



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2021

CORAM:

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P. (MD) .No.20225 of 2021

W.M.P. (MD) .Nos.16895 to 16897 of 2021

Dr.N.K.Jayanthi, M.D., (Homoeopathy),
(Registration No.A-1608)

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by the Director,
Department of Indian Medicine and Homoeopathy,
Chennai-600 106.

2.The Joint Director,
Department of Indian Medicine and Homoeopathy,
Chennai-600 106.

3.The District Siddha Medical Officer,
Dindigul.

4.The Principal,
Government Homoeopathic Medical College and Hospital,
Thirumangalam,
Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondent Nos.1 and 2 more particularly the third respondent to permit the petitioner to participate in the Indian Medicine and Homeopathy Department Transfer Counselling for Assistant Medical Officers (Siddha, Ayurveda, Unani, Homeopathy, Yoga & Naturopathy Scheduled on 08.11.2021, 09.11.2021 & 10.11.2021, as per the proceedings of the 1st respondent in Ref.No.1711/E1/2/2021 dated 02.11.2021.

For Petitioner : Mr.P.M.Vishnuvarthanan
For Respondents : Mr.R.Suresh Kumar
Government Advocate (Civil)



ORDER

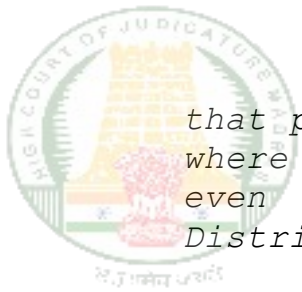
The petitioner, who is working as Assistant Medical Officer (H) at Government District Head Quarters Hospital, Dindigul, has filed this writ petition seeking a direction to the third respondent to permit her to participate in the Indian Medicine and Homeopathy Department Transfer Counselling for Assistant Medical Officers (Siddha, Ayurveda, Unani, Homeopathy, Yoga & Naturopathy) which was scheduled to be held on 08.11.2021, 09.11.2021 & 10.11.2021.

2. According to the petitioner, she is working in the same place for the past 5 ½ years i.e., from 04.03.2016. On 22.07.2021, vide proceedings No.1711/E1/2/2021-1, the second respondent called for Transfer Counselling among the vacant post in the Homoeopathy System within the State of Tamil Nadu. According to the petitioner, there are 52 posts in the Hospital and 53 posts in the Government Homeopathic Medical College and Hospital, Thirumangalam and she has completed 5 ½ years of service in the present place of working, she intended to apply for Transfer Counselling for five PG vacancies available in the fourth respondent College.

3. The petitioner claims that she is the only person having qualification of Speciality with MD (Homeopathic Pharmacy). Considering her qualification, the second respondent recommended the third respondent to appoint the petitioner in the fourth respondent College as "Diversion" duty for a period of two days in a week on 30.04.2021. However, it was modified by the first respondent that the petitioner was directed to work on all working days as "Diversion" duty at the fourth respondent College. Now the grievance of the petitioner is that despite the direction given by the second respondent, the third respondent has not permitted her to participate in the Transfer Counselling which was scheduled on 10.11.2021. Therefore, the petitioner has filed this writ petition.

4. Mr.R.Suresh Kumar, the learned Government Advocate (Civil) appearing for the respondents submits that due to flood and power outages in Chennai, he is not in a position to file written instructions before this Court. However, he relied on clause 5.3 in G.O.(2D).No.131, Health and Family Welfare (A1) Department dated 20.11.2007 and submitted that a staff from a District where the vacancies are more than 10 percentage cannot take part in the medical counselling. In the above said Government Order, the Health and Family Welfare (A1) Department has set out certain guidelines as to who is not eligible to participate in counselling and the relevant clauses 5.2 and 5.3 of the said guidelines are extracted hereunder:

5.2 In the case of medical institutions under the control of Director of Medical and Rural Health Services, the staff from the Districts where the total vacancies for



that post are 20% or more or the staff from an institution where the total vacancies in that category are 20% or more even if the total vacancies in that category in the District are less than 20%.

5.3. In the case of Primary Health Centres, (a) Staff from a District where the total vacancies in that category (Medical Officers/Para Medical Staff) in the District are 10% or more; (b) staff from a Primary Health Centre where there is already a vacancy; (c) a lady Medical Officer from a Primary Health Centre where the posts of all other Medical Officers are vacant.

5. The learned counsel for the petitioner submits that there cannot be any percentage of vacancy as far as Dindigul District is concerned, since only one post exists in the Dindigul District and the petitioner is working in that post for the past about 5 ½ years. Hence, she can be allowed to participate in the counselling as per clause 5.2.

6. Considering the submissions made on both sides, this Court is of the opinion that if, in case, anybody is willing to accept the post existing in Dindigul, there is no impediment for the respondent to permit the petitioner to participate in the transfer counselling. Hence, the respondent shall consider the case of this petitioner, if anybody is willing to accept the post existing in Dindigul, at the time of recruitment, pursuant to the notification for direct recruitment, dated 26.10.2021.

7. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

ssb

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

1.The Director,
Department of Indian Medicine and Homoeopathy,
Chennai-600 106.

2.The Joint Director,
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Chennai-600 106.

3.The District Siddha Medical Officer,
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4.The Principal,
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Madurai.

+1 CC to M/s.P.M.VISHNUVARTHAN, Advocate (SR-34506[F] dated
15/11/2021)

+1 CC to M/s.SPL GP (SR-34433[F] dated 15/11/2021)

Order made in
W.P. (MD) .No.20225 of 2021
12.11.2021

RS (01.12.2021) 4P 7C