

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.27645 of 2018
and W.M.P.Nos.32184, 32188, 32195 & 32195 of 2018

K.Bhuvaneshwari

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by Secretary to the,
Health and Family Welfare Department,
Secretariat, Fort St. George, Chennai - 9.
 2. The Medical Services Recruitment Board,
Rep. by its Member Secretary,
7th Floor, DMS Buildings,
359, Anna Salai, Teynampet,
Chennai - 600 006.
 3. The Director of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
 4. The Director of Medical and Rural Health Services,
361, DMS Complex,
Anna Salai, Chennai - 600 006.
 5. The Director,
King Institute of Preventive Medicine & Research,
Guindy, Chennai - 600 032.
- .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records pertaining to the impugned G.O.Ms.No.331 of Health and Family Welfare (C2) Department, dated 05.11.2015 issued by the 1st Respondent and quash the same.

For Petitioner : Ms.M.Arulmangai

For R1 : Mr.E.Manoharan, AGP

O R D E R
(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in the instant writ petition is to G.O.Ms.No.331, Health and Family Welfare (C2) Department, dated 05.11.2015 issued by the 1st respondent. The said G.O. reads thus:-

"ABSTRACT

Medical Services Recruitment Board - Posts coming under the purview of the Medical Services Recruitment Board - Amendment - Orders -Issued.

HEALTH AND FAMILY WELFARE (C2) DEPARTMENT
G.O. (Ms.) No.331

Dated: 05.11.2015

திருவள்ளூர் ஆண்டு 2045

மனமத, ஐப்பசி-19,

Read:

1. G.O. (Ms). No.36, Health and Family Welfare Department, dated: 12.02.2014.
2. G.O.(Ms.) No.401, Health and Family Welfare Department dated: 16.12.2014.
3. G.O. (Ms). No.243, H&FW (C2) Dept, dated:13.08.2015
4. From the Chairman, Medical Services Recruitment Board, Ref.No.1050/MRB/ E2/2014, dated: 19.09.2015.

ORDER:

In the reference third read above, the Member Secretary, Medical Recruitment Board has stated that some of the batch of Paramedical students in earlier years, while having been awarded with certificate or Diploma, marks scored by those candidates have not been issued to them. In such situation, there needs to be a clear guidelines for giving weightage to the academic performance of the candidates. Further, in the G.O. 3rd read above, the posts classified under Basic Services and the post of Driver under Tamilnadu General Subordinate Service have been taken out of the purview of the Medical Services Recruitment Board. In view of the above, the following amendments are issued to the Rules of Procedure of the Medical Services Recruitment Board, 2013.

AMENDMENTS

In the said Rules, in rule 3,-

(1) for the expression "the following methods of recruitment, namely:-

(A) Recruitment by open advertisement.-", the

expression, "the method of recruitment by open advertisement", shall be substituted;

(2) In clause (iii), after sub-clause(a), the following sub-clause shall be inserted namely:-

"(aa) Wherever marks are not awarded to the Technical Qualification but only a certificate or Diploma is issued for having passed the examination, the percentage of marks obtained in SSLC or HSC as the case may be alone taken into account for calculating the weightage of marks":

(3) the existing clause (iv) shall be omitted.

(BY ORDER OF THE GOVERNOR)

Dr.J.RADHAKRISHNAN,
SECRETARY TO GOVERNMENT"

2. Case of the petitioner is that she is a well qualified Laboratory Technician with a Certificate in Laboratory Technicians Grade - I course. She passed out the same in July, 1995 from Udumalai Paramedical College, Udumalpet. She completed 10th standard in April 1991, with a total of 337/500 marks, and Higher Secondary Course (Plus 2) in March 1993, with a total of 532/1200 marks. She further stated that there were no marks or grades awarded to her batch, in the Certificate of Laboratory Technicians Grade-I Course in July 1995. She was working as a Laboratory Technician in Integrated Counselling and Testing Centre (ICTC-HIV) programmes since 2008, on annual contract basis, on consolidated pay.

3. Petitioner has further stated that the Government of Tamil Nadu vide G.O.Ms.No.1048, Health and Family Welfare Department, dated 23.07.1993, have notified that Certificate of Laboratory Technician Course Grade-I (1 year) then offered to the successful candidates, may be re-designated as "Diploma in Laboratory Technician Course" and that the minimum qualification to undergo the Medical Laboratory Technician Course should be 10+2. The old course conducted by the Directorate of Medical Education, Chennai as "Certificate of Laboratory Technician Course Grade-I (1 year) was stopped in the year 1997, when the 1st batch of DMLT students came out, as qualified.

4. Petitioner has further stated that the Government of Tamil Nadu, vide G.O.Ms.No.308, dated 04.07.1996, issued by Health and Family Welfare Department, notified amendments to the Special Rules for the Tamil Nadu Medical Subordinate Service (Section 1 in Volume III of the Tamil Nadu Service Manual, 1970)

which came into force, retrospectively from 14.05.1986.

5. She further stated that G.O.Ms.No.308, dated 04.07.1996, notified that CMLT Grade-I Course and DMLT Courses, as minimum required qualification, for the post of Laboratory Technician Grade-I and hence CMLT Grade-I (12 months duration) and DMLT (18 months duration) courses were equally, recognised for appointment to the post of Laboratory Technician Grade-II post until 2007.

