



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2021

PRONOUNCED ON : 29.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.9305 of 2018

and

WMP.No.11113 of 2018

Dr.P.Balamurugan

... Petitioner

Vs.

1.The Principal Secretary to Government,
Department of Health and Family Welfare,
Fort St. George,
Secretariat,
Chennai-600 009.

2.The Chairman,
The Medical Services Recruitment Board,
7th Floor, DMS Buildings,
No.359, Anna Salai,
Teynampet,
Chennai-600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent passed in Ref. No.1520/MRB/S2/2015 dated 26.03.2018 and to quash the same and consequently, direct the respondents to appoint the petitioner to the post of Assistant Medical Officer (Siddha) in time bound manner.

For Petitioner : Mr.A.Mohamed Ismail

For Respondent-1:Mr.K.Tippu Sulthan, G.A.

For Respondent-2:Mr.M.Loganathan

O R D E R

The present Writ Petition is heard through Video Conferencing on 28.07.2021.

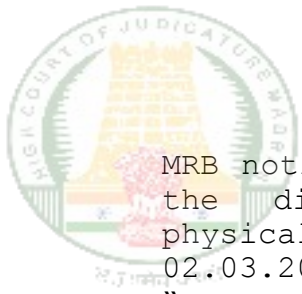


2. Pursuant to a recruitment notification dated 02.08.2017, called for by the Medical Services Recruitment Board (MRB) for the post of Assistant Medical Officer (Siddha) [hereinafter referred to as 'AMO (S)'], the petitioner herein had applied for the post under physically disabled quota. The petitioner's candidature was rejected on the ground that the disability certificate dated 06.12.2017, issued by the Medical Board, Government Thiruvannamalai Medical College Hospital, Thiruvannamalai, certifying the disability in the "upper limbs-left" of the petitioner, is contrary to G.O.(Ms) No.13, Welfare of Differently Abled Persons (DAP.3.2) Department, dated 02.03.2016, as well as, para 4(h) of the MRB notification, dated 02.08.2017. The petitioner is aggrieved against his non selection.

3. The G.O.(Ms) No.13, dated 02.03.2016 provides for 3% reservation for the disabled persons and the categories of posts identified as most suitable for different categories of the differently abled persons for 3% reservation, is set out in the annexure to the Government Order, which prescribes the disability of "One Leg" (OL) for the post of AMO (S). The recruitment notification also prescribes the reservation for the AMO (S) posts as "One Leg (OL) [40% to 70%]". The specimen format for the medical certificate to be produced by Orthopaedically physically disabled person has been prescribed in Annexure No.7 of the recruitment notification, which mandates production of the certificate in this prescribed format for persons with "40% to 70% disability" in "one leg-lower limbs" alone. Annexure- 7A carries a column for the Medical Board to certify the extent of permanent disability, wherein a reference has been made to the effect that the "upper limbs" must be functional and normal.

4. The petitioner herein had originally obtained a disability certificate in Annexures-7A and 7B issued by the Medical Board, Government Thiruvannamalai Medical College Hospital, Thiruvannamalai, dated 06.12.2017, which certified that he was suitable for the post of AMO (S). Since the certificate had also mentioned that the petitioner had disability in "upper limbs", he was referred for re-examination. Consequently, by a letter dated 01.02.2018, the Board had certified that the petitioner was not suitable for appointment as AMO (S). In continuation of this certificate, the second respondent herein had issued the impugned order dated 26.03.2018, declaring the petitioner as not suitable for appointment.

5. The impugned order of rejection places reliance on G.O. (Ms) No.13, dated 02.03.2016, as well as paragraph (h) of the



MRB notification, dated 02.08.2017 as the essential criteria for the disability of a candidate to claim reservation under the physically disabled category. However, G.O.(Ms) No.13 dated 02.03.2016, does not make any reference to the disability of "upper limbs" as a disqualification for appointment to the post of AMO (S). Likewise, the notification, dated 02.08.2017 issued by the MRB also fixes the eligibility of disabled person, to claim reservation, at 40% to 70% in "One Leg (OL)" alone. Neither G.O.(Ms) No.13, dated 02.03.2016 nor the MRB notification dated 02.08.2017, disqualifies the disability of the "upper limbs" nor has any percentage of disability of the "upper limbs" fixed as a disqualification for the selection.

6. The petitioner herein has been certified to have disability in one leg and his disability has been determined at 55%. This disability is not in dispute. It is also not in dispute that if the petitioner is extended the reservation under physically disabled quota, he would be entitled for selection. The only reason assigned by the second respondent is that the petitioner suffers from disability of the "upper limbs" also and therefore was regarded as disqualified for consideration under the relevant reservation. Though the impugned order makes a reference to G.O.(Ms) No.13 dated 02.03.2016 and the conditions of the notification, dated 02.08.2017 issued by MRB, factually, both the Government Order, as well as, the notification does not make any reference to the disability of the "upper limbs" as a disqualification.

7. The only impediment that seems to be found on record as a disqualification is the specimen format of the medical certificate specified in Annexure-7A of the notification. When the Government Order, as well as, the notification enables a candidate to claim reservation for the recruitment to the post of AMO (S), if he/she suffers disability of "one leg (40% to 70%)", the reliance on the specimen format, which is not ratified by any Regulation, cannot be sustained. Above all, the very same Medical Board that had certified that the petitioner was not suitable for the post, had earlier certified the petitioner on 06.12.2017, as suitable for the post. Thus, the impugned order, which also places reliance on the G.O.(Ms) No.13, dated 02.03.2016 and the conditions of the notification, dated 02.08.2017, cannot be sustained.

8. In the result, the impugned order of the second respondent dated 26.03.2018, is quashed. Consequently, the second respondent herein shall forthwith declare the petitioner's candidature as duly qualified to the post of Assistant Medical Officer (Siddha) under the physically disabled category and include his candidature in the Selection List, within a period of two weeks from the date of receipt of a copy



of this order. Thereafter, the first respondent herein shall issue appropriate appointment orders, appointing the petitioner as AMO (S), atleast, within a period of four weeks from then. The Writ Petition stands allowed accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP
To

1.The Principal Secretary to Government,
Department of Health and Family Welfare,
Fort St. George,
Secretariat,
Chennai-600 009.

2.The Chairman,
The Medical Services Recruitment Board,
7th Floor, DMS Buildings,
No.359, Anna Salai,
Teynampet,
Chennai-600 006.

+lcc to M/s.C.Sivakumar, Advocate Sr.50791

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and
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srg 20/10/2021