

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19897 of 2018

and

W.M.P. Nos.21486 and 21487 of 2018

Dr.Aishwarya Devi.S, BDS

... Petitioner

vs.

1.The Secretary to Government,
Health and Family Welfare Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai - 600 009

2.The Chairman
Medical Recruitment Board
7th Floor, DMS Building, 359, Anna Salai
Teynampet, Chennai - 600 006

3.The Tamil Nadu Public Service Commission
Chennai

(3rd respdt. suo motu impleaded vide
order of the court dated 19.9.2018)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for a writ of declaration declaring Rule 7 of the Special Rules for
Tamil Nadu Medical Service, Section 21 TNMS in Tamil Nadu Medical
Services, Service Manual Vol.II as illegal and unconstitutional and strike
down the same.

For Petitioner : Mr.Naveen Murthy
for Ms.S.Varsha

For Respondent : Mr.T.N.Rajagopalan
Govt. Pleader for R1
No appearance for R2 and R3

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

On 19.09.2018, we passed the following order:

Petitioner, a Bachelor Degree holder in Dental Surgery, with first class, passed out in the year October-2006, belonging to the General Category, has filed the instant writ petition for a writ of declaration, to declare Rule 7 of the Special Rules for Tamil Nadu Medical Service and Section 21 of the Tamil Nadu Medical Service in Tamil Nadu Medical Services, Service Manual Vol-II, as illegal and unconstitutional.

2. One of the main contentions is that the upper age limit for Assistant Surgeon (General Line), is 35 years, whereas, the upper age limit for Assistant Dental Surgeon is 30 years. Fixation of age limit for two interdisciplinary posts has no rational nexus with the object sought to be achieved by the Government and therefore, impugned rules are violative of Article 14 of the Constitution of India. The requisite educational qualification for Tamil Nadu Medical Services, is as follows:-

"Must possess a degree in Dental Surgery of any University or institution recognized by the University Grants Commission for their purpose of its grant or LDSc qualification of a body recognized by the Dental Council of India."

3. Rule 7 of the Special Rules for Tamil Nadu Medical Services impugned in the instant writ petition, is as follows:-

7. Qualification - Age - (a) No person shall be eligible for appointment to the service by direct recruitment in the post specified in column (1) of the table below if he has completed the age specified in the corresponding entry in column (2) thereof:

Provided that for the selection of Drug Inspectors made in the year 1974, the age limit shall, be reckoned with reference to the 1st July 1973.

TABLE.

Post (1)	Age (2)
Assistant Surgeons in the General Line	35 years
Junior Assistant to Chemical Engineer	30 years
Professor of Radiology Physics	
Assistant Professor of Radiology Physics	
Research Assistant to the Chemical Examiner	
Reader in Pharmaceutical Chemistry, in Pharmaceutics and in Pharmacology	
Assistant Reader in Pharmaceutics in Medical College	
Assistant Reader in Pharmacognosy in Medical Colleges	
Chemical Assistant, King Institute, Guindy	
Principal, School of Indigenous Medicine	48 years
Senior Resident Medical Officer-cum-Lecturer in the School of Indigenous Medicine	32 years
Senior Chemical Assistant (Sterile solution Section), King Institute, Guindy	30 years
Reader in Dental Surgery	42 years
Lecturer in Dental Surgery	30 years
Tutor in Dental Surgery	
Assistant Dental Surgeon	30 years

4. Record of proceedings shows that, on 04.08.2017, a

Hon'ble Division Bench of this Court, has ordered notice.

5. Today, on instructions, Mr.T.N.Rajagopalan, learned Government Pleader, submitted that the Director of Medical and Rural Health Services, Chennai, has sent proposal to the Government that the age limit for the recruitment to various post in Tamil Nadu Medical Services has been prescribed under Rule 7 of the Special Rules for Tamil Nadu Medical Services and for the post of Assistant Dental Surgeon (Dental), the age limit is fixed as 30 years, whereas, it is 35 years for the post of Assistant Surgeons in the general line.

