



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.23309 of 2021 and
W.M.P.Nos.24577 & 24578 of 2021

M.Saravana Priya

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep.by its Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai 600 009.

2.The Director,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent having Ref.No.604/E1/3/2021, dated 06.05.2021 and quash the same in so far as it holds that the petitioner does not fulfill the qualifications as per the Rules in 33F, 160B, 165 and Schedule T of the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945 for the post of Government Analyst and Consequently, direct the respondents to promote the petitioner as a Government Analyst in the State Drugs Testing Laboratory, Indian Medicine, Directorate of Indian Medicine and Homeopathy, Arumbakkam, Chennai 600 106.



For Petitioner : Mrs.Nalini Chidambaram, Senior Counsel for
Ms.C.Uma

For Respondents : Mr.T.Arun kumar,
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent having Ref.No.604/E1/3/2021, dated 06.05.2021 and quash the same in so far as it holds that the petitioner does not fulfill the qualifications as per the Rules in 33F, 160B, 165 and Schedule T of the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945 for the post of Government Analyst and Consequently, direct the respondents to promote the petitioner as a Government Analyst in the State Drugs Testing Laboratory, Indian Medicine, Directorate of Indian Medicine and Homeopathy, Arumbakkam, Chennai 600 106.

2. Heard Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioner and Mr.T.Arun kumar, learned Additional Government Pleader for the respondents.



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3. The petitioner is working as an Assistant Scientific Officer in Indian Medicine and Homeopathy Department in Drug Testing Laboratory, Chennai. The petitioner has sent a representation to consider her for the post of Government Analyst (Indian Medicine) in the Drug Testing Laboratory (Indian Medicine). Since no response evoked, the petitioner has filed a Writ Petition in W.P.No.2588 of 2021 before this Court seeking for a direction to consider her representation for being appointed as Government Analyst (Indian Medicine) in State Drugs Testing Laboratory. After considering her representation, the same was dismissed *vide* the impugned order dated 06.05.2021 in reference No.604/E1/3/2021 by the Directorate of Indian Medicine and Homeopathy, Chennai. In the impugned order, the following reasons have been stated for rejecting the representation of the petitioner:

"4. After careful consideration of individual (viz., Tmt.M.Saravana Priya) representation dated 27.10.2020 and 07.01.2021 and as per the Drugs and Cosmetics Act, 1940 and Rules 1945, it is informed that,
(i) The post of Government Analyst was sanctioned during 2017 and the adhoc rules for the post are yet to be framed.



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(ii) *The State Drug Testing Laboratory is to be headed by the Government Analyst to maintain quality of drugs supplied to the public.*

(iii) *It is a Quasi Judiciary post governed by the Drugs and Cosmetics Act, 1940*

(iv) *As per Schedule T, Quality Control Laboratory should be headed by Siddha/Ayurveda/Unani doctors only.*

(v) *Rule 160-B of Drugs and Cosmetics Rules, 1945 deals with the condition for granting / renewal of approval of Ayurvedic, Siddha and Unani Drugs Testing Laboratory (IM) and in Sub rule (b)(i) expert in Ayurveda/Siddha/Unani medicine who possesses a degree qualification recognized under Schedule II of Indian Medicine Central Council Act, 1970.*

(vi) *Rule 44 of Drugs and Cosmetics Act, 1940 and Rules, 1945 are prescribe for Government Analyst post in the Allopathy Drug Testing Laboratory only.*

(vii) *As per the Act, the Government is empowered to notify the qualified person as Government Analyst.*

5. *Hence, Tmt.M.Saravana Priya, Assistant Scientific Officer possesses M.Sc.Microbiology, M.Phil.Biotechnology Degrees and does not fulfill the prescribed qualification as per the rules in 33F, 160B,*



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*165 and schedule T of Drugs and Cosmetics Act, 1940
and Rule 1945."*

4. According to the second respondent, the petitioner's qualification in M.Sc Microbiology and M.Phil. Biotechnology degrees does not fulfil the prescribed qualification as per the Rules in 33(F), 160(B), 165 and Schedule T of Drug and Cosmetics Act 1940 and Rule 1945.

5. Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioner submitted that the relevant rules applicable to the post of Government Analyst (Indian Medicine) is prescribed under Part V of the Rules and hence, the eligibility criteria of the petitioner has to be evaluated only in according with the Rules 44, 45 & Rule 165.

