

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.04.2019

Pronounced on : 27.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.12817 of 2010  
and  
W.P.No.23109 of 2012  
and  
W.M.P.No.5520 of 2016

1.R.V.Betarajan  
2.V.Jeevakan  
3.M.Rajendran  
4.M.Kalaivani  
5.G.Murugesh  
6.K.S.Saravanan  
7.S.Padmaloohana  
8.V.Kamalakaran

...Petitioners  
(in W.P.No.12817 of 2010)

Writ petition stands withdrawn  
in respect of petitioners P1,P2,P4  
& P5  
as per order dated 19.11.2014 by  
MMSJ  
in M.P.No.2 of 2014 in  
W.P.No.12817 of 2010.

Writ petition stands withdrawn  
in respect of petitioners P6 to P8  
as per order dated 20.02.2014 by  
TRJ  
in M.P.No.1 of 2014 in  
W.P.No.12817 of 2010.

1.P.S.Ganesan  
2.B.Selson  
3.S.Sreedhar  
4.B.Shanmugasundaram  
5.K.Durai Pandi  
6.Killivalavan

...Petitioners  
(in W.P.No.23109 of 2012)

Writ petition stands dismissed  
in respect of petitioners P2 to P5  
as per order dated 27.03.2019 by  
CVKJ  
in W.P.No.23109 of 2012.

Versus

1. Government of Tamil Nadu,  
Rep.by its Principal Secretary,  
Health and Family Welfare Department,  
Fort St.George, Chennai - 600 009.
  2. The Principal Secretary,  
Government of Tamil Nadu,  
Personnel and Administrative Department,  
Fort St. George, Chennai - 600 009.
  3. The Director of Medical Services,  
DMS Compound,  
Teynampet, Chennai - 600 006.
  - 4.The Rural Health and Preventive Medicine,  
DMS Compound,  
Teynampet, Chennai - 600 006.
  - 5.The Deputy Director of Medical  
Education (Administration),  
Directorate of Medical Education,  
Kilpauk, Chennai - 600 010.
- ...Respondents  
(in W.P.No.12817 of 2010)
1. Government of Tamil Nadu,  
Rep.by its Principal Secretary,  
Health and Family Welfare Department,  
Secretariat, Chennai - 600 009.
  2. The Director of Medical Education,  
Chennai - 600 010.
  3. The Director of Medical and Rural  
Health Services, Chennai - 600 006.
  4. The Director of Medical Services, (ESI)  
Chennai - 600 006.
  5. The Director of Public Health and Preventive Medicine,  
Chennai - 600 006.

6. The Member Secretary

Medical Services Recruitment Board  
O/o The Director of Medical and Rural Health Service,  
VII Floor, 359 Annasalai,  
Chennai - 600 006.

7. The Director

State Employment Exchange  
Directorate of Employment and Training  
Guindy, Chennai - 600 032.

8. S.Essakki

9. R.V.Betarajan

10.K.S.Saravanan

11.V.Thilagavathi

12.R.Karthikeyan

.....Respondents  
(in W.P.No.23109 of 2012)

R8 to R11, Impleaded as per order  
dated 21.11.2012 by KCJ in M.P.No.2  
of 2012 in W.P.No.23109 of 2012.

R12, Impleaded as per order dated  
12.07.2013 by DHPJ in M.P.No.1 of  
2013 in W.P.No.23109 of 2012.

PRAYER in W.P.No.12817 of 2010:Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Mandamus, directing the respondents to grant appropriate age relaxation/remove the maximum age limit to the petitioners for the appointment to the post of Pharmacists in various Government Hospitals and Primary Health Centres in the State of Tamil Nadu as given to other communities such as BC, MBC, DNC, SC & ST pursuant to the certificate verification held on 24.05.2010 & 22.05.2010.

PRAYER in W.P.No.23109 Of 2012:Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Mandamus, directing the respondents to complete the selection for appointment to the post of Pharmacist pursuant to the interview call letter in Naka.No.20/MSRB/2012 dated 19.06.2012 issued by the sixth respondent without getting influenced by G.O.(2D) No.55 dated 06.07.2012 and to consider the case of the petitioner for an appointment to the post of Pharmacist in the State of Tamilnadu.

