



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2861 of 2018

and

WMP(MD)Nos.3076 & 3077 of 2018

B.Balu

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director of Medical Services &
Rural Health, DMS Campus, Anna Salai,
Teynampet, Chennai - 600 006.
- 3.The Director of Public Health,
DMS Campus, Anna Salai,
Teynampet, Chennai - 600 006.
- 4.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 5.The Chairman,
Medical Services Recruitment Board,
DMS Campus, Anna Salai,
Teynampet, Chennai - 600 006.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to give exemption to the petitioner from G.O.Ms.No.401 Health and Family Welfare Department dated 16.12.2014, since he has completed the diploma in Pharmacy in 1992, and to give him appointment on the basis of his employment seniority within the time stipulated by this Court.



For Petitioner

: Mr.S.Malaikani

For Respondents

: Mr.J.Gunaseelan Muthaiah,
Addl. Govt.Pleader for R1 to R4

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Mr.T.S.Md.Mohideen

Standing Counsel for MSRB-R5

ORDER

The petitioner completed his 10th standard in the year 1987. Thereafter, he completed his Diploma in Pharmacy. He also registered his name in Tamil Nadu Pharmacy Council. The Medical Services Recruitment Board issued recruitment notification in the year 2016 calling for applications from eligible candidates for filling up 333 vacancies for the post of Pharmacist. It was made clear that candidates sponsored by the employment exchange as well as the candidates from open market would be considered. It was also made clear that G.O.Ms.No.401, Health and Family Welfare Department dated 06.12.2014 will be followed while evaluating the respective merits of the candidates. As per the said Government Order, the weightage of marks is to be awarded as under :

Minimum Educational Qualification required for the post	Weightage of marks (*)		
	Diploma	HSC/PUC	SSLC/10th
	50%	30%	20%

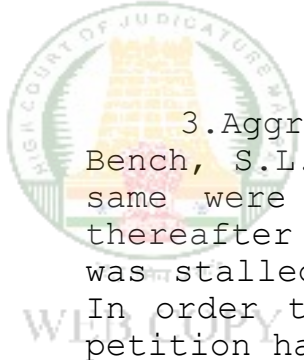
* Note :

I. In case marks are not specifically awarded for any batch of the Diploma, then selection for marks scored all will be based on the by the applicants in SSLC and HSC / PUC examinations only.

II. Wherever the basic essential qualification for a technical post is a diploma, has been changed from SSLC to HSC, in all such cases the weightage may be restricted to marks obtained in SSLC and the technical diploma (for all the candidates)

7.b. There will be no oral test (Interview) for the post.

2. The matter was considered at length by the Hon'ble Division Bench in WP.No.25786 of 2015. When G.O.Ms.No.401, dated 16.12.2014 was issued, writ petitions were filed before the Principal Bench challenging the said G.O. Those writ petitions were taken up along with the writ petitions in which the recruitment notification issued by the fifth respondent Board in the year 2016 was there. By the common order dated 06.11.2017, the Hon'ble Division Bench disposed of the writ petitions. It was clarified that the P.U.C/12th Standard marks will not be taken into account. Marks secured in 10th Standard and Diploma alone will be taken into account for the purpose of awarding weightage. Since the necessary clarification was provided, the interim order earlier granted stood vacated.



3. Aggrieved by the said common order of the Hon'ble Division Bench, S.L.Ps were filed before the Hon'ble Supreme Court. But the same were dismissed on 22.12.2017. The fifth respondent Board thereafter took up the process of selection from the stage where it was stalled on account of the institution of the writ proceedings. In order to once again put spokes in the wheel, the present writ petition has been filed.

4. It is seen that the writ petitioner before this Court was the petitioner in WP.No.25786 of 2015 and also WP.No.5507 of 2016. No doubt, the affidavit and petition in WP.No.5507 of 2016 has been enclosed in the typed set of papers by the petitioner. But, in the affidavit filed in support of this writ petition, there is no averment with regard to the institution of the earlier writ proceedings.

5. The prayer in the writ petition is for directing the respondents to give exemption to the petitioner from the operation of G.O.Ms.No.401, Health and Family Welfare Department dated 16.12.2014. The petitioner wants appointment based on his employment exchange seniority. When the petitioner's challenge to the said G.O failed, question of granting exemption will not arise. In any event, the petitioner after failing in his earlier attempt to dislodge the said G.O, cannot now seek exemption. Such a relief is patently not maintainable. Even more ridiculous is the demand for appointment on the basis of his employment exchange seniority.

6. The Hon'ble Supreme Court has held more than 20 years ago that in matters of public employment all other eligible candidates are entitled to participate in the selection process. The process cannot be confined to candidates who have registered themselves and who have been sponsored by the Employment Exchange. The present writ petition is a clear abuse of legal process. Since the petitioner has not made any averment in the affidavit filed in support of this writ petition and he has also not enclosed affidavit and petition in WP.No.25786 of 2015 where in he challenged the validity of the G.O.Ms.No.401 dated 16.12.2014, this Court has to necessarily levy cost on the writ petitioner.

7. The issue of recruitment of Pharmacist by the fifth respondent Board was considered by the Hon'ble Division Bench and the selection process was directed to be resumed by order dated 06.11.2017. The said order passed by the Hon'ble Division Bench was also sustained by the Hon'ble Supreme Court.

8. When the Hon'ble Division Bench specifically directed the fifth respondent Board to proceed with the selection, it was not open to the petitioner to come before this Court and seek an injunction restraining the Board from appointing Pharmacists on the basis of Notification No.6/MRB/2016. The petitioner knowingly and deliberately sought to play with the process of this Court. This Court has to necessarily censure such a conduct.



9.This writ petition is dismissed with a cost of Rs.10,000/-.
Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

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Sub Assistant Registrar

To

- 1.The Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director of Medical Services &
Rural Health, DMS Campus, Anna Salai,
Teynampet, Chennai - 600 006.
- 3.The Director of Public Health,
DMS Campus, Anna Salai,
Teynampet, Chennai - 600 006.
- 4.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 5.5.The Chairman,
Medical Services Recruitment Board,
DMS Campus, Anna Salai,
Teynampet, Chennai - 600 006.

+1CC to Mr.S.Malaikani, Advocate, SR.No. 48547

+1CC to Mr.T.S.Mohamed Mohideen, Advocate, SR.No. 48848

+1CC to the Special Government Pleader SR.No.49331

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AM/KKR/SAR 1/29.05.2018/4P/9C