not included in the provisional selection list, which was notified on conclusion of the selection on 20.06.2017. Therefore, the petitioner is before this Court seeking to challenge the notification dated 08.05.2017 insofar as it relates to the Note column in para 7 of the Notification is concerned and for consequential direction.

5. The substances of the grievance as projected in the writ petition and as submitted by the learned counsel for the petitioner is that the impugned note, which would state that in case marks are not specifically awarded for any batch of Certificate of training course, the selection will be based on the marks scored by the candidates in SSLC and HSC examination. According to the counsel, the said note is contrary to the notification, where the marks are apportioned both for technical qualification as well as for the educational qualification. According to the learned counsel, the weightage of marks given to technical qualification is 50 marks and remaining 50 marks was apportioned only towards marks obtained both in HSC and SSLC which means that more weightage and primacy is placed on the marks secured by the candidates in the technical qualification.

6. The learned counsel for the petitioner further submitted that ultimately the selection and the release of candidates list, it was found that the candidates were selected only on the basis of marks obtained from their educational qualification and no inter se weightage given to the marks obtained in the technical qualification. Such selection method has put the meritoriously, technically qualified person like the petitioner herein to grave disadvantage and snatched their chances of getting selected and appointed. According to the learned counsel, once the appointment is against the technical post, due primacy and importance has to be attached to the technical qualification and such appointment cannot be given on the basis of mere educational qualification which would only defeat the very purpose and spirit of such appointment by undermining the essence of the notification.

7. Upon notice Mr. A. Vivek, learned counsel entered appearance on behalf of the first respondent and Mr. C. Muthusamy, learned Special Government Pleader entered appearance on behalf of the second respondent and filed a detailed counter affidavit on behalf of the first respondent. In the counter affidavit, in paragraph 8, it is stated as follows:-

"8. Further, it is submitted that as per the Notification No. 4/MRB/2017 dated 08.05.2017, 50% weightage of marks has been given to the certificate course of Orthopaedic Technician and 30% weightage to

HSC marks and 20% weightage to SSLC marks have been given based on the guidelines prescribed in G.O.Ms.No.401, Health and Family Welfare (C2) Department, Dated 16.12.2014. It is also mentioned in the notification that in case marks are not specifically awarded for any batch of certificate course of Plaster Technician Grade - II, the selection for all candidates will be based on the marks scored by them in HSC (30% weightage) and SSLC (20% weightage) examination only as per G.O.Ms.No.331, Health and Family Welfare (C2) Department, dated 05.11.2015. In this case, the Director of Medical Education has given in their letter No.78263/PME/1/2016, dated 02.06.2017 that only certificates are issued and mark sheets have not been given before January 2012 and mark sheets are given only after January 2012 only on demand with respect to certificate course for Plaster Technician Grade -II. Hence, the marks obtained by the candidates in HSC and SSLC have only been taken into account for preparation of list for certificate verification as per merit and communal reservation."

8.According to the above averments, the mark sheets for Orthopaedic Technician Course were given only after January 2012. The decision was disclosed in the communication exchanged between the first respondent Medical Board and the second respondent, where it has been specifically mentioned that the mark sheets are given only in the month of January 2012 and earlier only certificates were issued to the candidates, who were qualified in the said courses. Therefore, as regards the candidates, who did not have mark sheet or who were not given mark sheet, but has the valid certificate in the subject, their selection was done on the basis of the marks obtained by them in SSLC and HSC. According to the learned counsel for the first respondent, the yardstick adopted by the respondents cannot be faulted with, as due primacy has been given to the meritorious candidates on the basis of the marks obtained by them in the school final.

9.This Court has considered the rival submission of the candidates, perused the relevant materials and pleadings placed on records.

10.Although in the notification as mentioned in the tabular column due importance and primacy is accorded to the technical qualification, however, it appears that by appending the note under the tabular column, the primacy as accorded to the technical qualification has been diluted in case of one set of candidates as against the another set of candidates. This Court

is unable to see how all the candidates regardless to the fact that whether they have mark sheet for technical qualification or not, can be put together and treated alike for the purpose of appointment to the post of Plaster Technician Grade - II. Such exercise done by the first respondent Board has resulted in invidious discrimination and the technically qualified persons were obviously put to great disadvantage viz ., the candidates, who had their mere educational qualification, as sole criteria for their eventual selection. The clubbing of candidates as done by the present selection amounts to treating the unequal as equal. No doubt, the candidates who have been selected also the holders of certificate in the subject, nevertheless the weightage of 50% marks for technical qualification was not applied in their case and whereas such weightage of 50% of marks was applied inter se for the candidates like the petitioner and others, who had applied with mark sheets. Therefore, such process of selection clearly discriminate and the same is also unreasonable and arbitrary. Once the appointment is to be made to the technical post, the inter se merits in the technical qualification should be the paramount consideration. No doubt, from 2012 as disclosed in the letter addressed by the second respondent that the mark sheets were available to the candidates only on demand which position would explain that earlier there was no such practice. But while conducting the selection as between candidates with mark sheet and without mark sheet, the first respondent board ought to have conducted the selection independently in order to find the best candidates on the basis of inter se merits. In this case, the first respondent board has arbitrarily clubbed all the candidates together regardless of the above fact. Thus, in the ultimate selection, where the candidates, who had secured the meritorious position in the technical qualification, had not been considered along with such candidates, who had merely issued certificate without the mark sheets and their selection was purely based on the marks obtained by them in SSLC and HSC.

11. During the course of arguments, this Court was informed that although the selection was completed, yet there are number of vacancies, which are yet to be filled in the post of Plaster Technician Grade - II. This fact is not disputed by the respondents.

12. This Court although is of the opinion that the selection as conducted cannot be countenanced both in law and on facts, but in view of the completion of the selection in 2017 itself, this Court does not want to upset the entire selection for the sake of one candidate who alone is before this Court. When the fact of the matter is that there are still number of the vacancies available in the post of Plaster Technician Grade- II and the petitioner having participated in the selection and have

come forward with the present writ petition challenging the note appended to the notification and having made out a case for grant of relief, but considering the overall interest of both the petitioner as well as Medical administration, this Court directs the respondents to consider the claim of the petitioner on the basis of the marks obtained by him in the technical qualification along with the marks obtained by him in both the SSLC and HSC by comparing it inter se merits along with the candidates, who have submitted the certificate with the mark sheet. In case, the petitioner comes out successful against the BC category, the respondents are directed to grant appointment to the petitioner in any one of the existing vacancies as Plaster Technician Grade - II. The respondents are directed to comply with the direction within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

skn

To

1. The Member Secretary,
The Medical Service Recruitments Board (MRB)
Government of Tamil Nadu, 7th Floor,
DMS Building, No.359, Anna Salai,
Teyampet, Chennai-6

2. The Director of Medical and Rural Health
Service, Chennai -6.

+1cc to Mr.A.S. Kaizer, Advocate SR.No.57689

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GMY (11/09/2018)