For Petitioners:: Mr.P.Vasanth, in W.P.No.23109 of 2012  
:: M/s.Row & Reddy, V.Govardhan,  
in W.P.No.12817 of 2010

For RR1 to 5 :: Mr.P.S.Sivashanmuga Sundaram,  
Special Government Pleader  
(in W.P.No.12817 of 2010)

For RR1 to 5 & 7:: Mr.P.S.Sivashanmuga Sundaram,  
Special Government Pleader  
(in W.P.No.23109 of 2012)

For R6 :: Mr.A.Vivek, Standing Counsel for Medical  
Recruitment Board  
(in W.P.No.23109 of 2012)

FOR R8 TO R12 in  
WP 23109 OF 2012 :: No Appearance

COMMON ORDER

1. The petitioners in W.P.No.12817 of 2010 have filed the writ petition in the nature a Writ of Mandamus, directing the respondents to grant appropriate age relaxation/remove the maximum age limit to the petitioners for the appointment to the post of Pharmacists in various Government Hospitals and Primary Health Centres in the State of Tamil Nadu as given to other communities such as BC, MBC, DNC, SC & ST pursuant to the certificate verification held on 24.05.2010 & 22.05.2010.

2. The petitioners in W.P.No.23109 of 2012 have filed the writ petition in the nature a Writ of Mandamus, directing the respondents to complete the selection for appointment to the post of Pharmacist pursuant to the interview call letter in Naka.No.20/MSRB/2012 dated 19.06.2012 issued by the sixth respondent without getting influenced by G.O.(2D) No.55 dated 06.07.2012 and to consider the case of the petitioners for appointment to the post of Pharmacist in the State of Tamilnadu.

3. W.P.No.12817 of 2010 had been filed by 8 petitioners. However, by orders dated 20.02.2014 and 19.11.2014, it was directed that the writ petition stood withdrawn in respect of petitioners 6 to 8 and 1,2,4 & 5. Consequently, the writ petition is being agitated only by petitioner No.3, namely, M.Rajendran.

4. W.P.No.23109 of 2012 had been filed by 6 petitioners. By order dated 27.03.2019, the writ petition had been dismissed, in so far as, petitioner Nos.2 to 5 were concerned. The writ

petitioner is being agitated only by petitioner Nos. 1 and 6, namely, P.S.Ganesan and Killivalavan.

W.P.No.12817 of 2010:

5. In the affidavit filed in support of the said writ petition, it had been stated that the writ petitioners had registered their names with Employment Exchanges for the post of Pharmacists and were awaiting appointment in various Government Hospitals. They had completed their Diploma in Pharmacy and have registered themselves with the Tamil Nadu Pharmacy Council. It was stated that on 02.06.1995, the second respondent namely, the Principal Secretary, Government of Tamil Nadu, Personnel and Administrative Department, Chennai, had issued G.O.Ms.No.179 constituting a High Level Committee for filling up of various posts at the entry level in various Government Departments.

6. It was stated that without the specific clearance of the High Level Committee, the departments were not entitled to fill up the various posts at the entry level. It was further stated that on 03.05.2000, the first respondent, namely, the Government of Tamil Nadu, rep. by its Principal Secretary, Health and Family Welfare Department, had issued G.O.Ms.No.105, seeking to fill up 172 posts of Pharmacist on the basis of district-wise seniority from the concerned Employment Exchanges. The grievances of the petitioners was that their names were not sponsored by the concerned Employment Exchanges since they were far below in the seniority list.

7. It was further stated, the second respondent, had issued G.O.Ms.No.149 dated 03.08.2000, bringing an amendment to Rule 12(d)(i) of the Tamil Nadu State and Subordinate Services. The second respondent issued a letter clarifying that for the post of Pharmacist, there was no upper age limit for appointment in the case of BC, MBC, DNC, SC, ST and Destitute Widows. However, this upper age limit was not removed for those seeking employment from the Open Category. It was further submitted that the second respondent, by G.O.Ms.No.212 dated 29.11.2001, imposed a complete ban on filling up of various posts in all Government Departments in the State of Tamil Nadu. The petitioners therefore had to compulsorily wait for their appointment as Pharmacists.

8. It was also stated that the School Education Department, Government of Tamil Nadu, had issued G.O.Ms.No.59 dated 12.06.2004, removing the maximum age limit even for the Open Category for appointment of Teachers in various Government Middle and Aided Schools. It was further submitted that on 13.05.2005, the first respondent had issued G.O.Ms.No.373 to fill up 570 posts of Pharmacist in various Government Hospitals and Primary Health Centres for a period of 2 years on

contractual basis, on the basis of district wise seniority from the Employment Exchanges.

