



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD)No.10196 of 2020

and

W.M.P. (MD) Nos.9068 and 9069 of 2020

Dr.P.Allwin Christuraj

... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Department of Health and Family Welfare,
Fort St. George, Chennai - 600 009.

2.The Director,
Indian Medicine and Homeopathy,
Chennai - 106.

3.The Member Secretary,
Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai - 106.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records relating to impugned Advertisement made online No.DIPR/678/Display/2020 for the post of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy) as mentioned in Serial No.5 of notification No.09/MRB/2020 dated 14.08.2020 issued by the 3rd respondent and quash the same as illegal.

For Petitioner

:Mr.V.M.Balamohan Thambi

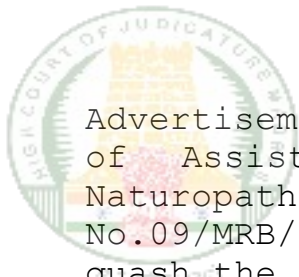
For Respondents

:Mrs.J.Padmavathi Devi,
Spl.G.P. For RR1 and 2.

Mr.T.S.Mohammed Mohideen,
standing counsel for R3

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorari, call for the records relating to impugned



Advertisement made in online No.DIPR/678/Display/2020 for the post of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy) as mentioned in Serial No.5 of notification No.09/MRB/2020 dated 14.08.2020 issued by the 3rd respondent and quash the same.

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2.The case of the petitioner is that, the petitioner is a qualified person to be considered for appointment to the post of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy). In order to fill up 73 vacancies of that nature, the respondent recruitment board had undertaken a recruitment drive in the year 2018 itself, where the petitioner also participated in the recruitment. The petitioner since being a differently abled person, under that quota, he made an application to the respondent board for consideration of his candidature for selection to the said post.

3.According to the petitioner, since 4% reservation are to be made for differently abled persons, out of total 73 posts, 3 posts were earmarked and in respect of that category, only 4 persons became eligible and in that line of merit, the petitioner admittedly stood as 4th person. Insofar as the first three persons are concerned, first person, since has produced all certificates, was selected and filled up in the first place. Insofar as the 2nd and third persons, who are ahead of the petitioner, are concerned, since they could not produce necessary certificates, their selection have been withheld. Subsequently also, according to the petitioner, a time frame was given by the recruitment board for those two persons to give the certificates within a time frame, within which, if they did not give the certificates, their selection would be cancelled.

4.In that circumstances, the petitioner since made a request to consider his candidature as a fourth one as the second and third candidates could not produce the certificate in time, the same seems to have not been considered, hence he already moved this Court and filed a writ petition, which is stated to be pending.

5.When that being the position, now, the impugned notification has been issued by the respondents by notification dated 14.08.2020, where the very same post of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy) with three vacancies have been brought forward to be filled up by way of selection.

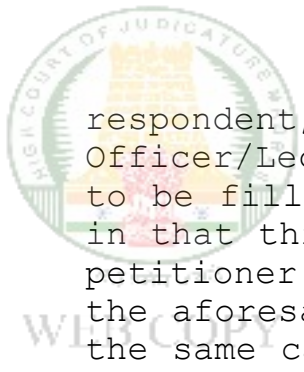
6. In this context, it is the case of the petitioner that, out of three vacancies earmarked in the impugned notification in the cadre of Assistant Medical Officer/Lecturer Grade II (Yoga and



Naturopathy), two are the vacancies, which could not be filled up for want of qualified candidates with certificates. However, since the petitioner was one of the eligible candidate with all certificates, one out of two remains unfilled for want of certificates from the respective candidates could have been filled up by accommodating the petitioner, for which, the petitioner having been making representations. Without considering the same, now since the recruitment board included two posts also along with one more by making total three posts in the present recruitment notification, the same is bad in law. Therefore, on that ground, the notification dated 14.08.2020 insofar as calling the applications to fill up three posts of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy) is under challenge.

