

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition Nos.30293 of 2014 & 16137 of 2015

- 1.Dr.Abdul Hafeez.A.
- 2.Dr.Raja.C.
- 3.Dr.Sushmitha.R.Iyer
- 4.Dr.Nandhini.J.V.R
- 5.Dr.Nilopher Nisha
- 6.Dr.K.V.S.Adhithya
- 7.Dr.Asha.K.
- 8.Dr.Mohammed Junaid
- 9.Dr.S.Sathish
- 10.Dr.Vasanthanarayanan.R.
- 11.Dr.Shyamala.M.

...Petitioners in
W.P.30293 of 2014
and
Petitioners 1 to 11 in
W.P.No.16137 of 2015

- 12.Dr.Regia.K.

...12th Petitioner in
W.P.No.16137 of 2015

Vs.

- 1.Medical Services Recruitment Board(MRB),
rep by its Member Secretary,
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai - 600 006.
- 2.The State of Tamil Nadu,
Rep by its Secretary to Government,
Health and Family Welfare (B-2) Department,
Fort St.George, Chennai - 600 009.
- 3.The Secretary,
Ministry of Health and Family Welfare,
Government of India, Room No.344,
A Wing, Nirman Bhawan, New Delhi - 110 001.

...Respondents in
W.P.No.30293 of 2014
...Respondents 1 to 3 in
W.P.No.16137 of 2015

4.Dr.P.Vinodh Kumar
5.Dr.P.Gayathri
6.Dr.Padmanabhan
7.Dr.P.Perumal
8.Dr.Durga
9.Dr.D.K.Niviethitha
10.Dr.M.N.Surendar
11.Dr.Roshan Domnic Jude Rayen
12.Dr.A.Alexander
13.Dr.Vijayaraghavan
14.Dr.Ramesh Kumar
15.Dr.Waseem Hassan Raza
16.Dr.S.Manikandan
17.Dr.I.A.Aravind
18.Dr.Dhanraj
19.Dr.Jeeva Rathan
20.Dr.Mathan Kumar
21.Dr.Devaki
22.Dr.Muthamil Selvi
23.Dr.Naveen
24.Dr.Chitraleka
25.Dr.Rajalakshmi
26.Dr.Sarasakavitha
27.Dr.Vidhya
28.Dr.Rekha
29.Dr.M.Bhaskar
30.Dr.M.Ramesh
31.Dr.M.Saranya

...Respondents 4 to 31 in
W.P.No.16137 of 2015

Prayer in W.P.No.30293 of 2014: Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus calling for the records relating to the Notification No.05/2014 dated 10.08.2014 and consequential notification No.5/MRB/E4/2014, dated 28.10.2014 issued by the first respondent for certificate verification on 19.11.2014 and quash the same in so far as preferential treatment is being given to candidates holding MDS-Paedodontia and MDS-Orthodontia/Conservative Dentistry over BDS degree for the post of Assistant Surgeon (Dental - General) in the Early Intervention Centres under National Rural Health Mission Schemes of the 3rd respondent and and consequently direct the first respondent to prepare a merit list of candidates who appeared for the competitive exam conducted by the first respondent on 12.10.2014 for the post Assistant Surgeon (Dental-General) based on the marks obtained by the candidates and appoint Assistant Surgeons (Dental-General) on the basis of the said merit list under the National Rural Health Mission Scheme.

Prayer in W.P.No.16137 of 2015: Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus calling for the records relating to G.O. (4D) No.4 dated 19.03.2015 (Health and Family Welfare (B2) Department) issued by the second respondent in so far it relates to the appointment of respondents 4 to 31 to the post of Assistant Surgeon (Dental) in the Early Intervention Centres under National Rural Health Mission Schemes and quash the same in so far as preferential treatment is being given to candidates holding MDS-Paedodontia and MDS-Orthodontia/Conservative Dentistry over BDS degree for appointment to the said posts and consequently direct the first respondent to prepare a merit list of candidates who appeared for the competitive exam conducted by the first respondent on 12.10.2014 for the post Assistant Surgeon (Dental-General) based on the marks obtained by the candidates without giving preferential treatment to candidates holding MDS-Paedodontia and MDS-Orthodontia/Conservative Dentistry over BDS degree candidates and appoint Assistant Surgeons (Dental-General) on the basis of the said merit list the post of Assistant Surgeon (Dental-General) in the District Early Intervention Centres under the National Rural Health Mission Scheme.