9. It was stated that they were to be absorbed into regular service on satisfactory completion of 2 years service. The names of the writ petitioners were not sponsored by Employment Exchanges on the ground that they had crossed 30 years of age which was the maximum age for appointment of various Government posts. It was further submitted that the second respondent by G.O.Ms.14 dated 07.02.2006 lifted the ban of recruitment for various posts in the Government Department. Consequently, G.O.Ms.No.212 dated 29.12.2001 was cancelled. The second respondent had issued another G.O.Ms.No.98 dated 17.07.2006, refixing the upper age limit for recruitment of various posts in the Government Departments. This was issued in view of the fact that most of the persons had become age barred during the pendency of G.O.Ms.No.212.

10. It was further submitted that on 08.10.2009, the first respondent had issued G.O.Ms.No.328 for recruitment of the post of Pharmacist on the basis of State wide Employment Exchange seniority. The names of the writ petitioners found place in the State wide list of Pharmacists and on 06.05.2010, the fifth respondent namely, the Deputy Director of Medical Education (Administration), Directorate of Medical Education, had called the writ petitioners for certificate verification on 22.05.2010 and 24.05.2010. It was stated that the respondents should relax the upper age limit and consider the writ petitioners for appointment to the post of Pharmacist, pursuant to the certificate verification held on 22.05.2010 and 24.05.2010, and the writ petitioners should not be rejected in view of the fact that they have crossed 35 years of age.

11. The writ petition has been filed in the nature of Mandamus to direct the respondents to grant appropriate age relaxation/remove the maximum age limit for the appointment of post of Pharmacists, pursuant to certificate verification held on 24.05.2010 and 22.05.2010. As stated above, the writ petition is agitated only by the 3<sup>rd</sup> writ petitioner, M.Rajendran.

W.P.No.23109 of 2012:

12. In the affidavit filed in support of the said writ petition it had been stated that the writ petitioners had successfully passed their Diploma in Pharmacy (Allopathy) between the years 1989-1990 and had registered their names in the Employment Exchanges in the year 1990. It had been stated that the first respondent, State of Tamil Nadu, represented by its Secretary to Government, Health and Family Welfare Department, had issued G.O.Ms.No.328 Health and Family Welfare (C1) Department dated 08.10.2009, whereby the Government took a

decision to recruit Pharmacists in the State of Tamil Nadu based on State wide Employment Exchange Seniority.

13. The first respondent then issued a direction in the first week of May, 2010 calling upon the writ petitioners to attend certificate verification scheduled to be held in the third and fourth week of May, 2010. The petitioners attended and produced all required certificates. It was stated that the respondents have not issued a appointment orders to the writ petitioners. The first respondent had issued G.O.Ms.No.65 dated 30.03.2007, framing guidelines for sponsoring candidates from the Employment Exchanges wherein, the Government has fixed 200 point roster and fixed the ratio as 1:15. It was stated that the respondents have not filled the vacancies but issued another order in G.O.Ms.No.18 dated 25.02.2008, altering the ratio.

14. Based on the Government order, a circular dated 11.02.2010, was issued by the second respondent for filling up the post of Pharmacist on the basis of seniority list sponsored by the Employment Exchanges. It was stated that on the basis of seniority, call letter were issued to the writ petitioners. They were called for an interview scheduled to be held on 21.05.2010. It was stated that however, no orders had been issued to the writ petitioners. It had been stated that the writ petitioners received information through the Right to Information Act, whereby, the Department had appointed many persons under priority quota, even those who have registered in the Employment Exchanges in the year 2009. It had been stated that the Department without taking into consideration the Employment Exchanges' seniority had applied the priority rule wrongly.

15. It had been stated that the respondents, at the time of filing of the writ petitions were taking steps to fill up the remaining vacancies of 345. It was stated that if the same procedure of appointment under priority quota is followed, then the petitioners would suffer much loss and hardship. It was stated that the Government had passed G.O.(2D) No. 55, dated 06.07.2012, removing the upper age limit for General Turn Candidates. It was stated that the change in the rule was impermissible. It was stated that appointment to the post of Pharmacist should be made without reference to the said G.O.(2D) No. 55, dated 06.07.2012. The writ petition had therefore been filed seeking the reliefs stated.

16. Even though both writ petitions have been pending for the past 9 years and 7 years respectively, a perusal of the record reveals that counter has not been filed on behalf of the respondents. In W.P.No.12817 of 2010, this Court granted an order that any appointment made would subject to the result of the writ petition. In W.P.No.23109 of 2012, this Court had passed an order retaining six posts for the petitioners and appointment would be subject to the disposal of writ petition.

It was stated that the respondents were free to comply with G.O. (2D) No. 55, Health and Family Welfare (C1) Department dated 06.07.2012.

