



W.P.(MD).No.15593 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.15593 of 2023

and

W.M.P(MD)Nos.13101, 13102 & 13103 of 2023

- 1.Vinoth
- 2.Jeyaramakrishnan
- 3.Mahalakshmi
- 4.Magesh

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort ST. George,
Chennai – 600 009.

- 2.The Director of Medical Education,
Kilpauk,
Chennai – 600 010.

- 3.The Member Secretary,
Medical Services Recruitment Board (MRB),
359, Anna Salai,
DMS Compound,
Teynampet,
Chennai – 600 018.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned provisional selection list issued by the third respondent in PSL No.08/MRB/2022, dated 04.11.2022 and to quash the same and consequently, direct the respondents to include the name of the petitioners in the selection list for appointment to the post of Dark Room Assistant, based on the marks secured by the petitioners in the selection by reckoning CRA candidates with or without Science in Higher Secondary Course as single category in accordance with Special Rules for Tamil Nadu Medical Subordinate Service as amended.

For Petitioner	: Mr.K.Navaneetharaja
For RR 1 & 2	: Mr.N.Ramesh Arumugam Government Advocate
For R – 3	: Mr.T.S.Mohammed Mohideen

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned provisional selection list issued by the third respondent in PSL No.08/MRB/2022, dated 04.11.2022 and consequently, to direct the respondents to include the name of the petitioners in the selection list for appointment



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to the post of Dark Room Assistant, based on the marks secured by the petitioners in the selection by reckoning CRA candidates with or without Science in Higher Secondary Course as single category in accordance with Special Rules for Tamil Nadu Medical Subordinate Service as amended.

2.The petitioners are qualified with 10th standard, Higher Secondary (+2) and Certificate of Radiological Assistants (CRA). Therefore, they are eligible for recruitment to the post of Dark Room Assistant (DRA), governed by Special Rules for Tamil Nadu Medical Subordinate Service as amended in G.O.Ms.No.385, Health and Family Welfare Department, dated 27.08.2021. They participated in the selection consequent to MRB Notification dated 16.03.2022 and awarded with weightage marks. However, the petitioners were not included in the provisional selection list published by the third respondent, dated 04.11.2022, despite the higher weightage marks, while candidates with lower weightage marks under Certificate of Radiological Assistant category with Science were included. The post of Dark Room Assistant is governed by Special Rules for the Tamil Nadu Medical Subordinate Service. The Special Rules prescribes qualification for the post of Dark Room Assistant to be filled up by direct



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recruitment as per G.O.Ms.No.304, Health and Family Welfare (C2) Department, dated 07.10.2015 and further amended as per G.O.Ms.No.385, Health and Family Welfare Department, dated 27.08.2021. Accordingly, the Special Rules prescribe the qualification for the post of Dark Room Assistant (direct recruitment) as incorporated in Clause 6B under the Head "Educational qualification" in the Notification No.08/MRB/2022 dated 16.03.2022, which reads as follows:-

Sl.No.	Name of the Post	Qualification
1.	Dark Room Assistant	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 with or without Science in Higher Secondary Course, shall be appointed.



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Accordingly, as per Special Rules, if candidates with the Certificate of Dark Room Assistants are not available, then the candidates with Certificate of Radiological Assistant of any recognized institution qualified with Higher Secondary Course with or without Science subject can be considered for appointment.

3.The petitioners are qualified with Higher Secondary Course (+2) with non-Science subject and thereafter qualified with Certificate of Radiological Assistant posts. In the absence of availability of candidates in the Dark Room Assistant category, the candidates qualified with Certificate of Radiological Assistant with or without Science in Higher Secondary Course can be considered for selection to the post of Dark Room Assistant. Accordingly, the candidates with Certificate of Radiological Assistant qualification remain to be a 'single category' to be considered for selection, based on the marks secured in the selection in the absence of availability of candidates with certificate of Dark Room Assistant qualification. The selection will be based on the marks secured by the candidates in their academic and technical qualifications (weightage marks) following the Rule of reservation. Consequently, the third respondent declared certificate

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verification on 15.06.2022 and published the list of candidates, calling for certificate verification by arriving at the candidates in accordance with weightage marks secured by the candidates. The names of the petitioners were included in Serial Nos.44, 45, 49 and 62 of the certificate verification list in accordance with the weightage marks. Accordingly, the third respondent arrived at the merit list for the purpose of certificate verification and consequently, the petitioners attended the certificate verification on 20.06.2022, 21.06.2022 and 22.06.2022 respectively and the certificates submitted by the petitioners were duly verified by the official concerned.

