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3.The Member Secretary,
Medical Service Recruitment Board,
7th Floor, DMS Buildings,
359, Anna Salai, Teynampet,
Chennai-600 006. ... Respondents

W.P.No.34494/2019 :

P.Ramya ... Petitioner
-vs-

1.State of Tamil Nadu,
represented by the Secretary to the Government,
Department of Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The Director of Medical Education,
Kilpauk,
Chennai-600 009.

3.The Member Secretary,
Medical Service Recruitment Board (MRB),
7th Floor, DMS Buildings,
359, Anna Salai, Teynampet,
Chennai-600 006. ... Respondents

W.P.No.26961 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in provisional selection candidates for the post of Radiotherapy Technician in Notification No.5/MRB/2018, dated 28.08.2019, on the file of third respondent and quash the same as illegal and direct the respondents to consider diploma holders exclusively for the post of Radiotherapy Technician to secure the ends of justice.

W.P.No.34492 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in provisional selection candidates for the post of Radiotherapy Technician in Notification No.5/MRB/2018, dated 28.08.2019, issued by the third respondent and quash the same as illegal and direct the respondents to consider Diploma Holders exclusively for the post of Radiotherapy Technician.(within a Reasonable Time to be fixed by this Court)

W.P.No.34494 of 2019 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in provisional selection candidates for the post of Radiotherapy



Technician in Notification No.5/MRB/2018, dated 28.08.2019, issued by the third respondent and quash the same as illegal and direct the respondents to consider Diploma Holders exclusively for the post of Radiotherapy Technician.

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For Petitioner in W.P.No.26961/2019 : Mr.R.Sankarasubbu

For Petitioners in W.P.Nos.34492/2019 & 34494/2019 :

Mr.E.Sathiyaraj

For Respondent 1 in all W.Ps : Mr.S.Sureshkumar,
Government Advocate.

For Respondent 2 in all W.Ps.: Mr.V.Kadhirvel,
Spl.Govt.Pleader.

For Respondent 3 in all W.Ps.: Mr.M.Loganathan,
Standing Counsel.

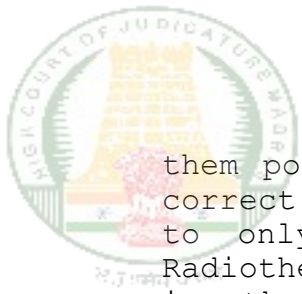
COMMON ORDER

All these Writ Petitions have been filed, challenging the Provisional Selection List that has been published by the third respondent, and seeking for a direction to the respondents to consider the names of the petitioners, who are Diploma Holders in Radiotherapy Technology, for the post of Radiotherapy Technician.

2. The main issue that has been raised in all these Writ Petitions is that Notification No.05/MRB/2018, dated 06.03.2018, was issued by the third respondent, calling for applications to fill up the post of Radiotherapy Technician. Clause 6 (B) of the said Notification prescribes the Educational Qualification. The Procedure for Selection was also prescribed in Clause 7 of the Notification. The Notification was issued to fill up 25 posts of Radiotherapy Technicians.

3. The grievance of the petitioners is that they possessed the qualification as prescribed in the Notification and, in spite of it, out of the 25 posts, 23 posts were allotted in favour of the persons, who had completed Degree course in B.Sc.(Radiotherapy Technology) and only 2 posts were allotted to Diploma Holders. It is submitted that the Diploma Holders were completely sidelined and the Degree Holders were given preference illegally.

4. Learned counsel appearing on behalf of the petitioners submitted that the third respondent had to carry on with the selection process strictly in accordance with the Notification, dated 06.03.2018, in which, the minimum educational qualification was prescribed as Diploma course in Radiotherapy Technology. According to the petitioners, all of



them possessed the said qualification. While so, it was not correct on the part of the third respondent to give preference to only those who had completed B.Sc. Degree course in Radiotherapy Technology. The further case of the petitioners is that the third respondent, by a Corrigendum, dated 09.11.2018, had invited the Online Applications only from the Degree Holders and, according to the petitioners, the said Corrigendum is contrary to the Rules. It is further brought to the notice of this Court that even the two posts, which were filled up by Diploma Holders, were allotted, based on reservation and, therefore, the Diploma Holders have been completely sidelined in the selection.