6. Petitioner has further stated that vide G.O.Ms.No.115, dated 03.04.2007 issued by the Health and Family Welfare (C2) Department, Special Rules for the Tamil Nadu Public Health Subordinate Service (Section 26 in Volume III of the Tamil Nadu Services Manual, 1989 were amended. The expression 'Laboratory Assistants (malaria)', was amended as 'Laboratory Technicians Grade-III', originally the post created for the 'Shortened Trained Laboratory Assistants.

7. The said G.O.Ms.No.115, dated 03.04.2007 also notified that for appointment, to the post of Laboratory Technician Grade III, a candidate must possess a qualification of HSC With CMLT (1 year course), conducted by DME, and for appointment, as Field Assistant recruited directly, to possess a qualification of HSC with CMLT (1 year course) conducted by DME, and for appointment as Field Assistant recruited by transfer, should possess SSLC with 6 months Field-cum-Laboratory Assistant Training course, conducted by the Director of Public Health and Preventive Medicine.

8. Petitioner has further stated that Government of Tamil Nadu in G.O.Ms.No.39 dated 05.02.2007, issued by the Health and Family Welfare (C2) Department, notified amendments, in the Special Rules in the Tamil Nadu Medical Subordinate Services (Section 21 in Volume III of the Tamil Nadu Services Manual, 1970). These rules were amended to appoint Laboratory Technicians Grade-II posts, with preference to candidates possessing DMLT (2 year course), by direct recruitment.

9. Petitioner has further stated that the Government of Tamil Nadu have notified the Constitution of 'Medical Services Recruitment Board' (MRB), for future recruitment of certain medical and para-medical services, vide G.O.Ms.No.1, dated 02.01.2012 issued by the Health and Family Welfare (C2) Department.

10. She further stated that as per G.O.(MS) No.401, dated 16.12.2014, issued by the Health and Family Welfare (C2) Department, Government have notified that the candidates would be selected for the paramedical and Technical Staff will be on the basis of weightage marks to their academic performance, duly

following rules of reservation and communal rotation. Subsequently, certain guidelines have been incorporated by an amendment issued in G.O.(Ms).No.331, Health and Family Welfare (C2) Department, dated 05.11.2015 stating in

"Rule 3,

(1) * * *

(2) In clause (Hi), after sub-clause (a), the following sub-clause shall be inserted namely:

(aa) Wherever marks are not awarded to the Technical Qualification but only a Certificate or Diploma is issued obtained in SSLC or HSC as the case may be alone taken into account for calculating the weightage of marks".

11. Petitioner has further stated that the above mode of selection as per 'weightage marks' was challenged in W.P.No.8031 of 2016 and this Court vide Judgement dated 06.11.2017, directed the Medical Recruitment Board, Chennai to obtain the marks of the candidates from the Director of Medical Education/Kings Institute/any other institutes, wherever available, to proceed with the selection on merits, and in accordance with the law.

12. Petitioner has further stated that MRB, Chennai vide its Notification No.1/MRB/2016 dated 10.01.2016, invited applications for recruitment, to the post of Lab Technician Grade-III, through online mode only upto 01.02.2016. There were about 710 vacancies for the said post. The Notification said that the selection process would be based on the weightage marks being awarded for the candidates viz., SSLC/10th (20%) ; HSC/PUC (30%); CMLT (50%).

13. Petitioner has further stated that about 24 candidates were listed with 50 on 50 weightage marks, in the first selection list, published online, and suspecting some foul play, one of the aggrieved candidates filed Writ Petition (MD) No.13747 of 2018, seeking to quash the Notification No. 1/MRB/2016, dated 08.06.2018, published in the internet on 09.06.2018 as illegal.

14. Petitioner has further stated that the Petitioner therein, raised an apprehension, with regard to the mode of selection, wherein about 24 candidates were awarded, weightage marks of 100%, that is 50/50, based on the 10th and Plus Two mark sheet, and sought to quash the notification.

15. Learned Single Judge, who disposed of W.P.(MD)No.13747 of 2018, on 27.06.2018 at para 6 of the Order dated 27.06.2018, has incorporated the version of the Director of Medical Education, Chennai in his letter NO.77574/DME/3/2017, dated 10.05.2018, that no marks were awarded for the Certificate of Laboratory Technician Course, prior to the year 1997.

16. Petitioner has contended that this Court has found the

weightage marks being awarded as above is unjustifiable, as those candidates, who acquired CMLT prior to 1997, were not issued with a mark sheet. Learned Single Judge, raised queries to MRB, Chennai and MRB, Chennai made submission through its Standing Counsel.

17. Finally, in the above said Order dated 27.06.2018 in W.P.(MD).No.13747of 2018, a learned Single Judge of this Court, accepted the submissions of the Chairman of MRB to "not to consider CMLT or DMLT marks obtained by the candidates as there were no marks awarded in the CMLT Grade-I candidates prior to 1997, and hence the MRB, Chennai is going to calculate, only the 10th Standard and Plus Two marks, for filling up the vacancies" and permitted MRB to recruit the candidates, on the basis of marks obtained in 10th Standard/SSLC and Higher Secondary/Plus 2 examinations. Petitioner has further stated that she had applied for the post of Medical Laboratory Technician Grade-Ill through online application no.300606 (MRB NO.3031).