6. Mr.T.N.Rajagopalan, learned Government Pleader further submitted that the Director of Medical and Rural Health Services, Chennai, has requested the Government to revise the age limit for the post of Assistant Surgeon (Dental) on par with that of Assistant Surgeon (General).

7. Learned Government Pleader further submitted that the Government have examined the proposal of the Director of Medical and Rural Health Services and decided to increase the upper age limit for appointment to the post of Assistant Surgeon (Dental) from 30 to 35 years, similar to that of Assistant Surgeon (General) and proposals to amend the Special Rules for Tamil Nadu Medical Services, have been sent to Tamil Nadu Public Service Commission for its concurrence, vide letter No.2928/B2/2018, dated 19.07.2018.

8. Learned Government Pleader further submitted that as soon as concurrence is given by Tamil Nadu Public Service Commission, amendment to the Special Rules for Tamil Nadu Medical Services, with reference to age, would be issued.

9. Inasmuch as, the Government of Tamil Nadu have already decided to bring an amendment to the Tamil Nadu Medical

Services Rules and draft notification has already been forwarded to the Tamil Nadu Public Service Commission for concurrence, in the light of Article 320(3)(a) of the Constitution of India, to consult State Public Service Commission on all matters relating to methods of recruitment to civil services and for civil posts and having regard to the corresponding duty to be discharged by the Public Service Commission to advice on any matter so referred to them and on any other matter, which the Governor of the State, may refer to them, Tamil Nadu Public Service Commission, is necessary and proper party, in so far as the amendment to the rules, and consequently for issuance of the notification, we suo motu implead the Tamil Nadu Public Service Commission, as a party respondent. Tamil Nadu Public Service Commission is arrayed as Respondent No.3 in this writ petition.

10. Registry is directed to make necessary amendment in the instant writ petition, wherever required.

11. On instructions from the Under Secretary, Tamil Nadu Public Service Commission, now arrayed as respondent No.3, Mr.Loganathan, learned Counsel for Tamil Nadu Public Service Commission, submitted that draft amendment of the notification, to amend the Special Rules for Tamil Nadu Medical Services, has been approved by the Tamil Nadu Public Service Commission and accordingly, Government have been informed.

12. Submission of the learned counsel for the Tamil Nadu Public Service Commission, is placed on record.

13. Draft Notification of the Health and Family Welfare (B2) Department, sent to the Tamil Nadu Public Service Commission for concurrence, is extracted hereunder:-

"Draft Notification

*Tamil Nadu Medical Service - Recruitment for the post of Assistant Surgeon (Dental)
- Revision of upper age limit from 30 to 35 - Amendment to Special Rules - Orders -
Issued.*

HEALTH AND FAMILY WELFARE (B2) DEPARTMENT

G.O.(Ms)No.

Dated:

திருவள்ளூர் ஆண்டு : 2049

விளம்பி, ஆடி:

Read:

1. G.O.(Ms) No.344, Health, dated 20.11.2015.
2. G.O.(Ms) No.251, Health, dated 17.10.2016.
3. From the Director of Medical and Rural Health Services,
Ref.No.72687/E6/4/2017, dated 23.01.2018.
4. Government letter No.2928/B2/2018-3, Health and Family Welfare Department,
dated 19.07.2018.
5. From the Secretary, Tamil Nadu Public Service Commission, letter No.

ORDERS:-

The Government in the order first read above have amended the nomenclature of the post of Assistant Dental Surgeon into that of Assistant Surgeon (Dental).

2. The Government, in the order second read above have issued amendment to the Special Rules for the Tamil Nadu Medical Service designating the Director of Medical and Rural Health Services as appointing authority for the post of Assistant Surgeon (Dental).

3. The Director of Medical and Rural Health Services in his letter third read above has stated that the age limit for recruitment to various posts in the Tamil Nadu Medical Services has been prescribed under Rule 7 of the Special Rules for Tamil Nadu Medical Services and for the post of Assistant Dental Surgeon (Dental), the age limit is fixed as 30, whereas, it is 35 for the post of Assistant Surgeons in the General line. He has therefore, requested the Government to revise the age limit for the post of Assistant Surgeon (Dental) on par with the post of Assistant Surgeon (General).

