



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.03.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.6087 & 6088 of 2023

and

W.M.P.(MD)Nos.5748, 5749, 5750 & 5751 of 2023

In WP(MD)No.6087 of 2023 :-

Dr.M.Divya

... Petitioner

vs.

- 1.The Director (Regulations),
Food Safety and Standards Authority
of India,
FDA Bhawan, Kotla Road,
New Delhi – 110 002.
- 2.The Secretary to Government,
Health & Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.
- 3.The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Chennai – 06.
- 4.National Medical Commission of India,
Rep.by its Secretary,
Pocket 14, Sector – 8,
Dwaraka Phase – 1,
New Delhi – 110 077.



5. The Joint Secretary,
Dental Council of India,
Aiwan – E- Ghalib Marg,
Kotla Road,
Temple Lane, Opp.to Mata Sundari College
for Women,
New Delhi – 110 002.

6. The Registrar,
The Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai,
Guindy, Chennai – 600 032.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned list of ineligible candidates bearing No.02/MRB/2021 dated 13.03.2023 issued by the 3rd respondent and quash the same in so far as petitioner is concerned which is in S.No.4, MRB No.17, Roll No. 201045537 and Reg. No.109987 and consequently direct the respondents to issue order of appointment to the petitioner as Food Safety Officer in the general category pursuant to the recruitment vide notification No. 02/MRB/2021 dated 13.10.2021.

In WP(MD)No.6088 of 2023 :-

Dr.R.Deepika

... Petitioner

vs.

1. The Director (Regulations),
Food Safety and Standards Authority
of India, FDA Bhawan, Kotla Road,
New Delhi – 110 002.



2.The Secretary to Government,
Health & Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

3.The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building, 359, Anna Salai, Chennai – 06.

4.National Medical Commission of India,
Rep.by its Secretary, Pocket 14, Sector – 8,
Dwaraka Phase – 1,
New Delhi – 110 077.

5.The Joint Secretary,
Dental Council of India,
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6.The Registrar,
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No.69, Anna Salai,
Guindy, Chennai – 600 032.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned list of ineligible candidates bearing No.02/MRB/2021 dated 13.03.2023 issued by the 3rd respondent and quash the same in so far as petitioner is concerned which is in S.No.15, MRB No.147, Roll No. 201020389 and Reg. No.113628 and consequently direct the respondents to issue order of appointment to the petitioner as Food Safety Officer in the general category of SC pursuant to the recruitment vide notification No. 02/MRB/2021 dated 13.10.2021.

**in both cases : -**

- For Petitioners : Mr.T.Antony Arulraj
- For R3 : Mr.R.Baskaran,
Additional Advocate General,
Assisted by Mr.M.Mohamed Mohideen,
- For R1, R4&R5 : K.Govindarajan,
Deputy Solicitor General of India
- For R2 : Mr.T.Villavankothai,
Additional Government Pleader
- For R6 : Mr.S.Ramesh

COMMON ORDER

The petitioners herein are BDS qualified candidates. They possess degrees issued by the Tamil Nadu Dr.MGR Medical University. When Medical Services Recruitment Board called for applications for the post of Food Safety Officers, the petitioners applied in response thereto. They wrote the written examinations held on 20.10.2022. The petitioners were called for certificate verification. However, the Board published a list of ineligible candidates on 13.02.2023 and the petitioners' names were included therein. The petitioners came to know that the Board did not consider BDS degree holders as holders of “Degree in medicine”. The petitioners have therefore filed these writ petitions impugning the stand of the respondents.



2. Holders of degree in Siddha medicine filed WP(MD)No.4882 of 2023 etc., challenging the stand of the respondents holding them ineligible for the post of Food Safety Officer. For the reasons set out in the common order dated 23.03.2023 allowing the said writ petitions, the present writ petitions also have to be allowed.

3. BDS is obviously a modern system of medicine dealing with dentistry. It comes under the allopathic category. The learned counsel for the petitioners would point out that for pursuing BDS course, one has to clear NEET as in the case of MBBS degree. It is also pointed out that when the Public Service Commission of the State of Tripura issued a similar notification, it enabled BDS degree holders also to participate in the recruitment process.

4. The petitioners are qualified to treat dental diseases and perform dental surgeries. They are governed by the Dentist Act which is a Central enactment. To exclude the petitioners who are dentists and including veterinarians who have been excluded in the definition set out in the Indian Medical Act, 1956 is irrational and perverse. The recruiting board cannot be bound by the clarification issued by the first respondent.



No clarification can prevail over a statutory definition. The scope and ambit of the definition has to be laid down by the court. I, therefore, hold that BDS degree holders are also eligible to participate in the subject recruitment process.

5.The impugned list declaring the petitioners as ineligible is set aside insofar as the petitioners are concerned. The selection list also will have to be revised as the petitioners also will have to be considered. The writ petitions are allowed accordingly. No costs. Connected miscellaneous petitions are closed.

23.03.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

SKM

Note : Issue order today (28.03.2023)

To:

- 1.The Director (Regulations),
Food Safety and Standards Authority of India,
FDA Bhawan, Kotla Road, New Delhi – 110 002.
- 2.The Secretary to Government, Health & Family Welfare Department,
Government of Tamil Nadu, Secretariat, Chennai – 600 009.



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3. The Member Secretary,
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6. The Registrar,
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G.R.SWAMINATHAN,J.

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