18. Petitioner has further stated that MRB has conducted verification of Certificates of about 5000 applicants, in three phases, to select eligible candidates, on the basis of the weightage marks based on 10th standard and Plus Two marks scored, as per its Notification No.1/MRB/2016, dated 08.06.2018, 27.07.2018 and 27.08.2018 respectively.

19. Petitioner has further stated that she had attended the Certificate Verification on 18.08.2018, in the forenoon session.

20. She further stated that MRB, Chennai has been constituted for recruitment of medical and paramedical staff on the basis of their qualifications, in Tamil Nadu Government Medical Services.

21. According to the petitioner, the said decision of MRB, Chennai to select, on the basis of School Education Certificates, and not on the basis of 'Technical Education' Certificates, is erroneous in law, and ultra vires of the Special Rules for the Tamil Nadu Public Health Subordinate Service, amended vide G.O.Ms.No.115, dated 03.04.2007, prescribing minimum qualification for the post of Laboratory Technician Grade III, without taking into account the work experience or exposure, in the field, and amendments issued in G.O.Ms.No.331 dated 05.11.2015, which subserves the purpose of the enactment, and on the above averments, has prayed for a writ of Certiorari, to quash of G.O.Ms.No,331 dated 05.11.2015, contending that the mode of selection for the posts of Laboratory Technician Grade III, is illegal, as per the MRB Notification No.1/MRB/2016 dated 08.06.2018, 27.07.2018 and 27.08.2018, respectively.

22. Ms.M.Arulmangai, learned counsel for the petitioner submitted that the minimum qualification required for joining the "Certificate of Laboratory Technician Grade-I Course" or the "Diploma in Medical Technician Course" should be 10+2 as per G.O.Ms.No.1048 dated 23.07.1993. She further submitted that the amended Special Rules, for the Tamil Nadu Medical Subordinate Services, as per G.O.Ms.No.308 dated 04.07.1996 prescribes the minimum qualification required for the post of Laboratory Technician Grade-I is CMLT Grade-I or DMLT course.

23. She further submitted that vide G.O.Ms.No.115 dated 03.04.2007 amendment has been made the Special Rules for Tamil Nadu Public Health Subordinate Service and notified that for the appointment as Laboratory Technician Grade III, a candidate must possess a qualification of HSC with CMLT (1 year course) conducted by DME. Thus, Service Rules, mandate that a candidate should be qualified in CMLT or DMLT to be appointed for the posts of Laboratory Technician Grade I or II or III. Submissions made before this Court, in the above said W.P.(MD).No.13747 of 2018, by the Chairman of the Medical Recruitment Board, was that the MRB, Chennai/2nd Respondent in W.P.(MD)No.13747 of 2018 would consider only the 10th and Plus Two marks for selection of candidates for the post of Laboratory Technician Grade III. Petitioner has further submitted that, it is ultravires of the mandatory service rules prescribed in in G.O.Ms.No.115 dated 03.04.2007.

24. Ms.M.Arulmangai, learned counsel further submitted that the Weightage Marks awarded for the educational qualifications, as per Notification No.1/MRB/2016 is CMLT 1 year (50%); HSC/PUC (30%); SSLC/10 (20%). Learned counsel further submitted that the minimum educational qualification, required for joining Laboratory Technician course, is Higher Secondary School Education with Science subjects and hence marks secured in 10th or SSLC marks, are irrelevant, for consideration for the said posts.

25. She further submitted that students who studied in 1970s, 1980s and 1990s, were never awarded 100% marks in SSLC/PUC or in 10th standard/Plus Two school system.

26. She further submitted that no Weightage marks have been awarded, for the Work Experience or competency. Besides the very purpose of Constitution of the Medical Recruitment Board is to select trained and competent medical, paramedical persons.

27. The notification is for selection of a 'Laboratory Technician', and not for any sub-ordinate, skilled services like driver, carpenter, electrician, etc. to select the candidates on

the basis of their 10th and Plus 2 marks.

28. Competency should be on the basis of 'soundness of technical knowledge, in laboratory technology, which includes pathology, microbiology and biochemistry.

29. She further submitted that MRB, Chennai has failed to realise that the said post is a responsible post in health care sector of the State and involves life and death of the public and hence, the selection parameter should be, on the basis of the candidates' training and competency, in Medical Laboratory Technology.

30. She further submitted that the test for the above posts of Laboratory Technicians Grade-III is a "Certificate in Medical Laboratory Technician Course" (1 year).

31. When the Government have made submissions to the effect not to consider the qualifying examination itself for the posts', the call for of the MRB, Chennai has failed to consider the same, and proceeded further, by defecting the purpose of recruitment.

32. Petitioner has contended that the purpose of the subordinate legislation, is to carry out the existing law, and not to change it. She further submitted that the subordinate law-making body, cannot go beyond the policy, laid down in the statute.

33. Learned counsel for the petitioner further submitted that there are several eligible candidates, serving in the Revised National Tuberculosis Control Programme (RNTCP) and Integrated Counselling and Testing Centre (ICTC-HIV) programmes, as temporary contractual employees for more than 15 years.

34. These Laboratory Technicians are more experienced and exposure than many of the newly qualified technicians, in recent years.

