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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2021

Pronounced on : 29.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. Nos.29295 and 29296 of 2016
and WMP.Nos.25322 to 25325 of 2016

G.Archana ... Petitioner in W.P.29295/2016
S.Thamilselvi ... Petitioner in W.P.29296/2016

-vs-

- 1.The Directorate of Medical Education,
No.162, Poonamallee High Road,
New Bupathy Nagar, Chetpet,
Chennai-600 031.
- 2.The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai-600 006.
3. Rehabilitation Council of India,
B.22 Qutab Institutional Area,
New Delhi-110 016.
4. The Tamil Nadu Public Service Commission
rep. by its Secretary,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai-600 003. ... Respondents

Common Prayer: Petitions filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his Proceedings in Ref.No.547/MRB/E3/2016 and Ref.No.557/MRB/E3/2016 respectively dated 09.08.2016 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the 2nd respondent to appoint the petitioner in the post of Audiometrician pursuant to Notification No.3/MRB/2016 issued by the 2nd respondent dated 24.01.2016.



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For Petitioners
in both WPs

: Mrs.N.Kavitha Rameshwar

For Respondents
in both WPs

: Mr.Karthigai Balan,
Government Advocate for R1

Mr.M.Loganathan for R2

Mr.Karthik Raja for R4

COMMON ORDER

Since the issue involved herein is one and the same, both the writ petitions were heard together and are being disposed of by this common order.

2. Challenging the orders of the 2nd respondent, namely, the Chairman, Medical Services Recruitment Board, Chennai, in his respective Proceedings in Ref Nos.547/MRB/E3/2016 and 557/MRB/E3/2016 dated 09.08.2016 and to quash the same as illegal, arbitrary and consequently, for directing the 2nd respondent to appoint the petitioners in the post of Audiometrician pursuant to notification No.3/MRB/2016 issued by the 2nd respondent dated 24.01.2016, the present Writ Petitions have been filed.

3.The relevant facts leading to the filing of the present writ petitions are as follows:

3.1 The petitioners after obtaining their Under Graduate Degree, have completed the Diploma in Hearing, Language and Speech (DHLS) in the respective institutions at Pondicherry viz., Jawaharlal Institute of Post Graduate Medical Education and Research (JIPMER) and Vinayaka Missions College of Paramedical Sciences. The said institutions are affiliated to All India Institutes of Speech and Hearing, Mysore and Indira Gandhi National Open University & Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai, respectively as approved by the Rehabilitation Council of India and the Ministry of Social Justice Empowerment, Government of India, New Delhi. The syllabus of the Certificate Course in Hearing, Language and Speech (DHLS) includes Audiometry as a subject and at that time, there was no course in the name of Audiometry exclusively.

3.2 While so, the 2nd respondent issued a notification dated 24.01.2016 inviting applications for recruitment to the post of Audiometrician in the scale of pay of Rs.5200-20200 + G.P.2400. Pursuant to the same, the petitioners applied for the said post through online mode and in accordance with the



procedures prescribed thereunder. Subsequently, they were called for certificate verification by the 2nd respondent by their notification dated 20.02.2016, in which, the name of the petitioner in W.P.No.29295/2016 found place at sl.No.5 and the petitioner in W.P.No.29296/2016 at sl.No.17. Accordingly, the petitioners appeared for certificate verification. On verification of the certificates of DHLS of the petitioners, the officials of the second respondent noted them as 'ineligible' for the post of Audiometrician. Immediately, the petitioners made an individual representation dated 25.02.2016 to the 2nd respondent stating that they have studied Audiometry as part of DHLS and they are well qualified for the post of Audiometrician.

3.3 Finding no response on the said representations, the Petitioners filed W.P.Nos.10590 and 10591 of 2016 seeking to issue a Writ of Mandamus, directing the 2nd respondent to consider them for the post of Audiometrician on the basis of their educational qualifications. By order dated 30.06.2016, the said writ petitions were disposed of by directing the 2nd respondent to consider the case of the petitioners on merits and in accordance with law and also in tune with the certificate dated 24.03.2016 issued by the All India Institute of Speech and Hearing.

3.4 As directed by this Court, the petitioners submitted representations dated 03.08.2016 to the 2nd respondent enclosing a copy of the order passed in the writ petitions. However, the second respondent rejected the said representations, by separate orders dated 09.08.2016, which are impugned herein.

