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W.P.(MD).Nos.9609 and 9610 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.06.2023

PRONOUNED ON : 24.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.9609 and 9610 of 2017

and

W.M.P.(MD)Nos.7340 to 7343 of 2017

P.Saravanakumar

... Petitioner in both cases

Vs.

1.The State of Tamil Nadu,
represented by the Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.

2.The Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Buildings,
359, Annasalai Teynampet,
Chennai-600 006.

... Respondents in both cases



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PRAYER in W.P.(MD)No.9609 of 2017 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for records relating to the impugned notification No. 5/MRB/2017, dated 08.05.2017, of the 2nd respondent and to quash the same and consequently, to direct the 2nd respondent to adopt selection process to the post of Pump Technician through written examination along with preference mark for experience.

PRAYER in W.P.(MD)No.9610 of 2017 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for records relating to the impugned G.O.Ms.No.401, dated 16.12.2014, of the 1st respondent and to quash the same and consequently, to direct the 1st respondent to issue fresh G.O. incorporating rules for selection process for various posts in Para Medical Technical category through written examination along with preference mark for experience.

In both cases:

For Petitioner	: Mr.R.S.Sivaram
For R1	: Mr.P.Thambidurai Government Advocate
For R2	: Mr.T.S.Mohammed Mohideen



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COMMON ORDER

The writ petition W.P.(MD)No.9609 of 2017 is filed for writ of ***Certiorarified Mandamus***, to quash the impugned notification, dated 08.05.2017, of the 2nd respondent and consequently, to direct the 2nd respondent to adopt selection process to the post of Pump Technician through written examination along with preference mark for experience. The writ petition in W.P.(MD)No.9610 of 2017 is filed for ***Writ of Certiorarified Mandamus***, to quash the impugned G.O.Ms.No.401, dated 16.12.2014, of the 1st respondent and consequently to direct the 1st respondent to issue fresh G.O. incorporating rules for selection process for various posts in Para Medical Technical category through written examination along with preference mark for experience.

2. The Tamilnadu Medical Services Recruitment Board (MRB) was constituted by the Government of Tamilnadu vide G.O.No.1, Health and Family Welfare (C2) Department, dated 02.01.2012. After the establishment of MRB, the Government of Tamilnadu vide its G.O.Ms.No.36, Health and Family



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Welfare (C2) Department, dated 12.02.2014, had formulated "The Rules and procedures for Medical Recruitment Board". As per the G.O., the rules regarding recruitment is given under Rule 3 consisting of Rule 3A and in Rule 3B and the same is extracted hereunder:

"3. Method of Recruitment:

The Medical Services Recruitment Board shall adopt the following methods of recruitment namely:-

(A) Recruitment by calling for list of candidates from the Employment Exchanges.

All Direct Recruitment posts except the posts coming under the purview of Tamil Nadu Public Service Commission shall be made generally by obtaining State-wide seniority list from the Directorate of Employment and Training. The Medical Services Recruitment Board shall also make recruitments by obtaining District-wide seniority list for the vacancies in respect of the post coming under the basic services and Drivers.

(B) Recruitment by Open advertisement:

*(i) in respect of Nurses and other Category of Posts as may be ordered by the Government, recruitment shall be made through open advertisement **by conducting written examination (through physical or electronic mode) without any reference to the employment exchange.***

(ii) in addition, with the orders of the Government the Medical Recruitment Board can recruit the candidates through open advertisement by conducting written examination, in those cases where adequate candidates are not available in the employment



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exchange.”