35. According to her, such candidates were not given weightage marks, for their work experience and exposure, in the field and hence they lose their chances to get absorbed into the main stream service. Their chances for promotions and increments are vitiated, as their experience gets no weightage marks, in the selection process.

36. Ms.M.Arulmangai, learned counsel for the petitioner further submitted that the Medical Services Recruitment Board, Chennai/2nd Respondent herein, has erred in taking a decision that 10th standard and Plus Two marks, would be taken into consideration for Selection of Laboratory Technician Grade-III,

posts to be filled up, as per the notification No.1/MRB/2016, dated 10.01.2016. Medical Recruitment Board, Chennai/2nd respondent, has failed to observe a fair and reasonable relation between the purpose and the rules, and consequentially there is a non compliance of mandatory requirement, resulting in nullification of the Act. She further submitted that the core purpose of selection of a competent and qualified Laboratory Technician is nullified by the acts of Medical Recruitment Board, Chennai/2nd Respondent herein.

37. She further submitted that the call for verification of the certificates of the applied candidates, is improper and unreasonable and inconsistent with the rules.

38. Ms.M.Arulmangai, learned counsel for the petitioner further submitted that the Secretary, Government of Tamil Nadu, Chennai and the Member Secretary, Medical Recruitment Board, Chennai/1st and 2nd Respondents herein, have made selection of candidates, for the posts of Laboratory Technicians Grade-III in 2014, by conducting a written examination for RNTCP Candidates. According to the petitioner, there is immense confusion and chaos, created by MRB, Chennai in the selection mode for Laboratory Technician Grade-III, and therefore the learned counsel seeks for a direction to the 1st and 2nd Respondents, to consider, selection of 'eligible' and 'qualified' candidates, by way of a written examination and awarding, weightage marks for their 'work experience'. According to the learned counsel for the petitioner, this could open up a fair and equal opportunity for all the eligible candidates to get qualified, on the basis of their performance and selection made for vacant posts.

39. Ms.M.Arulmangai, learned counsel for the petitioner also seeks for the following interim directions viz.,

(i) Interim injunction of the Selection and Certificate Verification Process of the candidates applied on line as per the Notification no.1/MRB/2016 dated 27.08.2018 issued by the Medical Recruitment Board until disposal of the main Writ Petition;

(ii) Interim stay of the G.O.Ms.No.331 of Health and Family Welfare (C2) Department, dated 05.11.2015, issued by the First Respondent until disposal of the main Writ Petition

(iii) Direction to the 1st and 2nd Respondents to conduct written examination for, selection of 'qualified laboratory technicians' creating open competition and giving weightage marks for work experience' of the candidates.

40. Apart from the above, Ms.M.Arulmangai, learned counsel for the petitioner, submitted that unfortunately, Writ Court in W.P.(MD)No.13747 of 2018, dated 27.06.2018, has failed to consider the submissions of the petitioner therein, in proper

perpetual and hence the instant writ petitioner filed for the prayer namely, Writ of Certiorari calling for the records pertaining to the impugned G.O.Ms.No.331 of Health and Family Welfare (C2) Department, dated 05.11.2015 issued by the 1st Respondent and quash the same.

41. Heard the learned counsel for the petitioner and perused the materials available on record.

42. On the facts of this case, this Court deems fit to consider the following aspects:-

(1) As to whether writ petition filed to challenge the G.O. of the year 2015, after the entire selection process is over. A person aggrieved by an order should approach the Court, within a reasonable time. What is reasonable time and Delay and laches ?

"Laches or reasonable time are not defined under any Statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another.

6. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.

(i) The words "reasonable time", as explained in Veerayeeammal v. Seeniammal reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and

properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

7. Laches on the part of the petitioner is per se apparent. Reference can also be made to few decisions of the Hon'ble Supreme Court, where inordinate delay and laches, on the part of the litigant, in approaching the Court, has been disapproved:

(i) In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.

(ii) In State of Maharashtra v. Digambar reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like.

Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person

including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(iii) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(iv) In *Chairman, U.P. Jal Nigam and another v.*

Jaswant Singh reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

43. A Hon'ble Division Bench of this Court, vide common order in W.P.No.25786 of 2015 etc., batch, considered the relief prayed therein, is extracted hereunder:-

"Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government order issued by the 1st Respondent in G.O.Ms.No.401 Health & Family Welfare (C2) Department dated 16.12.2014 and to quash the same in so far as the method of recruitment for the post of Pharmacist by awarding weightage marks based on the actual marks secured in the qualifying examinations and consequently directing the Respondents to adopt a fair procedure for selection to the post of Pharmacist in consonance to Article 14 and 16 of Constitution of India."

44. At paragraph Nos.2 to 7, in the common order in W.P.No.25786 of 2015, dated 06.11.2017, a Hon'ble Division Bench, ordered as hereunder:-

"2. After perusing the additional affidavit, dated 02.11.2017 and the materials, details of which, extracted supra, learned counsel for the petitioners in all writ petitions submitted that in the light of the above, the respondents to proceed further, with the notifications, under challenge, with a further direction to take note of the fact that persons, who had completed 10th and Higher Secondary courses, not proximate to the notifications, under challenge, would have been awarded lesser marks and those, who completed the above, proximate to the notifications, would have been awarded with higher marks and therefore, the same be directed to be considered by the Recruitment Agency, while implementing the weightage system. All the grounds of challenge to the notifications

impugned, have been now given up, in the light of the subsequent affidavit, dated 02.11.2017, which the respondents could have submitted earlier, when they filed their counter affidavits to the writ petitions.

