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W.P.No.13004 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.13004 of 2018

and

W.M.P.Nos.15282 to 15285 of 2018

1. K.Vinoth Kumar
2. K.Prem Kumar
3. K.Vanitha
4. V.Rajeshwari
5. V.Vijayalakshmi

... Petitioners

Vs.

1. The Commissioner,
Department of Indian Medicine and Homeopathy,
Anna Government Hospital Campus,
Arumbakkam, Chennai – 600 106.
2. Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
No.359, Anna Salai, Teynampet,
Chennai – 600 006.

3. The Principal Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai – 600 009.
[R3 impleaded vide order dated 05.10.2021 passed
in W.M.P.No.22720 of 2021 in W.P.No.13004 of 2018]

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent issued in G.O (Ms) No.301, health and Family Welfare (IM2-1) Department, dated 30.08.2017 and the second respondent notifications No.01/MRB/2018, No.02/MRB/2018, 03/MRB/2018, No.04/MRB2018 dated 13.02.2018 for the post of Pharmacist in Siddha, Ayurveda, Homeopathy and Unani, respectively and to quash the same and consequently to direct the first and second respondents to appoint the petitioners purely on merit basis in the respective discipline with all consequential other benefits.

[Prayer amended vide order dated 05.10.2021 made in W.M.P.No.22722 of 2021 in W.P.No.13004 of 2018]

For Petitioner : M/s.R.Syed Mustafa

For R1 : M/s.M.Sneha,
Special Counsel for Health &
Family Welfare Department

For R2 : Mr.L.Murugavel

ORDER

The second respondent herein issued different notifications vide Notification Nos.01/MRB/2018, No.02/MRB/2018, 03/MRB/2018, No.04/MRB2018 dated 13.02.2018 seeking to fill up the posts of Pharmacist (Siddha), Pharmacist (Ayurveda), Pharmacist (Homeopathy) and Pharmacist (Unani). The said posts of Pharmacists are in Category 6, Branch-II of



Special Rules for the Tamil Nadu Medical Subordinate Services.

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2. In terms of the above said notifications, the educational qualifications mentioned for filling up the posts are (i) Diploma in Indian System of Medicine; or (ii) Diploma in Pharmacy in Siddha; or (iii) Diploma in Integrated Pharmacy (DIP) conducted by the Government of Tamil Nadu. However, having prescribed the above said three alternative qualifications for the post of Pharmacist of different disciplines, two provisos are added, which reads as under:-

“ Provided that, if the persons holding the qualification specified in item (1) is not available, then the persons holding the qualification specified in item (2) shall be considered;

Provided further that, if the persons holding the qualification specified in item (2) is not available, then the persons holding the qualification specified in item (3) shall be considered.”

3. By operation of the above said provisos, if the persons holding the qualification at Sl.No.1 are not available, then only the persons holding the qualification specified at Sl.No.2 shall be considered. So also, in case if the persons holding the qualification at Sl.No.2 are not available, then the persons holding the qualification at Sl.No.3 shall be considered. All the



petitioners herein are the persons having the qualification mentioned at Sl.No.3 i.e., Diploma in Integrated Pharmacy (DIP). The petitioners having found themselves to be eligible to participate in the recruitment process pursuant to the above said four notifications, submitted their applications and then approached this Court by filing the present Writ Petition challenging the notifications and seeking consequential relief to appoint the petitioners basing upon their Employment Exchange Seniority. Subsequently, the relief sought in the Writ Petition was amended challenging the Government Order in G.O (Ms) No.301, Health and Family Welfare (IM-I) Department dated 30.08.2017 and seeking a consequential direction to the first and second respondents to appoint the petitioners purely on merit basis in their respective disciplines with all consequential benefits.

4. The above extracted two provisos were added to the Rules through G.O (Ms) No.301 dated 30.08.2017. In effect, it is the said amendment made to the Rules by adding the above said two provisos is challenged in the present Writ Petition. The recruitment pursuant to the above notifications is sought to be made by giving effect to the amendment made in G.O (Ms) No.301 dated 30.08.2017. Thus, the validity of the said two provisos is



required to be considered in this Writ Petition.

