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W.P.(MD)No.1381 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.01.2023

PRONOUNCED ON : 11.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1381 of 2023

and

W.M.P.(MD)Nos.1267, 1269 and 1270 of 2023

V.Chandralega

... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Principal Secretary
to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai-600 010.

3.The Member Secretary,
Medical Services Recruitment Board (MRB),
359, Anna Salai, DMS Compound,
Teynampet, Chennai 600 018.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned Provisional Selection List issued by the 3rd respondent in PSL No. 08/MRB/2022, dated 04.11.2022 and the subsequent impugned order issued by the 2nd respondent in Ref. No.103328/E5/1/2022, dated 30.12.2022 and to quash the same in so far as non-inclusion of petitioner in the selection list and consequently, to direct the respondents to include the name of the petitioner in the selection list for appointment to the post of Dark Room Assistant based on the marks secured by the petitioner in the selection by reckoning CRA candidates with or without Science in Higher Secondary Course as single category in accordance in accordance with Special Rules for Tamil Nadu Medical Subordinate Service as amended.

For Petitioner	: Mr.G.Sankaran Senior Counsel for Mr.F.Deepak
For R1 & 2	: Mr.R.Baskaran Additional Advocate General assisted by Mr.J.Ashok Additional Government Pleader
For R3	: Mr.T.S.Mohammed Mohideen *****



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ORDER

This writ petition is filed for issuance of writ of Certiorarified Mandamus, to quash the impugned Provisional Selection List issued by the 3rd respondent, dated 04.11.2022 in so far as non- inclusion of petitioner's name in the selection list and the subsequent impugned order issued by the 2nd respondent, dated 30.12.2022 and consequently to direct the respondents to include the name of the petitioner in the selection list for appointment to the post of Dark Room Assistant based on the marks secured by the petitioner in the selection by reckoning CRA candidates with or without Science in Higher Secondary Course as single category in accordance in accordance with Special Rules for Tamil Nadu Medical Subordinate Service as amended.

2. The petitioner belongs to SC community and has completed 10th and 12th standard. Thereafter, she passed the "Certificate of Radiological Assistance" course (one year) (hereinafter mentioned as CRA) which is a paramedical course.



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The candidates qualified with HSC in any subject shall be eligible for admission in CRA course. The petitioner has passed HSC in non-science subject, hence is eligible to be admitted in CRA course. The petitioner completed the course in the year 2009-2010. The post of Dark Room Assistant is governed by Special Rules for Tamil Nadu Medical Subordinate Service. Originally, the special rules had prescribed the qualification for the Dark Room Assistant as follows:

“Category-4 Dark Room Asst- Certificate of having successfully completed the training course for Dark Room Assistant provided that preference shall be given to candidate who have passed the C.R.A. Examination.”

Based on the above, the candidates either in science subject or non-science subject in HSC joined the CRA course. From the academic year 2012 to 2013, the CRA course was stopped temporarily. In the meanwhile the Government amended the special rules for Tamil Nadu Medical Subordinate Service for the post of Dark Room Assistant vide G.O.Ms.No.304, Health and Family Welfare Department, dated 07.10.2015, which is extracted hereunder:



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“i. A pass in Higher Secondary Course with Science Subjects

(a) Physics, Chemistry, Botany and Zoology; (or)

(b) Physics, Chemistry, Biology and any one of the related subjects (viz) Mathematics or Computer Science and

ii. Certificate of having successfully completed the training course for Dark Room Assistant of any Institution recognized by the State Government (or) Government of India.

Provided that if candidates with the certificates of Dark Room Assistant are not available, then candidates with Certificate of Radiological Assistant of any Institution recognized by the State Government or Government of India, shall be appointed.

Provided also that if candidate with the certificate of Radiological Assistant are also not available then candidates with Diploma in Radio Diagnosis or Diploma in Radio Therapy of any Institution recognized by the State Government or Government of India shall be appointed”.