3. Submission of the learned counsel for the petitioners that selection as notified be proceeded with, is placed on record.

4. In P.U.Joshi v. Accountant reported in (2003) 2 SCC 632, the Hon'ble Supreme Court, held as follows: "10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/ abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the Rules relating to a service and alter or amend and vary by addition /subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate Rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/ categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that Rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new Rules relating to even an existing service."

5. In the light of the submissions of both parties and decisions, cited supra, it is not necessary for this Court to advert to each and every ground of challenge,

made in the writ petitions. Contention of the learned counsel for the petitioners, as to how, marks should be awarded under the weightage system, should be done, cannot be countenanced, and it is for the respondents to give effect to the weightage system to select the candidates, in accordance with law.

6. Having regard to the letter, dated 02.11.2017, of the Director of Medical Education, Chennai, addressed to Medical Services Recruitment Board, Chennai, Tamil Nadu Medical Services Recruitment Board, is directed to obtain the marks of the candidates from the Director of Medical Education/King's Institute/Any other Institute, wherever it is available and proceed with the selection, on merits and in accordance with law.

7. In the result, the Writ Petitions are disposed of. Interim orders granted earlier, in all the writ petitions, are vacated. No costs. Consequently, connected Miscellaneous Petitions are closed."

45. Special leave petition, filed by one T.Murugesan and others before the Hon'ble Supreme Court, has been dismissed. Thus, G.O.(Ms)No.331 of Health and Family Welfare (C2) Department, dated 05.11.2015, has been considered, with reference to the affidavit dated 02.11.2007 filed by the department and though the directions were challenged before the Hon'ble Supreme Court, the same were not entertained. Paragraph No.5 of the order of the Hon'ble Division Bench in W.P.(MD). No.25786 of 2015 etc batch, dated 06.11.2017, has reached finality.

46. It is the submission of the learned counsel for the petitioner that the Writ Court in W.P.(MD).No.13747 of 2018, dated 27.06.2018, has not considered the submission of the petitioner therein, and passed orders. Order of the Writ Court in W.P.(MD).No.13747 of 2018, dated 27.06.2018, reads thus:-

"3. The short facts, which are required to be noticed for the disposal of the writ petition are as follows:

The petitioner, after passing +2 in the year 1994, had joined in the course called ?Lab Technician Course? and has completed the same successfully in the year 1995 and he registered the said qualification with the District Employment Office, Sivagangai for appointment to the post of Lab Technician Grade I.

3.1. The said Lab Technician course is presently known as Certificate of Medical Lab Technician (in short CMLT). While so, the second respondent, on 10.01.2016 issued a notification inviting applications from the eligible candidates for appointment to the post of Lab Technician Grade III. The selection process was only

through the marks secured by the candidates in their academic and technical qualifications. Based on the qualifications they acquired, like, SSLC, HSC/PUC and CMLT, weightage marks would be given to them. Accordingly, 20% of the marks as weightage marks would be given to SSLC qualification, like that, for HSC/PUC 30% weightage and 50% weightage would be given for CMLT qualification. Altogether the maximum weightage marks would be 100.

3.2. When this was the position during the earlier recruitment made by the second respondent, this year, the very same second respondent has issued the present notification in Notification No.1/MRB/2016 dated 08.06.2018. As per the said notification, the candidates, who are eligible to apply for the post of Lab Technician had been called for making applications through online. Pursuant to the said notification, the petitioner also had made application through online, where the petitioner's qualification such as SSLC, HSC and CMLT had been mentioned. Like the petitioner, all other applicants had made such applications by giving the qualifications in the application itself.

3.3. Pursuant to the said application filed by the number of candidates, the second respondent has issued the list of candidates to be called for certificate verification, which would be conducted from 27.06.2018 till 06.07.2018. Approximately, 1200 candidates were called for certificate verification on various dates from 27.06.2018 to 06.07.2018.

3.4. On verifying the list of candidates called for certificate verification, the petitioner found that, the petitioner's name was not in the list as one of the candidates called for certificate verification.

3.5. When the petitioner enquired about the absence of the petitioner's name in the list of candidates called for certificate verification, he came to understand that, even though the system of weightage marks were adopted for qualifications, such as SSLC, HSC as well as CMLT, the second respondent, instead of giving weightage marks to CMLT with 50 marks maximum, had chosen to give only weightage marks for 10th standard and +2 marks and based on which alone, the weightage marks were given for the maximum of 50 instead of 100. Out of the 50 marks, based on the marks obtained by the petitioner, both in 10th standard and +2, he was awarded only 25.02 marks. In this regard, it is the claim of the petitioner that, based on the cut off marks fixed for BC quota, the petitioner did not reach the zone of consideration and accordingly, his name had not been included in the list of candidates called for certificate verification.

3.6. According to the petitioner, it is the discrepancy on the part of the second respondent, who released the first list of candidates for certificate verification, because, firstly, as per the notification, the weightage marks ought to have been given to CMLT candidates also.

