



W.P.(MD)Nos.3797 & 3795 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.3797 & 3795 of 2020

and

W.M.P(MD)Nos.3207 & 3208 of 2020

K.Panjavarnam

... Petitioner in both writ petitions

Vs.

**1.The Government of Tamil Nadu
Rep. by Secretary,
Department of Health and Family Welfare,
Secretariat,
Chennai.**

**2.The Medical Services Recruitment Board,
Through its Member Secretary,
Government of Tamil Nadu,
7th Floor, DMS Building,
No.359, Anna Salai,
Teynampet,
Chennai.**

... Respondents in both writ petitions



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Prayer in W.P.(MD)No.3797 of 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration to declare the clause 6(B) educational qualification in the notification No. 8/MRB/2016 dated 31.01.2016 on the file of the 2nd Respondent is ultravires, unconstitutional and void in so far as it restricts and candidature to persons possessing the qualification from the institutions recognised by the Government of Tamil Nadu within the State of Tamil Nadu alone as listed in Annexure - 9.

Prayer in W.P.(MD)No.3795 of 2020 :- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the provisional Selection list for the post of Laboratory Technician Grade No.II on the file of the 2nd Respondent in No.8/MRB/2016, dated 29.11.2019 and set aside the same in so far as it omitted the petitioner's name as a selected candidate in the BC category and also quash the consequential communication, dated 09.01.2020, as arbitrary, illegal and discriminatory and consequently direct the 2nd Respondent to include the name of the petitioner in the provisional



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selection list for the post of Laboratory Technician Grade No.II and issue appointment order and appoint her to that post.

In both petitions

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.G.V.Vairam Santhosh - for R1
Additional Government Pleader

Mr.T.S.Mohamed Mohideen - for R2

COMMON ORDER

The issue arises in these writ petitions are one and the same and accordingly, both the writ petitions are disposed of by way of a common order.

2. The learned counsel for the petitioner submitted that the petitioner had completed two year Diploma course in Medical Laboratory Technology in first class from the Mother Teresa Institute of Health Sciences (Pondicherry) Society (hereinafter referred to as "Private



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Institute"), which is a Government of Pondicherry Institution. The petitioner successfully completed the said course during November, 2001. The said institution is run by the Government of Pondicherry. Whiles, the second respondent had issued impugned notification, dated 31.01.2016, inviting application through online mode, for direct recruitment to the post of Lab Technician Grade-II and he had also applied through online mode and on the basis his application, the second respondent published a list of weightage of marks and the petitioner has awarded 74.23 as weightage marks out of 100. Thereafter, by an intimation dated 12.09.2019, the list of candidates were called for certificate verification and in which, the petitioner name found place in serial No.591. The said certificate verification took place on 19.11.2019 and there was no problem during certificate verification and thereafter, a provisional selection list was published through online, on 29.11.2019, in the website of the second respondent. However, the petitioner's name was not found place, eventhough Backward Class candidates were awarded with weightage marks who got less than the petitioner i.e., 74.23 marks were find place and thereafter, the petitioner made an application



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under Right to Information Act on 12.12.2019 in order to find out the reason for withholding his candidature. The second respondent vide its impugned order, dated 09.01.2020, informed that the petitioner did not get qualified from the institute recognised by the Government of Tamil Nadu as mentioned in the Special Rules and in the notification. Challenging the impugned order and notification, the present writ petitions are filed.

3. The learned counsel for the petitioner further submitted that the impugned clause 6(B) is in violation of Article 14, 15 and 16 of the Constitution of India and this clause cannot be put against the petitioner and rejecting the candidature for the above said selection to the post of Lab Technician Grade - II.

4. The action of the respondent in not selecting the petitioner on sole reason that the petitioner studied outside the State of Tamil Nadu, is not sustainable one and the same is arbitrary and discriminatory and in violation of Principle of equality in the Constitution and further, the



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respondent on their own conduct of allowing the petitioner to participate in the selection process and called for the petitioner for certificate verification and thereafter, denying the candidature of the petitioner is not sustainable one and the petitioner had completed the course in a recognised University in Pondicherry and as such, the petitioner is eligible.

