



W.P.(MD)No.3198 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.3198 of 2020

and

W.M.P.(MD)No.2715, 2717 and 2718 of 2020

Government Diploma Medical Lab Technician Association,
represented by its State General Secretary,
P.U.Shajahan.

... Petitioner

Vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai – 600 009.
2. The Director of Medical Education (DME),
State of Tamil Nadu,
Kilpauk, Chennai – 600 010.
3. The Director of Medical Services (DMS),
DMS Campus,
Teynampet, Chennai – 600 006.
4. The Director of Medical and Rural Health Services,
DMS Campus,
Teynampet, Chennai – 600 006.



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5. The Director of Public Health and Preventive Medicine,
DMS Campus,
Teynampet, Chennai – 600 006.

6. G.Subramaniyan,
S/o. Guruswamy, Lab Technician Grade III,
Primary Health Centre, Sundharesapuram,
Sankarankovil Health Unit, Tenkasi District.

7. T.Vanaja

8. A.Shanmugasundari

9. M.Ramachandran

10. M. Parasuraman

(R6 to R10 are impleaded, vide Order dated 09.11.2022)

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records in connection with the impugned letter issued by the 1st respondent in Letter No.9075/C2/2017-08, Health and Family Welfare Department, dated 12.10.2017, quash the same.

For Petitioner : Mr. S.Bharathy Kannan

For R1 to R5 : Mr. G.Vairam Santhosh

Additional Government pleader

For R6 to R10 : Mr. G.Sankaran



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ORDER

This writ petition has been filed challenging the impugned letter issued by the 1st respondent, dated 12.10.2017 and to quash the same.

2. The case of the petitioner is that he was holding the post of State General Secretary of Government D.M.L.T. Association and at present, there are nearly 500 permanent members in the Association. As per the provisions of Tamil Nadu Medical Subordinate Service Rules, the Lab Technician Grade - II post should be fixed as Entry Level Post in the respondent Department and appointment should be made on the basis of the State seniority by comprising the Directors of DME, DMS, DMRHS and DPPM, the respondents 2 to 5 herein. In the year 2007, the first respondent has issued G.O.(Ms.).No.39, Health and Family Welfare (C2) Department and certain amendments have been made in the Special Rules for the Tamil Nadu Medical Subordinate Service. As per the G.O., the vacancies for the post of Laboratory Technician Grade - II should be filled up by way of direct recruitment and if no such suitable persons are available for direct



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recruitment, then the Department shall proceed with promotion by way of transfer from the post of Laboratory Assistant (Malaria) in the Tamil Nadu Public Health Subordinate Service. Contrary to the above said Rules and the G.O., the first respondent, by way of impugned letter dated 12.10.2017, permitted the respondents 2 to 5 to fill up the vacancies for the post of Lab Technician Grade – II, by recruitment transfer and promotion from the post of Lab Technician Grade III with CMLT qualification. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that G.O.(Ms.).No.39, dated 05.02.2007, makes it clear that the vacancies for the post of Laboratory Technician Grade - II should be filled up by way of direct recruitment and if no such suitable persons are available for direct recruitment, then the Department shall proceed with promotion by way of transfer from the post of Laboratory Assistant (Malaria). However, in the present case, without adopting the first method, the first respondent adopted the second method, which is not sustainable. Hence, he prayed for allowing the writ petition.



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4. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 5 has filed a counter stating that Laboratory Technician Grade - III is the entry level post in the Directorate of Public Health and Preventive Medicine. Further, orders were issued to fill up the post of Laboratory Technician Grade - II on State wide seniority instead of District wise seniority vide G.O.(Ms.)No.22, Health and Family Welfare (C2) Department, dated 29.01.2010. After constitution of Medical Services Recruitment Board in the year 2012, vide G.O.(Ms.).No.1, Health and Family Welfare (C2) Department, dated 02.01.2022, all the paramedical posts including Laboratory Technician Grade - II were filled up by Direct Recruitment. Hence, he prayed for dismissal of this writ petition.

5. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents 1 to 5 and the learned counsel appearing for the respondents 6 to 10.