For Petitioners : Mrs.Nalini Chidambaram, SC
for Mrs.C.Uma
(in both the WPs)

For Respondents : Mr.P.Vivek, SC (for R.1)
Mr.J.Pothyraj, Spl.G.P. (for R.2)
Mr.G.Karthikeyan, ASG (for R.3)
Mr.D.Nagasaila (for R.4,5,7,8,12 to
14, 16, 28 & 30)
Mr.M.Aravind Subramaniam
and N.A.Mohamed Noohu
(for R.15 and 23)
Ms.S.Vijayashanthi (for R.10)
Not ready for R.11,19,21 & 26
No representation for R.6

COMMON ORDER

Both the writ petitions relate to selection of Assistant Surgeon (Dental-General) in the District Early Intervention Centers under the National Rural Health Mission Scheme, pursuant to the Notification issued by the first respondent Board, dated 10.08.2014. Initially, Writ Petition No.30293 of 2014 was filed challenging the action of the first respondent calling the selected candidates for certificate verification, on 19.11.2014. Thereafter, it appeared that the selection was completed and

respondent Nos.4 to 31 (W.P.No.16137 of 2015) have been appointed and the appointment of these respondents vide G.O.(4D) No.4, dated 19.03.2015, issued by the second respondent is put to challenge in W.P.No.16137 of 2015.

2. When both the writ petitions were taken up for hearing, the learned Senior Counsel Mrs. Nalini Chidambaram, at the outset, would submit that the first respondent - Medical Services Recruitment Board is not the competent authority to prescribe qualifications for appointment to the post of Assistant Surgeon (Dental). According to her, the selection had been done through competitive examination and the basic qualification prescribed was BDS. Eventually, the selected candidates were all holding Masters Degree in Dental Surgery, overlooking the marks obtained by the candidates who had BDS Degrees. According to the learned Senior Counsel, once competitive examination is conducted, the selection can be based only on the marks secured by the candidates in the competitive examination and not on the basis of higher qualification. Therefore, she would submit that the appointment of the private respondents on the ground that they hold higher qualification despite their obtaining lower marks than the petitioners, has to be set aside.

3. The learned Senior counsel would also lay great emphasis on the ground that the first respondent Board has no authority to prescribe qualification.

4. On behalf of the private respondents Mr. D. Nagasaila, Mr. M. Aravind Subramaniam, Mr. S. Vijayashanthi, learned counsels entered appearance, respectively, and made their submissions.

5. During the course of argument, it is found by this Court that although the learned Senior counsel laid great emphasis on the power of the Board to prescribe qualification, ultimately both the writ petitions do not challenge the qualification as prescribed in the Notification dated 10.08.2014. In the Notification issued by the first respondent Board, it is clearly mentioned as follows:

"Explanation: If there are adequate numbers of qualified candidates with MDS (Paedodontia), only such candidates will be considered for selection in respect of the above said 31 vacancies. If there is inadequate number of qualified candidates with MDS (Paedodontia) qualification, the remaining vacancies will be filled with qualified candidates with MDS (Orthodontia/Conservative Dentistry) qualification. If even after considering the qualified candidates (with the

above mentioned higher qualification), such vacancies will be filled with the qualified candidates with BDS qualification.

6. From the above explanation, it could be seen that if qualified MDS candidates are available, they will be considered for selection in respect of 31 vacancies. The petitioners, with their eyes wide open, had participated in the examination and after such participation, they cannot turn around and challenge the qualification as prescribed.

7. But in this case, the claim of the petitioners is far worse that they have first of all not challenged the qualification, which is clearly prescribed in the Notification itself. In the absence of challenge to the qualification, it does not lie in the mouth of the petitioners to assail the appointment of the private respondents, whose appointments were made on the basis of their MDS qualification.

