

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.34291 of 2018

ORDER:

This writ petition is filed seeking to issue Writ of Mandamus declaring the action of the respondents in not considering and not following the mandatory procedure contemplated in clause 13 of the Notification No.1 of 2018, dated 19.03.2018, and placing the petitioner at Sl.No.111 position in the Provisional Merit/Selection List instead of at Sl.No.8 and excluding the petitioner altogether from the selection list of candidates for the post of Civil Assistant Surgeons Specialties (Ophthalmology) in Telangana Vidya Vidhana Parishad, as arbitrary and illegally and vitiated by official malafides and not providing column for additional qualification in the online application due to non-application of mind and not considering the petitioner's representation, dated 06.06.2018, by the Selection Committee of respondent No.2 and not considering her objections to the Provisional Merit List dated 02.07.2018 and thereby violating the petitioner's Fundamental Right to Employment enunciated under Right to Life under Article 21 of the Constitution of India and is also violative of Article 14 of the Constitution of India and consequently sought a direction to set aside the selection list for the post of Civil Assistant Surgeons Specialties (Ophthalmology) in Telangana Vidya Vidhana Parishad pursuant to the Notification No.1 of 2018, dated 19.03.2018.

2. Heard Sri P. Radhakrishna, learned counsel for the petitioner, learned Government Pleader for Services and Smt. Rachna S.Waddepalli, learned Standing Counsel for the 2nd respondent.

3. It has been contended by the petitioner that she is fully eligible and qualified to be appointed as Civil Assistant Surgeons Specialties (Ophthalmology). The respondent issued Notification No.1 of 2018 to fill up Civil Assistant Surgeons Specialties (Ophthalmology) on 19.03.2018. In response to the said notification, the petitioner made an application through online. The petitioner submits that the selection method is only based on marks obtained in the qualifying examination and as per the notification, the following is the criteria and weightage of selection procedure.

	Criteria	Weightage
I.	Aggregate of Marks obtained in all the years of the PG Degree/Diploma in the concerned speciality	65% of total marks obtained in the PG degree/PG diploma
II.	Additional Qualification	The candidates possessing PG degree will get 10% of total marks in the concerned board speciality only.
III.	Weightage for contractual service	15 Marks (maximum) (i) @ 2.5 marks per six months in Tribal Area (ii) @ 2.0 marks per six months in Rural Area (iii) @ 1.0 mark per six months in urban areas.
IV.	Weightage for number of years lapsed since passing the qualifying examination of PG Degree/PG Diploma in the concerned speciality	10 Marks @ 1.0 (one) mark per each completed year of service after acquiring requisite qualification

As per the selection procedure, the petitioner is entitled for weightage for aggregate of marks obtained in all the years of PG Degree/Diploma in the concerned speciality and that the petitioner is also entitled for additional qualification weightage marks as the

petitioner is having both diploma in Ophthalmology and a degree in Ophthalmology in the form of DNB i.e., Diploma from National Board examinations.

4. The petitioner contends that the respondents ought to have followed the selection criteria as enunciated in the notification, but the respondents have not considered the case of the petitioner for grant of weightage marks towards additional qualification. The petitioner further submits that at the time of uploading the online application form, the petitioner is having Two Post Graduation qualifications, one in the form of Diploma in Ophthalmology and DNB in Ophthalmology. The petitioner further submits that in the notification, it was clearly stated that for DNB and other degree if no marks are awarded, it will be taken as 50% for grant of weightage. The petitioner submits that the respondents have considered only one Post Graduation qualification and not considered the Additional Post Graduation possessed by the petitioner for the purpose of selections, thereby, the petitioner's right to proper evaluation as per the notification, is being denied. Therefore, learned counsel for the petitioner contends that the respondents ought to have considered the additional qualification of the petitioner and for selection to the post of Civil Assistant Surgeons Specialties (Ophthalmology) and included her name in the Provisional Selection List. The petitioner further submits that when the respondents have not included the name of the petitioner in the Provisional Merit List, she has submitted a representation to the respondents on 06.06.2018, but the respondents

have neither considered the representation submitted by the petitioner nor considered the case of the petitioner for awarding of additional weightage marks towards Post Graduation Degree and Diploma. The counsel for the petitioner submits that appropriate orders be passed in the writ petition directing the respondents to consider the case of the petitioner for grant of additional qualification weightage marks as set out in the notification and re-consider her case for appointment to the post of Civil Assistant Surgeons Specialties (Ophthalmology) . The counsel further submits that at the time of admission, this Hon'ble Court was pleased to grant interim direction on 28.09.2018 and directed that one post of Civil Assistant Surgeons Specialties (Ophthalmology) be kept reserved and by virtue of the said interlocutory order, one post of Civil Assistant Surgeons Specialties (Ophthalmology) is kept unfilled and contends that the case of the petitioner be considered for appointment against the unfilled vacancy.

5. Learned Government Pleader appearing for the respondents submitted that the case of the petitioner was considered in terms of the selection procedure as enunciated in notification No.1 of 2018, dated 19.03.2018, and during the process of verification of certificates, it was noticed that the petitioner has uploaded only one Post Graduation qualification and after selection process, the petitioner has claimed additional qualification by submitting additional Post Graduation qualification. The respondents have rightly rejected the case of the petitioner as the petitioner has not uploaded two Post Graduation qualifications at the time of uploading the application form.

6. This Court, having considered the rival submissions made by the parties is of the view that from the material papers filed along with the writ petition, the petitioner has uploaded both qualifications in the Post Graduation i.e., Diploma in Ophthalmology as well as Post Graduation qualification in Ophthalmology (DNB), which would mean that the petitioner has rightly uploaded both the qualifications of Post Graduation in Ophthalmology and it is the respondents who have not considered the additional qualification at Post Graduation level in favour of the petitioner.

7. Therefore, the action of the respondents in not awarding additional qualification weightage marks for having Post Graduation qualification in favour of the petitioner is arbitrary and illegal and the respondents are directed to consider the case of the petitioner for grant of additional qualification weightage marks and then consider the case of the petitioner for appointment to the post of Civil Assistant Surgeons Specialties (Ophthalmology), and upon such consideration, if the petitioner comes within the zone of consideration, the case of the petitioner shall be considered for appointment to the above said post within a period of six weeks.

8. With these observations, the writ petition is allowed. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

27th February 2018

mar