6. However, Mr.T.Arun Kumar, learned Additional Government Pleader for the respondents submitted that Rule 44 falls under Part V which is a general category which deals with Government Analysts, Inspectors, Licensing Authorities and Controlling Authorities. However, in specific relation to Government Analyst for Indian Medicines such as



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Ayurveda, Siddha and Unani drugs. The relevant rule applicable would be rule 165 falling under Part XVIII. Part XVIII is given with the topic 'Government Analysts and Inspectors for Ayurvedic/Siddha and Unani Drugs'. For the sake of clarity, Rule 165 of the Act is extracted hereunder:

"165. Qualifications of Government Analyst - A person who is appointed as Government Analyst under Section 33-F of the Act shall be a person possessing the qualifications prescribed in Rule 44 or a degree in Ayurveda, Siddha or Unani system, as the case may be, conferred by a University, a State Government or Statutory Faculties, Councils and Boards of Indian Systems of Medicine recognized by the Central or State Government, as the case may be, for this purpose and has had not less than three years' post graduate experience in the analysis of drugs in a laboratory under the control of (i) a Government Analyst appointed under the Act, or (ii) a Chemical Examiner to Government, or (iii) the head of an institution specially provided for the purpose by the appointing authority."

6.1. Rule 33(F) which comes under Chapter IV-A relates to provisions for Ayurveda, Siddha and Unani Drugs. The qualification



prescribed under Rule 33(F) would denote the qualifications specific to Ayurveda, Siddha and Unani and not any general heading qualifications.

Rule 33(F) reads as under:

"33-F. Government Analysts - (1) The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit having the prescribed qualifications to be Government Analysts for such areas as may be assigned to them by the Central Government or the State Government, as the case may be."

7. Mrs.Nalini Chidambaram, learned Senior Counsel further submitted that Rule 44 does not stipulate that only the candidates with the degree in Ayurveda, Siddha and Unani are eligible to be appointed as Government Analyst. So far it is insisted that the petitioner is also qualified by fulfilling the criteria contemplated under Rule 165 r/w. Rule 44 of the Drugs and Cosmetics Act. Rule 44 would prescribe qualification for Government Analyst which reads as under:

*"44. **Qualifications of Government Analyst-- A** person appointed as a Government Analyst under the*



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Act shall be a person who--

(a) is a graduate in medicine or science or pharmacy or pharmaceutical chemistry or a University established in India by law or has an equivalent qualification recognized and notified by the Central Government for such purpose and has had not less than five years' post-graduate experience in the testing of drugs in a laboratory under control of (i) a Government Analyst appointed under the Act, or (ii) the head of an Institution or testing laboratory approved for the purpose by the appointing authority or has completed two years' training on testing of drugs, including items stated in Schedule C, in Central Drugs Laboratory, or

(b) Possesses a post graduate degree in medicine or science or pharmacy or pharmaceutical chemistry or a University established in India by law or has an equivalent qualification recognized and notified by the Central Government for such purpose or possesses the Associateship Diploma of the Institution of Chemists (India) obtained by passing the said examination with 'Analysis of Drugs and Pharmaceuticals' as one of the subjects and has had after obtaining the said post graduate degree or



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diploma not less than three years' experience in the testing of drugs in a laboratory under the control of (i) a Government Analyst appointed under the Act, or (ii) the head of an Institution or testing laboratory approved for the purpose by the appointing authority or has completed training on testing of drugs, including items stated in Schedule C, in Central Drugs Laboratory."

8. Rule 44(a) prescribes the qualifications of graduation in medicine or science or pharmacy or pharmaceutical chemistry and it also stipulates that the candidates who have not less than five years of Post Graduate experience in the testing of Drugs in the Laboratory under the control of a Government Analyst appointed under the Act or the Head of the Institution or testing laboratory approved for the purpose by the appointing authority or two years training on testing of drugs including items stated in the Schedule 'C' in Central Drugs Laboratory.

9. Rule 44(b) stipulates alternate qualification possessing Post



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Graduate in medicine or science or pharmacy or pharmaceutical chemicals or any Associateship Diploma of the Institution of Chemists obtained by passing one of the subjects in analysis of drugs and pharmaceuticals. Along with the above educational qualification, three years experience in testing of drugs in laboratory under the control of a Government Analyst appointed under the Act, or the head of an Institution or testing laboratory approved for the purpose by the appointing authority or has completed training on testing of drugs, including items stated in Schedule C, in Central Drugs Laboratory.

