



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.2259 of 2014

and

M.P(MD) .Nos.1 and 2 of 2014

WEB COPY

R.Theodor Samraj

... Petitioner

-Vs-

1.The State of Tamil Nadu

Represented by it's Secretary to Government
Department of Health and Family Welfare
St.George Fort
Chennai -9

2.The Chairman

Medical Services Recruitment Board - MRB
7th Floor, DMS Office Building
No.359, Anna Salai
Teynampet
Chennai - 6

3.The Assistant Director

Professional and Executive Employment Office
Santhome, Chennai - 4

4.The Commissioner

The State Rehabilitation of disabled
15/1, Modern School Road
Chennai - 6

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, quashing the Notification No.02/MRB/E4/2014, dated 31.01.2014 issued by the 2nd respondent to the extent of non grant of reservation for physically handicapped persons and consequently direct the 2nd respondent to consider the petitioner for appointment to the post of physiotherapist, within the time that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar

For M/s.Ajmal Associates

For R1 & R3 : Mr.S.Dhayalan

Government Advocate

For R2 : T.S.Mohammed Mohideen



ORDER

This Writ petition has been filed to quash the Notification No.02/MRB/E4/2014, dated 31.01.2014 issued by the 2nd respondent to the extent of non grant of reservation for physically handicapped persons and consequently direct the 2nd respondent to consider the petitioner for appointment to the post of physiotherapist.

2.The petitioner is a physically challenged person (Ortho). He has completed Bachelor of Physiotherapy during the year 1997 at M.G.R.University and further completed the mandatory six months internship on 20.01.1998 and he was certified as a registered physiotherapist. The petitioner himself registered in the employment office, Santhome, Chennai on 11.02.1998 under Physically Handicapped preference and he was allotted with registration No.MDP 1998 M 00001063. In this circumstance, the second respondent by his proceedings, dated 26.03.2012, selected 18 candidates for the post of Physiotherapist for the year 2012. Though the petitioner name was called for under Physically challenged person (Ortho) in 1:5 ratio, none of the candidates were selected under physically challenged category and the same was admitted by the second respondent in his information given under RTI Act on 03.04.2014. Again, the second respondent called for recruitment to the post of 34 Physiotherapist for the year 2014, in which, the second respondent is supposed to be reserved two posts for physically challenged persons ie. Serial Nos.1 and 34. However, no reservation is provided for the physically handicapped person. Hence, the petitioner has come up with the present Writ petition.

3.In support of his contention, the learned counsel for the petitioner relied on the judgment reported in **2009 WLR 1065 in W.P.No.3858 of 2008 (R.Parthiban Vs. The Secretary to Government, State of Tamil Nadu Department of Education and another)**, in which, this Court has stated how the physically challenged persons have to be appointed in the process of recruitment. Hence, he prayed for allowing this Writ petition.

4. The contention of the respondents is that the petitioner was not sponsored through Employment Exchange. The second respondent filed a counter affidavit and stated that there are 18 candidates were selected by notification dated 24.03.2012 and 34 candidates were selected as per notification dated 21.02.2014. As such, for these 52 candidates, one disabled candidate had already been selected for the post of Physiotherapist. In the next selection process, one more disabled person has to be selected. He would further submit that the petitioner's name would be considered in the next vacancy. As per G.O.No.99, Personnel and Administrative Reforms Department, dated 26.02.1988, the order of preference for filling up of the differently abled category is followed and a candidate (Deaf category) has been selected as per the norms. He further submitted that in the next vacancy, the petitioner's name would be considered.



The learned Government Advocate would state that 34th place is vacant.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 & 3 and the learned counsel appearing for the second respondent.

6. Admittedly, the petitioner has been sponsored through Employment Exchange. Though the petitioner has possessed the certificate of disabled person, instead of sponsoring him in the category of disabled person, he has come under General category. Admittedly, in 52 candidates, only one person was appointed under the category of disabled person. The Judgment reported in **2009 WLR 1065 in Page No.1069**, this Court has held as follows:

"15.EFFECTING RESERVATION - MAIN TENANCY OF ROSTERS:

(a) All establishments shall maintain separate 100 point reservation roster registers in the format given in Annexure II for determining/effecting reservation for the disabled - one each for Group A posts filled by direct recruitment, Group B posts filled by direct recruitment. Group C posts filled by direct recruitment, Group C posts filled by direct promotion, Group D posts filled by direct recruitment and Group D posts filled by direct recruitment and Group D posts filled by promotion.

(b) Each register shall have cycles of 100 points and each cycle of 100 points shall be divided into three blocks, comprising the following points:

Ist Block - Point No.1 to Point No.33

2nd Block - Point No.34 to Point No.66

3rd Block - Point No.67 to Point No.100

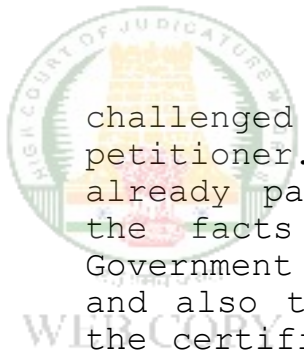
(c) Points 1, 34 and 67 of the roster shall be ear-marked reserved for persons with disabilities - one point for each of the three categories of disabilities. The head of the establishment shall decide the categories of disabilities for which the point 1, 34 and 67 will be reserved keeping in view all relevant facts.

(d)...."

10.Guidelines also provide that if the nature of vacancies in an establishment in such that a person of a specific category of disability cannot be employed, the vacancies may be inter changed among the three categories"

7. In the above Judgment, it is clearly stated how the disabled person has to be appointed in the process of recruitment.

<https://hccservicescourts.gov.in/hccmcs/> stated fact that the petitioner is the physically



challenged person and the respondents ought to have appointed the petitioner. It is also an admitted fact that the petitioner has already participated in the certificate verification. Considering the facts and circumstances of the case and as the learned Government Advocate would submit that the 34th place is still vacant and also the fact that the petitioner has already participated in the certificate verification under the general category, this Court is inclined to allow this Writ petition. Accordingly, the respondents are directed to appoint the petitioner in the 34th vacancy, within a period of 12 weeks from the date of receipt of a copy of this order. Since the petitioner has challenged the notification and the persons who had participated in the notification have already been appointed, there is no necessity to interfere with the notification.

8. With the above direction, this Writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa

To

1. The Secretary to Government
State of Tamil Nadu
Department of Health and Family Welfare
St. George Fort
Chennai -9
2. The Chairman
Medical Services Recruitment Board - MRB
7th Floor, DMS Office Building
No.359, Anna Salai
Teynampet
Chennai - 6
3. The Assistant Director
Professional and Executive Employment Office
Santhome, Chennai - 4



4.The Commissioner
The State Rehabilitation of disabled
15/1, Modern School Road
Chennai - 6

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate (SR-206[F] dated
03/01/2020)

+1 CC to M/s.SPL.GP (SR-285[F] dated 06/01/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-137[F] dated 03/01/2020
)

W.P. (MD) No.2259 of 2014

and

M.P (MD) .Nos.1 and 2 of 2014

03.01.2020

KK/SAR/28.01.2020/5P-8C/