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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.662 of 2015
and
M.P.No.1 of 2015

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Fort. St. George, Chennai - 600 009.
- 2.The Director,
Tamil Nadu Medical Service Recruitment Board,
7th Floor, DMS Building, 359 Anna Salai,
Teynampet,
Chennai - 600 006.

Now as
The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building,
No.359, Anna Salai,
Teynampet,
Chennai - 600 006.

..Appellants

Vs.

E.Manimegalai

..Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 18.07.2014 made in W.P.No.25968 of 2012.

Prayer in W.P.No.25968 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the second respondent to accept the recognition of the Diploma in Medical Laboratory Technology course completed by the petitioner, thereby consider the petitioner as a candidate for the post of Lab Technician Grade II.



For Appellants : Mr.T.N.C.Kaushik
Government Counsel
For Respondent : Mr.N.Surya Senthil

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JUDGMENT

(Judgment of the Court was made by K.KALYANASUNDARAM, J)

This appeal arises out of the order passed in W.P.No.25968 of 2012 dated 18.07.2014, wherein, the learned Single Judge allowed the writ petition and directed the appellants to consider the case of the writ petitioner in the future vacancy.

2.The appellants are the respondents in the writ petition and the writ petition was filed by the respondent herein for issuance of a Writ of Mandamus directing the second respondent therein to accept the recognition of the Diploma in Medical Laboratory Technology Course and consider her as a candidate for the post of Lab Technician Grade-II.

3.The case of the writ petitioner is that she belongs to Backward Community and she obtained B.Sc., degree from the University of Madras in the year 1995 and holding a Diploma in Medical Laboratory Technology from the College of Medical Technology, Voluntary Health Services, Adyar, Madras, in the year 1987. The Tamil Nadu Medical Services Recruitment Board had issued an advertisement for recruitment to the post of Lab Technician Grade-II. Her name was forwarded along with other names to the Board by the District Employment Office (Technical Personnel), Chennai and on 16.08.2012, she received a call letter for certificate verification to be held on 25.09.2012. The said call letter states that a Diploma in Medical Laboratory Technician Course (DMLT-2 years) conducted by the Director, King Institute of Preventive Medicine, Chennai - 32, under certificate issued by the DME, Chennai -10, alone shall be eligible for appearing for certificate verification. Immediately, she made a representation dated 18.08.2012 to the second respondent to consider her candidature since she has satisfied all the eligibility criteria. But there was no response, hence, she filed the writ petition.

4.The further case of the petitioner is that by G.O.Ms.No.2640, Health Education and Public Health Department, dated 29.11.1962, the Government has approved the Lab Technician's Course conducted by the Voluntary Health Services, Adyar, but her case was not considered on earlier two occasions in the years 1990 and 2002.



5. In the counter filed by the respondent, it was stated that in G.O.Ms.No.2640, Education and Public Health Department, dated 29.11.1962, it is clearly mentioned that the candidates who have successfully undergone the Lab Technician Course may be appointed as Laboratory Assistants in the Medical Department or as Bacteriology Assistants in the King Institute, Guindy. The post of Laboratory Assistant is not equivalent to Laboratory Technician Grade-II Post. In G.O.Ms.No.39, Health and Family Welfare (C2) Department, dated 05.02.2007, eligibility for the post of Lab Technician Grade-II has been clearly stated and as per the said G.O., a Diploma in Medical laboratory Technology Course (two years duration) conducted by the King Institute of Preventive Medicine or from any other Institution recognised by the Government of Tamil Nadu for this purpose. Provided that, if candidates with the above qualification are not available then candidates with Certificate in Medical Laboratory Technology (one year) duration conducted by the institutions recognised by the Government of Tamil Nadu for this purpose may be appointed.

6. The sum and substance in the counter of the respondent is that the writ petitioner has not satisfied the eligibility criteria and that apart, as more number of Diploma in Medical Laboratory Technology candidates are readily available, Certificate in Medical Laboratory Technology (one year) candidates cannot be considered to be posted in those vacancies.

7. The learned Single Judge having found that the writ petitioner has successfully completed one year Diploma Course offered by the Voluntary Health Services, Adyar and the institution was recognised by the Government in G.O.Ms.No.2640, Education and Public Health Department, dated 29.11.1962, issued a direction to consider the case of the petitioner in the next vacancy that may arise in future. Assailing the order, the present writ petition has been filed.

8. The learned Government Advocate appearing for the appellants Mr.T.N.C.Kaushik would urge that as per the Adhoc Rules and G.O.Ms.No.39, Health and Family Welfare (C2) Department, dated 05.02.2007, the Tamil Nadu Medical Service Recruitment Board (MRB) has to first consider the candidate, who has Diploma in Medical Laboratory Technician Course (DMLT-2 years) conducted by the Director, King Institute of Preventive Medicine, Chennai. Furthermore, the certificate shall be issued by the Director of Medical Education, Chennai, but the Diploma Certificate of the writ petitioner has not been issued by the competent authority i.e., the Director of Medical Education (DME). Since more number of candidates in DMLT were available, the case of the writ petitioner was not considered. The learned Single Judge without noticing the same, has allowed the writ petition.



9. Per contra, the learned counsel for the respondent made submission justifying the order of the learned Single Judge.

10. We have carefully perused the rival submissions and perused the materials available on record.

11. In the instant case, it is an admitted fact that the writ petitioner has obtained a Diploma in Medical Laboratory Technology (one year). Perusal of G.O.Ms.No.39, Health and Family Welfare (C2) Department, dated 05.02.2007 would reveal that the candidates who possess two years duration course in Diploma in Medical Laboratory Technician (DMLT - 2 years) conducted by the King Institute of Preventive Medicine, Chennai or any other institution recognised by the Government of Tamil Nadu will be considered at the first instance and if those candidates are not available, the candidates who are holding CMLT (one year), will be considered for appointment of Lab Technician Grade-II. It is also relevant to note that while granting approval to the Voluntary Health Services, Adyar to conduct Laboratory Technician course, it is clearly stated that the candidate, who has successfully undergone the course, may be appointed as Lab. Assistant in the Medical Department and as Bacteriology Assistant in the King Institute, Guindy or any other suitable post provided by otherwise satisfied the Rules.

12. The specific case of the appellants is that the candidates with DMLT were readily available for the appointment and hence, the case of the writ petitioner was not considered. It is not the case of the writ petitioner that one year qualified CMLT holders were considered for appointment and her case was rejected arbitrarily. It must be mentioned that the eligibility criteria fixed by the Government in G.O.Ms.No.39, Health and Family Welfare (C2) Department, dated 05.02.2007, was not challenged by the writ petitioner. Therefore, we are of the considered opinion that the order passed in the writ petition cannot be sustained and hence, it is liable to be set aside.

13. Accordingly, this writ appeal is allowed and the order passed in the writ petition No.25968 of 2012 dated 18.07.2014 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

skn



To

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

2.The Director,
Tamil Nadu Medical Service Recruitment Board,
7th Floor, DMS Building, 359 Anna Salai,
Teynampet, Chennai - 600 006.

+1cc to the Government Pleader SR. No.56690

W.A.No.662 of 2015
and
M.P.No.1 of 2015

SMI (CO)
PR (07/12/2021)