4. Time and again this Court has passed orders referring to the fact that the candidates qualified with Certificate of Radiological Assistant with or without science subject in Higher Secondary Course form a single category for the purpose of selection to the post of Dark Room Assistant and the Special Rules do not contemplate any priority to Certificate of Radiological Assistant candidates with Science in Higher Secondary course. However, when the provisional list was issued by the third respondent, dated 04.11.2022, the petitioners were not selected and a perusal of the provisional selection list would clearly reveal that the Certificate of Radiological Assistant candidates with



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Science were given priority and they were lifted to the first list and thereafter, pushing the candidates without Science to the second level. That exercise is not permissible, as held by this Court in more than one case. Challenging the said provisional selection list, dated 04.11.2022 issued by the third respondent, this Writ Petition came to be filed.

5.The learned counsel appearing for the petitioner vehemently contended that such discrimination among Certificate of Radiological Assistant candidates with or without Science is not permissible in view of the orders passed by this Court at least two times with respect to the same provisional selection list and pressed for quashing the impugned provisional selection and provide the petitioners with an appointment.

6.The learned standing counsel appearing for the third respondent vehemently contended that a Writ Petition in W.P.No.20413 of 2022 has been filed before the Division Bench of this Court by S.Arun Kumar and 4 others with a prayer to quash the portion in respect of relaxation of existing educational qualifications of



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Plus Two Pass with Science Group/subject to the post of Dark Room Assistant into as "Plus Two pass with Science group or without science group" alone and consequently to direct the respondents to select and appoint the petitioner in the post of Dark Room Assistant, based on their eligibility in terms of the educational qualification fixed to the post of Dark Room Assistant in G.O.Ms.No.304, Health and Family Welfare (C2) Department, dated 07.10.2015, with all service and attendant benefits. The Hon'ble Division Bench of this Court, vide order, dated 18.08.2022, dismissed the Writ Petition and the relevant portion of which reads as follows:-

"6. The Amendment in the Rule has been made maintaining the required qualification for the post, but with the proviso that if the eligible candidates are not available in the post of Dark Room Assistant, then the candidates in possession of the qualification given in the proviso would be eligible for appointment. The relaxation in the qualification has not been given in general, but as an exception when the eligible candidates would not be available. It is not going to affect those who are having the required qualification of the post and if the



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petitioners are in possession of the qualification along with other eligible candidates to apply for the post, it could not be clarified as to what is the fear in their mind in reference to the relaxation of the qualification which would operate only when the eligible candidates are not available. It is also not clarified as to how the amendment is offending the judgment of this Court. In the light of the aforesaid, we do not find that the amendment in the Rule is against the judgment of this Court."

7.The Government has directed the Board vide letter No. 2656398/C2/2022-4 Dated: 01.09.2022 of the Health and Family Welfare Department, Secretariat, Chennai by citing the above judgment that the primary requirement (qualification) for the post of Dark Room Assistant is H.Sc with Science Subject (+) certificate of Dark Room Assistant. The Amendment 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. As such, the persons with primary requirement (i.e.) H.Sc., with Science subject (+) a certificate of Dark Room Assistant be selected



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first and in the non-availability of such category, then H.Sc., with or without Science (+) certificate of Radiological Assistant, are to be considered and requested to arrive the selection list as per the above clarification.

8. But the Merit List has been prepared for the post of Dark Room Assistant with the candidates possessing the certificate of Radiological Assistant with Higher Secondary (Science) group first and then without Science group with the above qualification and the provisional selection list has been drawn as per the rules of reservation in force and published on 04.11.2022 and communicated to the appointing authority for issue of appointment and posting orders.

9. The weightage marks of the petitioners and the last selected candidates under the respective communal category are as follows:-



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S. No.	Name of the petitioner	Appln. No.	Community	Educational Qualification	Wightage marks of the petitioner out of 100/ Rank	Weightage marks of the last selected candidate in the respective communal category / Rank	No.of candidates who have not reached the zone of consideration and ahead of the petitioner in the merit list
1.	Vinoth	301044	BC	CRA (HSC-Non Science)	83.74 (Rank 207)	86.12 (Rank 197)	18
2.	Jeya Ramakrishnan	302179	BC	CRA (HSC-Non Science)	85.14 (Rank 202)	86.12 (Rank 197)	14
3.	Mahalakshmi	301309	MBC / DNC	CRA (HSC-Non Science)	80.44 (Rank 225)	84.17 (Rank 204)	34
4.	Magesh	301777	BC	CRA (HSC-Non Science)	84.28 (Rank 205)	86.12 (Rank 197)	16