4. On 23.08.2016, when the matters were taken up for admission, this Court directed the second respondent to keep two posts of Audiometrician vacant and file counter affidavit meeting out the grounds raised by the petitioners.

5.A detailed counter affidavit has been filed by the 2nd respondent, wherein it is inter alia stated as follows:

5.1 The petitioners claimed that they completed the course of Diploma in Hearing Language and Speech (DHLS) which includes Audiometry as a subject and the said course was approved by the central Government, but as per the Adhoc rules for the post of Audiometrician, the candidate must have passed one year certificate in Audiometry and the petitioners did not possess the said certificate and hence, they were not considered for appointment to the post in question.

5.2 It is further stated that the syllabus of the DHLS course and the certificate course in Audiometry are not one and



the same. In the Diploma of DHLS course, the subject 'Audiology' is studied along with other subjects, such as speech and language pathology, basic medical sciences related to speech and hearing, Psychology, community based rehabilitation and Education for Children with special needs, whereas in the certificate course in 'Audiometry', the candidates study the subject of Audiometry exclusively along with practical, which is more suitable for the post of 'Audiometrician'.

5.3 As per 6C (ii) of the MRB notification No.3/MRB/2016 dated 24.01.2016, it is the responsibility of the candidates to produce the equivalence certificate issued by the Government of Tamil Nadu. But the petitioners have not produced such certificate and the certificate issued by the All India Institute of Speech and Hearing cannot be accepted. With these averments, the second respondent prayed for dismissal of these writ petitions.

6.The learned counsel for the petitioners contended that the petitioners are eligible for appointment to the post of Audiometrician and as per the notification, they produced the equivalence certificate dated 24.03.2016 issued by the All India Institute of Speech and Hearing, an autonomous body under the Ministry of Health and Family Welfare, Government of India. However, the same was not considered by the second respondent, on the ground that the petitioners have not produced the equivalence certificate issued by the Government of Tamil Nadu, which is arbitrary and illegal. The learned counsel further contended that the petitioners earlier approached this Court by filing WP.Nos.10590 and 10591 of 2016, in which, this Court directed the respondent authorities to consider the petitioners' case in tune with the said certificate issued by the All India Institute of Speech and Hearing. Despite the same, the second respondent rejected the claim of the petitioners for want of equivalence certificate from the Government of Tamil Nadu, which is unjust and non-application of mind on the part of the respondent authorities. Thus, the learned counsel sought to allow these writ petitions by setting aside the orders impugned herein and giving appropriate direction to the second respondent.

7.The learned standing counsel appearing for the 2nd respondent reiterated the averments made in the counter affidavit and submitted that the orders impugned herein are perfectly correct and the same warrant no interference by this Court. He further submitted that the Universities have no authority to issue equivalent certificate; and the Government has to form an Equivalence Committee, which in turn, after examining all the parameters, shall declare a course to be equivalent to another and issue certificate of equivalence; and



therefore, the petitioners have to approach the Government for formation of Equivalence Committee and obtain necessary certificate to consider their candidatures for appointment to the post in question. Hence, the learned counsel prayed for dismissal of these writ petitions.

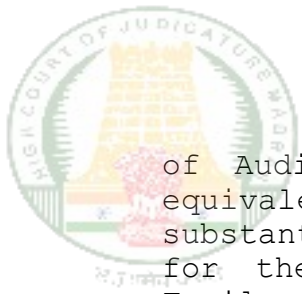
8. Heard the learned Government Advocate appearing for the first respondent and the learned Standing Counsel for the fourth respondent as well.

9. This Court considered the submissions made on either side and also perused the materials available on record carefully and meticulously.

10. The facts remain undisputed are that the petitioners after finishing their Bachelor Degree, have obtained Diploma in Hearing, Language and Speech (DHLS) in the Institutions recognised and approved by the third respondent viz., Rehabilitation Council of India and the Ministry of Social Justice Empowerment, Government of India, New Delhi; and after issuance of the notification for recruitment to the post of Audiometrician, the petitioners have obtained certificate from the All India Institute of Speech and Hearing to the effect that those who have completed the DHLS program are eligible for appointment as Speech and Hearing Assistant / Speech and Hearing Technician / Audiometrician.

