



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.01.2022

Pronounced on : 14.02.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.17238 of 2021 and
W.M.P.No.18250 of 2021

- 1.A.K.Venkitachalam
- 2.B.Iyappan
- 3.J.Jeyapaul
- 4.G.Moorthi
- 5.G.Balakrishnan
- 6.A.Jaya Prabha
- 7.M.Narayanasamy
- 8.S.Markannan
- 9.N.Mujibur Rahman
- 10.R.Manjula
- 11.N.Sankar
- 12.A.Rahamathulla Khan
- 13.M.K.Venkatachalapathy
- 14.S.Musthafa Khan

... Petitioners

Vs.

- 1.State of Tamil Nadu
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.
- 2.The Director of Medical and Rural Health Services,
7th Floor, D.M.S.Building,
359, Anna Salai, Chennai 600 006.
- 3.The Director of Public Health and Preventive Medicine,
D.M.S.Campus,
Teynampet, Chennai 600 006.
- 4.Medical Recruitment Board,
Rep.by its Chairman,
7th Floor, D.M.S.Building,
359, Anna Salai,
Chennai 600 006.

... Respondents



PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 3 and 4 herein to appoint the petitioners as Ophthalmic Assistants in the Primary Health Centres and other similar Government Health Centres, on the basis of their representations dated 16.07.2021, in the light of the common order dated 03.04.2002, passed in O.A.No.7723 of 1999, O.A.Nos.8029 to 8037 of 1999 and O.A.No.7965 of 2001 and O.A.Nos.281 to 284 of 2002, passed by the then Tamil Nadu Administrative Tribunal, Chennai and the order dated 30.04.2008, passed in W.A.No.139 of 2008, confirming the order of this Court dated 12.12.2007, passed in W.P.No.8285 of 2007.

For petitioners : Mrs.W.R.Subhashini

For Respondents : Mr.L.S.M.Hasan Fizal,
Addl. Govt. Pleader for RR1 to 3
Mr.M.Loganathan,
Standing Counsel for R4

ORDER

This writ petition has been filed to issue a writ of Mandamus, directing the respondents 3 and 4 herein to appoint the petitioners as Ophthalmic Assistants in the Primary Health Centres and other similar Government Health Centres, on the basis of their representations dated 16.07.2021, in the light of the common order dated 03.04.2002, passed in O.A.No.7723 of 1999, O.A.Nos.8029 to 8037 of 1999 and O.A.No.7965 of 2001 and O.A.Nos.281 to 284 of 2002, passed by the then Tamil Nadu Administrative Tribunal, Chennai and the order dated 30.04.2008, passed in W.A.No.139 of 2008, confirming the order of this Court dated 12.12.2007, passed in W.P.No.8285 of 2007.

2. The case of the petitioners is that they are Diploma Holders in Optometry. According to them, they have passed the condensed Para Medical Ophthalmic Assistant Course from the Government Medical Institutions. In effect that all the petitioners are eligible Diploma Holders in Optometry and they are also in possession of certificate from the respective Government Medical Institutions where they underwent the condensed Course, in terms of G.O.Ms.No.662, dated 09.12.1998, which provided for additional qualification towards acquiring three months condensed Course in order to qualify themselves for appointment as Ophthalmic Assistants in Government Medical Institutions.

3. The petitioners have also registered their names in the respective employment exchanges and they being fully eligible and qualified, awaiting appointment as Ophthalmic



Assistants in any of the Government Primary Health Centres, for several years now.

4. In 1999, several Diploma Holders who obtained their Diplomas from Private Institutions approached the then Tamil Nadu Administrative Tribunal in O.A.Nos.7723, 8029 to 8037 of 1999, seeking direction to appoint them as Ophthalmic Assistants in Government Primary Health Centres / District Headquarters Hospital in the State of Tamil Nadu. The Diploma Holders from the Government Medical Institutions also filed applications in O.A.No.7965 of 2001, O.A.Nos.281 to 284 of 2002, seeking similar direction for their appointment as Ophthalmic Assistants, as well.