17. Heard arguments advanced by Mr.V.Govardhan, for M/s.Row & Reddy, learned counsel for writ petitioner in W.P.No.12817 of 2010, Mr.P.Vasanth, learned counsel for the petitioners in W.P.No.23109 of 2012. Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader for respondents 1 to 5 in both writ petitions and for R7 in W.P.No.23109 of 2012. Mr.A.Vivek, learned Standing Counsel for Medical Recruitment Board in W.P.No.23109 of 2012.

18. The sixth respondent in W.P.No.23109 of 2012 namely, the Member Secretary, Medical Services Recruitment Board, Office of the Director of Medical and Rural Health Services, Chennai, is the Competent Authority to appoint Pharmacist.

19. W.P.No.12817 of 2010 had been filed for a Mandamus/direction to the respondents to grant appropriate age relaxation/remove the maximum age limit to the petitioners for the appointment of post of Pharmacist in various Government Hospitals and Primary Health Centres in the State of Tamil Nadu as given to other community such as BC, MBC, DNC, SC and ST, pursuant to the certificate verification held on 24.05.2010 and 22.05.2010. Subsequent to the filing of the writ petition, the Government had passed G.O.(2D) No. 55, dated 06.07.2012, extending the age concession as per Rule 12(d)(i) of General Rules for Tamil Nadu State and Subordinate Services, as a one time measure for a specified period, namely, for a period of five years from the date of issue of the said order.

20. W.P.No.23109 of 2012 had been filed that the writ petitioners must be considered for the post of Pharmacist without placing reliance on G.O.(2D) No. 55, dated 06.07.2012.

21. However, W.P.No.12817 of 2010 is agitated only by third writ petitioner, M.Rajendiran. Similarly, W.P.No.23109 of 2012 is agitated only by the first and sixth writ petitioners namely, P.S.Ganesan and Killivalavan.

22. During the course of arguments, it had been pointed out by the learned counsel for the writ petitioners that altering the rules mid way through selection process have never with stood legal scrutiny. In this connection, reference had been made to the following judgments:

1. (2001) 10 SCC 51, Maharashtra State Road Transport Corp. and Ors. V. Rajendra Bhimrao Mandve and Ors.
2. (2005) 4 SCC 154, Secretary, A.P.Public Service Commission V. B.Swapna and Ors.

3. (2008) 3 SCC 512, K.Manjusree V. State of Andhra Pradesh and Another.
4. (2008) 7 MLJ 417, K.Nehru V. State of Tamil Nadu, rep.by its Secretary to Government, Labour and Employment Department, Chennai and Others.

23. During the course of arguments, however, Mr.P.S.Sivashanmuga Sundaram, the learned Special Government Pleader and Mr.A.Vivek, learned standing counsel for Medical Services Recruitment Board, have stated that the respondents may be permitted to examine the eligibility and suitability of the third writ petitioner, M.Rajendran in W.P.No.12817 of 2010 and the first and sixth writ petitioners namely, P.S.Ganesan and Killivalavan in W.P.No.23109 of 2012 and pass suitable orders based on the existing Government orders and also take into consideration the pendency of the writ petitions before this Court for the past nearly 7 to 9 years and pass appropriate orders. The respondents should also understand that the pendency of the writ petition before this Court was not attributable to the said writ petitioners. The writ petitioners had approached the Court seeking enforcement of their legal right. It is very unfortunate that even before this Court, they were made to wait in queue for a long number of years. Consequently, it is directed that the Member Secretary, Medical Services Recruitment Board, in the Office of the Director of Medical and Rural Health Service, Chennai, must consider the case of the third writ petitioner in W.P.No.12817 of 2010, M.Rajendran, No.1C7, Haathoon, Residency, Pattamangalam Street, Mayiladuthurai - 609 001, and the first and sixth writ petitioners in W.P.No.23109 of 2012, namely, P.S.Ganesan, 22/6, Vinayagar Koil Street, Shastri Nagar, West Saidapet, Chennai - 600 015, and Killivalavan, TVN, Main Road, Pandur and Post, Via Kalamaruthur, Ulundurpet Taluk, Villupuram District, in proper perspective keeping in mind that they are educationally qualified to be appointed as Pharmacists and if age was the sole criteria on which they cannot be considered, then suitably, as a one time measure, relax the age, and also take other factors into consideration, particularly, that they have registered themselves with the Employment Exchanges of the respective Districts and have been awaiting appointment for a considerable number of years, and then pass appropriate and suitable orders.

