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W.P.No.31854 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.31854 of 2013
and M.P.No.1 of 2013

A.Kalaiselvi

.. Petitioner

Versus

1. Indira Gandhi Medical College & Research Institute,
(A Government of Puducherry Institution),
Rep. by its Director,
Vazhudavur Road,
Kadirkamam, Puducherry - 605 009.

2. The Administrative Officer,
Indira Gandhi Medical College & Research Institute,
(A Government of Puducherry Institution),
Vazhudavur Road,
Kadirkamam, Puducherry - 605 009.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus to call for the records relating to impugned Clause 4(g) of the General Instructions in Notification No.151-1/IGMC&RI/Estt/Rectt (NP/2012, dated 22.06.2012 issued by the first respondent herein and the order of the 2nd respondent in No.6-3/66/PKMCS/Estt/RTI/2013-14/1469, dated 21.10.2013 and quash the same and direct the respondents to consider the petitioner's name against the



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"Scheduled Caste" category for selection to the post of "Staff Nurse" and grant her appointment to the said post with all attendant benefits without reference to Clause 4(g) of the General Instructions in Notification, dated 22.06.2012.

For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.V.Vasanth Kumar,
Additional Government Pleader
(Pondicherry)

ORDER

The writ petitioner challenges Clause - 4(g) of the General Instructions in the notification, dated 22.06.2012 and the order of the second respondent, dated 21.10.2013, by which, the petitioner was informed that she was not selected to the post of Staff Nurse under the Scheduled Caste quota and that the waiting list is not published.

2. The case of the petitioner is that the petitioner possesses B.Sc., Nursing Degree and is fully eligible to be appointed to the post of Staff Nurse under the respondents. The petitioner belongs to the Scheduled Caste category. By a notification, dated 22.06.2012, the respondents called for applications for filling up of 141 vacancies for the post of Staff Nurse in the pay band of Rs.9300 - 34800 + Grade Pay of Rs.4600/-. The petitioner duly



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made an application. However, when the results were published, the petitioner's name did not find place in the select list. Aggrieved by the same, the petitioner has filed the present Writ Petition.

3. It is the further case of the petitioner that the impugned Clause in the notification requires that a community certificate, which is obtained on or after 01.01.2012, has to be submitted. The community certificate which was issued to the petitioner was on 19.10.2011. It is only by oversight, the petitioner submitted the same. Even thereafter, the petitioner obtained a community certificate once again and resubmitted. Therefore, the respondents ought not to have rejected the candidature of the petitioner under the Scheduled Caste quota and ought to have selected and appointed her.

4. The Writ Petition is resisted by the respondents by filing a counter-affidavit. It is their case that the petitioner, while applying for the post, ought to have produced community certificate issued after 01.01.2012 which is made clear in the notification itself. Subsequently, the petitioner submitted the Scheduled Caste community certificate which is beyond the



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cut-off date prescribed in the notification. As such, her case could not be considered as a Scheduled Caste candidate and was considered only as a general candidate. The last of the General Category candidate selected got 79.42 marks and the petitioner got only 61.13 marks. Therefore, she was not selected.

5. The counter-affidavit also further states that even assuming that the petitioner has to be considered under the Scheduled Caste quota, there were nine vacancies which were advertised in the Scheduled Caste quota and nine persons were selected as against the same. The last of the Scheduled Caste candidate who got selected acquired 61.26 marks. Therefore, even hypothetically considering the case of the petitioner under the Scheduled Caste quota, still, she does not come within the zone of consideration.

6. Heard *Mr.T.N.Sugesh*, learned Counsel for the petitioner and *Mr.V.Vasantha Kumar*, learned Additional Government Pleader (Pondicherry) for the respondents.



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7. After reiterating the submissions made in the Writ Petition, in reply to the counter-affidavit, the learned Counsel for the petitioner would also point out that of the nine persons who were selected under the Scheduled Caste quota, three persons did not join. The information obtained by the petitioner under the Right to Information Act, 2005 categorically demonstrates the same. Therefore, if the petitioner is to be considered under the Scheduled Caste quota, she would have been in the first place in the waiting list and accordingly, when the three candidates selected under the Scheduled Caste quota having not joined, the respondents ought to have appointed the petitioner.

8. Per *contra*, *Mr.V.Vasantha Kumar*, learned Additional Government Pleader (Pondicherry) for the respondents would submit that the notification is very clear and categorical and if the petitioner does not adhere to the notification, her case cannot be considered under the Scheduled Caste quota.

9. I have considered the rival submissions made on either side and perused the material records of the case.



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10. It is true that the notification requires that the community certificate obtained after 01.01.2012 has to be produced by the candidates. In this case, it is the case of the petitioner that by oversight, the petitioner produced the certificate, dated 19.10.2011. It is also not disputed that once again the petitioner obtained a certificate which is issued after 01.01.2012 and produced the same, however, beyond the cut-off date prescribed in the notification. As against the substantial conditions in the notification such as qualification etc., and the procedural conditions namely, submission of the certificate within the cut-off time, Courts, on equitable consideration, can extend the benefits to candidates when it comes to procedural considerations. Therefore, merely on the non-production of the Scheduled Caste certificate within the time, the petitioner cannot be non-suited. However, even considering the petitioner as a Scheduled Caste candidate, paragraph No.18 of the counter-affidavit categorically states the marks of the nine selected Scheduled Caste candidates and that the last of the candidates who was selected under the Scheduled Caste quota also got more marks than the petitioner i.e., 61.26, whereas, the petitioner got 61.13



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marks. In view of the same, even condoning the procedural lapse on the part of the petitioner, the petitioner cannot get selected.

11. The only contention of the learned Counsel for the petitioner is that had the respondents operated a waiting list, since three candidates had not joined, the petitioner would have got an opportunity. The petitioner does not have a mandatory right to pray that in every selection, the employer has to draw up and operate the waiting list, especially, when the same has not been the subject matter of challenge. In view thereof, this Court is not in a position to grant any relief to the petitioner.

12. Accordingly, finding no merits, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

Index : yes
Speaking order
Neutral Citation : yes
grs

To

<https://www.mhc.tn.gov.in/judis>



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