3. As per the proviso, if the candidates with certificate of DRA are not available, the candidates with CRA shall be considered for the appointment to the DRA post. Consequent to this amendment the candidates qualified with HSC in non-science subject with CRA was not considered for appointment, hence some



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140 candidates were affected and they submitted representations. Thereafter, the Government issued G.O.Ms.No.104, Health and Family Welfare Department, dated 26.02.2021, with a direction to the 2nd and 3rd respondents to fill up the vacancy in the post of Dark Room Assistant from the candidates who passed HSC without Science and possess CRA qualification to meet out the COVID-19 pandemic situation and further, directed to send the necessary proposals to amend the special rules. Thereafter, the second respondent forwarded a proposal to the Government and based on the same, the State Government issued G.O.Ms.No. 385, Health and Family Welfare Department, dated 27.08.2021, amending the special rules by substituting the following proviso:

*"Provided that if candidates with the certificate of Dark Room Assistant are not available, then candidates with Certificate of Radiological Assistant of any Institution recognized by the State Government or Government of India, **with or without science** in Higher Secondary Course, shall be appointed".*

Accordingly, the candidate with the CRA qualification with or without science in



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HSC are considered as single category while considering for appointment. The 3rd respondent issued notification, dated 16.03.2022, inviting applications through online for direct recruitment to the post of DRA with 209 vacancies. According to the notification, the educational qualification is prescribed. It also states that if the candidates with certificate of DRA are not available, the candidates with CRA with or without science in HSC shall be appointed. Based on the said notification, the petitioner participated in the selection process and the weightage marks obtained by the petitioner is 79.33.

4. The contention of the petitioner is that the respondents have misinterpreted the provision and has taken the CRA candidates as two categories, namely, candidates possessing science subject and candidates processing non science subject. The 3rd respondent issued provisional selection list, dated 04.11.2022, wherein the petitioner's name was not included whereas the SC candidates who secured lesser marks are included. On enquiry it came to the



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knowledge of the petitioner that the respondents have drawn the selection list by segregating candidates qualified with CRA and with HSC Science and HSC non-science. In the meanwhile the said selection list was challenged in W.P.No.30364 of 2022 and the Hon'ble Court, vide order, dated 15.11.2022 passed an order and the relevant portion of the order is extracted here under:

"6. The learned Senior Counsel for the petitioners drew the attention of this Court to the impugned selection list and in particular, he referred to candidates, who have been selected based on studying Science subjects in the Higher Secondary Course. He would submit that as per the impugned selection list, candidates, who have studied Science subjects in the Higher Secondary Course were given priority and the candidates, who did not study Science, Le, non-Science candidates, in the Higher Secondary Course were ranked below them, which according to him is not in accordance with the recruitment Notification and not in accordance with the Rules, dated 27.08.2021 issued in G.O. Ms.No.385, Health and Family Welfare (C2) Department.

7.

8. The learned counsel for the petitioners would also submit that till final orders are passed on the petitioner's representation, an interim direction may be issued to the respondents not to issue appointment orders to the selected candidates as per the impugned selection list dated 04.11.2022. Since a prima facie case has been made out by the petitioners, no prejudice would be caused to the respondents, if the petitioners are allowed to give a representation as stated supra and the respondents are



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directed to pass final orders on merits and in accordance with law, within a time frame to be fixed by this Court. This Court is therefore inclined to issue a direction to the respondents to keep the impugned selection list dated 04.11.2022 in abeyance till final orders are passed on the petitioners' representation.

9. For the foregoing reasons, this Court directs the petitioners to submit a representation to the respondents requesting for publishing a fresh selection list which includes the names of the petitioners instead of the impugned selection list, dated 04.11.2022, within a period of three days from the date of receipt of a copy of this order. On receipt of the said representation, the 2nd respondent is directed to pass final orders on merits and in accordance with law, within a period of two weeks thereafter.