5. As noted above, the said two provisos were added to the Rules through G.O (Ms) No.301 dated 30.08.2017. In the said Government Order, the reason for adding the two provisos are mentioned as under:-

“ 2. In the reference second read above the Additional Chief Secretary/ Commissioner of Indian Medicine and Homeopathy has informed that as per the Government Order first read above those who are qualified with Diploma in Pharmacy (Siddha), can apply only for the post of Pharmacist (Siddha), those who have qualified in Ayurveda, can apply only for the post of Pharmacist (Ayurveda), those who have qualified in Unani, can apply for the post of Pharmacist (Unani), those who have qualified in Homeopathy, can apply for the post of Pharmacist (Homeopathy) whereas those who have qualified in Diploma in Integrated Pharmacy course are eligible to apply for the posts of Pharmacist (Siddha/ Ayurveda/ Unani/ Homeopathy) and hence they have more employment opportunities in the Government Sector.

In view of the above, Pharmacist (Siddha), Pharmacist (Ayurveda), Pharmacist (Unani), Pharmacist (Homeopathy) may be considered and give them preference if there are inadequate candidates in their category, then the candidates those who qualified in Diploma in Integrated Pharmacy may be considered for selection, and has requested to issue amendment to the effect.



3. The Government have examined the proposal of the Additional Chief Secretary/ Commissioner of Indian Medicine and Homeopathy in detail and has decided to amend the Special Rules for the post of Pharmacist in Tamil Nadu Medical Subordinate Services.”

6. The learned counsel for the petitioners, M/s.R.Syed Mustafa contended that by virtue of the said provisos, which are impugned in the Writ Petition, the persons who are having the qualification of Diploma in Integrated Pharmacy are excluded from being considered for appointment to the post 'Pharmacist' of any discipline and he also further contended that the impugned notifications provide for procedure for selection by giving weightage marks to the Diploma Course, HSC/ PUC and SSLC/ 10th at the ratio of 50% : 30% : 20% respectively. But, by operation of the impugned provisos, even if the persons having the qualification of Diploma in Integrated Pharmacy are more meritorious than the persons having the other two qualifications, they are being excluded and only in the event of non-availability of the persons having the first two qualifications, than the persons having the third qualification, are being considered and in case, if all the posts that are notified under the impugned notifications are filled up by the persons having first two qualifications, the persons having the third



qualification like the petitioners stand totally excluded from being appointed to the post of 'Pharmacist'.

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7. He also further contended that the respondents, instead of providing a preference for the candidates having the first two qualifications and giving them the preference in the event of merit being equal among the candidates who possessed other qualification, the respondents have adopted a procedure by having totally excluding the persons like the petitioners, who possess the third qualification. Thus, he contended that the impugned provisos amended through G.O (Ms) No.301 dated 30.08.2017 is arbitrary and violative under Articles 14 and 16 of the Constitution of India. He also further demonstrated from the re-joinder filed in the writ petition to say that though the petitioners herein, who possessed the third qualification have secured more merit than the other candidates who possessed the first and second qualifications, they are being preferred and the petitioners who are more meritorious are being ignored, thereby giving a go-bye to the merit.

8. On the other hand, M/s.M.Sneha the learned Special Counsel for Health and Family Welfare contended that the duration of the course to



acquire the first and second qualification referred to under the Rules is 2 years in the respective specialization and whereas the qualification prescribed at Sl.No.3 is Diploma in Integrated Pharmacy Course is of 2 ½ years, during which period all the four disciplines are covered and therefore, the persons having the first two qualifications are preferred to the persons holding the third qualification. Further, it is also contended that the persons having the third qualification are eligible to participate in all the four notifications i.e., in respect of Pharmacist (Sidhha), Pharmacist (Ayurveda), Pharmacist (Homeopathy) and Pharmacist (Unani) and whereas, the persons having the qualifications mentioned at Sl.Nos.1 and 2 are entitled to participate in the recruitment process only in respect of their respective disciplines viz., Pharmacist (Sidhha) or Pharmacist (Ayurveda) or Pharmacist (Homeopathy) or Pharmacist (Unani). Thus, it is contended that the persons having the third qualification will have more employment opportunities and whereas the persons having the other two qualifications will have less employment opportunities and therefore, the impugned amendment was effected through G.O (Ms) No.301 dated 30.08.2017.

