



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.08.2020**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.6684 of 2020

and

W.M.P(MD)No.6038 of 2020

P.Arumugasamy

...Petitioner

-Vs-

1.The Secretary to Government/
Health and Family Welfare Department,
Fort St. George,
Secretariat,
Chennai-09.

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

3.The Chairman,
Medical Service Recruitment Board,
7th Floor, DMS Complex,
359-Annasalai,
Teynampet,
Chennai-06.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent pertaining to its proceedings in Letter No.40883/C2/2019-3 dated 30.01.2020 and to quash the same and consequently direct the respondents to consider his candidature for appointment to the post of Dark Room Assistant by relaxing the rules within the stipulated time that may be fixed by this Court.

For Petitioner	: Mr.S.C.Herold Singh
For R1 & R2	: Mrs.S.Srimathy, Special Government Pleader
For R3	: Mr.T.S.Mohamed Mohaideen

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records on the file of the
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first respondent pertaining to its proceedings in Letter No.40883/C2/2019-3 dated 30.01.2020 and to quash the same and consequently direct the respondents to consider his candidature for appointment to the post of Dark Room Assistant by relaxing the rules within the stipulated time that may be fixed by this Court.

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2. Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner, Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents 1 & 2 and Mr.T.S.Mohamed Mohaideen, learned counsel appearing for the third respondent.

3. The petitioner, namely, Mr.P.Arumugasamy, having qualified with +2 and completed a certificate course of Radiological Assistant had applied to the post of Dark Room Assistant pursuant to the notification issued by the third respondent i.e., The Chairman, Medical Service Recruitment Board, even in an earlier occasion also.

4. To hold the post of Dark Room Assistant, what shall be the educational qualification, has been prescribed by the Government through G.O(Ms)No.304, Health and Family Welfare (C2) Department, dated 07.10.2015, and the following qualifications are essential according to the said G.O(Ms)No.304.

"By Direct Recruitment, or for special reasons, by recruitment by transfer from any other service:-

(i) A pass in Higher Secondary Course with Science subjects

(a) Physics, Chemistry, Botany and Zoology (or)

(b) Physics, Chemistry, Biology and any one of the related subjects (viz) Mathematics or Computer Science; and

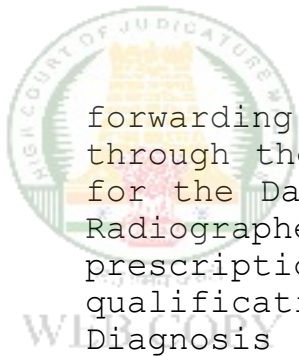
(ii) Certificate of having successfully completed the training course for Dark Room Assistant of any institution recognised by the State Government (or) Government of India.

Provided that if candidates with the certificate of Dark Room Assistant are not available, then candidates with Certificate of Radiological Assistant of any institution recognised by the State Government or Government of India shall be appointed.

Provided also that if candidate with the certificate of Radiological Assistant are also not available then candidates with Diploma in Radio Diagnosis or Diploma in Radio Therapy of any institution recognised by the State Government or Government of India shall be appointed."

5. Since the petitioner does not have any one of these qualifications, it seems, he has requested the respondents, especially, the first and second respondents to relax such qualifications and his request having been considered by the second respondent seems to have been forwarded to the first respondent, who

<https://hcservices.com/sdjc/hcservices/> the said request of the petitioner with the



forwarding letter of the second respondent, has rejected the plea through the impugned order, dated 30.01.2020 stating that the posts for the Dark Room Assistant is the feeder category for the post of Radiographer and for the said post of Radiographer, as per the prescription made by the Atomic Energy Regulatory Board (AERB), the qualification prescribed is +2 with Science and Diploma in Radio Diagnosis or Diploma in Radiotherapy. In that view of the prescription made for the post of radiographer, which is a promotional post, for which, the feeder category is Dark Room Assistant, and for the said posts, now the petitioner seeks for relaxation of qualification to participate in the competitive recruitment process, therefore, it has to be rejected, accordingly, the plea of the petitioner was rejected through the impugned order of the first respondent dated 30.01.2020. Challenging the same, the present writ petition has been filed.