3.7. Secondly, in respect of some of the candidates, who had been called for certificate verification, they had been awarded 50/50 marks, which means those candidates presumed to have obtained centum in all subjects, both in 10th standard and +2. In other words, if a candidate secured 500/500 in 10th standard and 1200/1200 in 12th standard alone could have been awarded 50/50 marks as weightage marks and this kind of 50/50 have been given to atleast more than 20 candidates, whose names are found in the list and therefore, in this regard, the petitioner's apprehension is that, something went wrong somewhere, as there could have been no scope of giving such centum marks for this many candidates for both 10th standard as well as +2 and therefore, based on such claim, which probably would be a false claim, those candidates have been wrongly included in the list and therefore, the entire list of candidates fit for calling for certificate verification, is improper and therefore, challenging the said impugned list of candidates, the present writ petition has been filed.

4. I have heard the learned counsel for the petitioner, who would submit that, since the petitioner obtained only 25.02 marks, based on the 10th and +2, his name was not included and in this regard, the necessary clause, where the method of selection prescribed by the second respondent, has been violated.

5. The learned counsel would further submit that, since a number of candidates, as set out above were awarded 50/50, as if they got centum in both 10th and +2, the entire ranking list prepared for the purpose of certificate verification by the second respondent through the impugned list is vitiated and therefore, the entire impugned list has to be set aside.

6. I have heard the learned standing counsel for the second respondent, who has produced written instructions received from the second respondent ie., Member Secretary, Medical Services Recruitment Board, dated 26.06.2018, which reads thus:?

Medical Services Recruitment Board (MRB) Position Note on Recruitment to the post of Lab Technician Grade -III The Medical Services Recruitment Board has published Notification No.1/MRB/2016 dated 10.01.2016 to invite online applications for the selection of candidates for the post of Lab Technician Grade ? III in Tamil Nadu

Public Health Subordinate Service. (Vacancy notified 710) As per G.O.(Ms)No.401, Health and Family Welfare (C2) Department dated 16.12.2014, the candidates are selected by giving weightage marks to their academic performance duly following rules of reservation and communal rotation. Subsequently certain guidelines has been incorporated by amendment issued in G.O.(Ms) No.331, Health and Family Welfare (C2) Department dated 05.11.2015.

As per the Special Rules for the post of Lab.Technician Grade ? III in Tamil Nadu Public Health Subordinate Service, the candidates must possess Certificate in Medical Lab Technology Course (one year duration) undergone in any institution recognized by the Director of Medical Education. In the meantime, one Thiru.M.Sundaravarman has filed W.P.No.8031 of 2016 in the Hon'ble High Court of Madras challenging the guidelines laid down in G.O.(Ms) No.331, Health and Family Welfare (C2) Department dated 05.11.2015 regarding the method of awarding weightage marks in arriving merit list. The Hon'ble High Court of Madras on hearing various writ petitions as a batch cases in W.P.No.8031 of 2016, W.P.No.25786 of 2015 etc. filed against the G.O.(Ms) No.401 Health and Family Welfare (C2) Department dated 16.12.2014 and G.O.(Ms) No.331, Health and Family Welfare (C2) Department dated 05.11.2015 delivered judgment on 06.11.2017 as follows:?

It is for the respondents to give effect to the weightage system to select the candidates in accordance with the law and the Medical Services Recruitment Board is directed to obtain the marks of the candidates from the Director of Medical Education/King's Institute/Any other Institute, wherever it is available and proceed with the selection on merits and in accordance with the law.?

The Special Leave Petition filed by T.Murugesan and others before the Hon'ble Supreme Court of India, New Delhi against the above orders of the Hon'ble Madras High Court was also dismissed on 22.12.2017. The Director of Medical Education in his letter No.77574/PME/3/2017 dated 10.05.2018 has informed that no marks awarded for certificate of Laboratory Technician Course prior to the year 1997. In the circumstances reported by the Director of Medical Education and as per the rules of procedure laid down in G.O.(Ms) No.331, Health and Family Welfare (C2) Department dated 05.11.2015, the weightage has been restricted to the marks obtained by the candidates in SSLC (20%) and HSC (30%) uniformly to all the applied candidates. Based on the above method only the merit list and communal roster has been drawn. Out of 4109

candidates with certificate in Medical Laboratory Technician qualification as furnished in their online application 24 candidates have furnished the same marks for Total Maximum marks as well as Total Marks obtained by the candidates while submitting online application and its veracity could be ascertained only at the time of Certificate Verification and their eligibility would be decided only after that. It is humbly submitted that the Board has scheduled the First phase of Certificate Verification for 1200 candidates from 27.06.2018 to 29.06.2018 and from 02.07.2018 to 06.07.2018 based on the marks furnished by the candidates in their online application. It is further informed that if the required number of suitable candidates (ie 710+10% reserve) are not available in the first phase of Certificate Verification, the board will conduct certificate verification till suitable candidates as per the eligibility criteria are arrived at. It is further submitted that the petitioner Thiru.S.Balamurugan has secured weightage marks of 25.02 out of 50 and he belongs to Backward Class (BC) community. The last (BC-General) candidate, who was called for certificate verification has secured the weightage marks of 32.77 out of 50. The above facts may be appraised before the Hon'ble High Court to dismiss the above Writ Petition.?