9. Mr.L.Murugavel, learned counsel appearing for the Respondent



No.2 contended that they have strictly followed the Rules and completed the recruitment process and all the posts were filled-in and subsequent recruitments have also taken place.

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10. This Court passed an interim order dated 30.05.2018, subjecting all the appointments made under the notifications to the result of the Writ Petition.

11. From the extract of G.O (Ms) No.301 dated 30.08.2017 as extracted above, the only reason given by the respondent in State adding the impugned provisos to the Rule in question is that the persons having the qualification mentioned at Sl.Nos.1 and 2 will have less employment opportunities comparing the persons possessing the qualification mentioned at Sl.No.3. As is seen from the impugned notifications, except the notification issued in respect of Pharmacist (Homeopathy), all the other posts viz., Pharmacist (Sidhha), Pharmacist (Ayurveda) and Pharmacist (Unani), one of the qualifications prescribed is 'Diploma in Indian System of Medicine' and there is no specialization in that. Thus, the persons having the Diploma in Indian System of Medicine, which is mentioned at Sl.No.1 of the



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Rule in question is eligible to participate in respect of post of Pharmacists of all disciplines except Pharmacist (Homeopathy). Likewise, the persons having the 'Diploma in Integrated Pharmacy' are eligible to participate in the recruitment process for the post of Pharmacists in all the four disciplines including Pharmacist (Homeopathy). Thus, comparatively the persons having the qualification of 'Diploma in Indian System of Medicine' are also equally entitled to participate in the recruitment process in respect of the posts of Pharmacists of all disciplines including Pharmacist (Homeopathy) and whereas, the persons with 'Diploma in Integrated Pharmacy' are eligible to participate in the recruitment process for the post of Pharmacists of all disciplines. Thus, the persons having the qualification mentioned at Sl.No.3 are having only one additional opportunity than the persons having the qualification mentioned at Sl.No.1. If that be the case, the reason given by the State in the impugned Government Order on the ground of non-availability of employment opportunities to the persons having qualification at Sl.Nos.1 and 2 and availability of more employment opportunities to the persons having the qualification mentioned at Sl.No.3 does not stand to legal scrutiny.



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12. Be that as it may, while prescribing the qualifications for a particular post, the availability or non-availability of the employment opportunities to the prospective candidates is totally an irrelevant consideration and it is only the nature of duties and functions of the posts in question and the expertise that is required to man the particular posts are the relevant criteria. If the State is of the view that the persons having different qualifications are to be provided an equal or preferential opportunity, it is always open for the State to prescribe ratio among the persons having different qualification. But by inclusion of the impugned provisos, the candidates possessing the qualification at Sl.Nos.2 and 3 are excluded, in case if sufficient number of candidates having the qualification prescribed at Sl.No.1 are available to be appointed to the post notified under the notifications in question. So also, the candidates possessing the qualification at Sl.No.3 are totally excluded in case if all the posts notified are filled up by the candidates possessing the qualifications at Sl.Nos.1 and 2. Thus, the persons holding the qualifications at Sl.Nos.2 and 3 are being excluded from being considered for appointment on par with other candidates. Further, the very notification itself provides a procedure for selection by awarding marks for Diploma, HSC/ PUC and SSLC/ 10th at the ratio of 50% : 30% : 20%. But



by operation of the impugned provisos, even if the person having the qualification mentioned at Sl.No.3 secures highest marks by virtue of the selection procedure prescribed under the notification, he will stand totally excluded from being considered for appointment if sufficient number of candidates having prescribed qualifications mentioned at Sl.Nos.1 and 2 are available for appointment to the posts notified. Thus, the very purpose providing for a procedure for selection under the notification stands defeated.