5. Per contra, Mr.S.Sureshkumar, learned Government Advocate, appearing on behalf of the respondents, submitted that the Notification was issued on 06.03.2018 and, after the Notification was issued, a Writ Petition came to be filed before this Court in W.P.No.4761 of 2018, wherein, the petitioners, who were Degree Holders in B.Sc.(Radiotherapy Technology), had questioned the respondents for not considering them for selection to the post of Radiotherapy Technician. This Court had heard the entire case in detail and specifically directed the respondents to receive applications, which were submitted by the applicants, who were Degree Holders in Radiotherapy Technology. It was only pursuant to the said order, the Corrigendum came to be issued on 09.11.2018.

6. Learned counsel appearing on behalf of the respondents also brought to the notice of this Court Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in short 'the Act'. Explanation (2) to Section 25 was read and it was submitted that wherever there is a prescription of Diploma in a particular subject as a qualification, a Degree in that subject should be deemed to be a higher qualification. The learned counsel, by making this submission, justified the act of the respondents in considering the Degree Holders to be of higher qualification than the Diploma Holders. The learned counsel further submitted that while this Court was dealing with the Writ Petition in W.P.No.4761 of 2018, it also had an occasion to go into the issue with regard to promotion of the Diploma Holders and the Degree Holders. Therefore, the learned counsel submitted that there is absolutely no illegality in the procedure adopted by the respondents in the selection of the candidates. The learned counsel concluded his arguments by submitting that already all the 25 posts have been filled up and any adverse order that is passed in these Writ Petitions will directly impact the rights of those persons, who have been selected by the respondents to the post of Radiotherapy Technician.



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7. This Court has carefully considered the submissions by the learned counsel on either side and also the material available on record.

8. The crux of the grievance that was expressed by the petitioners is that they, in spite of having sufficient qualification to be considered for appointment to the post of Radiotherapy Technician, had been sidelined against the Degree Holders in B.Sc. (Radiotherapy Technology). It is also their grievance that out of 25 posts, which were filled up, 23 of them were filled up with the candidates, who possessed B.Sc. Degree with Radiotherapy Technology.

9. The justification that was given by the respondents is the order that was passed by this Court in W.P.No.4761 of 2018, dated 15.03.2018, and also the relevant Clause in the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

10. It will be relevant to extract the relevant portions of the said order in W.P.No.4761 of 2018 as under :

''11. But, this Court is unable to agree with the above said submissions. Admittedly, the petitioners have completed B.Sc. (Radiotherapy Technology) in Madras Medical College, affiliated to The Tamil Nadu Dr.M.G.R.Medical University, and it is a three years degree Course. It is also not in dispute that the Madras Medical College, where the petitioners have completed the said degree course, is also found place in the list of Institutions/Universities conducting Radiotherapy Technologist training courses which are in accordance with AERB requirements, as could be seen from the instruction issued by the Atomic Energy Regulatory Board (AERB), Government of India, Radiological Safety Division, dated 31.08.2016. For better appreciation, relevant portions of the said instruction of AERB are stated below:-

xxxxx

12. Besides, it is also seen that in the Notification, the third respondent Board has mentioned awarding of 50% weightage marks to those candidates, who have completed Diploma course in Radiotherapy Technology and the same is also extracted below:-

Minimum Educational qualification required for the post Weightage of marks Diploma Course in Radiotherapy Technology HSC/PUC SSLC/10th Diploma Course in Radiotherapy Technology 50% 30% 20% In



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view of the above, no doubt, the respondent is afraid of awarding of over and above 50% of weightage marks to those candidates who have completed three years degree course in B.Sc. (Radiotherapy Technology), like the petitioners herein. It is made clear that such candidates shall also be awarded weightage marks only on par with the holders of two years Diploma Course in Radiotherapy Technology. Learned counsel for the petitioners has also acceded that the petitioners will not claim more than 50% of weightage marks.

