



W.P(MD)No.4883 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4883 of 2023
and
W.M.P.(MD)Nos.4567 & 4568 of 2023

G.Haripriya

... Petitioner

Vs.

- 1.The Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
St.George Fort,
Chennai-600 009.
- 2.The Member Secretary,
Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
359, Anna Salai,
Teynampet,
Chennai-6.
- 3.Shareena
- 4.The Director,
Directorate of Indian Medicine and Homeopathy,
Chennai-600 106.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to appointment order issued by the Directorate of Indian Medicine and Homeopathy, 4th respondent herein vide Ref.No.14871/E1/2/2019, dated 02.02.2023 and quash the same as against the third respondent, BCM candidate and in that place, direct the fourth respondent to appoint the petitioner whose application No is 700662 with Exam No.70438 in the Provisional Selection List PSL No.7/MRB/2020, dated 25.11.2022 to the post of Assistant Medical Officer (Homeopathy).

For Petitioner : Mrs.R.Annie Abinaya
for Mr.A.John Vincent

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1 & R4
: Mr.Mohamed Mohideen
Standing Counsel for R2
: Mr.M.Kannan for R3

ORDER

Heard the learned counsel on either side.

2. The petitioner is an aspirant for the post of Assistant Medical Officer(Homeopathy). The Medical Service Recruitment Board (MRB) issued notification dated 26.10.2021 calling for applications from the eligible candidates. The petitioner applied in response thereto. However, she was not selected. Challenging her non-selection which was on account of accommodating the third respondent, the present writ petition came to be filed.



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3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. She pointed out that the petitioner belongs to backward class category. She had secured 63.5 marks. She was ranking 10th in the overall merit ranking list and 7th in the merit list as far as BCs are concerned. It so happened that all the general turn vacancies came to be filled up by the meritorious BC candidates. The petitioner came to be excluded because the fourth respondent herein (BC(Muslim)) came to be appointed. The learned counsel appearing for the petitioner points out that in the notification published by MRB, four vacancies had been marked towards the general turn and three vacancies have been marked for BCs. In the separate column earmarked for BCM, it was mentioned that no post had been reserved for BCM category. Relying the decision of the Hon'ble Division Bench made in *W.P.No.32383 of 2005 etc., dated 12.06.2006 (Dr.M.Vennila Vs. Tamil Nadu Public Service Commission)*, the learned counsel contended that the brochure issued by the recruiting agency is binding the department as well as the candidate. Having notified four GT vacancies, the recruiting agency could not have arbitrarily reduced the same to three and diverted it to BCM category. If



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the notification had adhered to as such, all the four GT vacancies would have been filled up by BC candidates and since the petitioner was ranked 7th in the BC merit list, she also would have made it. The factual aspects as projected by the petitioner are undoubtedly correct. The only question that calls for consideration is whether the petitioner is entitled to relief.

4. No doubt, in the matter of appointment, one has to conform to 200 points roster as set out in schedule 5 of Tamil Nadu Government Servants (Conditions of Services) Act, 2016. In the counter affidavit filed by the State, it is stated that the recruitment is being made for the post of Assistant Medical Officer(Homeopathy) for the second time. There was a recruitment process in the year 2019. In the year 2019, four vacancies were filled. Since we are still in the first rotation, vacancies now filled pertain to points 5 to 17. As per schedule 5, it is as follows:-

- “5.General Turn
- 6.Scheduled Castes
- 7.Most Backward Classes and Denotified Communities
- 8. Backward Classes (other than Backward Class Muslims)
- 9. General Turn
- 10.Backward Classes (other than Backward Class Muslims)



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- 11.General Turn
- 12.Scheduled Castes
- 13.Most Backward Classes and Denotified Communities
- 14.Backward Classes (Other than Backward Class Muslims)
- 15.Backward Class Muslims
- 16.Scheduled Castes
- 17.Most Backward Classes and Denotified Communities.”

5. It is seen that Point No.15 has been earmarked for BC Muslim. Its omission in the notification was admittedly a mistake. It is also the fact that MRB did not issue any corrigendum. But the question is whether the consequence of this mistake can enure in favour of the writ petitioner. If I accept the case of the petitioner and allow the writ petition, that would amount to denial of reservation for BC Muslim. It would run contrary to Schedule 5. It is well settled that the Court cannot issue mandamus contrary to law. Therefore, even while acknowledging that MRB has committed a mistake, still the appointment of the third respondent herein cannot be disturbed. The third respondent was rightly accommodated against BC Muslim category to which she was legally entitled to. The authorities after realising the mistake had set right the same at the stage of certificate verification. It is for this reason, I am not in a position to interfere.



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6. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

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Government of Tamil Nadu,
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Chennai-600 009.

2.The Director,
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Chennai-600 106.

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