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6. The petitioner Association has filed the present writ petition only on the ground that without direct recruitment the vacancy that was arose for the post of Laboratory Technician Grade - II has been filled up by way of recruitment by transfer. For better appreciation, the relevant portion of the amendments in G.O.(Ms).No.39, Health and Family Welfare Department, dated 05.02.2007, reads as follows:

Amendments

In the said Special Rules, in Part II, under Branch -IV, General”.

(1). For the expression “Technician Grade-I” and “Technician Grade-II”, wherever the occur, the expressions, “Laboratory Technician Grade-I”, and Laboratory Technician Grade II” shall respectively be substituted;

(2) As so amended, in rule 2, in sub rule (a) under the heading CLASS III, for the entry in the second column against Category (2) “Laboratory Technician Grade in the first column thereof, the following entry shall be substituted namely

(i), by direct recruitment; or

(ii),by recruitment by transfer from the post of



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“Laboratory Assistant (Malaria) in the Tamil Nadu Public Health Subordinate Service”.

(3). In Annexure II; under the heading CLASS III for the entry in column (2), against Category 2 Laboratory Technician Grade II, in column (1) thereof, the following entry shall be substituted, namely:-

A Diploma in Medical Laboratory Technology Course (two years duration) conducted by the King Institute of Preventive Medicine or from any other institution recognized by the Government of Tamil Nadu for this purpose. Provided that candidates with the above qualification are not available than candidates with Certificate in Medical Laboratory Technology (one year) duration conducted by the Institution recognized by the Government of Tamil Nadu for this purpose may be appointed.

7. A perusal of the above said amendments in G.O.(Ms).No.39, Health and Family Welfare Department, dated 05.02.2007, Tamil Nadu Medical Subordinate Service Post of Technician Grade I and Grade II Amendment to Special Rules made it clear that for filling up the post of Laboratory Technician Grade II, the State have power by direct recruitment or by recruitment by transfer from the post of Laboratory Assistant



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(Malaria) in the Tamil Nadu Public Health Subordinate Service with the qualification of Diploma in Medical Laboratory Technology Course (two years duration) conducted by the King Institute of Preventive Medicine or from any other institution recognized by the Government of Tamil Nadu for this purpose. Provided that candidates with the above qualification are not available than candidates with Certificate in Medical Laboratory Technology (one year) duration conducted by the Institution recognized by the Government of Tamil Nadu for this purpose may be appointed. However, the petitioner himself confused that the post of Laboratory Technician Grade - II has to be filled up only by way of direct recruitment and if no such suitable persons are available for direct recruitment, then the Department shall proceed with promotion by way of transfer from the post of Laboratory Assistant (Malaria). On perusal of the G.O., it is made clear that by direct recruitment or by recruitment by transfer and the word 'and' is not used and the word 'or' is the option to fill up the post either by way of direct recruitment or by way of recruitment by transfer.



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8. A perusal of the counter affidavit reveals that since the Notification issued by the Medical Services Recruitment Board for appointment of Laboratory Technician Grade II by direct recruitment is under challenge, the Government has no other way to fill up the post and permitted the Head of the Department to fill up the remaining vacancies of Laboratory Technician Grade II by the second method of appointment governed by Special Rules for Tamil Nadu Medical Subordinate Services for the post of Laboratory Technician Grade II, vide Government letter dated 12.10.2017. Based on the Government letter, 220 eligible Laboratory Technician Grade III with Certificate in Medical Laboratory Technology qualification were promoted as Laboratory Technician Grade II through recruitment by transfer and allotment orders were issued by the Director of Medical and Rural Health Services on 21.02.2018. In view of the huge gap from 2015 to 2019, there was an acute shortage of Laboratory Technician Grade II posts in most of the Medical College and Government Hospitals. Hence, all the Head of Institutions requested to fill up the vacant post of Laboratory Technician Grade II posts. Therefore, the posts of Laboratory



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Technician Grade II had been filled up by the second method of appointment ie., by recruitment by transfer. Hence, the grievance expressed by the petitioner Association is not sustainable one and the writ petition is liable to be dismissed. Accordingly, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

12.12.2022

Index : Yes / No

Speaking Order : Yes / No

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To

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M.DHANDAPANI,J.

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