4. The Government have examined the proposal of the Director of Medical and Rural Health Services and decided to increase the upper age limit for appointment to the post of Assistant Surgeon (Dental) from 30 to 35, similar to that of Assistant Surgeon (General) and to amend the Special Rules for Tamil Nadu

Medical Service accordingly.

5. The appended Notification will be published in the Tamil Nadu Government Gazette.

(BY ORDER OF THE GOVERNOR)

J.RADHAKRISHNAN,
PRINCIPAL SECRETARY TO GOVERNMENT"

14. Letter No.2928/B2/2018-3, dated 19.07.2018 of the Joint Secretary to the Government, Health and Family Welfare (B2) Department, sent to the Secretary, Tamil Nadu Public Service Commission, Chennai, seeking concurrence of Commission, is extracted hereunder:-

"Health and Family Welfare (B2) Department
Letter No.2928 / B2 / 2018-3, dated : 19.07.2018

From
Thiru.V.Avudaiappan, M.A.,
Joint Secretary to Government.

To
The Secretary,
Tamil Nadu Public Service Commission,
Chennai -3.(w.e.)

Sir,

Sub: Tamil Nadu Medical Service - Recruitment for the post of Assistant Surgeon (Dental) - Revision of upper age limit - Amendment to Special Rules for Tamil Nadu Medical Service - Concurrence of the Commission - Requested - Regarding.

Ref: From the Director of Medical and Rural Health Services,
Letter R.No.72687/E6/4/2017, dated 23.01.2018.

I am directed to invite your attention of the reference cited and to state that the Director of Medical and Rural Health Services in his letter cited has requested to revise the age limit for the post of Assistant Surgeon (Dental) and issue necessary amendment to the Special Rules for Tamil Nadu Medical Services (Section 21) under Part - II in Branch - I for the post of Assistant Surgeon (Dental) from 30 to 35 years. The request of the Director of Medical and Rural Health Services have been examined and decided to issue amendment to the Special Rules for Tamil Nadu Medical Service by increasing the upper age limit to the post of Assistant Surgeon (Dental) from 30 to 35 years (similar to that of Assistant Surgeon (General)).

2. I am, therefore, to enclose a draft amendment and notification

and to request you to obtain the concurrence of the Commission and to communicate the same to the Government at the earliest."

15. Concurrence given by the Tamil Nadu Public Service Commission, with minor change is extracted hereunder:-

"Copy of letter NO.4660/RND-B2/2018, dated 17.09.2018 addressed to the Principal Secretary to Government, Health and Family Welfare Department, Secretariat, Chennai - 600 009 from the Secretary, Tamil Nadu Public Service Commission, Chennai - 600 003.

Sir,

Sub.: Rules - Tamil Nadu Medical Service - Amendment to Special Rules for the posts of Assistant Surgeon (Dental) - Concurrence of the Commission - Requested - Regarding.

Ref.: Government Letter No 2928/B2/2018-3, Health and Family Welfare (B2) Department, dated 19.07.2018.

I am directed to invite kind attention to the reference cited and to inform that the Commission concurs with the draft amendment proposal of the Government sent in the reference cited with regard to amending the Special rules for the post of Assistant Surgeon (Dental) in Tamil Nadu Medical Service with the following suggestion:-

(i) The term "Rules" may be suggested to incorporate in the beginning of the Abstract portion of the G.O. to be issued in this regard.

I am, therefore, to request that the above suggestion may be incorporated in the G.O. to be issued and to send 10 copies of the same for the Commission's reference.

*Sd/- Secretary
Section Officer"*

16. Government have decided to increase the upper age limit for appointment to the post of Assistant Surgeon (Dental) from 30 to 35 years similar to that of Assistant Surgeon (General). Tamil Nadu Public Service Commission has given the concurrence with minor change. In the above said circumstances, it is for the

Government of Tamil Nadu, to amend the rules and accordingly, issue the notification, within a period of two weeks from the date of receipt of a copy of this order.