11. It is the grievance of the petitioners that though they have obtained certificate from the competent authority that the DHLS course is equivalent to the course of Audiometry, the second respondent has not considered the candidature of the petitioners for appointment to the post of Audiometrician for want of equivalence certificate only from the Government of Tamil Nadu. It is their specific case that on earlier occasion, the petitioners filed WP.Nos.10590 and 10591 of 2016, which were disposed of, by this Court, directing the 2nd respondent to consider the case of the petitioners on merits and in accordance with law and also in tune with the certificate dated 24.03.2016 issued by the All India Institute of Speech and Hearing; and without adhering to the said direction, the second respondent rejected the petitioners' claim and insisted them to produce the equivalence certificate from the Government of Tamil Nadu again for appointment to the post in question, which is arbitrary and illegal and the same cannot be allowed to be sustained.

12. Whereas the stand of the second respondent is that as per the notification, the petitioners did not possess the certificate course of Audiometry, which is the essential qualification for appointment to the post of Audiometrician; and the DHLS course studied by them is not equivalent to the course



of Audiometry and hence, they were directed to produce the equivalence certificate from the Government of Tamil Nadu. To substantiate the same, they relied upon the Adhoc Rules framed for the post of Audiometrician in G.O.(Ms)No.5, Health and Family Welfare (C2) Department, dated 06.01.2015. Thus, according to the second respondent, the rejection orders passed by the second respondent are perfectly valid in law and the same do not call for any interference by this Court.

13.From the documents enclosed in the typed set of papers, it could be seen that by notification dated 24.01.2016, online applications were invited for recruitment to the post of Audiometrician, as per which, the educational qualification required for the same is as follows:

(i)Must have passed HSC with subjects Physics, Chemistry, Botany and Zoology or Physics, Chemistry, Biology with any one of the related subjects;

(ii)Must have passed a one year certificate course in Audiometry from Government Medical Institutions under the control of the Director of Medical Education or in any other Institution recognised by the State or Central Government.

Further, clause (ii) to instruction No.6C of the said notification says that if a candidate claims equivalent qualification, the onus of providing the same rests with the candidate. Except the same, there is no specific mention that the candidate should produce the equivalence certificate obtained from the Government of Tamil Nadu, as regards the educational qualification. That apart, the adhoc rules referred to in the impugned orders as well as in the counter affidavit filed by the second respondent are nothing but the educational qualification prescribed in the notification as extracted above and the same do not state anything about the production of equivalence certificate only from the Government of Tamil Nadu. As such, the reason adduced in the orders impugned herein, in the opinion of this Court is only to reject the claim of the petitioners and for formal compliance of the earlier order of this Court dated 30.06.2016 in WP.Nos.10590 and 10591 of 2016 dated 30.06.2016 and hence, the same cannot be countenanced.

14.For better appreciation, the relevant passage of the earlier order passed by this Court in the aforesaid WP.Nos.10590 and 10591 of 2016 is reproduced hereunder:

"2. The petitioners hold the Diploma in Hearing, Language and Speech (DHLS). They have applied for the post of Audiometrician through online mode pursuant to the Notification issued by the second



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respondent on 24.01.2016. In the said Notification, the respondent department has categorically stated that the candidates should have passed one year certificate course in Audiometry from the Government Medical Institution under the control of the Director of Medical Education. Subsequently, though the petitioners were called for certificate verification, they were rejected on the ground that they have obtained only DHLS, instead of Certificate Course in Audiometry. According to the petitioners, the syllabus of both the courses is one and the same and in fact, Audiometry is a narrow subject whereas the DHLS covers Audiometry along with several other aspects of hearing loss.

3. In this connection, learned counsel appearing for the petitioners also brought to the notice of this Court a letter dated 24.03.2016 issued by the All India Institute of Speech and Hearing, wherein it is categorically stated that the course syllabus / curriculum and other related issues of this program is being regulated by the Rehabilitation Council of India, New Delhi, which has been mandated by RCI Act of 1992, as approved by the Parliament. Therefore, in view of the subsequent development, the petitioners should have been considered for the said post.

4. The second respondent has filed a counter affidavit stating that at the time of calling for application, the petitioners did not possess the requisite qualification and therefore, they were treated as ineligible for the said post.

