

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.23291 of 2008

and M.P.No.1 of 2008

Tamil Nadu Physically Handicapped
Medical Laboratory Technician Welfare Association,
Reg.No.168/2007,
represented by its Secretary S.Alagu Sunder ... Petitioner

vs.

1. The State of Tamilnadu,
rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai 600 010.
3. The Director of Public Health and Preventive Medicine,
Office of the Director of Medical Services,
Chennai 600 006.
4. State Special Commissioner for the
Physically Challenged,
Thousand Lights,
Chennai 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus seeking a direction to the Respondents to consider the physically challenged stipendiary candidates with CMLT qualification with preference/priority in selection and appoint them in all the available vacancies in the post of Medical Laboratory Technician Grade III.

For Petitioner : Mrs.A.Arulmozhi

For Respondents: Mr.K.Magesh,
Special Government Pleader

O R D E R

Petitioner/Association has come up with this Writ Petition seeking a direction to the Respondents to consider the physically challenged stipendiary candidates with CMLT

qualification with preference in selection and appoint them in all the available vacancies in the post of Medical Laboratory Technician Grade III.

2. It is stated that, the Petitioner/Association has been functioning with the object of catering to the needs of the physically challenged candidates, who were given stipendiary training for Certificate course of Medical Laboratory Technician Grade I, and there are more than 150 members enrolled in the Association.

3. According to the Petitioner/Association, their members belong to FC, BC, MBC, SC and DNC and all of them have passed Higher Secondary Examination and the Certificate course for the Medical Laboratory Technician, Grade-I. They were offered the course by the decision of the Government of Tamilnadu sanctioning 300 seats for trainee candidates in six Training Centres at Chennai, Madurai, Coimbatore, Trichy, Salem and Tirunelveli. Since the training course was offered by the Government of Tamilnadu, to help and encourage the physically challenged candidates, Rs.300/- per month was given to them as stipend, without collecting course fee.

4. Trainees who had undergone the training course as stipendiary candidates were informed that, they will be eligible for appointment to the post of Laboratory Technician Grade II and the qualification prescribed for appointment to the said post by direct recruitment as per the Special Rules for the Tamilnadu Public Health Subordinate Service was that, the candidate must have passed +2 examination and must possess Certificate in Medical Lab Technology (CMLT) (one year) duration course undergone in any Institution recognized by the Director of Medical Education.

5. While some of the candidates who had undergone training along with the members of the Petitioner/Association were selected and appointed as Medical Lab Technician Grade II and are in service with Respondents 2 to 4 herein, remaining candidates are waiting for appointment.

6. In the above circumstances, the 1st Respondent issued G.O.Ms.No.39, Health and Family Welfare (C2) Department, dated 05.02.2007 amending the conditions for recruitment to the post of Laboratory Technician Grade I and Grade II in the Special Rules for the Tamilnadu Medical Subordinate Service, to the following effect:

"A Diploma in Medical Laboratory Technology Course (Two years) duration conducted by the Kings Institute of Preventive Medicine or from any other

Institution recognized by the Government of Tamil Nadu for this purpose.

Provided that, if the candidates with the above qualification are not available, then candidates with Certificate in Medical Laboratory Technology Course (one year) duration conducted by the Institutions recognized by the Government of Tamil Nadu for this purpose may be appointed."

7. The 1st Respondent has further issued a clarification vide letter dated 03.05.2007 that, DMLT candidates shall be given priority in appointment to the post of Medical Laboratory Technician Grade II. The Petitioner/Association made representations to the Respondents herein, explaining the plight and difficulties of the physically challenged candidates and requested to consider them with preference in appointment to the post of Medical Laboratory Technician Grade II. The 4th Respondent vide Letter in Na.Ka.No.10753/Oo.Ma/3-1/2007, dated 25.04.2008, has recommended that, there are more vacancies in the post of Medical Laboratory Technician Grade II and 178 candidates in the cadre of physically challenged have to be accommodated and that, among the vacancies in the post of Medical Laboratory Technician Grade III, only 12 physically challenged persons can be accommodated. The 4th Respondent has also recommended that, 178 physically challenged candidates may be given preference in appointment to Medical Laboratory Technician Grade III after consultation with the 1st, 2nd and 3rd Respondents.

8. The case of the Petitioner/Association is that, prior to the amendment vide G.O.Ms.39, dated 05.02.2007, candidates, who pursued one year CMLT course and candidates, who pursued two years DMLT course were treated as equal and called for interview on the basis of their seniority in the Employment Exchange. After consideration of their qualification and seniority, appointments were made to both categories. But, due to the said amendment, candidates who pursued Diploma course were given preference and candidates with CMLT qualification were totally neglected from the recruitment process to the post of Laboratory Technician Grade II and they are in long waiting list for consideration even for appointment to the post of Medical Laboratory Technician Grade III, also.

9. Learned counsel for the Petitioner pointed out that, physically challenged candidates of the Petitioner/Association, who were given stipendiary training by the Kings Institute are

waiting for more than seven years for appointment and that, Diploma candidates, who recently completed the course and who are much younger to the members of the Petitioner/Association, were given employment. She drew the attention of this Court to the 4th Respondent's communication dated 25.04.2008, wherein, it has been categorically stated by the Government that, physically challenged candidates numbering 178 have to be accommodated and that, 1200 vacancies are to be filled up.

10. During the course of arguments, learned counsel for the Petitioner further submitted that, as on date, there are less than 80 physically challenged candidates of the Petitioner/Association to be accommodated, but, she is not aware as to whether others have been accommodated or not, or as to whether they are interested in joining the employment that may be offered by the Government.