13. Further, it is also necessary to notice that the qualifications mentioned at Sl.No.3 is included in the qualification criteria for the first time through G.O (Ms) No.25 dated 27.01.2016 and immediately thereafter, through impugned G.O (Ms) No.301 dated 30.08.2017, the benefit that was conferred upon the persons, who acquired the qualification of Diploma in Integrated Pharmacy is taken away indirectly by introducing the above-mentioned 2 provisos which has the effect of totally excluding the persons having the qualification mentioned at Sl.No.3.

14. Then, Coming to the contention of the learned Special Counsel for Health and Family Welfare that the persons who are possessing the



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qualification mentioned at Sl.Nos.1 and 2 have a specialization and they have undergone the course in a particular specialization for a period of two years unlike the persons possessing the qualification at Sl.No.3 is concerned, the same does not stand to scrutiny, in view of the fact that the persons who were possessing the qualification mentioned at Sl.No.1 are eligible for the post of Pharmacist of different i.e., disciplines in respect of Pharmacist (Sidhha), Pharmacist (Ayurveda) and Pharmacist (Unani) and whereas the persons possessing the qualification at Sl.No.3 are eligible for one more specialization viz., Pharmacist (Homeopathy) also. Hence, the question of the persons possessing the qualification at Sl.No.1, a specialized expertise in the respective field does not arise. May be, the persons having the qualification at Sl.No.2 may have the specialization, but the State in its wisdom thought it fit to include the qualification of Diploma in Pharmacy as one of the qualification for the post of Pharmacist and accordingly, the same was included. Having included the qualification at Sl.No.3 as one of the qualification for the post of Pharmacist and so long as the said qualification is continued to be one of the qualification for the post of Pharmacist, the State is not justified in excluding them by an indirect way.



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15. In the light of the above, this Court is of the considered view that the classification that is sought to be made by introducing the two impugned provisos is totally arbitrary and illegal and violation of Articles 14 and 16 of the Constitution of India. Accordingly, the impugned Government Order to the extent of adding the two above mentioned provisos to the Special Rules in the category 6 of Branch II of the Special Rules for Tamil Nadu Medical Subordinate Services is struck down. Consequently, the said provisos included in the impugned notifications shall also stand struck down.

16. Then coming to the aspect of relief to which the petitioners herein are entitled insofar as the recruitment process is concerned, as submitted by learned counsel appearing on behalf of the Respondent No.2, entire recruitment process has already concluded long back and subsequent recruitment process are also over. This Court has already subjected any appointments to be made pursuant to the impugned notification to the result of the Writ Petition. Therefore, the appointments that were made so far pursuant to the impugned notification cannot be said to have become final.

17. However, the persons who are selected pursuant to the impugned



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notification are not made parties to the Writ Petition. As this Court has subjected any appointment to the result of the Writ Petition, it is also not necessary to implead all of them as party respondents. Be that as it may, as the appointments have already taken place in the year 2019 and they have been working for all these years, this Court is not inclined to disturb the appointments that were already made. In case if the petitioners, in terms of their merit possessed as per the selection procedure provided under the impugned notifications and are coming within the zone of consideration for appointment to any of the posts covered by the impugned notifications or in case if any of the less merited candidates than the petitioner were appointed, the respondents shall take necessary steps to appoint the petitioners also as Pharmacist in their respective specialization under the relevant notifications in any of the existing or future vacancies and place them at their respective places as per their merit and extend all other consequential service benefits. However, the petitioners who secured appointment pursuant to this order shall not be entitled for any monetary benefits till the date of their appointment.

18. Accordingly, the Writ Petition stands allowed. No costs.



Connected Miscellaneous Petitions, if any shall stand closed.

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26.06.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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Anna Government Hospital Campus,
Arumbakkam, Chennai – 600 106.
2. The Medical Services Recruitment Board (MRB),
7th Floor, DMS Building, No.359, Anna Salai,
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MUMMINENI SUDHEER KUMAR, J.

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