24. The Member Secretary, Medical Services Recruitment Board, is not a respondent in W.P.No.12817 of 2010, but however, that should not be an impediment in issuing a direction to the said authority to consider the case of the third writ petitioner, M.Rajendran, who is also educationally qualified. The Member Secretary, Medical Services Recruitment Board, should realize that the writ petitioners are not foes to be denied employment, but fellow citizens, holding on to a thin string of

hope all these years awaiting employment. The Member Secretary, Medical Services Recruitment Board, Office of the Director of Medical and Rural Health Service, Chennai, is to complete this exercise with respect to the said three candidates on or before 31.07.2019.

25. The writ petitions are disposed of on the above terms. No orders as to costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

smv

To,

1. Government of Tamil Nadu,  
Rep.by its Principal Secretary,  
Health and Family Welfare Department,  
Secretariat, Chennai - 600 009.
2. The Director of Medical Education,  
Chennai - 600 010.
3. The Director of Medical and Rural  
Health Services, Chennai - 600 006.
4. The Director of Medical Services, (ESI)  
Chennai - 600 006.
5. The Director of Public Health and Preventive Medicine,  
Chennai - 600 006.
6. The Member Secretary  
Medical Services Recruitment Board  
O/o The Director of Medical and Rural Health Service,  
VII Floor, 359 Annasalai,  
Chennai - 600 006.
7. The Director  
State Employment Exchange  
Directorate of Employment and Training  
Guindy, Chennai - 600 032.

8. The Principal Secretary,  
Government of Tamil Nadu,  
Personnel and Administrative Department,  
Fort.St.George, Chennai-600 009.

9. The Deputy Director of Medical Education (Administration),  
Directorate of Medical Education,  
Kilpauk, Chennai-600 010.

+1cc to M/s.Row & Reddy, Advocate SR.No.41460

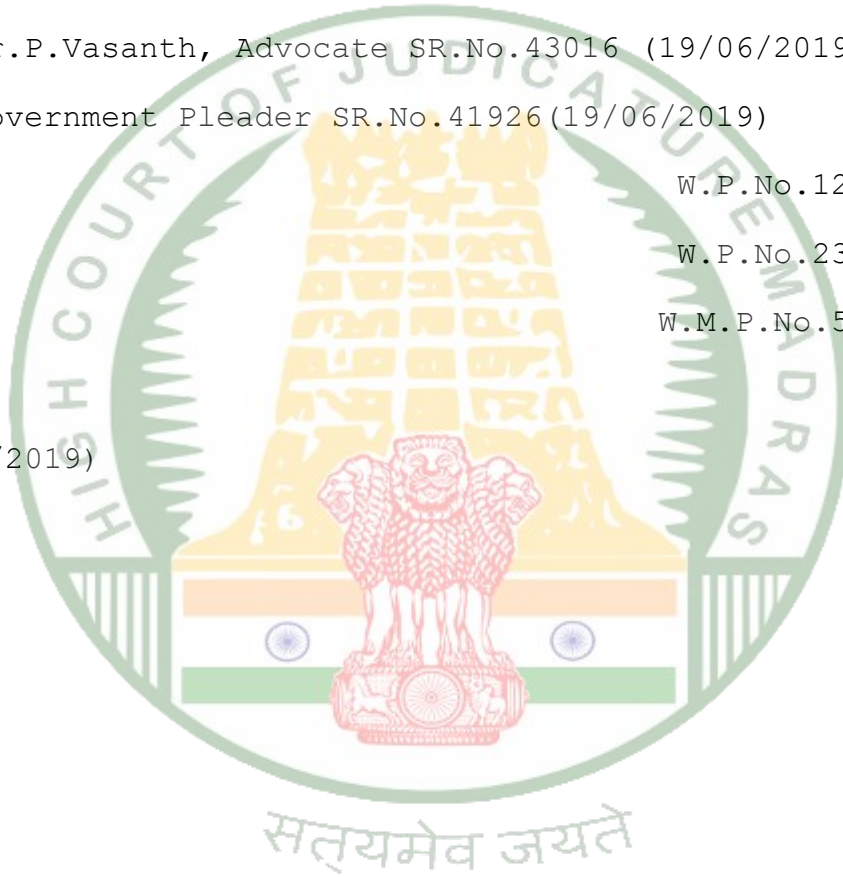
+1cc to Mr.T.P.Prabakaran, Advocate SR.No.40973

+2cc to Mr.P.Vasanth, Advocate SR.No.43016 (19/06/2019)

+1cc to Government Pleader SR.No.41926 (19/06/2019)

W.P.No.12817 of 2010  
and  
W.P.No.23109 of 2012  
and  
W.M.P.No.5520 of 2016

PM(CO)  
GMY(30/04/2019)



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