6. Heard the learned counsel appearing for the petitioner, who would submit that, the reasons cited in the impugned order by the first respondent for rejecting the request of the petitioner for grant of relaxation is that, insofar as to hold the post of Dark Room Assistant, what is the qualification available with the petitioner is enough, however, the next promotional category is Radiographer, to hold the promotional post, as per the prescription by Atomic Energy Regulatory Board (AERB), the petitioner or any other incumbent must have the qualification of +2 with science and diploma in radio diagnosis or diploma in radiotherapy, without such qualifications if the petitioner is permitted to entry level post for Dark Room Assistant, he would not be entitled to get further promotion to the post of radiographer, therefore, that was the reason cited by the first respondent in the impugned order, hence the said reason cannot be sustained.

7. However, the learned Standing Counsel appearing for the third respondent and the learned Additional Government Pleader appearing for the first and second respondents would submit that, the education and other qualifications for the post of Dark Room Assistant has been prescribed under G.O(Ms)No.304, Health and Family Welfare (C2) Department, dated 07.10.2015 and according to the said prescription, the aforesaid qualifications are essential to hold the post of Dark Room Assistant and this prescription was made based on some intelligible differencia as the Dark Room Assistant is the feeder category for the post of radiographer. Therefore taking into account both the posts i.e., Dark Room Assistant as well as the radiographer, the said qualification have been prescribed through the said G.O(Ms)No.304, dated 07.10.2015. Therefore without fulfilling the said qualification, the petitioner cannot seek for any relaxation for getting appointment in the feeder category level post of Dark Room Assistant.

8. They would also submit that, in fact the said issue has been already decided by the learned Additional Government Pleader in some of the writ petitions, where a learned



Judge of this Court, having considered the said plea, was pleased to reject the same vide order dated 13.04.2017 made in W.P(MD)Nos.6809 and 6810 of 2017 in the matter of **J.Muthuvel Kumar and D.Jeya Ramakrishnan vs. The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Health and Family Welfare Department, Secretariat, Fort St. George, Chennai-600 009 and others.** By virtue of the said judgment, the issue has been given a quietus and so long as G.O(Ms)No.304, dated 07.10.2015 with amendment prescribing the qualification to hold the said post of Dark Room Assistant is invogue, such relaxation cannot be asked for, therefore, the plea raised by the petitioner is not countenanced, accordingly it was rightly rejected by the first respondent through the impugned order.

9. In addition, the learned counsel appearing for the respondents brought to the notice of this Court that, during the year 2017, among others, the very same petitioner Mr.P.Arumugasamy also filed a writ petition in W.P.(MD)No.1710 of 2017 unsuccessfully on the same issue, of course, at the time of deciding that writ petition along with some other writ petitions by the very same learned Judge, who passed the order on 20.04.2017 along with similar connected writ petitions found that the issue raised therein having become infructuous, those writ petitions were dismissed. Therefore, the very same petitioner has unsuccessfully filed a writ petition on the very same issue earlier before this Court, however unmindful of the same, once again he has made an attempt now.

10. However, the learned counsel appearing for the petitioner in this regard would submit that, now the cause of action arises for the petitioner is different, where, the petitioner has made a request for relaxation before the second respondent, which was forwarded to the first respondent who in turn had rejected such request, in view of such rejection order made through the impugned order, it become necessitated for the petitioner to file this writ petition, therefore, the petitioner cannot be precluded from filing this writ petition, as it is not for the same cause of action, for which he has chosen to file the first writ petition.

11. Be that as it may, now the issue is, whether the petitioner is entitled to seek any relaxation as he has claimed, which was rejected by the first respondent through the impugned order.

12. As has been rightly pointed out by the learned counsel appearing for the respondents, the qualification prescribed to hold the post of Dark Room Assistant is in G.O(Ms)No.304, dated 07.10.2015 and that has not been challenged and the import of the said Government Order is still in force. When that being the position, as a matter of right, the job seeker cannot seek for any relaxation of the basic educational qualifications prescribed by the employer or authorities concerned since it is a settled proposition of law.