3. The Directorate of Medical Education, Chennai, had introduced a new Para Medical Certificate Course in Heart and Lung Hypothermia Machine Technician shortly called "Pump Technician" or "Perfusionist" in the year 2007. Pump Technician or Perfusionist is a specialist health care professional who uses the heart-lung machine during cardiac surgery and other surgeries that requires cardiopulmonary bypass to manage the patient's physiological status. The petitioner is a first batch student in Pump Technician, Para Medical Course in Madurai Medical College and completed the Course in the year 2008. The 2nd respondent, vide its Notification No.05/MRB/2017, dated 08.05.2017, had called for application for the post of Heart-Lung Hypothermia Machine Technician. The total vacancy for the post is 7 and the process of selection is through direct selection **without** any written examination and the last date for receipt of application through online is 29.05.2017. The age prescribed for candidate is 18-57 years. The educational qualification



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prescribed for the post is pass in Higher Secondary with Science Subjects, Physics, Chemistry, Botany and Zoology and pass in one year certificate course in Pump Technician conducted by Government Medical institutions or any other institution recognized by the State or Central Government and the procedure of selection is based on the following marks:

- 50% marks for Pump Technician Course certificate
- 30% marks for HSC/ PUC
- 20% marks SSLC/10th

4. The 2nd respondent had called for application without giving any preference to experience and further they have adopted selection procedure through marks scored in SSLC, HSC and Certificate Course, which is totally against G.O.Ms.No.36 dated 12.02.2014, wherein it specifically states under Rule 3 to select candidates through **written examination only**. The respondents have amended G.O.Ms.No.36, by issuing G.O.Ms.No.401, Health



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and Family Welfare (C2) Department, 16.12.2014 wherein the 1st respondent had amended the Rule 3 in G.O.Ms.No.36 H & FW Department, dated 12.02.2014, wherein the written examination is restricted only to Assistant Surgeons and Nurses. The contention of the petitioner is that such process would attract favoritism, influence and other mode of illegal selection process which will have direct impact over the patients' life. The petitioner had submitted representation to the 1st respondent, dated 17.05.2017 but the same was not considered. Without considering the same, the respondents are proceeding with the selection process and if followed the same will not be made on merits of the candidates. Hence, alleging that there is deviation in the process of selection, the petitioner is before this Court.

5. The petitioner has filed another writ petition in W.P.(MD)No. 9610 of 2017 challenging G.O.Ms.No.401, dated 16.12.2014. The contention of the petitioner in this writ petition is that the Tamil Nadu Government through Tamilnadu Medical Services Recruitment Board is recruiting candidates by



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granting percentage marks for the 10th, 12th, Degree, Diploma and Certificate Course. The respondents are recruiting without examination and without granting weightage for experience, which is unjust and non-application of mind. The amendment of G.O.Ms.No.36, dated 12.02.2014, is unnecessary. The respondents have relied on the judgment rendered in W.A.1027 of 2013 dated 0905.2014, which is entirely different case. And there is no direction in the said judgment of the Hon'ble Division Bench to amend the G.O.Ms.No.36, dated 12.02.2014. Hence the G.O.Ms.No.401 is passed without any direction and without any necessity and hence the said G.O.Ms.No.401 is total non-application of mind. The written examination is conducted to evaluate the merits of the candidates. If recruitment is conducted without written examination and without interview, the only method would be by calling for list from the employment exchange and by paper publication and based on the marks obtained in 10th, 12th and other courses, which is against the principles of public employment, since public employment ought to be based on merits. Therefore, the petitioner is before this Court.



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6. The 1st respondent has filed a counter affidavit in W.P.(MD)No. 9610 of 2017 stating that earlier the Medical Services Recruitment Board was following the rules of procedure as per G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.02.2014, which was based on the seniority of registration in employment exchange subject to fulfilling minimum educational qualification and communal reservation. Thereafter the Hon'ble Division Bench vide its judgment, dated 09.06.2014, in W.A.No.1027 of 2013 had directed to call for application by issuing paper publication and hence in order to comply with the order the G.O.Ms.No.401 was issued. Hence in view of the orders of the Hon'ble Supreme Court of India and the High Court of Madras, the method of selection could not be fixed with mere employment seniority, since the persons who are not registered with employment exchange is also open to apply to the said post when open advertisement is issued. It is