13. Although the learned Special Government Pleader for the respondents 1 and 2, producing a copy of the AERB Safety Code, stated that a Radiation Therapy Technologist shall have the qualification of (i) 10+2 or equivalent with science subjects from a recognized board; and (ii) two years' radiation therapy technologies' course or equivalent, based on the minimum course content prescribed by the competent authority, from a recognized institution with in-field training in radiotherapy; the said contention also cannot be sustained, for, the petitioners have completed a three years Course in B.Sc. (Radiotherapy Technology), which is also recognized by the AERB as stated above.

14. Thus, in view of the above, considering the fact that the petitioners have completed three years degree course in B.Sc. (Radiotherapy Technology) and that the Madras Medical College & Govt. General Hospital, Chennai, affiliated to The Tamil Nadu Dr.M.G.R. Medical University, Chennai, where the petitioners have studied the said Course, has been given recognition by the Atomic Energy Regulatory Board, Government of India, Radiological Safety Division, to conduct three years degree course i.e. B.Sc.(Radiotherapy Technology), this Court has no hesitation to direct the respondents to consider the application to be submitted by the petitioners as they are well qualified. Accordingly, the respondents are directed to receive the application to be submitted by the petitioners either in person or register post, if they submit it on or before the last date of submission of application as stated in the said Notification.'



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11. It is clear from the above order that this Court had considered the qualifications of both the Degree Holders and the Diploma Holders. This Court also considered the 50% weightage marks to be given to the candidates, who have completed Diploma course in Radiotherapy Technology. While considering the same, this Court had also held that the same would not apply to the Degree Holders. This Court categorically held that the persons, who had completed B.Sc. Degree course in Radiotherapy Technology, were also entitled to participate in the selection and a direction was given to the respondents to receive applications from them.

12. The above order gave rise to the Corrigendum issued by the respondents on 09.11.2018. By virtue of the said Corrigendum, the following was added to the Notification, dated 06.03.2018 :

"In partial modification to the Notification No.05/MRB/2018, Dated 06.03.2018, Medical Services Recruitment Board (MRB) invites online applications only from the eligible candidates with 'B.Sc. (Radiotherapy Technology)' Degree who have undergone the course (course in line with AERB requirements) in Government and Private Institutions affiliated to the Tamil Nadu Dr.M.G.R.Medical University or any other University or Institution recognised by the University Grants Commission for direct recruitment to the below mentioned post in Tamil Nadu Medical Subordinate Service carrying the scale of pay noted against on temporary basis."

13. After the Corrigendum was issued, the selection was considered by taking into consideration both the Diploma Holders and the Degree Holders. The respondents had taken note of the explanation (2) to Section 25 of the Act, which provides that a Degree Holder must be deemed to possess a higher qualification than a Diploma Holder.

14. The above provision came up for consideration before a Division Bench of this Court in W.A.No.1306 of 2019. The relevant portions of the said judgment are extracted hereunder :

"10(a) Rule 25 of the Tamil Nadu Government Service (Conditions of Service) Act, 2016, defines Special qualifications. Explanation II is extracted below :-

In cases where the special rules prescribe a Diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification.



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(b) The Explanation II is very clear that in case the special rules prescribe Diploma as the essential qualification then a degree in that subject would be a higher qualification.

11(a) Similar issue came up for consideration before the Hon'ble Supreme Court in Jyothi K.K. And others vs. Kerala Public Service Commission and others., 2010(15) SCC 596.

(b) In Jyothi K.K., the required qualification for appointment to the post of Sub Engineer (Electrical) in the Kerala State Electricity Board was a Diploma in Electrical Engineering of a recognized institution after three years of study. The Kerala Public Service Commission was not prepared to receive applications from the holders of B.Tech Degree in Electrical Engineering or Bachelor Degree in Electrical Engineer. The Writ Petition filed before the High Court was dismissed. The matter was taken up before the Hon'ble Supreme Court.