8. The arguments advanced on behalf of the petitioners by the learned Senior Counsel about the competitive nature of examination need not be gone into for the simple reason that the Notification has prescribed MDS qualification as the preferred qualification. In the teeth of such clear indication and prescription, the petitioners cannot have any case at all and their claim as against the private respondents' appointment has to necessarily fail. Once, the petitioners have not chosen to question the qualification and participated in the examination, there ends the matter. It is no more open to the petitioners thereafter to complain about the preference extended to the MDS categories, as that preference is in fact authorized by the very Notification itself, which gave rise to cause of action for the petitioners to approach this Court. On the whole, this Court is of the view that the writ petitions, without a challenge to the qualification prescribed in the impugned Notification, have to necessarily fail and hence, both the writ petitions shall stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Member Secretary,
Medical Services Recruitment Board(MRB),
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai - 600 006.

2.The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare (B-2) Department,
Fort St.George, Chennai - 600 009.

3.The Secretary,
Ministry of Health and Family Welfare,
Government of India, Room No.344,
A Wing, Nirman Bhawan, New Delhi - 110 001

+1cc to Mr.B.Ramaratnam, Advocate sr.57834

+2cc to Mr.C.Uma, Advocate sr.57829, 57830

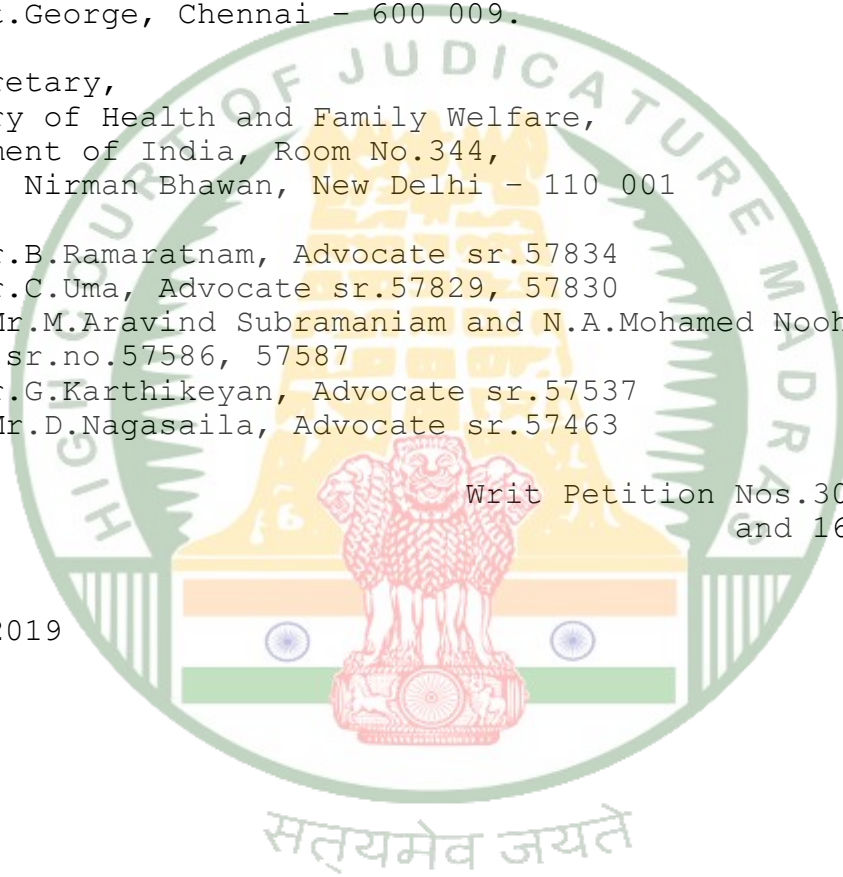
+8ccs to Mr.M.Aravind Subramaniam and N.A.Mohamed Noohu,
Advocates sr.no.57586, 57587

+1cc to Mr.G.Karthikeyan, Advocate sr.57537

+1cc to Mr.D.Nagasaila, Advocate sr.57463

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and 16137 of 2015

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