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further submitted that in order to select the best available talent for the public service and to select candidates with merit and without an iota of doubt the weightage method has been introduced. Further the selection is being done without any oral examination (interview) and the selection is solely based on their academic performance and communal rotation reservation only. Weightage method would be the justified method of selection of meritorious candidates, since the selection is purely based on the marks obtained by the individual candidate in their academic performance. G.O.Ms.No.401, Health and Family Welfare (C2) Department, dated 16.12.2014, was issued based on the judgment of this Court in W.A.No.1027 of 2013, dated 09.06.2014. The method of recruitment was introduced in G.O.Ms. No.401, Health and Family Welfare (C2) Department, dated 16.12.2014, wherein the weightage of marks is given as under:



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SL. No	Minimum Educational Qualification required for the post	Weightage of marks		
		Degree/ Diploma/ Certificate	HSC/P.U.C	SSLC/10 th
a.	Degree	50%	30%	20%
b.	Diploma	50%	30%	20%
c.	Certificate with PUC / HSC qualification	50%	30%	20%
d.	Certificate with SSLC	60%	NA	40%
e.	Minimum General Educational Qualification (SSLC Pass)	NA	NA	100%
(NA-Not Applicable)				

7. The counter affidavit further states that the selection is being done without any oral examination (interview) for these posts in a fair and transparent manner and the selection is solely based on their academic performance and communal reservation only. Hence, the contention of the petitioner that this process will attract favoritism is absolutely baseless.



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G.O.Ms.No.401, Health and Family Welfare (C2) Department, dated 16.12.2014, was followed to recruit around 1527 candidates for 7 categories to the posts such as Dark Room Assistant, Prosthetic Craftsman, EEG/EMG Technician, Therapeutic Assistant in Indian Medicine, Occupational Therapist, Audio-Metrician and Village Health Nurse by adopting weightage marks method and they have been issued with appointment orders by the respective appointing authorities. Earlier the recruitment to these posts was done by following Employment Exchange seniority only and no preference was given to experience. Now the recruitment is done through open advertisement as per the orders of this Court and now the selection is done on the basis of the weightage of marks of the candidates in the academic courses purely on merit basis and following the rule of reservation. Further in W.P.No.26162 of 2010, this Court, vide order, dated 02.08.2012, has quashed the selection process for appointment to the posts only from candidates sponsored through Employment Exchange. Thereafter, the respondents are following based on merits only, therefore, there is no infirmity. Hence, the 1st respondent prayed to dismiss the



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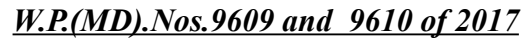
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writ petitions.

8. Heard Mr.R.S.Sivaram, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the first respondent and perused the records.

9. The contention of the respondents is that G.O.Ms.No.401, Health and Family Welfare (C2) Department, dated 16.12.2014, was issued based on the judgment, dated 09.06.2014 passed in W.A.No.1027 of 2013 and the relevant portion of the judgment is extracted hereunder:

"It is also relevant, at this juncture, to note that the Three Judge Bench of the Hon'ble Supreme Court, in the decision reported in 2014 (2) SCALE 262 (Renu and others V. District and Sessions Judge, Tis Hazari and another) reiterated the above said proposition of law and gave a direction to all the High Courts to comply with the purport of Articles 14 and 16 of the Constitution of India while filling up of any vacant post either in the High Court or in the Subordinate Courts throughout the India. In the said decision, the Hon'ble Supreme Court held that "post



The contention of the petitioner is that while considering the recruitment process to the Village Assistant, an issue was raised whether recruitment can be based on the employment seniority alone. While answering the issue, the Hon'ble Division Bench by following the judgment rendered in the case of the Excise Superintendent Malkapatanam Vs K.B.N. Vishveswar Rao and others reported in 1996 (6) SCC 216 and Union of India and others vs N. Hargopal and others, reported in 1987 [3] SCC 308 case, had held that in any public employment, the applications shall be called from all eligible candidates. Hence it was directed to call for list from employment exchange and also call for applications from general public through paper publication also. In order to



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comply with the direction, the respondents had issued G.O.Ms.No.409. This Court is of the considered opinion that the amendment to this effect, the respondents are absolutely right in doing so. Infact the petitioner is not having any grievance to this amendment at all.