5. No doubt, when the petitioners applied for the post of Audiometrician, as per the notification, they did not possess the qualification of one year Certificate Course in Audiometry, instead they obtained only a qualification of Diploma in Hearing, Language and Speech (DHLS). However, as brought to the notice of this Court by the learned counsel for the petitioners, the All India Institute of Speech and Hearing issued a letter dated 24.03.2016 stating that those candidates who have completed the DHLS programme are eligible for appointment as Speech and Hearing Assistant / Speech and Hearing Technician / Audiometrician. Therefore, in such view of the matter, the petitioners are directed to submit a fresh representation along with a copy of the letter dated 24.03.2016 issued by the All India Institute of Speech and Hearing and also a copy of the order of this Court



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within a period of one week from the date of receipt of a copy of this order. On receipt of such representation, the second respondent is directed to consider the same on merits and in accordance with law and also in tune with the letter dated 24.03.2016 issued by the All India Institute of Speech and Hearing within a period of 30 days thereafter.

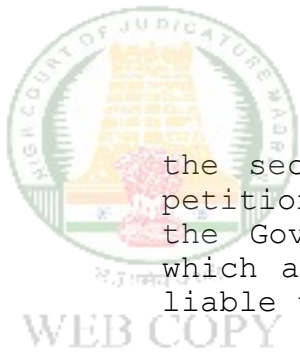
6. In fine, with the above directions, the writ petitions stand disposed of. No Costs. Consequently, connected miscellaneous petitions are closed."

Thus, it is clear from the aforesaid order that at the time of notification dated 24.01.2016, the petitioners possess DHLS course, which is equivalent to the course 'Audiometry' and they also obtained a equivalent certificate on 24.03.2016 from the All India Institute of Speech and Hearing, coming under the purview of the Rehabilitation Council of India, which is the statutory body under the Ministry of Social Justice and Empowerment, Government of India, the content of which is profitably, extracted below:

"....The main objective of this program is to generate manpower to take up routine clinical work of assessment and therapeutic management for various communication disorders at village, block/taluka and town levels. The students enrolled in this program are given both theoretical and practical training in Audiology among other subjects covering the topic on Sound and Hearing, Hearing loss, Evaluation of hearing, Hearing aids & earmolds and Counselling on use, trouble shooting and rehabilitation. The course syllabus/ curriculum and other related issues of this program is being regulated by Rehabilitation Council of India, New Delhi which has been mandated by RCI Act of 1992, as approved by the Parliament.

Accordingly, those candidates who have completed the DHLS program are eligible for appointment as Speech & Hearing Assistant / Speech & Hearing Technician / Audiometrician, subject to holding RCI Registration."

15. Taking note of the aforesaid subsequent development, this Court observed that the petitioners should have been considered for the said post and accordingly, directed the second respondent to consider the claim of the petitioners on merits and in accordance with law and also in tune with the said certificate dated 24.03.2016 issued by the All India Institute of Speech and Hearing, within a period of 30 days. However, without complying with the said direction in letter and spirit,



the second respondent erroneously rejected the request of the petitioners, for want of equivalence certificate issued only by the Government of Tamil Nadu, by the orders impugned herein, which are unjust, arbitrary and illegal and hence, the same are liable to be set aside.

16. At this juncture, it is relevant to point out that the Full Bench of this Court in Nadar Thanga Shuba Laxman.A Vs. The State of Tamil Nadu and another [2014 (2) LW 881] answered the reference relating to the equivalence certificate issued by the competent authorities to the effect that 'declaring the degree obtained from one University as equivalent to the degree obtained from yet another University will have its effect and validity right from the date of issuance'.

17. In such view of the matter, the orders dated 09.08.2016 passed by the second respondent are set aside and the second respondent is directed to pass fresh orders, strictly in accordance with the earlier order dated 30.06.2016 passed in WP.Nos.10590 and 10591 of 2016, within a period of eight weeks from the date of receipt of a copy of this order.

18. Both the writ petitions stand allowed in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tsi/rk
To

1. The Directorate of Medical Education,
No.162, Poonamallee High Road,
New Bupathy Nagar, Chetpet,
Chennai-600 031.
2. The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai-600 006.
3. Rehabilitation Council of India,
B.22 Qutab Institutional Area,
New Delhi-110 016.



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4. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai-600 003.

+2ccs to M/s.Kavitha Rameshwar, Advocate Sr.26654
+1cc to the Government Pleader Sr.26787

W.P. Nos.29295 and 29296 of 2016

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