5. The then Tamil Nadu Administrative Tribunal passed orders in all the applications on 30.04.2002, directing the authorities to permit those petitioners who obtained Diploma from Private Institutions to undergo three months condensed Paramedical Ophthalmic Assistant Course in the Government Medical Institutions to enable them to acquire necessary qualification to be appointed as Ophthalmic Assistants in the Government Primary Health Centres. The Tribunal further directed that they should be appointed only after those Diploma Holders who had obtained their Diploma from Government Medical Institutions.

6. According to the petitioners herein, there were also proceedings before this Court in W.P.No.8285 of 2007, dated 12.12.2007 and the order passed by the learned Single Judge of this Court, has been confirmed by the learned Division Bench in W.A.No.139 of 2008 vide order dated 30.04.2008.

7. While matter stood thus, after formation of the fourth respondent Board, instructions were issued to the Employment Exchanges, calling for eligible candidates for appointment as Ophthalmic Assistants. According to the petitioners, they have been sponsored by Employment Exchange to the fourth respondent. Thereafter, they were also called for certificate verification in December 2018. However, nothing came out, thereafter.

8. The fourth respondent Board being created only in 2018, may not be aware of the earlier proceedings and the directions passed by the then Tamil Nadu Administrative Tribunal or the directions of this Court in the above mentioned Writ Petition and Writ Appeal. The petitioners have also submitted individual representations dated 16.07.2021, requesting the third and fourth respondents to appoint them as Ophthalmic Assistants as according to them, there are 60 vacancies still available in various Primary Health Centres and Government Institutions. As there was no response forthcoming, the



petitioners are before this Court for issuance of writ of Mandamus.

9. Notice was ordered in this writ petition. In response to the notice, the fourth respondent has filed a counter affidavit.

10. According to the fourth respondent Board, it has requested the third and second respondents to initiate necessary action to amend the relevant Service Rules applicable to the post of Ophthalmic Assistant in line with the directions of this Court and the then Tamil Nadu Administrative Tribunal vide its letter dated 22.04.2019.

11. Despite the request made as early as in April 2019, no further action appeared to have been taken by the Government in amending the relevant rule. In the meanwhile, it appears, that there are 60 vacancies available and the same need to be filled up as the same cannot be kept unfilled for indefinite period of time for effective administration of the Department.

12. The learned Additional Government Pleader has not controverted the above facts and infact, he would fairly submit that there are 60 vacancies available. These petitioners who are fully eligible and qualified to be considered for appointment, can be directed to be considered pending decision by the Government for amending the adhoc Rules in terms of the directions of the Tribunal as well as of this Court in the aforementioned Applications, Writ Petition and Writ Appeal.

13. In view of the fact that the averments stated by the petitioners are not in dispute and the directions of the Tribunal as well as this Court are to be applied to the claim of the petitioners squarely, there is no scope for further adjudication of the claim of the petitioners in this case.

14. For the above said reasons, this writ petition stands allowed and the respondents are directed to consider the claim of these petitioners for appointment of Ophthalmic Assistants in Primary Health Centres or in other Government Medical Institutions in the existing vacancies in terms of the order passed in W.A.No.139 of 2008, dated 30.04.2008, confirming the order of this Court dated 12.12.2007, passed in W.P.No.8285 of 2007, if these petitioners are otherwise eligible for the subject appointment.



15. The respondents / competent authorities are directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

gsk

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai 600 009.
- 2.The Director of Medical and Rural Health Services,
7th Floor, D.M.S.Building,
359, Anna Salai,
Chennai 600 006.
- 3.The Director of Public Health and
Preventive Medicine,
D.M.S.Campus,
Teynampet,
Chennai 600 006.
- 4.The Chairman,
Medical Recruitment Board,
7th Floor, D.M.S.Building,
359, Anna Salai,
Chennai 600 006.

+14ccs to Mrs.W.R.Subhashini, Advocate SR.No.9794, 9124

+1cc to Government Pleader SR.No.9511

W.P.No.17238 of 2021 and
W.M.P.No.18250 of 2021

KSM(CO)
GMY(22/02/2022)