17. Mr.T.N.Rajagopalan, learned Government Pleader, shall inform the orders of this Court for compliance, in letter and spirit, within the said period.

18. Post the matter on 03.10.2018. "

2. Today, when the matter came up for further hearing, in the forenoon, Mr.T.N.Rajagopalan, learned Government Pleader submitted that he has not received any instructions regarding issuance of Notification and thus sought for time. We directed the Registry to list the matter on 08.10.2018. However, in the afternoon when the court resumed, learned Government Pleader, represented that Government of Tamil Nadu, has issued G.O.(Ms) No.447 Health and Family Welfare (B2) Department, dated 27.09.2018, amending the Special Rules for the Tamil Nadu Medical Service and increased the upper age limit for appointment to the post of Assistant Surgeon (Dental) from 30 to 35, similar to that of Assistant Surgeon (General). Government have also directed publication of Notification in the Government Gazette. The said Government Order is extracted hereunder:

ABSTRACT

Rules - Tamil Nadu Medical Service - Recruitment for the post of Assistant Surgeon (Dental) - Revision of upper age limit from 30 to

35 - Amendment to Special Rules - Orders - Issued.

HEALTH AND FAMILY WELFARE (B2) DEPARTMENT

G.O.(Ms)No.447

Dated: 27.09.2018

Read:

1. G.O.(Ms) No.344, Health and Family Welfare (B2) Department, dated 20.11.2015.
2. G.O.(Ms) No.251, Health and Family Welfare (B2) Department, dated 17.10.2016.
3. From the Director of Medical and Rural Health Services, Ref.No.72687/E6/4/2017, dated 23.01.2018.
4. Government letter No.2928/B2/2018-3, Health and Family Welfare Department, dated 19.07.2018.
5. From the Secretary, Tamil Nadu Public Service Commission, letter No. 4660/RND-B2/2018, dated 17.09.2018.

-:oOo:-

ORDERS:-

The Government in the order first read above have amended the nomenclature of the Post of Assistant Dental Surgeon into that of Assistant Surgeon (Dental).

2. The Government, in the order second read above have issued amendment to the Special Rules for the Tamil Nadu Medical Service designating the Director of Medical and Rural Health Services as appointing authority for the post of Assistant Surgeon (Dental).

3. The Director of Medical and Rural Health Services in his letter third read above has stated that the age limit for recruitment to various posts in the Tamil Nadu Medical Services has been prescribed under Rule 7 of the Special Rules for Tamil Nadu Medical Services and for the post of Assistant Surgeon (Dental), the age limit is fixed as 30, whereas, it is 35 for the post of Assistant Surgeons in the General line. He has, therefore, requested the Government to revise the age limit for the post of

Assistant Surgeon (Dental) on par with the post of Assistant Surgeon (General).

4. The Government have examined the proposal of the Director of Medical and Rural Health Services and decided to increase the upper age limit for appointment to the post of Assistant Surgeon (Dental) from 30 to 35, similar to that of Assistant Surgeon (General) and to amend the Special Rules for Tamil Nadu Medical Service accordingly.

5. The appended Notification will be published in the Tamil Nadu Government

To

The Director of Stationery and Printing, Chennai - 2.

(for publication of Notification in the TNGG)

The Works Manager, Government Central Press, Chennai-79.

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

The Director of Medical Education, Chennai-10.

The Director of Public Health and Preventive Medicine, Chennai-6.

The Accountant General, Chennai-18.

The Chairman, Medical Services Recruitment Board, Chennai-6.

The Secretary, Tamil Nadu Public Service Commission, Chennai-3
(10 copies)

Copy to:-

The Government Pleader, High Court, Madras-104.

(With reference to W.P.No. 19897 of 2017)

The Personnel and Administrative Reforms/Law Departments,
Chennai-9, Gazette.

