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W.P.Nos.27138 of 2010 and 25287 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2023

PRONOUNCED ON : 10.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.Nos.27138 of 2010 and 25287 of 2011

and

M.P.Nos.1 of 2010 and 1 and 2 of 2011

S.Deivanayaki

: Petitioner

-VS-

1.The Director of Medical Services,
DMS Office, Teynampet,
Chennai.

2.The Joint Director,
Department of Medical and Rural Health,
Kumbakonam,
Thanjavur District.

3.The District Employment Officer,
Employment Exchange,
Thanjavur.

4.Sheela

: Respondents

PRAYER in W.P.No.27138 of 2010: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, forbearing the respondents 1 to 3 herein from appointing the fourth



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respondent who has not got the required qualification of Dental Hygienist Course certificate for the post of Dental Hygienist and consequentially appoint the petitioner to the post of Dental Hygienist in the Thanjavur District Medical Services.

PRAYER in W.P.No.25287 of 2011: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in proceedings bearing Ni.Mu.No.10307/Ni3/2010, dated 26.11.2010 appointing the fourth respondent herein to the post of Dental Hygienist and quash the same and consequentially direct the respondents 1 and 2 to appoint the petitioner to the post of Dental Hygienist in the Thanjavur District Medical Services.

In both petitions:

For Petitioner : Mr.K.Sridhar
for M/s.K.Sridhar Asso.

For R1 to R3 : Mr.T.M.Rajangam
Government Advocate

For R4 : Mr.M.Guruprasad

COMMON ORDER

By consent of both parties, both the cases are taken up together and disposed of the common order.



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2.W.P.No.27138 of 2010 was filed by the petitioner, Mrs.S.Deivanayaki, seeking for the relief of Writ of Certiorarified Mandamus, forbearing the respondents 1 to 3 herein from appointing the fourth respondent for want of qualification of Dental Course Certificate for the post of Dental Hygienist and consequently, directing the respondents 1 to 3 to appoint the petitioner to the said post.

3.W.P.No.25287 of 2011 was filed by the very same petitioner, seeking to quash the order of appointment issued by the respondents 1 to 3 in the proceedings, dated 26.11.2010, whereby, the fourth respondent herein is selected to the post of the Dental Hygienist and further direct the respondents 1 and 2 to appoint the petitioner in the said post.

4. The common facts in both the writ petitions are as under:

4.1.The petitioner completed the dental hygienist course certificate at Meenakshi Ammal Dental College and Hospital, Maduravoyal, Chennai, in December 2000. She registered herself with the Tamil Nadu Dental Council and her registration number is 375. She served as a dental hygienist



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at Meenakshi Ammal Dental College and Hospital, Maduravoyal, Chennai during the period 2000–2002. Subsequently, she was working as dental hygienist at Tirupur. Further, the petitioner belongs to the Most Backward Community and she registered her name with the Coimbatore District Employment Exchange on 01.11.2007. Pursuant to the letter received from the third respondent/Employment Exchange, Thanjavur, dated 01.11.2010, she attended the interview on 26.11.2010 for the post of Dental Hygienist and subsequently, she alleged that for the MBC quota, there were only two candidates, namely, the petitioner and the fourth respondent.

4.2. It is further alleged by the petitioner that the fourth respondent was not qualified for the post of Dental Hygienist as she did not hold the requisite Dental Hygienist Course certificate. The fourth respondent held a Dental Mechanics Course certificate and as such, she ought not to have been called for the interview. According to the petitioner, the fourth respondent is likely to be considered and appointed for the post of the Dental Hygienist and she is not having requisite qualification and the fourth respondent is having Dental Mechanics only.



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5. The contesting respondent, namely, the second respondent filed counter.

5(a). From the counter, it is seen that for selecting two posts of Dental Hygienists in Thanjavur District, lists were called for from the District Employment Office, Thanjavur, vide office Ref.No.4325/3/2008, dated 06.03.2009. In response to this, the District Employment Officer has sent a list of seven candidates vide their letter No.A3/X2/38, dated 01.11.2010.

5(b). Further, it is seen that the office Ref.No.4325/E3/2008, dated 06.03.2009, candidates have called for the two posts of Dental Hygienist in Thanjavur District to the District Employment Office, Thanjavur and their vide Lr.No.A3/X2/38/09 dated 01.11.2010, the District Employment Office has sent the list of candidates to the post of Dental Hygienist. An interview was conducted in the office of the Joint Director of Health services, Kumbakonam on 26.11.2010 for selecting the suitable candidates for the post of Dental Hygienist. Out of seven candidates, five candidates have



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attended the interview and two candidates were selected for the post of Dental Hygienist.