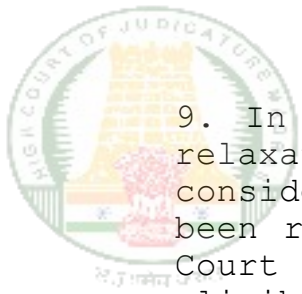


13. More over, by giving reasons, the learned Judge vide his order dated 13.04.2017 in the Judgment cited above, has considered the very same issue and rejected the same. In order to appreciate the said order of the learned Judge, the following part of the order are usefully extracted hereunder:-

“6. The learned counsel for the respondents 1 to 3 produced Government Order vide G.O.Ms.No.304 Health and Family Welfare (C2) Department, dated 07.10.2015, whereby an amendment was introduced to the Special Rules for Tamil Nadu Medical Subordinate Service (Section 21 in Volume III of the Tamil Nadu Services Manual, 1970). By these amendment certificate for having successfully completed the training course of Dark Room Assistant of any institution recognized by the State Government or Central Government has been made essential. However, the candidates with the certificate of Radiological Assistant of any recognised institution will also be considered if candidates with the certificate of Dark Rook Assistant are not available. By that amendment, the educational qualification was also amended and a pass in Higher Secondary course with Science subjects is the required qualification. It is stated in the Government Order that the amendment is in tune with the qualification prescribed for the post of Radiographer by the Atomic Energy Regulatory Board, Mumbai.

7. Based on the representation of the petitioners to relax the recruitment rules, the learned counsel for the petitioners submits that the petitioners' request for relaxation can be considered by the respondents so that their names will be considered for selection.

8. Having regard to the contents of the Government Order vide G.O.Ms.No.304 Health and Family Welfare (C2) Department, dated 07.10.2015 and other provisions of the Special rules for Tamil Nadu Medical Subordinate Service Rules, 1970, this court is convinced that a pass in Higher Secondary course with Science subjects, namely, a) Physics, Chemistry, Botany and Zoology or b) Physics, Chemistry, Biology and any one of the related subjects (Viz.,) Maths or Computer Science is essentially required for the post of Dark Room Assistant and hence, the said educational qualification cannot be dispensed with and the respondents cannot be directed to relax the recruitment rules. This court is also satisfied that the amendment of the rules by G.O.Ms.No.304 Health and Family Welfare (C2) Department, dated 07.10.2015, is in tune with the qualification prescribed by Atomic Energy Regulatory Board, Mumbai, for the post of Rediographer.



9. In such circumstances, this Court cannot direct either relaxation or issue direction to the respondents to consider the representation of the petitioners. It has been repeatedly held by the Hon'ble Supreme Court and this Court in number of cases, that the prescription of the eligibility criteria is within the exclusive domain of the recruitment agency or the employer. The judicial review in these cases is limited to circumstances wherein the eligibility criteria has been prescribed in a capricious manner. In the above circumstances, this Court find no merits in the Writ Petitions. Hence, the Writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

14. I am in complete agreement with the said view taken by the learned Judge in the said order dated 13.04.2017 as the prescription made by way of basic educational qualification in G.O(Ms)No.304, dated 07.10.2015 to hold the post of Dark Room Assistant is based on intelligible differencia. Since the authorities have considered not only the post of Dark Room Assistant but also the next promotional post of Radiographer, for which, the qualification has already been prescribed under the guidelines of AERB, therefore, there cannot be an order to prescribe the educational qualification as prayed by an individual like the petitioner to suit his convenience. Therefore, this Court has no hesitation to hold that absolutely there is no infirmity in the impugned order passed by the first respondent, therefore, the petitioner cannot make any successful challenge of the same.

15. In the result, the writ petition deserves to be rejected. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1.The Secretary to Government/
Health and Family Welfare Department,
Fort St. George,
Secretariat,
Chennai-09.

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

+1 CC to Mr.T.S. MOHAMED MOHIDHEEN, Advocate (SR-14803[F] dated
24/08/2020)

+1 CC to SPL GP (SR-14857[F] dated 25/08/2020)

Order made in
W.P. (MD)No.6684 of 2020
21.08.2020

VB (29.09.2020) 7P 5C