

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.39868 OF 2017

ORDER:

This writ petition is filed seeking a Writ of Mandamus to declare the action of the respondents in preparing the impugned merit list dated 07.11.2017 by taking into consideration the marks obtained in SSC qualification only, as illegal, arbitrary and contrary to the notification dated 22.08.2017 and sought a consequential direction to set aside the impugned merit list dated 07.11.2017 with a further direction to the respondents to consider the petitioners' case for appointment to the post of MPHA (F) by preparing a revised merit list basing on the marks obtained in the SSC qualification and MPHW (F) Training as per the notification dated 22.08.2017.

Heard the learned counsel for the parties.

It has been contended by the petitioners that they are fully eligible and qualified to be appointed as MPHA (F) and they were appointed on 21.11.2008 as 2nd ANM on contract basis. The petitioners further submit that while they were discharging their duties on contract basis, the respondents have issued notification dated 22.08.2017 for filling up six posts of MPHA (F) on regular basis, apart from other posts. The petitioners further submit that they are Physically Handicapped and the said notification is issued for filling up backlog vacancies reserved for disabled persons. The petitioners further submit that as per the notification, one must possess SSC from recognized school and also possess MPHW (F) (Multipurpose Health Worker) Training Certificate and also get the Training Certificate registered with Para Medical Board. Since the petitioners were fully eligible and qualified for appointment to the post of

MPHA (F), they have responded to the said notification. The petitioners further submit that since the respondents have issued notification for backlog vacancies reserved for disabled, the written examination and interviews (oral tests) were waived and the selection procedure was to be followed as per G.O.Ms.No.74 dated 14.02.2007. The petitioners further submit that the respondents have prepared the merit list and published the same on 07.11.2017 and in the said merit list, their names are shown at Sl.Nos.9 and 16. The petitioners also submit that only six posts of MPHA (F) were notified and since their names are shown below in the merit list and the procedure adopted by the respondents is incorrect, their cases could not be considered for appointment to the post of MPHA (F).

Learned counsel for the petitioners had submitted that the respondents have prepared the merit list based on the marks secured in SSC examination, instead of certificate course in MPHW (F). Learned counsel for the petitioners further submitted that if the respondents have prepared the merit list as per the marks obtained in MPHW (F) Training course, the petitioners would have found place high in the merit list and they could have been appointed to the post of MPHA (F). The Commissioner of Family Welfare has clarified way back on 05.04.2007 that the marks obtained in MPHW (F) Training course alone should be taken into consideration for the purpose of determining the merit, but contrary to the said guidelines, the respondents have prepared the merit list based on the marks obtained in SSC examination.

Learned counsel for the petitioners further contended that appropriate orders be passed in the writ petition by setting aside the merit list dated 07.11.2017, as it is contrary to the guidelines issued by the Commissioner of Family Welfare. Learned counsel further pointed out that

even in 2016, the respondents have undertaken recruitment process for the posts of MPHA and prepared the merit list thereto based on the marks secured in MPHW (F) Training course and, for the first time, the respondents have prepared the merit list dated 07.11.2017 basing on the marks obtained in SSC examination, which is contrary to the guidelines issued by the Commissioner of Family Welfare on 05.04.2007.

Learned Government Pleader appearing for the respondents had submitted that the respondents have prepared the merit list dated 07.11.2017 based on the marks obtained in SSC examination, as it was made clear in the notification dated 22.08.2017 itself that the respondents would be following the selection process as contemplated in G.O.Ms.No.74 dated 14.02.2007. Learned Government Pleader has drawn attention of this Court to G.O.Ms.No.74 dated 14.02.2007, wherein it is made very clear that the marks obtained in the qualification examination alone would be taken into consideration while preparing the merit list, therefore, no illegality has been committed by the respondents in preparing the impugned merit list. Learned Government Pleader had further submitted that as the entire selection process to the posts of MPHA (F) has been stalled pursuant to the interim orders passed on 29.11.2017, the interim orders be vacated and the writ petition be dismissed, as there are no merits in the writ petition.

This Court, having considered the rival submissions of learned counsel for both parties, is of the considered view that the respondents have issued notification on 22.08.2017 notifying six backlog vacancies of MPHA (F) meant for disabled and in the notification, it is made clear that the selections are to be made as per G.O.Ms.No.74 dated 14.02.2007 and the written examination and interviews (oral tests) were waived. A perusal

of the said G.O makes it abundantly clear that the selections would be made based on the marks obtained in the qualifying examination. Admittedly, for the post of MPHA (F), SSC is the academic qualification and the certificate course of Multipurpose Health Worker is the technical qualification and the petitioners cannot contend that the technical qualification marks have to be taken into consideration while preparing the merit list. The petitioners have not disclosed the number of marks secured by them in the certificate course of Multipurpose Health Worker, therefore, in the absence of not disclosing their marks in the said technical course, it would not be possible for this Court to adjudicate the case as to what kind of marks the petitioners have secured and what are the marks secured by the other selected candidates. When once the notification specifically states that the selection process would be based on G.O.Ms.No.74 dated 14.02.2007, whereby the written test and oral interview would be waived and the selection process would be based only on academic qualification marks, the petitioners cannot insist that the marks secured in technical course such as certificate course in Multipurpose Health Worker should be taken into consideration at the time of preparing the merit list. Thus, there are no merits in the writ petition and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. The interim order dated 29.11.2017 is vacated. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI,J

13th June, 2019
v v