10. But the contention of the petitioner is that in the G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.02.2014, which is prescribing the service rules to the “para medical technicians”, states that the selection should be through **written examination** as well. But while amending the rules as per the order the Division Bench, under the guise of amendment, the respondents have prescribed the selection through academic marks alone which is against the method prescribed under G.O.Ms.No.36. The respondents relying on the order passed in W.A.No.1027 of 2013 and had deleted the selection through “written examination”, which is against the said G.O.Ms.No. 36. On perusing the G.O.Ms.No.36 and G.O.Ms.No.401 and the counter, it is seen that there is no rhyme or reason for deleting the “written examination”. In



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the counter the respondents had stated that in order to select the best available talent for the public service and to select candidates with merit and without an iota of doubt, the weightage method has been introduced and without any oral examination (interview). And also stated the selection is solely based on their academic performance and the weightage method would be the justified method of selection of meritorious candidates. Therefore, the respondents are also right in dropping with oral examination i.e. interview, since the same creates some doubt. But as rightly pointed out by the petitioner there is no reason stated why the written examination was deleted. Even in the counter affidavit the respondents have mentioned about the interview alone but the petitioner's specific case is that the G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.02.2014, states about the written examination.

11. The respondents have stated merits can be assessed by assigning percentage marks for the educational qualifications in 10th, +2, degree, degree, diploma, etc. But when the candidates from either diploma or degree can be



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selected, both of them cannot be taken on par, therefore, a common test is necessary and hence for selecting meritorious candidates, written examination would be appropriate. Moreover, basic educational qualification alone is not sufficient for selecting meritorious candidate. Subsequently, they should conduct common examination for the recruitment process. Therefore, the petitioner is absolutely right in stating that the deviation from the original G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.02.2014, by deleting written examination is without any rhyme or reason. Infact if written examination is conducted then meritorious candidates may be selected than by weightage marks for academic qualification.

12. Therefore, this Court is of the considered opinion under the guise of implementing the judgment rendered in W.A.No.1027 of 2013 the respondents have deviated from G.O.Ms.No.36. and the judgment has not directed to delete the written examination method of selection. The Learned Counsel appearing for the respondents submitted that it is the policy decision of



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the Government, but this Court is of the considered opinion that even though it is a policy decision of the Government to formulate the recruitment process, by following a judgment, the respondents have deliberately deleted the written examination qualification which is prescribed in the original rules. There is no rhyme or reason for deleting the said written examination procedure. Infact in all recruitment process the academic marks would be taken along with written examination marks and interview marks. i.e. it would be “academic + written + interview”. The interview may create some doubt, but the written examination will not create any doubt. Therefore, the respondents shall take the weightage for academic qualification along with written examination marks in order to select meritorious candidate, the written examination procedure cannot be dispensed with, since along with academic marks, written examination marks would be appropriate to get meritorious candidate in public employment. Hence this Court is of the considered opinion that the deletion of written examination in G.O.Ms.No.401 is against G.O.Ms.No.36.



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13. Therefore, this Court is inclined to allow the writ petition by upholding G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.02.2014, but G.O.Ms.No.401, Health and Family Welfare (C2) Department, dated 16.12.2014 is bad in law for deleting the qualification of written examination. To that extent, the G.O.Ms.No.401, Health and Family Welfare (C2) Department, dated 16.12.2014, is declared as not in accordance to G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.02.2014. The impugned notification, dated 08.05.2017, is also quashed. The respondents are at liberty to issue fresh notification in accordance to G.O.Ms.No.36, Health and Family Welfare (C2) Department, dated 12.02.2014. As far as the weightage granted to SSLC, HSC, diploma and degree, it is sustained. The respondents shall conduct the selection process by taking weightage from the academic marks, then marks from written examination and thereafter select meritorious candidate. Therefore, the respondents are directed to conduct written examination before selecting any candidate for para medical also.



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14. With the above said observation, the writ petitions are allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

24.11.2023

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

The Secretary,
The State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai.



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S.SRIMATHY, J.

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