(c) The Supreme Court found that Rule 10(a) (ii) of the Rules made the degree in the relevant subject a higher qualification enabling the degree holders also to compete with the Diploma Holders.

Rule 10(a) (ii) reads as follows:

"10. (a) (ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post." (emphasis supplied)

(d) The Supreme Court on a reading of the Rule in the light of the selection notification and the condition regarding eligibility criteria, held that if a person had required the higher qualification in the same faculty, such qualifications can be stated to presuppose the acquisition of the lower qualification. The Hon'ble Supreme Court therefore allowed the appeal filed by the Degree holders by holding that they



are also eligible to apply for the post for which qualification is only a Diploma.

12. The Supreme Court decided Zahoor Ahmad on the peculiar facts of the said case. There was no special rules in Zahoor Ahmad, like the one in Kerala State and Subordinate Services Rules, considered by the Hon'ble Supreme Court in Jyoti K.K. cited supra. However, in the State of Tamil Nadu there is a specific Rule making Degree a higher qualification, in case Diploma is the essential qualification.

13. The judgment relied on by the learned Senior Counsel for the appellant has no relevance to the issue raised herein. In Zahoor Ahmad, the Supreme Court found that unlike in Jyoti K.K., there was no service rules in the State of Jammu and Kashmir, which prescribe that a degree would be treated as higher qualification in case Diploma is the essential qualification for a particular post. The Supreme Court in paragraph 22 of the said Judgment, explained the ratio of the decision in Jyoti K.K., which was rendered on the basis of rule 10(a)(ii) of the Kerala State Subordinate Services Rules, 1956.

14. The following observation contained in Zahoor Ahmad, would make the position clear:-

22. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular



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qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome.

23. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.

15. The decision of the Supreme Court in Jyoti K.K. is applicable to the case on hand. Here also, there is a rule which provides that in case Diploma is the essential qualification, degree in the relevant subject would be a higher qualification.''

15. In the above judgment, the general rule, which gives a statutory recognition to Degree Holders than Diploma Holders, is upheld. This aspect also has a lot of significance



in the present case.

16. In view of the above discussion, this Court does not find any illegality in the selection process, that was undertaken by the respondents. Now, the selection process is over and 25 candidates have already been selected and they are not before this Court. If the petitioners had any grievance on the Corrigendum or the relevant Section under the Tamil Nadu Government Servants (Condition of Service) Act, 2016, they should have challenged the same and, without doing so, they cannot maintain the present relief that has been sought for before this Court, since the selection has already taken place in accordance with the Notification, Corrigendum and the Tamil Nadu Government Servants (Condition of Service) Act, 2016. Once the selection has taken place within the four corners of the available Rules, this Court cannot interfere with such selection, unless the Rules concerned are put to challenge.

17. In the result, these Writ Petitions are devoid of merits and the same are dismissed. No costs. Consequently, the connected W.M.P.Nos. 26350, 26352, 34848, 35192, 35194, 35198 and 35199 of 2019 are also dismissed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1.The Secretary,
State of Tamil Nadu,
Department of Health,
Fort St.George, Chennai-9.

2.The Director of Medical Education,
No.162, EVR Salai,
Kilpauk, Chennai-10.

3.The Member Secretary,
Medical Recruitment Board,
7th Floor, DMS Buildings,
359, Anna Salai, Chennai-6.

+3ccs to Mr.R.JAYAPRAKASH, Advocate SR.No. 104713, 104428, 104426

+1cc to Mr.M.Loganathan , Advocate SR.No. 104687

+2ccs to Mr.E.Sathiyaraj , Advocate SR.No. 40596, 10497

+1cc to Mr.R.Sankarasubbu , Advocate SR.No. 104243

+1 cc to Government Pleader Sr.No. 10452, 104547

W.P.Nos. 26961, 34492 & 34494/2019

A.SK(18/12/2019)