10. Till final orders are passed by the 2nd respondent, the impugned selection list dated 04.11.2022 shall be kept in abeyance by the respondents. However, in case, the 2nd respondent comes to the conclusion that the petitioners are not entitled for the reliefs they have sought for in their representation, the 2nd respondent can go ahead and process the impugned selection list but it goes without saying, necessarily, the respondents will have to follow the existing statutory rules before issuing appointment orders to the selected candidates"

The said writ petition was disposed of based on the representation submitted by the petitioners thereunder and directed the respondents to consider the claim of



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the petitioners thereunder. In this writ petition, the contention of the petitioner is that such bifurcation is not mandated under Special Rules at all and the respondents have misinterpreted the rule. Therefore, the claim is to include the petitioner's name in the selection list and hence the present writ petition is filed.

5. The learned Additional Advocate General relied on the notification, dated 30.12.2022, wherein the respondents have considered the representation of the petitioner and also relied on the order passed in W.P.No.20413 of 2022, dated 18.08.2022 and has submitted that the Court has clarified that the provision of the amended rule can be applied for the respondents only if the eligible candidates are not available for the post of Dark Room Assistant and not by making general obligations so as to deprive the eligible candidates for the post in question. By relying on this portion of the notification, the learned Additional Advocate General submitted that the petitioner will be considered based on the proviso and it will arise only if the Dark Room Assistant candidates are not available.



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referred in G.O.Ms.No.385, Health and Family Welfare (C2) Department, dated: 27.08.2021 is made only as a proviso to the above referred main rule, and the said proviso will come into operation only when there is no candidate with the above primary requirement, the alternative arrangement is to be resorted to, as made in the proviso to main rule. Hence, the candidates with Certificate of Dark Room Assistant or Certificate in Radiological Assistant with Higher Secondary Science subject have to be considered first, only if they are not available, then Certificate in Radiological Assistant with Higher Secondary without Science have to be considered.”

The Director has stated that the candidates with DRA or CRA with HSC Science subject have to be considered first. Only if they are not available, the CRA with HSC without Science have to be considered. The Director of Medical Education has clearly misconstrued the proviso. The proviso clearly states if DRA is not available, the CRA with Science or without Science shall be considered. Which means that the CRA with or without science is considered as a single unit and they shall be considered with or without Science. The proviso does not states DRA and CRA with HSC science as one group. In other words,

- i. If the DRA is not available,



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ii. Then CRA with Science or without Science shall be considered.

8. The Learned Additional Advocate General submitted that once the selection process is started and the same cannot be stopped, hence submitted that the writ petition cannot be entertained and prayed to dismiss the writ petition. It is seen from the records that the Learned Single Judge in W.P.No.30364 of 2022, vide order, dated 15.11.2022, directed the respondents to consider and pass orders. But the respondents clearly misconstrued the proviso and had passed the impugned order. When the provisions of law is misinterpreted, then the selection process cannot be allowed to proceed with. Hence this Court left with no option necessarily should interfere in the selection process.

9. The learned Additional Advocate General further submitted that the candidates were selected and all the candidates were appointed and they are serving as of now. Moreover in the list of candidates, candidates who are



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processing CRA with Science alone were considered and candidates who are processing CRA without Science were not considered at all. After considering this plea this Court had given its anxious consideration. The respondents have two options, either to cancel the entire selection process or to consider at least the petitioner alone. This Court is inclined to grant relief to the petitioner. Therefore, the 3rd respondent is directed to select the petitioner, include the petitioner's name in the provisional selection list and submit the same to the second respondent within a period of one week from the date of receipt of a copy of this order. The second respondent shall appoint the petitioner in the said post within a period of 2 weeks thereafter.

10. With the above said observation, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

11.04.2023

Internet : Yes

NCC : Yes / No

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To

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai-600 010.



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S.SRIMATHY, J

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