10. The only difference between Clause a and b of Rule 44 is that a person possessing graduation in medicine or science or pharmacy or as the case may be and have five years of Post Graduate experience in testing of drugs or three years of experience in the testing of drugs is sufficient for the person possessing Post Graduate Degree in medicine or science or pharmacy or pharmaceutical chemistry. So far as the proviso to Rule 44 would clarify that those individuals who have a degree in medicine, physiology, pharmacology, microbiology and pharmacy should



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have experience or training in testing Schedule 'C' items in an approved laboratory or institution for a period not lesser than six months. Those persons who do not have the degree in the above subjects, but in other branch of science should have similar such experience in testing Schedule 'C' drugs for a period not lesser than three years in an approved Laboratory or Institution. No doubt, Rule 44 is placed under Part V of the Drugs and Cosmetics Rules, 1945.

11. If the respondents accept the qualifications prescribed for the Government Analyst fall under Rule 44, then, the qualifications contemplated under the proviso to Rule 44 should also be accepted. The respondents cannot deny the applicability of Rule 44 because in the impugned order, it is categorically mentioned that Rule 44 is applicable. However it is stated that the above Rule is applicable only for allopathy drug laboratory and not for Indian medicine. The penultimate paragraph of the rejection order speaks about Rule 33(F), 160(B), 165 and Schedule 'T' of Drugs and Cosmetics Act, 1940 and Rules 1945.



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12. Rule 33(F) and 165 have been already dealt and the scope of Rule 165 is the qualifications for Government Analyst. Rule 165 speaks about two types of Government Analysts. One for those persons who are possessing the qualification under Rule 44 and the other is about the Government Analyst who fulfills the condition of possessing the degree in Ayurveda, Siddha and Unani systems, as the case may be. Rule 44 consciously omits to state anything about the qualifications of degree in Ayurveda, Siddha and Unani system. The conjoint reading of Rule 44 and Rule 165 would give an inference that the graduation in medicine referred in Rule 44 is in respect of allopathic medicine. The remaining part of the other systems of medicine is included under Rule 165 and according to the said Rule, the person who aspires for the post of Government Analyst (Indian Medicine) should be possessing a degree in Ayurveda, Siddha and Unani systems as the case may be. However the Government Analyst in respect of allopathic medicine can either be a medical graduate/post graduate or graduate /post graduate in science, pharmacy or pharmaceutical chemistry.



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13. The petitioner who possessed the qualification prescribed under Rule 44 cannot claim to be appointed as Government Analyst (Indian Medicine) in view of the complementary qualifications prescribed under Rule 165. No doubt the petitioner has got the qualifications to be appointed as Government Analyst, but not a Government Analyst (Indian medicine). However, the duties of Government Analyst as seen under Rule 166 is to analyze, test or cause to be analyzed or tested such samples of Ayurveda, Siddha and Unani drugs sent to him by the Inspectors or any other authorities authorised by the Government under the Act and to furnish the reports.

14. If a person who has got M.Sc qualification in Microbiology is accepted to be qualified to test any drug including Indian drugs, the Government can relax the rules so as to include the persons like the petitioner into its ambit. For any reasons, the Government Analyst (Indian medicine) has to qualify under separate category and the graduation in science is not sufficient to make out the demand of expertise in testing the drugs of Indian Medicine. A person who does not have a suitable



qualification cannot be forced to be appointed to the said post.

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15. Schedule 'T' of the Drugs and Cosmetics Act only deals with the conditions for grant of licence for manufacturing practices for Ayurveda, Siddha and Unani Medicines. So the Rule applicable for the petitioner's case would be Rule 165 r/w. Rule 44 and 33(F).

16. The learned Senior Counsel for the petitioner also submitted that atleast one promotion for Government Servants to the next cadre during their services is essential and normal incentive for their service.

17. But such accommodation can be given only if the Government has got the sanctioned post in any prescribed category. Though the petitioner should not be considered for Government Analyst for Indian Medicine, she can very well be considered for Government Analyst for any other category, for which, she has the essential qualification under Rule 44 of the Act. Considering the long services and the qualification of the petitioner, the Government can take some pro-active measures to



promote the petitioner in any appropriate post.

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18. With these observations, this Writ Petition is disposed.

Consequently, connected miscellaneous petitions are closed. No costs.

07.11.2023

Index : Yes

Internet : Yes/No

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To

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

2.The Director,
Directorate of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.



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R.N.MANJULA, J.

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