



W.P.(MD)Nos.12456 of 2020 and 20155 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.01.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.12456 of 2020 and 20155 of 2022

and

W.M.P.(MD)Nos.10658 and 10659 of 2020 and 14650 to 14653 of 2022

1. Dr.S.Vinayaga Sundar
2. Dr.K.Kavitha

... Petitioners
in both W.Ps'

Vs.

1. The Principal Secretary to Government,
Department of Health and Family Welfare,
Secretariat, Chennai - 600 009.
2. The Principal Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
3. The Commissioner,
Department of Indian Medicine and Homeopathy,
Chennai - 600 106.
4. The Member Secretary,
Medical Service Recruitment Board,
7th Floor, DMS Building,
Anna Salai, Teynampet,
Chennai – 600 009.

... Respondents
in both W.Ps'



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PRAYER in W.P.(MD)No.12456 of 2020 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records on the file of the fourth respondent pertaining to its notification dated 14.08.2020 bearing notification No.05/MRB 2020 with regard to the post of Assistant Medical Officer (Sidha) and to quash the same and consequently, direct the respondents to consider the recommendation of the second respondent in Na.Ka.No.31971/M-E2/2008 dated 19.08.2009 and to observe the petitioners as Medical Officer (Sidha) in any one of the vacancy pursuant to the notification dated 14.08.2020.

PRAYER in W.P.(MD)No.20155 of 2022 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent pertaining to its order bearing Lr.Ref.No.5987/P&D-1/2018 dated 28.07.2021 and to quash the same and consequently, direct the respondents to observe the petitioners as Medical Officer (Sidha).

For Petitioners
in both W.Ps' : Mr.S.C.Herold Singh
for Mr.K.A.Thirumalaiappan

For Respondents
in both W.Ps' : Mr.J.Ashok
Addl. Govt. Pleader for R1 to R3
Mr.T.S.Mohamed Mohideen
Standing Counsel for R4



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COMMON ORDER

Since the issue raised in both the Writ Petitions is one and the same, with the consent of the learned counsel appearing for both sides, both the Writ Petitions have been heard together and are disposed of by this common order.

2. The case of the petitioners is that after completing their Sidha Medicine Graduation in BHMS, have registered their name in the Tamil Nadu Medical Council and thereby, they are eligible to be appointed to the post of Assistant Medical Officer (Sidha). The Government of Tamil Nadu in order to facilitate the health care system of the School students, has formed a scheme for medical inspection for children. The same was approved by the Government vide G.O.(Ms).No.315, Education Department, dated 04.03.1968. Pursuant to the same, the Directorate of School Education, by proceedings dated 03.04.1968 communicated the same to the Chief Educational Officers as well as the District Educational Officers so as to implement the G.O.(Ms).No.315 dated 04.03.1968 to provide medical inspection and follow up treatment for the students



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studying in Secondary Schools. Thereafter, they were appointed as Assistant Medical Officer (Siddha) by the District Educational Officer, Trichy and Madurai Districts Secondary Schools Medical Aid Scheme by order dated 16.12.2008 by direct recruitment for the academic year 2008-2009 on consolidated pay of Rs.8,000/-. While so, the Director of School Education, by his proceedings dated 19.08.2009 recommended the first respondent to scrap the scheme of the Education Department due to dissatisfaction over the implementation of the scheme. While implementing the said recommendation, without passing any order and without affording any opportunity, their services were terminated from the academic year 2010-2011. Thereafter, on the basis of the said recommendation, the Secretary to Government, Health and Family Welfare Department sought for clarification from the third respondent with respect to the Medical Officers of Indian Medicine, who served with the Educational Department. The said clarification sought for were also forwarded to the first respondent herein.

3. Since the proposal forwarded were also pending with the first respondent, the petitioners filed Writ Petition in W.P.(MD)Nos.18481 of



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2017 etc., This Court, by order dated 09.03.2021, directed the second respondent to pass orders on the recommendation dated 19.08.2009 on merits within a period of twelve weeks, pursuant to which, the third respondent rejected his representation citing order passed in W.P.(MD)No. 9254 of 2011 stating merely a recommendation to Government does not confer any right on the individuals for absorption. Hence, the Writ Petitions have been filed.

4. The learned counsel appearing for the petitioners would submit that though the petitioners services were terminated in the year 2011 itself, subsequently in the year 2016, the third respondent made recommendation to the Government for absorption of the petitioners on par with other staffs who were working in the above said scheme. However, it is to be noted that the other staffs were absorbed in the regular establishment, but the petitioners were not absorbed in the regular establishment and on that ground the respondents mechanically rejected the petitioners' candidature and refused to accept the recommendation. Accordingly, he prayed for allowing these Writ Petitions.



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5. Per contra, the learned Standing counsel appearing for the fourth respondent would submit that admittedly the petitioners were appointed as Assistant Medical Officer (Sidha) for implementation of G.O.(Ms.No).315, Education Department, dated 04.03.1968 and subsequently, based on the recommendation made by the Educational Officer, the scheme was scrapped and the petitioners services were terminated in the year 2011. Thereafter, the Medical Recruitment Board was established in the year 2012 and all the posts were recruited only through the Medical Recruitment Board and no one can be absorbed in the medical service except by the said Board, and thereby the present impugned order has been passed.

6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. The facts in the present case are not in dispute. Admittedly the petitioners were appointed as Assistant Medical Officer (Sidha) in order to



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implement G.O.(Ms).No.315, Education Department, dated 04.03.1968 to provide medical assistance to the students studying in the Higher Secondary School. Initially, consolidated pay was fixed of Rs.8,000/- based on the above said Government Order and thereafter, the petitioners services were terminated in the year 2011. The petitioners claimed that the staffs appointed with the very same scheme were absorbed in the regular establishment whereas the petitioners were not absorbed in the Medical Department.

8. However, the fact remains that in the year 2012, the Medical Recruitment Board was created and all those posts were filled up only by the Health Department only through Medical Recruitment Board whereas the Education Department made a recommendation for absorption of the petitioners to the Medical Department and this Court in W.P.(MD)Nos. 18481 of 2017 etc., issued a direction to the second respondent to consider the same, pursuant to which the respondents have passed impugned order stating that the recommendation will not be binding on the Government. It is also not in dispute that thereafter the Medical Recruitment Board was



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introduced and all the recruitments were initiated and handled by the said Board. Hence, this Court is not inclined to interfere with the orders impugned herein.

9. Accordingly, these Writ Petitions are dismissed with the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.01.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Principal Secretary to Government,
Department of Health and Family Welfare,
Secretariat,
Chennai - 600 009.
2. The Principal Secretary to Government,
School Education Department,
Secretariat,



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3. The Commissioner,
Department of Indian Medicine and Homeopathy,
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