5. The learned counsel for the petitioner further submitted that the petitioner scored 74.23 marks, whereas, the person who scored lessor marks than the petitioner was selected, is not sustainable and further, the rejection of the petitioner's candidature only on the sole ground that the petitioner obtained certificate only from the State other than Tamil Nadu, is not sustainable one. Accordingly, he prayed for allowing these writ petitions.

6. Though the counter is not filed, however, the learned Standing Counsel for the second respondent submitted that the notification was issued on 30.01.2016 whereas, the petitioner



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participated in the selection process only in the year 2019 and after finalising the meritorious candidates, thereafter, it is found that the petitioner studied in Pondicherry University which was not recognised by the Government of Tamil Nadu thereby, the result of the petitioner was withhold, if at all the petitioner has to challenge the selection notification prior to the participation in the selection process. The petitioner's candidature was allowed to continue on the ground that the petitioner has satisfied the condition prescribed in the notification. However, the condition has to be verified only at the time of finalising the selection list, the petitioner's certificate was verified and only after verifying the certificate, it is revealed that the petitioner obtained certificate which was recognised by the Government of Tamil Nadu. The Institute was not recognised by Government of Tamil nadu and each and every State has the power to recognise the course conducted by the respective States. In the present case, unless that institute and certificate has recognised by State of Tamil Nadu, the candidature of the petitioner cannot be accepted. Hence, the impugned notification's rejection order is perfectly in order, which cannot be interfered with.



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7. Further, the learned Standing Counsel for the second respondent submitted that the employer has a every right to fix the qualification. In the present case, the impugned clause 6(B) educational qualification is a Diploma certificate in Medical Laboratory Technology course two years conducted by King Institute and Preventive Medicine or any other institution recognised by the Government of Tamil Nadu, for this purpose. However, it is open to the petitioner institute to get recognition from the Government of Tamil Nadu and there is no bar for getting recognition from the State of Tamil Nadu. Unless the petitioner Intitute obtained recognition from the State of Tamil Nadu, the student studied in the said institute is not entitled to participate in the selection process and the employer has every right to fix education qualification and recognition of the certificate, in which, the petitioner has no right to challenge the educational qualification as prescribed by the employer. Hence, prayed for dismissal of these writ petitions.

8. The facts in the present case are not in dispute. The petitioner filed two writ petitions before this Court, challenging the



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impugned notification clause 6(B) of the notification and the consequential rejection order. The only plea raised by the petitioner was that the impugned notification clause 6(B) imposed the condition that the institute has to be recognised only by the Government of Tamil Nadu and it is an admitted fact that the notification was issued in the year 2016, whereas, the selection process for the candidature was conducted only in the year 2019 and the petitioner must aware of the condition prescribed in the notification, then they have to participate in the selection process.

9. In the present case, in the absence of any interim order, the selected candidates have joined duty and no post is available as on date to consider the petitioner's request. Further, as rightly pointed out by the learned Standing Counsel appearing for the second respondent that the employer has every right to fix the qualification, in which, this Court cannot interfere, unless the qualification prescribed by the employer is arbitrary. In the present case, though the petitioner obtained a certificate from the State outside Tamil Nadu, the only condition imposed in the impugned notification is that the certificate and the



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institute has to be recognised by the Government of Tamil Nadu. There is no prohibition for that particular institute to get recognition from the State of Tamil Nadu. Unless, the petitioner institute take steps to get recognition from the State of Tamil Nadu and moreover, the entire selection process is already over and the selected candidates were not added as a parties here in the writ petition and hence, the prayer sought in these writ petitions cannot be granted.

10. Accordingly, these writ petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

06.12.2022

Index :Yes/No
Internet : Yes / No
RM



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7th Floor, DMS Building,
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M.DHANDAPANI, J.

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