5(c). Further it is also seen that two lists of candidates were sent by the District Employment Office, Thanjavur for interview. One for MBC quota and it contained two candidates and another for BC quota and it contained 5 candidates. In the list of MBC quota, the certificates of both candidates were verified. The petitioner holds Dental Hygienist Certificate and the fourth respondent holds Dental Mechanic Certificate. During the interview in the list of BC quota, the satisfied Dental Hygienist candidate is selected and posted as Dental Hygienist and unsatisfied other four candidates were rejected.

6.The comparison, of course, with regard to Dental Mechanics and also the Dental Hygienist have been elaborately discussed at Para No.6 of the counter affidavit. It is the specific stand of the second respondent that the Dental Mechanics studies, the subjects related to Dental Hygienist, hence, the Dental Mechanics knows the work of Dental Hygienist. But



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Dental Hygienists do not study the subjects in Dental Mechanics and hence, they could not perform the work of Dental Mechanics.

6(a).Further, in the *Adhoc* Rules of Dental Hygienist Clause XV, Category 2, it is stated that the persons possessing previous experience in Dental Hygiene with other prescribed qualification shall be eligible for appointment to the Dental Hygienist post. Moreover, the fourth respondent has worked as Dental Hygienist temporarily at Government Primary Health Centre, Thalaivasal from 03.05.2004 to 25.11.2010 also under National Rural Health Mission, Model Dental Health Programme. Further, the Employment registration number of the fourth respondent is 2006 F00602 SF 09.03.2006, and the petitioner's registration number is 2007 F 00806 SF 1.11.2007. As such, the fourth respondent is senior than the petitioner in employment seniority also.

6(b).During the interview, the fourth respondent produced experience certificate as she had temporarily worked as Dental Hygienist at Government Primary Health Centre, Thalaivasal under National Rural Health Mission Scheme. It is ordered in G.O(Ms)No.415, Health and Family



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Welfare (EAP II-2), Department, dated 29.12.2009 and the above posting order is issued to the fourth respondent in R.No.16133/E6/2003/4, dated 28.04.2004 of the Deputy Director of Health Services, Salem. The fourth respondent worked temporarily as Dental Hygienist at Government Primary Health Centre, Thalaivasal from 03.05.2004 to 25.11.2010 and a duty certificate was issued by the Block Medical Officer of Government Primary Health Centre, Thalaivasal on 25.11.2010. During the interview, the fourth respondent produced genuine experience certificates and not bogus certificate.

7. After hearing the rival submissions made by the learned counsel on either side and the learned counsel appearing for the fourth respondent has reported no instructions from his clients.

8. From the impugned order, it is seen that for selection of the post of the Dental Hygienist in Government Service, Section 10 (a)(1) of the TNPSC Rules would be adopted for temporary employment. Necessary notification has been issued and candidates have been called for from the District Employment Office under the category of BC quota and MBC quota.



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The subject matter relates to MBC quota. Both in the affidavit as well as the counter affidavit by the contesting official respondents, I find that the dispute is relating to MBC quota alone. The petitioner alleged that the selected candidate/fourth respondent does not possess necessary qualification, namely, certificate course in Dental Hygienist. At para No.6, the tabular column of comparison of Dental Mechanics and Dental Hygienist have been elaborated and it is specifically stated that the Dental Mechanics studies, the subjects related to Dental Hygienist and hence, the Dental Mechanics knows the work of Dental Hygienist. But Dental Hygienists do not study the subjects in Dental Mechanics and hence, they could not perform the work of Dental Mechanics. Furthermore, it is also seen that the selected candidate, namely, the fourth respondent has also worked as a Dental Hygienist in Government Primary Health Centre, Thalaivasal under the National Rural Health Mission Scheme for about six years ie., from 03.05.2004 to 25.11.2010 and duty certificate was also issued by the Block Medical Officer of Government Primary Health Centre, Thalaivasal and the said certificate is also found to be genuine.

9. Hence, I find that taking note of the qualification of the fourth



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respondent, who belongs to MBC category and did her course in Dental Mechanics, who has the post completion of Dental Hygienist also and also taking note of the statement made by the competent authority that the Dental Mechanics studies includes Dental Hygienist and not the vice versa and also she worked in the very same post as temporary under the National Rural Health Mission Scheme for the Dental Hygienist in the Government Primary Health Centre for more than six years and the required certificate has also been produced, which is also found to be genuine and besides as per the *Adhoc* rules of Dental Hygienist Clause XV, Category 2, person possessing previous experience in Dental Hygiene with other prescribed qualification shall be eligible for appointment to the Dental Hygienist post. Hence, I find that the selection of the fourth respondent is in accordance with law. The allegation levelled against the fourth respondent by the petitioner is found to be only misconceived and that the counter clearly discloses the meritorious position of the fourth respondent and hence, I am not inclined to interfere with the impugned order.

10. Accordingly, these writ petitions are dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.



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10.11.2023

Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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RMT. TEEKAA RAMAN, J.

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