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W.P.(MD)NO.5621 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5621 of 2023

Uthayanilavan

... Petitioner

Vs.

1. The Medical Services Recruitment Board,
Through its Member Secretary,
7th Floor, DMS Building,
No.359, Anna Salai, Teynampet,
Chennai – 600 006.
2. The Tamil Nadu Dr.M.G.R.Medical University,
Through its Registrar,
69, Anna Salai, Guindy,
Chennai – 600 032.
3. The Director of Medical Education,
Kilpauk, Chennai.
(R-3 is *suo motu* impleaded
vide Order dated 31.03.2023)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to consider the petitioner's manual application dated 20.02.2023 for the recruitment of Theater Assistant in Tamil Nadu Medical Subordinate



Service s per the notification 01/MRB/2023 dated 03.02.2023.

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For Petitioner : Mr.R.Suriyanarayanan

For R-1 : Mr.Mohamed Mohideen,
Standing Counsel.

For R-2 : Mr.J.Ramesh

* * *

ORDER

Heard the learned counsel on either side.

2. The first respondent Board has issued notification calling for applications from eligible candidates for the post of Theatre Assistant. The petitioner is an aspirant for the post and wants to take part in the recruitment process. The question is whether the petitioner is eligible to take part.

3. Recruitment to the said post is governed by the Tamil Nadu Medical Subordinate Service. Amendment to the Special Rules for the



Tamil Nadu Medical Subordinate Service in respect of this post was made vide G.O.(Ms)No.279 Health and Family Welfare (C1) Department dated 08.08.2017. As per the amendment rules, the post can be filled up by way of direct recruitment. The qualification has been set out as follows:-

“ (3) ...

(1) ...

(2) By Direct Recruitment

(a) A pass in Higher Secondary Course with the Science subjects of Physics, Chemistry, Botany and Zoology or Physics, Chemistry and Biology; and

(b) one year certificate course in Theatre Technician conducted by the Government Medical Institutions under the control of the Director of Medical Education or in any other institutions recognized by the State or Central Government. ”



4. The learned counsel appearing for the petitioner submits that in view of Section 25 of Tamil Nadu Government Servants (Conditions of Service) Act 2016, the petitioner who is possessing Diploma in Operation Theatre and Anaesthesia Technology should be deemed as possessing higher qualification and hence eligible to participate.

5. I am not persuaded by the said submission. Section 25 of Tamil Nadu Government Servants (Conditions of Service) Act 2016 is as follows:-

“ **Special Qualifications** – (1) No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he, -

(a) possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the special rules; or

(b) possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests by the Government in consultation with the Equivalence Committee.

(i) by the Government in consultation with the



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Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission for the purpose, in cases where the appointment has to be made in consultation with the Commission; and

(ii) by the Government or by the appointing authority with the approval of the Government in other cases – G.O.Ms.No.226 P&AR dated 18.08.1994 w.e.f. 18.08.1994.

Explanation I: In case where the special rules prescribe a diploma or degree or a post graduate degree as a qualification for appointment, then -

(a) a diploma obtained after completion of S.S.L.C. or Higher Secondary course [10+3(3Years Diploma) or (10+2+2) (Lateral entry)

(b) a degree obtained after completion of S.S.L.C. and Higher Secondary Course (10+2+3) or more or

(c) a post graduate degree obtained after completion of S.S.L.C. Higher Secondary Course and a degree [10+2+3+2] or more from any University or Institution recognized by the University Grants Commission shall be recognized as the qualification-G.O.Ms.No.65 P&AR(Per S) department dated



02.07.2014 w.e.f. 18.08.2009.

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Explanation II : In case where the special rules prescribe a diploma in a particular subject as qualification, then, a degree in that subject should be deemed to be a higher qualification.

Explanation III : In cases where the special rules prescribe a period of practical or other experience in addition to educational or technical qualifications for an appointment, such a period of practical or other experience as the case may be, should have been acquired after obtaining the educational or technical qualifications prescribed for such appointment unless otherwise specified in the special rules – vide G.O.Ms.No.301 P&AR dated 18.08.1994 w.e.f.18.08.1994.

(2)(a) The Equivalence Committee shall consist of-

(i) The Secretary to Government, in-charge of Higher Education Department	Chairman
(ii) The Secretary to Government, in-charge of Personnel and Administrative Reforms Department (Now HRM Department)	Member



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(iii) The Secretary to Government, in-charge of School Education Department	Member
(iv) The Vice-Chairman, Tamil Nadu State Council for Higher Education	Member
(v) The Vice-Chancellor, University of Chennai	Member
(vi) The Vice-Chancellor, Anna University	Member
(vii) The Vice-Chancellor, Annamalai University	Member
(viii) The Director of Technical Education	Member
(ix) The Director of Collegiate Education	Member
(x) The Tamil Nadu State Council for Higher Education	Member Secretary

(b) The Chairman of the Equivalence Committee may request the Chairman or Secretary, Tamil Nadu Public Service Commission, the Chairman or Member Secretary of the Tamil Nadu Teachers Recruitment Board or any other official to attend any meeting of the Committee as a special invitee, if considered necessary.”

6. A reading of the aforesaid provision leads to the following conclusions:-



a) A candidate to become eligible to participate in the recruitment process must possess the qualification prescribed in the relevant recruitment rules.

b) If he is not possessing the prescribed qualification, he must possess such other qualification as has been declared to be equivalent to or higher than the prescribed qualification.

Explanation 1 to Section 25 of the Act states that if Diploma or Degree has been prescribed for appointment, a person possessing a Degree or P.G.Degree will be deemed to possess higher qualification and hence eligible to participate in the recruitment process. The petitioner wants this Court to declare that the Diploma in Operation Theatre and Anaesthesia Technology is a higher qualification when compared to the prescribed certificate course for Theatre Technician. Section 25 of the Act is silent with regard to certificate courses. The Hon'ble Supreme Court in the decision reported in **2023 SCC OnLine SC 343 (Unnikrishnan CV and Others Versus Union of India and Others)** held as follows:-

13.....It is trite law that courts would not prescribe the qualification and/or declare the equivalency of a course. Until and unless rule itself prescribes the



equivalency namely, different courses being treated alike, the courts would not supplement its views or substitute its views to that of expert bodies.

14. In *Guru Nanak Dev University v. Sanjay Kumar Katwal* this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the Court held that no material had been produced before it to show that the distance education course had been recognized as such.

15. In *Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad*, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course



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content leading up to the acquisition of various qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine.”

Obviously this Court cannot go into the question of equivalence. Applying the very same logic and reasoning found in ***Unnikrishnan CV*** case, I hold that the writ Court cannot grant any declaration that the qualification possessed by a candidate is higher than the special qualification prescribed in the recruitment rules. It is the Government that alone can go into the issue. Unless the petitioner succeeds in getting declaration in terms of Section 25 of the Act, he cannot participate in the recruitment process. This writ petition stands dismissed. No costs.

15.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

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