10.While so, a Writ Petition in W.P.No.30364 of 2022 has been filed by S.Bharath and 7 others with a prayer to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned Provisional Selection List issued by the third respondent



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namely the Member Secretary, Medical Services Recruitment Board in PSL No.08/MRB/2022, dated 04.11.2022 and to quash the same and consequently direct the respondents to include the name of the petitioners in the selection list for appointment to the post of Dark Room Assistant, based on the marks secured by the petitioners in the selection by reckoning CRA candidates with or without Science in Higher Secondary Course as a single category. This Court disposed of the Writ Petition vide order, dated 15.11.2022 and the relevant portion of which reads as follows:-

"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.

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



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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."

11.The petitioners herein have completed CRA course without Science in H.Sc course. Based on the marks secured by the petitioners in the selection by reckoning CRA candidates with or without Science in the Higher Secondary Course as a single category, their names ought to have been included in the provisional selection list. Since they are not provisionally selected on that basis, this Writ Petition came to be filed.

12.Heard Mr.K.Navaneetharaja, learned counsel appearing for the petitioner, Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 and 2 and Mr.T.S.Mohammed Mohideen, learned standing counsel for the third respondent.



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13. When this Court has held at least two times with respect to the same provisional list that there should not be any discrimination between Certificate of Radiological Assistant candidates with or without Science in Higher Secondary course, and they should be considered as a single category, the impugned provisional list having lifted the Certificate of Radiological Assistant candidates with Science in the Higher Secondary Course in the first level, pushing down the certificate of Radiological Assistant candidates without Science to the second level is per se illegal. When the amendment to the Rules and the notification itself mandated that both would be considered under a single category in the absence of candidates with certificate of Dark Room Assistant, the Certificate of Radiological Assistant with or without Science in Higher Secondary course can be considered. The impugned provisional list would clearly reveal that the candidates with certificate of Dark Room Assistant are fully unavailable and only the candidates with certificate of Radiological Assistant with Science and without Science in Higher Secondary Course are available. Considering the order passed by this Court in W.P(MD)No.1381 of 2023, dated 11.04.2023 (V.Chandralega Vs. The Principal Secretary to Government and others), in a similar case, this Court has held in favour of the candidates with certificate of Radiological Assistant



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without Science category and the relevant portion of which is extracted as follows:-

"7. 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



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available, then Certificate in Radiological Assistant with Higher Secondary without Science have to be considered.”

The Director has stated that the candidates with DRA or CRA with HSC Science subject have to be considered first. Only if they are not available, the CRA with HSC without Science have to be considered. The Director of Medical Education has clearly misconstrued the proviso. The proviso clearly states if DRA is not available, the CRA with Science or without Science shall be considered. Which means that the CRA with or without science is considered as a single unit and they shall be considered with or without Science. The proviso does not states DRA and CRA with HSC science as one group. In other words,

- i. If the DRA is not available,*
- ii. Then CRA with Science or without Science shall be considered.*

8. The Learned Additional Advocate General submitted that once the selection process is started and the same cannot be stopped, hence submitted that the writ petition cannot be entertained and prayed to dismiss the writ petition. It is seen from the records that the Learned Single Judge in W.P.No.30364 of 2022, vide order, dated



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15.11.2022, directed the respondents to consider and pass orders. But the respondents clearly misconstrued the proviso and had passed the impugned order. When the provisions of law is misinterpreted, then the selection process cannot be allowed to proceed with. Hence this Court left with no option necessarily should interfere in the selection process.

9. The learned Additional Advocate General further submitted that the candidates were selected and all the candidates were appointed and they are serving as of now. Moreover in the list of candidates, candidates who are processing CRA with Science alone were considered and candidates who are processing CRA without Science were not considered at all. After considering this plea this Court had given its anxious consideration. The respondents have two options, either to cancel the entire selection process or to consider at least the petitioner alone. 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."



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14.This Court is fully in consonance and agreement with the order passed in W.P(MD)No.1381 of 2023 and hence, this Court directs the third respondent to consider the case of the petitioners and to include them in the provisional selection list following seniority and communal roster from 10% estimated vacancies available in the reserved list and issue them appointment orders within a period of four weeks from the date of receipt of a copy of this order.

15.With the above directions, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

17.07.2023

NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort ST. George,
Chennai – 600 009.
- 2.The Director of Medical Education,
Kilpauk,
Chennai – 600 010.
- 3.The Member Secretary,
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L.VICTORIA GOWRI, J.

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