



3BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.8396 of 2015

and

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

O.Anand

... Petitioner

-Vs-

1.The State of Tamil Nadu rep by
The Secretary to Government,
Health & Family Welfare (C2) Department,
Secretariat, Chennai-9.

2.The Director of Medical Education,
Kilpauk, Chennai-10.

3.The Director of Public Health &
Preventive Medicines,
Chennai-6.

4.The Medical Services Recruitment Board rep by
The Member Secretary,
DMS Building, 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 the maximum age limit fixed by the respondents 2 to 4 in the matter of appointment to the post of Dark Room Assistant as unconstitutional and ultravires and consequently, direct the respondents to consider the petitioner also for appointment to the post of Radiographer and appoint them in the vacancies if the petitioner is otherwise eligible for appointment.

For Petitioner	: Mr.D.Selvanayagam
For R1 to R3	: Mr.S.Dhayalan
	Government Advocate
For R4	: Mr.T.S.Mohamed Mohideen

ORDER

The writ of Declaration is filed to declare the maximum age limit fixed by the respondents 2 to 4 in the matter of appointment
<https://hcservices.ecourts.gov.in/hcservices/>



to the post of Dark Room Assistant as unconstitutional and ultravires and consequently, to direct the respondents to consider the petitioner also for appointment to the post of Radiographer and appoint them in the vacancies if the petitioner is otherwise eligible for appointment.

WEB COPY

2.The learned counsel for the writ petitioner states that the age limit prescribed in the notification for recruitment during the year 2015 is in violation of the Rule 12(1) of the General Rule. The writ petitioner is fully qualified and eligible for selection and appointment to the post of Dark Room Assistant and Radiographer. However, the writ petitioner was not appointed on account of the fact that the age limit was fixed in the notification.

3.Now the fourth respondent filed a counter affidavit stating that the persons, who all are eligible to avail the benefit of Rule 12(d) of the General Rule as well as the Tamil Nadu State and Subordinate Service Rules, are entitled for such age relaxation and it is relevant to extract para Nos.4, 5 and 6 of the counter affidavit filed by the fourth respondent which states that the age limit in all the cases may not be proper.

"It is submitted that based on the above rules, proposal has been sent to Employment Exchange vide Ref.No.23/MRB/E3/2015 dated 2.04.2015 to sponsor the candidates for the post of Dark Room Assistant. In the mean time, a clarification regarding age is received from Government vide Government Letter No.22796/C2/2014-15, Health and Family Welfare Department, Dated: 18.05.2015. The Government clarified as follows:-

S1 No.	Prescribed Education Qualification	Category	Maximum Age Limit
1.	SSLC (Minimum General Educational Qualification - MGEQ)	1.SC, SC(A), ST and DW of all castes. 2.MBC/DC, BC and BC (M) 3.Others	35 32 30
2.	Higher Qualification than SSLC (MGEQ) (ie +2, Diploma and Degree)	1.SC, SC(A), ST, MBC/DC, BC, BC(M) and DW of all castes. 2.Others.	No maximum age limit. 30

5.I submit that a revised proposal in Ref.No.23/MRB/E3/2015 dated 26.05.2015 has been sent to the Employment Exchange as per the above criteria for age. Hence, the age limit for the post of Dark Room Assistant is 30 years for "others" and no age limit for SC, SC(A), ST, MBC / DC, BC, BCM and DW of all castes. As per the G.O.(Ms).No.401 Health and Family Welfare



(C2) Department, dated 16.12.2014 the rule of recruitment for Para Medical Staff has been revised by the Government based on Hon'ble High Court orders as follows:-

a) Vacancy details for all direct recruitment to the post of Para Medical and Technical Staff are notified to the employment exchange.

b) The list of eligible candidates will be sponsored by the employment exchange. The sponsored candidates will be intimated to apply on line for the concerned post, when the advertisement by open notification is issued by the Medical Services Recruitment Board through two newspapers as per the High Court directions.

c) Open advertisement in at least two news papers (one of which will be in vernacular language) will be published for inviting application form all candidates. (All eligible candidates irrespective of registered in employment exchange are eligible to apply online)

d) The process of selection shall be based on the marks obtained by the candidates in various examinations by giving weightage to their academic performance, age duly following communal rotation.

Hence, the petitioner is eligible to apply for the post of Dark Room Assistant when the advertisement is published in the newspapers even though his name was not sponsored by the Employment Exchange if he comes under OC he is eligible up to 30 years if he fulfils all qualifications. There is no age limit for SC, SC (A), ST, MBC and DC and DW of all castes.

6. It is submitted that as per Rule 12(d) of General Rule for the Tamil Nadu State and Subordinate Service, the recruitment has been made in Medical Services Recruitment Board.

The age limit for the post of Dark Room Assistant is 30 years for "others" and no age limit for SC, SC(A), ST, MBC / DC, BC, BCM and DW of all castes. Hence, the petitioner is eligible to apply for the post of Dark Room Assistant when the advertisement is published in the newspapers even though his name was not sponsored by the Employment Exchange if he comes under OC he is eligible up to 30 years. There is no age limit for SC, SC(A), ST, MBC and DC, BC and BCM and DW of all castes and 30 years for OC candidates."

4. However, the selection of the year 2015 was concluded long back and selected persons were appointed and working for the past more than 5 ½ years.



5.Under these circumstances, this Court cannot grant any retrospective benefit of age relaxation or appointment to the writ petitioner. However, the petitioner is at liberty to participate in the forthcoming recruitment if any notified, in accordance with the Rules in force.

6.With the above observation, this Writ petition stands disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

1.The Secretary to Government,
The State of Tamil Nadu
Health & Family Welfare (C2) Department,
Secretariat, Chennai-9.

2.The Director of Medical Education,
Kilpauk, Chennai-10.

3.The Director of Public Health &
Preventive Medicines,
Chennai-6.

+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate (SR-83752[F] dated 28/08/2019)

+1 CC to M/s.SPL GP (SR-84208[F] dated 29/08/2019)

W.P. (MD)No.8396 of 2015
and
M.P. (MD)No.1 of 2015
28.08.2019

NS

MS/16.09.2019/4P.6C