11. In reply, learned Special Government Pleader appearing for the Respondents submitted that, a detailed counter has been filed by the Respondents. As regards the method of recruitment, learned counsel drew the attention of this Court to paragraph 5 of the Counter Affidavit, which reads thus:

"5. With reference to the averments made in paragraph 5 of the Affidavit, it is submitted that, as per Rule 5(b) of the Special Rules applicable to the post of Laboratory Technician Grade III in Class I Category 4 of the Tamil Nadu Public Health Subordinate Service as amended in G.O.Ms.No.115, Health and Family Welfare (C2) Department, dated 03.04.2007, the method of recruitment and qualification prescribed for the post of Laboratory Technician Grade III, are as follows:

(a) Method of Recruitment:

Promotion from Field Assistants

(or)

Direct Recruitment

(b) Qualification for appointment by direct recruitment:

(i) Must have passed plus-two Examination:

(ii) Must possess Certificate in Medical

Laboratory Technology (one Year

duration Course) undergone in

any Institution recognized by the

Director of Medical Education; and

(iii) Must have a good physique, good vision and capacity to do out door work.

12. Learned Special Government Pleader appearing for the Respondents further drew the attention of this Court to paragraph 15 of the Counter Affidavit, which states that, in case of non-availability of candidates, who have passed two year DMLT course, candidates who have passed one year CMLT course will be recruited by the Government. Relevant paragraph of the Counter Affidavit is extracted hereunder:

"15. With reference to the averments in paragraphs 12 to 14 of the Affidavit, it is submitted that Certificate of Medical Laboratory Technology Course was given to the physically challenged candidates at free of cost along with stipend during their training. The trainees have given undertaking to the effect that they will not demand any job in the Government sector. The Government have not given any kind of assurance to the Certificate of Medical Laboratory Technology trainees that, all the candidates would be accommodated in Government Service on completion of Certificate of Medical Laboratory Technology training. Further, it is not possible to reserve all the available vacancies in the post of Laboratory Technician Grade III by giving preference/priority in selection and appointment to the post of Laboratory Technician Grade-III."

13. Pointing out that, physically challenged candidates of the Petitioner/Association, who have completed one year CMLT course with stipend, have given an undertaking that, they will not demand any job in the Government sector and that, the Government has also not given any assurance that, the trainees will be considered for recruitment in the Government sector, learned Special Government Pleader submitted that, it is not possible for the Government to reserve all the available vacancies in the post of Lab Technician Grade III, by giving priority in appointment. However, he submitted that, in the case on hand, one physically challenged candidate could be appointed for every 33 candidates, as per Communal Roster.

14. It is further submitted by the learned Special Government Pleader that, the qualified members of the Petitioner/Association, who are awaiting recruitment, could be considered for appointment only to the post of Laboratory Technician Grade-III, and not to the post of Laboratory Technician Grade-II, as contended by the Petitioner and that, the Government cannot give a go by to the guidelines and Rules

for selection, and proceed with the appointment of candidates. On the said grounds, he prayed for dismissal of this Writ Petition.

15. Heard the learned counsel on either side and perused the material documents available on record.

16. It is not in dispute that, the physically challenged members of the Petitioner/Association, who have pursued CMLT course for a period of one year, are less than 80 in number, as on date. By G.O.Ms.No.39, dated 05.02.2007, candidates who have undergone training in two-year DMLT Course, were given preference and candidates who pursued one year CMLT course were completely brushed aside. It has been stated that, candidates who have completed one year CMLT course would be considered, if candidates who have pursued two year DMLT course, are not available.

17. In the case on hand, members of the Petitioner/Association are physically challenged and certainly, they should be shown consideration in appointment and their candidature cannot be rejected on par with other candidates. However, it does not mean that, Rules have to be ignored and they should be accommodated in all positions, more so in Grade-II itself. In case, members of the Petitioner/Association, who have completed one year CMLT course are found to be suitable in terms of Rules and Regulations, nothing prevents the Government in considering their case. Merely because, the Government has not given any assurance to the trainees who have pursued one year CMLT course that, they will be considered for appointment in the Government sector and that, the trainees have also given an undertaking that, they will not demand any job in the Government Sector, it cannot be a ground to deprive appointment to them. Any person is entitled to compete to secure a job in the Government sector and it is the duty of the Government to account for social security, moreso employment.

18. In this regard, learned counsel for the Petitioner submitted that, the members of the Petitioner/Association may be directed to be considered for appointment to the post of Laboratory Technician Grade-III itself.

19. Taking note of the submissions of the learned counsel on either side, this Court is of the view that, the members of the Petitioner/ Association can be considered for appointment to the post of Laboratory Technician Grade-III, provided they fulfill all the guidelines prescribed and there is no need to violate Rules and Regulations while considering them for appointment. However, no prejudice is going to be caused if preference is given based on the communal Roster, as pointed out in paragraph 8 of the counter Affidavit.

20. In view of the foregoing, this Court directs the Respondents to consider the members of the Petitioner/Association for appointment to the post of Laboratory Technician Grade-III, in accordance with the Rules and Regulations, provided they fulfill all other requisite qualifications. While doing so, there shall be age relaxation, as the present Writ Petition is of the year 2008 and many candidates would have already crossed the age meant for recruitment.

The Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

(aeb/jas)

To:

1. The Secretary to Government,
State of Tamilnadu,
Health and Family Welfare Department,
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+1 CC to The Govt. Pleader sr 31500.

W.P.No.23291 of 2008

GP(CO)
SP(08/12/2020)