



W.P.No.25683 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **16.12.2022**

Pronounced on : **23.12.2022**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.25683 of 2022
and
W.M.P.Nos.24721 and 24723 of 2022

Dr.Ayisha K

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner,
Indian Medicine and Homeopathy,
Arignar Anna Hospital Campus,
Arumbakkam, Chennai - 600 106.

3.The Member Secretary,
Medical Service Recruitment Board (MRB),
Government of Tamil Nadu,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai - 600 006.

4.Dr.Muzammil Ahmed
5.Dr.Tanveer Hussain Hashmi

... Respondents



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PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records, pertaining to the Impugned Letter / Notification No.08/MRB/2020 dated 07.09.2022 (uploaded in the Website of MRB) passed by the 3rd respondent (Medical Service Recruitment Board) and quash the same and direct the repondents to issue fresh list of candidates, including the petitioner's name and then call for Certificate Verification, for the (8) posts of Assistant Medical Officer (Unani).

For Petitioner : Mr.B.Dhanaraj

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader
for R1 and R2

Mr.M.Loganathan
Standing Counsel
for R3

Mr.Haja Mohideen Gishri
for R4 and R5

ORDER

The petitioner is aggrieved by her non selection in the impugned selection list dated 07.09.2022 for the post of Assistant Medical Officer (Unani) released pursuant to the recruitment notification issued by the third respondent Board dated 14.08.2020.



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2. The petitioner claims that being the only eligible Muslim Women candidate falling under the Backward Class Muslim category and who has secured 64 marks on par with the selected candidates viz., the fourth and fifth respondents, ought to have been selected to the post of Assistant Medical Officer (Unani) in place of the respondent Nos.4 and 5.

3. According to the petitioner, as per the recruitment notification, four vacancies are to be filled up only by women candidates. However, according to her, in violation of the amended proviso to Rule 7 of Adhoc Rules relating to the post of Assistant Medical Officer (Unani) inserted on 28.11.2011, the selection has been finalized by the third respondent Board. The amended proviso to Rule 7 of the Adhoc Rules which the petitioner relies upon reads as follows:

"Amendment:

In the said rules, to Rule 7, the following proviso shall be added namely:-

"Provided that, if no eligible candidate is available for the vacancy reserved for a communal



category other than Backward class for appointment to the post of Assistant Medical Officer (Unani), then the said vacancy shall be filled up among the candidates belonging to any of the other communal categories, based on merit".

4. Further it is contended by the petitioner that the amended proviso to Rule 7 of the Adhoc Rules, the expression "other than the Backward Class Muslim" was substituted and given retrospective effect from 16.11.2012, as per G.O.(Ms)No.70 dated 10.03.2015 of the Health and Family Welfare (IM2-1) Department. It is contended by the petitioner that the object of insertion of the above proviso to Rule 7 of the Adhoc Rules was to de-reserve the unfilled vacancies reserved for the communal categories and distribute to any other category i.e., Backward Class (Muslim) based on merit which has been followed by the Government of Tamil Nadu from time to time.

5. According to the petitioner, a combined reading of the amended proviso to Rule 7 of the Adhoc Rules clearly establishes that "if no eligible



candidates are available for the vacancies reserved for the communal categories other than the Backward Class (Muslim) candidates, then the said vacancies shall be filled up among the Backward Class (Muslim) candidates based on merits". According to the petitioner, since there are no eligible candidates available for the communal categories i.e.,

- (1) BC (W),
- (2) MBC & DNC (W) and
- (3) SC (W),

as per the amended proviso to Rule 7 of the Adhoc Rules, the Backward Class (Muslim) candidates have to be appointed in such vacancies.

6. As per the impugned selection list, Sl.No.6 to 8 are Backward Class (Muslim). But, according to the petitioner, the persons listed in Sl.No.6 to 7, the respondent Nos.4 and 5 in this Writ Petition are male candidates, have been wrongly selected in the place of women candidates. According to the petitioner, she being a women candidate and ranked eighth is eligible for selection even according to the selection Authority. According to her, the third respondent Board ought to have included the name of the petitioner in the selection list as Sl.No.8.



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7. A Counter Affidavit has been filed by the third respondent Board, denying the contentions of the petitioner. According to them, there is no separate reservation for Backward Class (Muslim) (Women) and therefore, as a matter of right, the petitioner cannot claim the reservation. According to them, only in accordance with Section 26 (5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the impugned selection list was published. According to them, since there are no qualified and suitable women candidates belonging to

(1) BC (W),

(2) MBC & DNC (W) and

(3) SC (W) are available, the posts were allocated to male candidates i.e., the fourth and fifth respondents who had secured the same marks as that of the petitioner but were elder to the petitioner.

8. According to the third respondent Board, only in accordance with the recruitment notification, the impugned selection list was published. They also contend that even though the petitioner, fourth and fifth respondents have secured the same marks of 64, the petitioner's name was



not included in the impugned selection list only due to the fact that the respondent Nos.4 and 5 are senior to the petitioner in age.

9. The fifth respondent has also filed a Counter, reiterating the contentions of the third respondent Board by stating that the impugned selection list was published only in accordance with the recruitment notification. It is further contended that though the petitioner had secured 64 marks out of 100, she was not called for Certificate Verification as she was admittedly born on 12.03.1994 and was much younger than the respondent Nos.4 and 5.

