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W.P.No.33569 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.33569 of 2022
and WMP.Nos.33026 & 33028 of 2022

Mrs.V.Padmavathi

Petitioner

VS.

1.The State of Tamil Nadu,
Rep. By its Principal Secretary,
Health and Family Welfare Department,
Fort St.George, Secretariat,
Chennai-600 009.

2.The Director,
Directorate of Indian Medicine and Homeopathy,
Arignar Anna Hospital Complex,
Arumbakkam, Chennai-600 106.

3.The Medical Services Recruitment Board (MRB),
Rep. By its Member Secretary,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai-600 006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned Provisional List PSL No.05/MRB/2020 dated 18.11.2022 and quash the same and consequently, direct the 3rd respondent to include the name of the petitioner without withholding her name in the Provisional List.



W.P.No.33569 of 2022

For Petitioner

: Mr.A.M.Kamalanath

For Respondents

: Mr.Stalin Abimanyu,
Additional Govt. Pleader for R1 & R2

Mr.M.Loganathan for R3

ORDER

This writ petition has been filed challenging the impugned provisional list dated 18.11.2022 issued by the third respondent and for a consequential direction to the third respondent to include the name of the petitioner and not to withhold her name in the provisional list.

2. Brief facts of the case are as under:

2.1. The petitioner has completed her Bachelor of Siddha Medicine and Surgery (BSMS) from the Government Siddha Medical College, Palayamkottai, which is affiliated to the Tamil Nadu Dr.MGR Medical University, Chennai. The petitioner has also registered herself with the Tamil Nadu Siddha Council at Chennai.

2.2. The third respondent had issued a notification dated 14.08.2020, notifying 54 vacancies to the post of Assistant Medical Officer (Siddha). Subsequently, through an addendum dated 26.10.2021, 58 further vacancies



W.P.No.33569 of 2022

were notified and the total number of vacancies is 112 for the post of Assistant Medical Officer (Siddha).

2.3. The petitioner applied for the said selection. Even while making the application, the petitioner had revealed about the existing service particulars and a No Objection Certificate was also received from the existing employer.

2.4. The results were published by the third respondent through a notification dated 07.09.2022 and the petitioner was called upon for certificate verification. Subsequently, the third respondent through a notification dated 04.11.2022, published the revised rank list and the petitioner was allotted 8th rank in the provisional list of candidates. The selected candidates were once again called for certificate verification, which was held on 10.11.2022. Subsequently, the impugned provisional list of candidates was published and the name of the petitioner was withheld. Aggrieved by the same, the present writ petition was filed before this Court.

3. When the matter came up for admission on 14.12.2022, this Court



passed the following order :

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“The grievance of the petitioner in this writ petition is that her selection to the post of Assistant Medical Officer (Siddha) has been withheld on the ground that she is involved in disciplinary proceedings.

2. The learned Senior counsel appearing for the petitioner drew the attention of this Court to the No Objection Certificate issued by the present employer of the petitioner and would submit that the said disciplinary proceedings pertains to an unauthorised absence and is not serious in nature. He would also submit that only due to Covid-19 Pandemic, the petitioner did not attend duty and due to her absence, the disciplinary proceedings have been initiated.

3. He also drew the attention of this Court to the recruitment Notification, pursuant to which the petitioner had applied to the post of Assistant Medical Officer(Siddha) and in particular, he drew the attention of this Court to the declaration, any aspirant will have to give and the same reads as follows :-

VIII. I am not a dismissed Government Employee.

IX. There is no criminal case filed against me in the Police Station /Court.

X. There is no Vigilance Case filed against me.

XI. I hereby declare that my character / antecedents are suitable for appointment to this post.

XII. I declare that I do not have more than one living spouse.

4. According to him, the pendency of a disciplinary proceeding will not disable the petitioner to get selected as no such declaration was sought for by the respondents from the petitioner under the recruitment Notification.

5. The learned Standing counsel for the 3rd respondent would submit that there are Board Standing Orders, which disable the petitioner from getting selected to the post due to the pendency of disciplinary proceedings against her.

6. He would also submit that sufficient time was granted



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to the petitioner to clear herself of the disciplinary proceedings but despite the same, till date, she has not been absolved of the disciplinary proceedings and that is the reasons as to why her results have been declared as withheld.

7. The issue requires further consideration and can be decided only after a counter is filed by the respondents.

8. However, since a prima facie case has been made out by the petitioner, interim direction will have to be issued to the respondents, directing them to reserve one post which has already been allotted to the petitioner as per the provisional selection list till final orders are passed by this Court in this writ petition.

9. Accordingly, this Court by way of an interim direction directs the respondents to reserve one post to the petitioner as per the provisional selection list dated 18.11.2022 for the post of Assistant Medical Officer (Siddha), till final orders are passed.