(BY ORDER OF THE GOVERNOR)

J. RADHAKRISHNAN,
PRINCIPAL SECRETARY TO GOVERNMENT,

// FORWARDED BY ORDER //

SECTION OFFICER.

APPENDIX

Notification

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Hon'ble Governor of Tamil Nadu hereby makes the following amendment to the Special Rules for the Tamil Nadu Medical Services (Section 21) in Volume II of the Tamil Nadu Services Manual, 1969.

AMENDMENT

In the said Special Rules, in Part-11, in Branch - I Medical, in rule 7 in sub-rule (a), in the Table, under the heading "Age" in column (2), against the post "Assistant Surgeons (Dental)" in column (1) thereof, for the expression "30 years", the expression "35 years" shall be substituted".

**J. RADHAKRISHNAN,
PRINCIPAL SECRETARY TO GOVERNMENT**

// True Copy //

Section Officer

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3. Petitioner has sought for a writ of declaration. On the other hand, Government has issued G.O. (Ms) No.447 dated 27.09.2018 increasing the upper age limit, as stated supra. In view of the above, there is no need for declaration.

4. Accordingly, the writ petition is disposed of. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

(S.M.K., J.) (S.P., J.)
03.10.2018

Asr

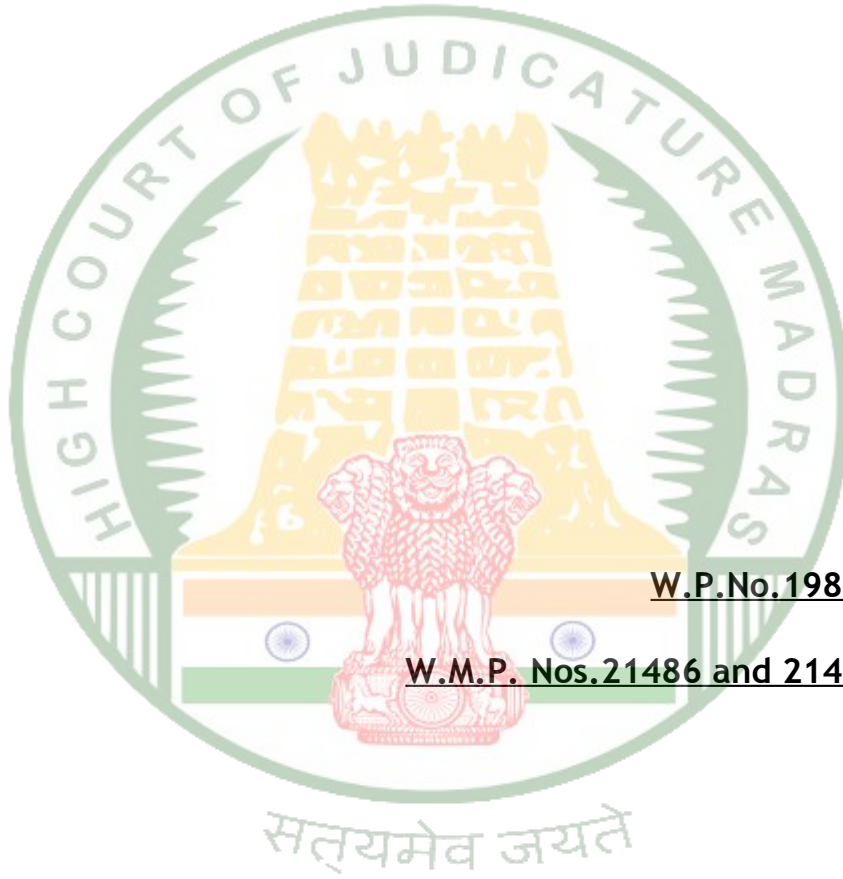
- 1.The Secretary to Government,
Health and Family Welfare Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai - 600 009
- 2.The Chairman
Medical Recruitment Board
7th Floor, DMS Building, 359, Anna Salai
Teynampet, Chennai - 600 006
- 3.The Tamil Nadu Public Service Commission
Chennai

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AND
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asr



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