7. By relying upon the said instructions, the learned standing counsel for the second respondent would submit that, under the notification under clause 7 with the Heading ?Procedure for Selection?, no doubt, the method of awarding weightage marks have been provided for the qualification, such as SSLC, HSC and CMLT. However, in the said clause itself, we have appended a note, whereby, it is specifically stated that, in case, if marks are not awarded by any batch of the CMLT course, the selection for all will be based on the marks secured by the applicants in SSLC/HSC/PUC examinations only. In this regard, for better appreciation, the relevant clause of the notification is extracted hereunder:

7.Procedure of Selection:

7a.Selection will be made based on the marks scored by the candidates in their academic and technical qualification(s) for the post of Lab Technician Grade III duly following the rules of reservation and communal rotation issued by the Government of Tamil Nadu. There will be no oral test (Interview) for the post. Minimum educational qualification required for the post Weightage for marks Certificate (CMLT-One year) HSC/PUC SSLC/10th a. Certificate in Medical Lab Technology Course (One year) with PUC/HSC qualification 50% 30% 20% Note: In case marks are not specifically awarded for any batch of

the CMLT (one year) course, then selection for all will be based on the marks scored by the applicants in SSLC and HSC/PUC examinations only.?

8. The learned standing counsel would further submit that with regard to the candidates, who have been awarded full marks as 50/50, are concerned, 24 such candidates are found in the list for whom 50/50 marks have been awarded. This 50 weightage marks are awarded by the second respondent not based on the mark statement produced by those candidates, however, it is merely on the basis of the claim those candidates made in their respective application submitted through online.

9. In this regard, the learned standing counsel would further submit that except online applications, no other documents, such as, mark statements and other qualifications were required to be produced along with online applications. Therefore, only based on the marks, which were filled by every candidate in the applications concerned, such weightage marks were awarded and the said weightage marks only be tentative and the same would be confirmed after verification of the original certificates of the mark statement to be produced by the candidates at that time of certificate verification.

10. After having heard the learned standing counsel for the second respondent, this Court has raised a pointed query that if the 24 candidates, for whom, entire 50 marks by way of weightage marks have been awarded and based on which, if those candidates were called for counselling and ultimately, if the second respondent found on certificate verification that the claim made by those candidates or some of the candidates are wrong, certainly, the weightage marks already awarded, even though tentatively, would be reduced accordingly. However, the certificate verification is being done only for 1200 above candidates out of 4200 applicants, who made such applications pursuant to the notification of the second respondent.

11. Ultimately, if the second respondent, on certificate verification, found some of the candidates or majority or considerable number of candidates, who made a claim through online applications with regard to percentage of marks, to be false or mistaken, then, it will have an impact on the very ranking given by the second respondent to candidates based on their marks on communal rotation for the purpose of certificate verification itself. In that case, the candidates, who got real marks and by virtue of their proper claim made through the online application would have been left even for certificate verification. Therefore, that would prejudice the interest of some of the candidates and

therefore, the said procedure adopted by the second respondent, whether, would be justifiable?.

12. In response to the said pointed query raised by this Court, the learned standing counsel for the second respondent, after having obtained immediate instructions from the second respondent (Chairman of the second respondent Board), has produced the following instructions: (through soft copy):?

Dear Sir, We may submit that all those who have applied with CMLT qualifications will be called for certificate verification and after that results will be published may be read as ?after that selection list will be published as per merit and communal rotation with candidates fulfilling eligibility criteria in the notification.? right now 1200 candidates were called for certificate verification, remaining 2909 applicants will be called for certificate verification, after completion of 1200 in the phase 1. (after that the results of selection will be published)?

13. After submitting the said instructions instantly given by the Chairman of the second respondent, through Whatsapp communication, which has been produced before this Court by the learned standing counsel, he would submit that, in order to set right the discrepancies now found, as weightage marks have been awarded based on the claim made by the respective candidate through online application, where some of the candidates had claimed centum in both 10th and +2 and with the result, 50 weightage marks out of 50 had been given to them, the second respondent, now decided to call entire eligible applicants, who are (1200+2909) 4109 applicants including 1200, who have been already called for certificate verification through the impugned list. Therefore, the entire 4109 applicants would be called for certificate verification in phased manner and after completing the initial 1200 and based on certificate verification of each of such candidates, out of 4109 applicants, the final selection list would be prepared by applying the communal rotation and the same would be published.

14. The learned standing counsel would further submit that, after the entire applicants were called for certificate verification and after verifying the certificates pertaining to their educational qualifications, their claim made through the online applications would be verified and accordingly correct weightage marks would be given to each of the candidates and only based on such corrected marks to be given to the eligible candidates, final selection list would be made and if such final selection list is made, there may not

be any grievance for any one of the candidates, including the petitioner, as no CMLT weightage marks is given to any candidate and weightage marks of candidates is given only in respect of qualification of 10th/+2/PUC alone.

15. Considering the said submissions made by the learned standing counsel for the second respondent and also the instructions instantly given today by the Chairman of the second respondent Board, which has been passed on to this Court through the Whatsapp message received by the learned standing counsel, this Court is of the view that, the doubt/apprehension of the petitioner has now been cleared by virtue of the clear cut decision taken by the second respondent Board, as reflected in the latest instructions given by the Chairman of the MRB, as extracted hereinabove.

