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W.A.No.67 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 67 of 2023
and
CMP Nos. 582 & 584 of 2023

Dr. K. Ayisha

.. Appellant

Versus

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 Services Recruitment Board (MRB)
Government of Tamil Nadu,
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai - 600 006.
4. Dr.Muzammil Ahmed,
No.28/12, Mottu Kollai West Street,
Ambur, Thiruppattur District - 635 802.



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5. Dr.Tanveer Hussain Hashmi,
No.14, Aasnampet Road,
Sanikkam Maidu Kambi Kollai,
Ambur, Thiruppattur District - 635 802

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 23.12.2022 made in WP. No. 25683 of 2022.

For Appellant : Mr. M. Ramamoorthy
for Mr. Rathina Asohan

For R1 & R2 : Mr. Stalin Abhimanyu,
Additional Government Pleader

For R3 : Mr. L. Murugavelu,
Standing Counsel

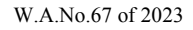
For R4 & R5 : Mr. S. Haja Mohideen Gisthi

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Heard the learned counsel appearing for all the parties and also perused the documents placed before this court.

2.The appellant has preferred this intra-court appeal to set aside the order dated 23.12.2022 passed by the learned Judge in WP No.25683 of 2022 and to direct the respondents 1 to 3 to include her name in the vacancies reserved for women.



<https://www.mhc.tn.gov.in/judis>



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respondents 4 and 5) have been selected and their names appeared in the selection list dated 07.09.2022, which is arbitrary, discriminatory and in violation of Article 14 of the Constitution of India and also without following amended proviso to Rule 7 of Adhoc Rules relating to the post of Assistant Medical Officer (Unani) in Indian Medicine and Homeopathy Department, vide, G.O.Ms.No.307 dated 28.11.2011 and G.O.Ms.No.70 dated 10.03.2015 issued by the Health and Family Welfare Department, Government of Tamil Nadu, the first respondent herein. Aggrieved by the mode of selection of male candidates, in the place reserved for Women Candidates, the appellant made a representation dated 09.09.2022 to the third respondent requesting to include her name in the selection list, but the same is kept pending without any consideration till date. Therefore, she has filed a writ petition in W.P. No. 25683 of 2022 seeking to quash the notification dated 07.09.2022 passed by the third respondent and direct the respondents to issue fresh list of candidates, by including the name of the appellant and then, call for certificate verification for the 8 posts of Assistant Medical Officer (Unani). However, the learned Judge dismissed the writ petition on 23.12.2022, the relevant passage of which is usefully extracted below:

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:



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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.

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.”

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. Even though, 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.

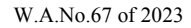
20. Admittedly, the petitioner is younger to the respondent Nos.4 and 5. Though she had scored the same marks as that of the respondent Nos.4 and 5, the respondent Nos.4 and 5 have been rightly given preference in the selection by the third respondent Board only in accordance with the Rules prescribed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

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."

Aggrieved by the aforesaid order, the writ petitioner is before this court with the present appeal.



6. Subsequently, the learned counsel for the third respondent has filed a status report dated 30.10.2023 and submitted that in view of the withdrawal of Dr.Zikra Tahseen from the selection list, the appellant, who is the next in the



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order of merit, will be called for certificate verification for the post in question. In support of his submission, the learned counsel referred to the relevant passage at page 6 of the status report dated 30.10.2023 filed by the third respondent, which reads as under:

"It is respectfully submitted that in view of the representation of Dr. Zikra Tahseen being excluded by the Board while finalizing of Provisional Selection List for the post of Assistant Medical Officer (Unani). The one name Dr. Ayisha.K. is the next in the order of Merit to be called for certificate verification against excluding the name of Dr.Zikra Tahseen from the approved certificate verification list of the post of Assistant Medical Officer (Unani)."

7. In the light of the latest development as referred to above, this court is of the opinion that nothing remains to be done, except recording the memo and status report filed by the respective respondents, as referred to above. Accordingly, this writ appeal stands disposed of, directing the third respondent to consider the candidature of the appellant for the post in question, if there is no other legal impediment. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
29.11.2023

Index : Yes / No
Internet : Yes / No
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To

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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,
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Government of Tamil Nadu,
7th Floor, DMS Building,
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