7.The learned counsel appearing for the petitioner would submit that, two candidates had been given some time i.e. 30 days time, within which, they should produce the certificates, failing which, it would be presumed that, the candidates were not able to produce required documents, accordingly, their provisional selection will be cancelled without any further notice. Therefore, within the 30 days time, if the said candidates could not produce the certificates, their selection should have been cancelled and if their selection has been cancelled, certainly, the next man in the queue is the petitioner and he could have been accommodated, for which, he has been filed writ petition also. However, without accommodating the petitioner, who is eligible to hold the post, as he was the next man in the queue in the cadre of four posts reserved for differently abled persons and such an action was not taken and wrongly since they included the said two posts in the present notification, the said notification insofar as including the said two posts of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy) to be filled up is bad and therefore, the same is liable to be interfered with, he contended.

8.However, the learned standing counsel appearing for the third respondent, who is the recruitment agency, on instructions, would submit that, two candidates as rightly pointed out by the learned counsel appearing for the petitioner in Sl.Nos.37 and 71 in the total 73 candidates in the 2018 selection are one Pandiyaraja and A.Nanthini. Those two persons, though admittedly could not produce necessary certificates, subsequently, they brought the necessary certificates to the satisfaction of the third respondent recruitment board and after having verified their certificates, their selection has been confirmed and they were selected and appointed by the orders of the respondent dated 02.06.2020. After having appointed the said two individuals, who are admittedly stood ahead of the petitioner, now the present notification dated 14.08.2020 has been issued by the third



respondent, where three posts of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy) are also sought to be filled up and all the three vacancies are new vacancies and in that three, earlier two have not been included. Therefore, the petitioner under misconception has filed this writ petition with the aforesaid ground as projected by the petitioner and therefore, the same cannot be countenanced, accordingly, the learned standing counsel seeks this Court to reject the writ petition.

9.I have also heard the learned Special Government Pleader appearing for the respondents 1 and 2.

10.The only controversy is whether the total three vacancies now given in Sl.No.5 through the impugned notification dated 14.08.2020 issued by the third respondent consist of the two earlier vacancies of the year 2018, for which selection has been made under differently abled persons quota and for want of production of necessary certificates, those posts have not been filled up and kept vacant till the issuance of the next notification.

11.The learned counsel appearing for the petitioner submitted that, within the 30 days time, since they could not produce the certificates, certainly, the posts neither have been filled up and those vacant posts have now been included in the total three vacancies. Therefore, without considering the candidature of the petitioner, those two vacancies should not have been included in the present notification.

12.However, the learned standing counsel appearing for the 3rd respondent as referred to above on instructions has categorically stated that, appointment orders have been given to those two persons viz., Pandiayaraja and Nanthini, who stood in Sl.Nos.37 and 71 and ahead of the petitioner, who was in the 4th place in the differently abled persons quota under the recruitment of the year 2018 for the post of Assistant Medical Officer/Lecturer Grade II (Yoga and Naturopathy).

13.When that being the position, those two posts have been filled up, the question of brought forward of the two posts along with the current vacancy and makes it total three as claimed by the petitioner is totally wrong and therefore, the learned standing counsel categorically stated that, the three vacancies now earmarked in the present notification in the said category at Sl.No.4 are fresh vacancies and that three vacancies are in no way connected with the earlier vacancies claimed to have been unfilled, by the petitioner.

14.In view of the said facts, this Court has no hesitation



to hold that the petitioner is under misconception as if the earlier two posts in 2018 recruitment since have not been filled up, those vacant posts have now been included in the present notification without considering the candidature of the petitioner. Factually, it is not so. If at all the petitioner has got any grievance with regard to the selection and appointment to the said two individuals, who have been given selection and appointment by order dated 02.06.2020, after verifying the certificates, on the ground that, their certificates could not have been produced in time and the belated production of certificates could not have been accepted by the respondents, it is open to the petitioner to agitate the issue in a separate proceedings in the manner known to law. Therefore, on that ground, the present challenge made in this writ petition to quash the notification would not be sustained in the eye of law.

15. In view of the above, this writ petition is liable to be dismissed and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

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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.

To

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Chennai - 106.

+1 CC to SGP (SR-15309[F] dated 28/08/2020)

+1 CC to Mr.T.S. MOHAMED MOHIDHEEN, Advocate (SR-15315[F] dated 28/08/2020)

+1 CC to Mr.V.M. BALA MOHAN THAMPI, Advocate (SR-15326[F] dated 31/08/2020)

W.P. (MD)No.10196 of 2020
27.08.2020

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