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W.P.(MD)No.1529 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.01.2023

PRONOUNCED ON : 30.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1529 of 2023

and

W.M.P.(MD)Nos.1400, 1402 and 1403 of 2023

C.Ramkumar

... Petitioner

vs.

- 1.The State of Tamilnadu,
represented by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai – 6.
- 2.The Director of Medical Education,
Office of the Director of Medical
Education, Kilpauk,
Chennai-10.
- 3.The Member Secretary,
Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
Teynampet, Chennai 6.



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4.M.Raja Muniyandi
5.S.Saravanan
6.R.Ananthapriya

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the record relating to the impugned selection list published by the 3rd respondent through the official website, vide his proceedings in PSL.No.08/MRB/2022, dated 04.11.2022 (published on 07.11.2022) and the consequential impugned order passed by the 2nd respondent, vide his proceedings in Ref.No.97891/E5/1/2022-4, dated 09.01.2023 and to quash the same as illegal in so far as the non inclusion of petitioner is concerned and consequentially, to direct the respondents to appoint the petitioner in the post of Dark Room Assistant taking into consideration of the marks secured by the petitioner within the period that may be stipulated by this Court.

For Petitioner	: Mr.H,Mohammed Imran for M/s.Ajmal Associates
For R1 & 2	: Mr.R.Baskaran Additional Advocate General assisted by Mr.T.Amjadkhan Government Advocate
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 selection list published by the 3rd respondent through the official website, vide his proceedings, dated 04.11.2022 and the consequential impugned order passed by the 2nd respondent, vide his proceedings, dated 09.01.2023 and to quash the same as illegal in so far as the non-inclusion of petitioner is concerned and consequentially, to direct the respondents to appoint the petitioner in the post of Dark Room Assistant taking into consideration of the marks secured by the petitioner within the period that may be stipulated by this Court.

2. The petitioner belongs to SC community and has completed 12th standard (HSC) and B.A.(Sociology), then had passed the Certificate of Radiological Assistance (CRA) course (one year), which is a paramedical course. The candidates qualified with HSC in any subject shall be eligible for admission in



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CRA course. Accordingly, the petitioner has qualified HSC in non-science subject and is eligible to be admitted in CRA course. The petitioner completed the course in the year 2008-2009.

3. The post of Dark Room Assistant is governed by Special Rules for Tamil Nadu Medical Subordinate Service. Originally, the special rules 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 (Certificate of Radiological Assistance) CRA course. But in the year 2012 to 2013, the CRA course was stopped temporarily. The Government amended the Special Rules for Tamil Nadu Medical Subordinate Service for the post of Dark Room Assistant and Notification was issued in



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G.O.Ms.No.304, Health and Family Welfare Department, dated 07.10.2015 and the amended Rule states as follows:

“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”.



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4. As per the proviso, if the candidates with certificate of DRA are not available, then the candidates with CRA shall be considered for the appointment to the post. Since this amendment is affecting the persons who have qualified themselves with non-science group have submitted a representation. Thereafter, consequently, 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



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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 HSC are put in single category to be considered for appointment, in the absence of eligible candidates with certificate of DRA course 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 as 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 78.07.

5.The contention of the petitioner is that the respondents have misinterpreted the provision and has taken the CRA candidates as 2 categories,



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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 were included.

6. On perusal of the selection list, it is seen that the respondents have drawn the selection list by segregating candidates qualified with CRA who passed HSC in Science and CRA who passed HSC in non-science subjects. The said selection list was challenged in W.P.No.30364 of 2022 and this 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,



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i.e, 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 petitioners' 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 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.



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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 the petitioners thereunder.

7. In this writ petition, the claim of the petitioner is that such bifurcation is not mandated under special rules at all. The respondents have misinterpreted the rule. Therefore, the claim is to include the petitioner's name in the selection list.

8. The learned Additional Advocate General relied on the communication,



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dated 30.12.2022 and the order passed in W.P.No.20413 of 2022, dated 18.08.2022 and submitted that the Court has clarified that the provision of the amended rule can be applied only if the eligible candidates with Certificate of Dark Room Assistant are not available. Further submitted that the communication is not depriving 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. Therefore, the learned Additional Advocate General claimed that the petitioner will be considered in accordance to the proviso and prayed to dismiss the writ petition.

9. Heard Mr.H.Mohammed Imran, learned Counsel appearing for the petitioner and Mr.R.Baskaran, learned Additional Advocate General appearing for the respondents 1 and 2 and Mr.T.S.Mohammed Mohideen, learned Counsel appearing for 3rd respondent.



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10. On perusing the communication, dated 30.12.2022, it is seen that the Director of Medical Education has stated as under:

*“It is also informed that as per rule vide G.O.Ms.No.304, Health and Family Welfare Department, dated 07.10.2015, the main required qualification for appointment to the post of Dark Room Assistant by Direct Recruitment and by Recruitment by Transfer method is a pass in HSC with Science subject as specified therein and a Certificate Course in training for Dark Room Assistant. This is the primary requirement. The amendment 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 of Medical Education has clearly misconstrued the proviso. The Director has stated that the candidates with the 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, the certificate in



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Radiological Assistant in Higher Secondary without Science have to be considered.

11. On perusing the proviso, it is seen that if Dark Room Assistant is not available, then the certificate in Radiological Assistant with Science or without Science shall be considered, which means that the Certificate in Radiological Assistant is considered as a single unit and they shall be considered with or without Science. If the Dark Room Assistant is not available, the respondents shall consider the candidates who are processing certificate in Radiological Assistant with Science or without Science. At the cost of repetition,

i. First Certificate of Dark Room Assistant candidate,

ii. If not available, then “CRA Science” and “CRA Non Science” shall be considered and both are not distinguished and they are one and the same unit.



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12.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. The respondents clearly misconstrued the proviso and wrongly interpreted the proviso. Hence the plea, if selection process once started, cannot be stopped, cannot be entertained.

13. The learned Additional Advocate General further submitted that the candidates were selected and were appointed. When the provision itself is wrongly interpreted, this Court is bound to interfere in the selection process and the plea of AAG that already candidates were appointed cannot be entertained.

14. In the list of selected candidates, candidates who are processing certificate of Radiological Assistant with Science alone were considered. The candidates who are processing certificate of Radiological Assistant without Science were not considered at all. The respondents have two options, either to



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cancel the entire selection process or to consider at least the petitioner alone.

15. 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.

16. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
Tmg

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To

- 1.The Secretary to Government,
State of Tamilnadu,
Health and Family Welfare Department,
Secretariat, Chennai – 6.
- 2.The Director of Medical Education,
Office of the Director of Medical
Education, Kilpauk,
Chennai-10.



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S.SRIMATHY, J

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