16. Once all the 4109 candidates are called for certificate verification and after verifying the certificates of each of the candidate, if weightage marks are awarded, then the petitioner cannot have any grievance, as he has to compete with others by way of getting weightage marks only for 10th and +2/PUC and in that case, proper evaluation of merit would be made possible and in that case, final results of selection, if it is issued, after completing this exercise, every meritorious candidate will get their due marks and accordingly, the selection would be finalised.

17. Therefore, by recording the said submissions, made by the learned counsel for the second respondent through their Chairman, as submitted by the learned standing counsel for the second respondent, on record, this Court is inclined to dispose of this writ petition. Accordingly, this writ petition is disposed of, as no further order is required to be passed. No costs. Consequently connected Miscellaneous Petitions are closed."

47. Order of the Writ Court in W.P.(MD).No.13747 of 2018, dated 27.06.2018, though contended as unfortunate, by Ms.M.Arulmangal, learned counsel for the petitioner, the same has not been challenged, in the manner known to law. Decision made in W.P.(MD).No.13747 of 2018, dated 27.06.2018, cannot be indirectly assailed, in the instant writ petition and the same cannot be set at nought, without there being any challenge.

48. As stated supra, decision of the Hon'ble Division Bench in W.P.No.25786 of 2015 etc., batch dated 06.11.2017 (M.Sundaravarman Vs. State of Tamil Nadu), has been challenged in the Hon'ble Supreme Court and Special Leave Petition preferred has been dismissed on 22.11.2017 itself. Having participated in the Selection process, and found unsuccessful,

the petitioner has now chosen to challenge the G.O.Ms.No.331 of Health and Family Welfare (C2) Department, dated 05.11.2015, issued in the year 2015, which is not permissible. Correctness of the said G.O., cannot be revisited.

49. In Madanlal v. State of J & K reported in AIR 1995 SC 1088, unsuccessful candidates challenged the process of selection of the District Munsifs in the State of Jammu and Kashmir undertaken by the Jammu and Kashmir Public Service Commission on the ground, inter alia that they fared well in the written examination and they were not selected. Besides, they also alleged bias and mala fide in the process of assessment. The Supreme Court rejected the contention and while dealing the locus of the unsuccessful candidates, who had acquiesced themselves to the selection process, at paragraph 8, the Apex Court held as follows:

"The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

50. In Union of India v. N.Chandrasekharan reported in 1998 (3) SCC 694, selection to the post of Assistant Purchase officer, was challenged. The unsuccessful candidates have challenged the process of selection. The Tribunal quashed the promotions made on the basis of the panel of Assistant Purchase Officers. While allowing the appeals preferred by the Union of India, the Hon'ble Supreme Court, at Paragraph 13, held as follows:

"It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn

around and contend later when they found they were not selected, by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."

51. The Hon'ble Supreme Court in *Sadananda Halo v. Momtaz Ali Sheikh* reported in 2008 (4) SCC 619, at Paragraph 35, held that unsuccessful candidates cannot turn back and assail the selection process, except in certain cases where exceptions have been carved out by the Hon'ble Supreme Court.

52. In a recent decision on *D.Sarojakumari Vs. R.Helen Thilakom* reported in 2017 (7) SCC 357, the Hon'ble Supreme Court after considering *Madanlal* case and other similar cases, the Hon'ble Supreme Court, set aside the judgement of the Kerala High Court has held hereunder:

"4. The main ground urged on behalf of the appellant is that Respondent No.1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

5. In *Dr.G.Saran vs. University of Lucknow and Ors.*, reported in (1976) 3 SCC 585, the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows :-

"15. We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection (1976) 3 SCC 585 Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee....."

6. In Madan Lal & Ors. vs. State of J&K & Ors reported in (1995) 3 SCC 486, the petitioner laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows :-

"9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted....."

7. In Manish Kumar Shahi vs State of Bihar reported in 2010 12 SCC 576, this Court held as follows :-

"23.....Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name (1995) 3 SCC 486 (2010) 12 SCC 576 does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

8. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others reported in (2013) 11 SCC 309 the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows :-

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave

error by entertaining the grievance made by the respondents."

9. Same view has been taken in Madras Institute of Development Studies and Another Vs. Dr.K.Sivasubramaniyan and others reported in (2016) 1 SCC 454.

10. The Kerala High Court did not note the above mentioned judgments and ignored the well settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment.

11. As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this we need not go into the other issues raised.

12. We, therefore, allow these appeals and set aside order dated 25.07.2003 of the learned Single Judge and dismiss the writ petition O.P.No.36563 of 2002 as being not maintainable."

53. In the light of the above discussion and decisions, prayer sought for in the instant writ petition cannot be granted. Hence writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

kk/dm

To

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George, Chennai - 9.
2. The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Buildings,
359, Anna Salai, Teynampet,
Chennai - 600 006.
3. The Director of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
4. The Director of Medical and Rural Health Services,
361, DMS Complex,
Anna Salai, Chennai - 600 006.
5. The Director,
King Institute of Preventive Medicine & Research,
Guindy, Chennai - 600 032.

+2cc to Ms.M.Arulmangai, Advocate SR.No.73438

+1cc to Government Pleader SR.No.73878

W.P.No.27645 of 2018 and W.M.P.Nos.
32184, 32188, 32195 & 32195 of 2018

KGK(CO)

GMY(27/11/2018)