10. According to the fifth respondent, only in accordance with the extant regulations or rules followed by the Medical Service Board, while finalizing selection of candidates where two or more candidates scoring equal marks, the Medical Service Board had categorically informed in its website publication 'Frequently Answered Questions' in respect of Posts relating to open advertisements and the same reads as follows:

"In case of two or more candidates scoring equal marks in the written examination or by any other means of merit the following will be the basis



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for fixing the seniority:

A) Senior in age will be placed above;

B) If the age too is equal

(i) in case of OMR (offline) applications date of receipt of application in the board's office;

(ii) in case of online application, date and time of online registration of application will be taken into account to fix the seniority.

Therefore, according to the fifth respondent, the Medical Services Board was constrained to call the fourth and fifth respondents for Certificate Verification respectively in that order of seniority since both have secured 64 marks each and since both of them are admittedly senior by age than the petitioner. Therefore, according to the fifth respondent, the selection list has been correctly published and there is no arbitrariness or discrimination.

11. Heard, Mr.B.Dhanaraj, learned counsel for the petitioner, Mr.Stalin Abimanyu, learned Additional Government Pleader for R1 and R2, Mr.M.Loganathan, learned Standing Counsel for R3 and Mr.Haja Mohideen Gishri, learned counsel for R4 and R5.



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Discussion:

12. The Distribution of Vacancies as per the recruitment notification dated 26.10.2021 issued by the third respondent Board for the post of Assistant Medical Officer (Unani) is as follows:

CATEGORY	G	W	DAP(PH)		TOTAL VACANCIES
			G	W	
GT	2	1			3
BC	1	1			2
BCM					
MBC(V)					
MBC & DNC		1			1
MBC					
SC	1	1			2
SCA					
ST					
TOTAL	4	4			8

13. As seen from the Distribution of Vacancies, there are four post reserved for women. The reservation for women is available only under GT,



BC, MBC&DNC and SC and under those categories one post each has been reserved for women. There is no separate women's reservation under the BCM category to which the petitioner belongs.

14. It is also made clear in the recruitment notification in Clause 5 (d) that "if no qualified and suitable women candidates are available for selection against the vacancies reserved for them, those vacancies will be filled by male candidates belonging to the respective communal categories. Admittedly, there are no qualified and suitable women candidates available for selection against the vacancies reserved for General Backward Class categories.

15. The petitioner who belongs to the Backward Class (Muslim) category, where there is no special reservation for women, cannot claim reservation under the General Backward Class category. Backward Class (Muslim) category is a separate reservation within the 30% reservation available for the Backward Classes.



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16. In the recruitment notification in Clause 5 (f), it has also been made clear that "the expression B.C. (i.e., Backward Class) wherever it occurs including online application form, should be read as "B.C. (other than BCM) and B.C. (Muslims)". Therefore, it is made clear that when there is no special reservation for women under the Backward Class Muslim category, the question of the petitioner getting selected under the women category will not arise.

17. Section 26 (5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 also makes it clear that "if a qualified and suitable women candidate belonging to Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes or Denotified Communities or General Turn is not available for selection for appointment in the turn allotted for women in the cycle, then the turn so allotted shall go to a male candidate within the respective category. In respect of the posts to which the Rule of Reservation of appointment does not apply, then, the turn so allotted shall go to the next male candidate."



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18. Since there is no separate reservation for women under the Backward Class (Muslim) to which the petitioner belongs, by applying Section 26 (5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the respondent Nos.4 and 5 have been rightly selected. Eventhough, the respondent Nos.4 and 5 have secured the same marks as that of the petitioner, they have been given preference correctly as they are senior to the petitioner in age.

19. As per the Rules followed by the third respondent Board, while finalizing the selection of candidates, "In case of two or more candidates scoring equal marks in the written examination or by any other means of merit, the following will be the basis for fixing the seniority:

A) Senior in age will be placed above;

B) If the age too is equal

(i) in case of OMR (offline) applications date of receipt of application in the board's office;

(ii) in case of online application, date and time of online registration of application will be taken into account to fix the seniority.



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20. Admittedly, the petitioner is younger to the respondent Nos.4 and 5. Though she had scored the same marks as that of the respondent Nos.4 and 5, the respondent Nos.4 and 5 have been rightly given preference in the selection by the third respondent Board only in accordance with the Rules prescribed by them.

21. The amendment to Adhoc Rules relating to the post of Assistant Medical Officer (Unani) in Indian Medicine and Homeopathy Department which the petitioner has relied upon has no applicability to the facts of the instant case. When the recruitment notification does not provide for any separate reservation for women under the Backward Class (Muslim) category, the amended proviso to Rule 7 has no applicability. Only in cases where reservation has been provided for under a communal category other than Backward Class for appointment to the post of Assistant Medical Officer (Unani), then the said vacancy shall be filled up among the candidates belonging to any of the other communal categories, based on merit.



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22. The petitioner has applied to the subject post under the Backward Class (Muslim) category, where there is no special reservation for women. The General Backward Class category has reserved one post for women. The petitioner cannot claim reservation under the General Backward Class category.

23. For the foregoing reasons, this Court does not find any merit in this Writ Petition. Accordingly, this Writ Petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

23.12.2022

Index : Yes/No
Speaking Order : Yes / No
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To

1.The Government of Tamil Nadu,
Represented by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner,
Indian Medicine and Homeopathy,
Arignar Anna Hospital Campus,
Arumbakkam, Chennai - 600 106.

3.The Member Secretary,
Medical Service Recruitment Board (MRB),
Government of Tamil Nadu,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai - 600 006.



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ABDUL QUDDHOSE. J.,

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**Pre-delivery Order in
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**23.12.2022
(1/2)**