



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13187 of 2015

and

M.P. (MD) No.1 of 2015

WEB COPY

G.Sam Ebenezer

... Petitioner

vs.

1.The Secretary to Government

Department of Health and Family Welfare

Government of Tamil Nadu

Fort St.George, Chennai

2.The Secretary

Medical Service Recruitment Board (MRB)

7th Floor, DMS Building

359, Anna Salai, Teynampet

Chennai-6

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of declaration declaring that reservation of 6792 posts out of 7243 posts of Nurses in Notification No.01/2015 dated 19.04.2015 is unconstitutional and violative of Articles 14 15 and 16 of the Constitution of India.

For Petitioner : Mr.S.Anwar Sameem

For Respondents: Mr.S.Dhayalan

Government Advocate

O R D E R

The relief sought for in the present writ petition is to declare the reservation of 6792 posts out of 7243 posts of Nurses, in notification No.01 of 2015, dated 19.05.2015, as unconstitutional and violative of Articles of 14, 15 and 16 of Constitution of India.

2. *Prima facie* the relief as such sought for deserves no merit consideration at this length of time in view of the fact that the process of selection was concluded long back and the selected persons were appointed and working for the past of five years. This apart, a candidate, who participated in the process of selection, cannot challenge the notification itself. The relief sought for is to declare the notification as null and void. However, the writ petitioner had participated in the process of selection pursuant to the notification No.01 of 2015, dated 19.04.2015 and was unsuccessful. The writ petitioner had scored 63% and the last candidate, who was selected and appointed, scored 65.50%. Thus, the writ petitioner was an unsuccessful candidate



and therefore, he cannot challenge the notification, after being not selected in the process of selection.

3. However, the learned counsel appearing for the writ petitioner states that 95% of the posts are reserved for women candidates for appointment to the post of Nurses. This Court is of the considered opinion that in certain circumstances, the reservations are provided considering the suitability of the persons for the post. It happens on gender basis, considering the job profile as well as the suitability. Assessment of suitability is the prerogative of the employer. Thus, the employer is within the powers to assess the suitability. Thus, all these aspects are to be considered. However, the issues at large raised in the present writ petition are left open. However, the writ petitioner cannot maintain this writ petition as he participated in the process of selection and became unsuccessful. This being the factum, the writ petition deserves no merit consideration.

4. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To:

1.The Secretary to Government,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Fort St.George, Chennai.

2.The Secretary,
Medical Service Recruitment Board (MRB),
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai-6.

+1 CC to M/s.SPL GP (SR-83576[F] dated 27/08/2019)

+1 CC to M/s.T. ANTONYARUL RAJ, Advocate (SR-83876[F] dated 28/08/2019)

krk

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and
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26.08.2019