10. Post the matter for counter on 06.02.2023.”

Thereafter, the matter was posted for hearing on 24.01.2023 and this Court passed the following order :

“When this writ petition was entertained, an interim order was passed on 14.12.2022 directing the respondents to reserve one post to the petitioner as per the provisional selection list dated 18.11.2022 for the post of Assistant Medical Officer (Siddha), till final orders are passed.

2. A mention was made today morning by the learned counsel for the petitioner to the effect that the counselling for the post of Assistant Medical Officer (Siddha) is under way today and it is conducted from 11.00 a.m. to 04.30 p.m.

3. Admittedly, the selection process involves conducting a counselling. Hence, the petitioner can be permitted to attend the counselling conducted by the second respondent today. The result can be kept in a sealed cover and ultimately, when the writ petition is decided, the same can be taken note of



W.P.No.33569 of 2022

WEB COPY

depending upon the result in the writ petition. It is made abundantly clear that permitting the petitioner to attend the counselling conducted by the second respondent, does not in anyway give any right to the petitioner to claim for the post and this order is passed more in the nature of an interim arrangement and it will be subject to the final result in the writ petition.

Post this writ petition under the caption "for orders" on 31.01.2023."

4. It is clear from the above interim orders that one post was reserved and the petitioner was also permitted to participate in the counselling conducted by the second respondent and the result has been kept in a sealed cover.

5. Heard Mr.A.M.Kamalanath, learned counsel appearing for the petitioner, Mr.Stalin Abimanyu, learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 and Mr.Loganathan, learned counsel appearing on behalf of the third respondent.

6. The only ground for withholding the candidature of the petitioner was that proceedings were initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and punishment was also imposed against the petitioner by the existing employer to the effect of stoppage of



W.P.No.33569 of 2022

increment for two years without cumulative effect.

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7. The learned standing counsel appearing on behalf of the third respondent brought to the notice of this Court Clause 6D(c) of the Notification and submitted that a candidate, who applies for selection, must not have any adverse character or antecedent. In the present case, the existing employer of the petitioner had initiated disciplinary proceedings for imposing major penalty and the same ended by imposing a punishment and that the same falls within the ineligibility under Sub-Clause (c) to Clause 6D of the Notification.

8. The learned counsel for the petitioner, in reply to this submission, brought to the notice of this Court the No Objection Certificate that was given by the existing employer and also the amount that was deposited by the petitioner towards the punishment that was imposed against her. The learned counsel for the petitioner would submit that if the existing employer did not find the antecedent of the petitioner to be adverse and the petitioner was permitted to deposit the amount, the same should not be put against the petitioner, when the petitioner is otherwise qualified and had been placed very



W.P.No.33569 of 2022

high in the rank list.

WEB COPY

9. In the considered view of this Court, disciplinary proceedings were initiated by the existing employer on the ground of unauthorised absence. This unauthorized absence, according to the petitioner, was occasioned during Covid-19 pandemic and there was no wilful absence on the part of the petitioner. This fact had been taken into consideration even while passing the interim order dated 14.12.2022.

10. The relevant clause that was pointed out by the learned standing counsel appearing on behalf of the third respondent speaks about adverse character or adverse antecedent of a candidate. On a plain reading of this clause, it should be seen if a candidate had involved in any activity with moral turpitude. The proceedings were initiated only on the ground that the petitioner was absent and the same was taken into consideration even while imposing the punishment of stoppage of increment for two years without cumulative effect. This certainly cannot be considered to be a very adverse antecedent or adverse character on the part of the petitioner.

11. In the light of the above discussion, this Court holds that



W.P.No.33569 of 2022

withholding the candidature of the petitioner to participate in the selection to the post of Assistant Medical Officer (Siddha) requires interference of this Court and accordingly, the same is held to be illegal. The petitioner has already participated in the counselling that was held on 24.01.2023 and the result has been kept in a sealed cover. Since the decision taken by the third respondent is interfered by this Court, the sealed cover can be opened and the candidature of the petitioner can be considered, if she has fulfilled all the other requirements.

12. In the result, this writ petition is allowed and there shall be a direction to the third respondent to consider the candidature of the petitioner to the post of Assistant Medical Officer (Siddha), if she is otherwise qualified. No costs. Consequently, connected miscellaneous petitions are closed.

31.01.2023

Index : Yes / No
Internet : Yes / No
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N.ANAND VENKATESH. J

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To
1.The Principal Secretary,



W.P.No.33569 of 2022

The State of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Secretariat, Chennai-600 009.

- 2.The Director,
Directorate of Indian Medicine and Homeopathy,
Arignar Anna Hospital Complex,
Arumbakkam, Chennai-600 106.
- 3.The Member Secretary,
The Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai-600 006.

W.P.No.33569 of 2022

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