



Writ Petition No.2404 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.2404 of 2023

and

W.M.P.No.2494 of 2023

Dr.A.Dhevendhiran
S/o.(late) Asokan

...Petitioner

Vs

1.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.

2.The Director of Public Health and
Preventive Medicines,
DMS Buildings, Teynampet,
Chennai - 600 006.

3.The Member Secretary,
Medical Services Recruitment Board (MRB),
7th Floor, DMS Building, No.359,
Anna Salai, Teynampet,
Chennai - 600 006.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the respondents to accept the Kurumans (ST) Community certificate of the petitioner and appoint the petitioner to the post of Assistant Surgeon (General) which was withheld by



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the third respondent in proceedings No.10/MRB/2019 dated 28.08.2019 for want of ST community certificate as per the Notification No.10/MRB/2019 dated 20.02.2019 on the file of the third respondent.

For Petitioner : Mr.S.Doraiswamy

For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader [R1&R2]
Mr.M.Loganathan
Standing Counsel [R3]

ORDER

This writ petition has been filed for issuance of a writ of mandamus directing the respondents to appoint the petitioner to the post of Assistant Surgeon (General) as per the notification dated 20.02.2019.

2. When the matter came up for admission on 30.01.2023, this Court passed the following order:

"Mr.Stalin Abhimanyu, learned Additional Government Pleader, takes notice for respondents 1 and 2.

2. Mr.M.Loganathan, learned Standing Counsel, takes notice for third respondent.

3. The short issue that arises for consideration in the present writ petition is that the petitioner belongs to a Scheduled Tribe community. The petitioner submitted application for selection and appointment to the post of Assistant Surgeon pursuant to the



notification issued by the third respondent on 20.02.2019. Totally, 21 vacancies were notified under the category of Scheduled Tribe. The petitioner was selected in the written examination. During certificate verification, since the petitioner was not able to produce community certificate, he was not given employment. According to the petitioner, the community certificate was given by RDO, Dharmapuri, on 19.12.2022. On receipt of the community certificate, the petitioner gave a representation to the third respondent on 21.12.2022 to appoint him to the post of Assistant Surgeon mainly on the ground that out of 21 vacancies, only 6 candidates were appointed and there are 15 vacancies available.

4. Learned Standing Counsel appearing on behalf of the third respondent shall take instructions in this regard and report before this Court.

Post this case in the motion list on 02.02.2023."

3. The matter was taken up for hearing today and learned Standing Counsel appearing on behalf of the third respondent submitted that after the 2019 notification, a fresh notification was issued and the vacancies which were not filled up under the category of Scheduled Tribe, was carried forward to the next notification. In view of the same, it was submitted that there is no scope for appointing the petitioner to the post of Assistant Surgeon (General) based on the earlier notification issued in the year 2019.

4. Learned counsel for the petitioner brought to the notice of this



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Court G.O.(Ms) No.23, dated 29.01.2023 and specifically pointed out

Clause (vi) of the Government Order, which is extracted hereunder:

"(vi) In the selection process, to draw a list of candidates eligible for appointment and also to draw a "Reserve List" of candidates who will be wait listed and to keep this "Reserve List" valid till the next recruitment. The vacancies which arise due to non-joining of selected candidates within the time stipulated and fresh vacancies which arise due to retirement, promotion and other unforeseen circumstances during the year shall be filled up with the Reserve List candidates thereby enabling a continuous flow of intake at any point of time to avoid any shortage of doctors."

5. Learned counsel for petitioner submitted that the petitioner was provisionally selected and his name was withheld on the ground that he did not produce the community certificate. It was further submitted that the delay in producing the community certificate cannot be attributed against the petitioner and the petitioner ought to have been kept in the reserved list and after the petitioner had produced the community certificate, he should have been selected in the next recruitment.

6. In the considered view of this Court, the submission made by learned counsel for petitioner is not sustainable. Even as per the provisional



selection list that was issued by the third respondent on 28.08.2019, a note that was appended to the provisional selection list specifically provides as follows:

"Note:

The result of the above candidates in Annexure - II is withheld, pending production, verification and acceptance of certain mandated documents called for from them as per the notification (or) verification of certain details in their application. In case of candidates whose selection is withheld for want of documents, the candidate shall produce the same within 30 days from the date of publication of this notification, at the MRB office (during the working hours, on any working day). If the candidate fails to produce necessary documents within the stipulated time, it will be presumed that he/she is not able to produce the required documents and his/her provisional selection will be cancelled without any further notice."

7. It is clear from the above that where the candidate fails to produce the necessary documents within the stipulated time, the provisional selection will stand cancelled. Hence, there is no scope for placing such a candidate in the reserved list as contended by the learned counsel for the petitioner.

8. The provisional selection of the petitioner was cancelled since he did not produce the community certificate and whatever vacancies were left



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unfilled, were carried forward to the next selection while issuing the fresh notification. Since the petitioner has not been kept in the reserved list, the Government Order that was relied upon by learned counsel for petitioner will not apply to the facts of the present case.

9. In the light of the above discussion, the relief as sought for by the petitioner cannot be granted by this Court.

In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.02.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1. The Secretary to Government,

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Health and Family Welfare Department,
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2.The Director of Public Health and
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N.ANAND VENKATESH, J

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02.02.2023