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W.P.Nos.15857 and 15860 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.15857 and 15860 of 2022
and W.M.P.Nos.15154, 15155 and 15159 of 2022

S.Ashwath

...Petitioner in both W.Ps

-Vs-

1. Medical Services Recruitment Board (MRB),
represented by its Member Secretary
Government of Tamil Nadu,
7th Floor, D.M.S.Building,
No.359, Anna Salai, Teynampet,
Chennai-600 006.

2. The Secretary to Government,
Department of Health and Family Welfare,
Secretariat,
Fort St.George,
Chennai-600 009.

... Respondents in both W.Ps

Prayer in W.P.No.15857 of 2022: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the list of ineligible candidates for the post of Pharmacist (Siddha), dated NIL issued by the first respondent and direct the first respondent to appoint petitioner as a Pharmacist (Siddha) as per the Notification No.03/MRB/2022 dated 25.02.2022 forthwith.



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Prayer in W.P.No.15860 of 2022: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Declaration, declaring that para 6B of the Notification of the respondent in No.03/MRB/2022 dated 25.02.2022 which prescribed educational qualifications for the post of Pharmacist (Siddha) is unconstitutional, null and void and unenforceable in law.

In Both W.Ps

For Petitioner	: Mr.P.Jagadeesan
For R1	: Mr.L.Murugavelu Standing Counsel
For R2	: Mr.G.Ameedius Government Advocate

COMMON ORDER

W.P.No.15857 of 2022 has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the entire records relating to the list of ineligible candidates for the post of Pharmacist (Siddha), dated NIL issued by the first respondent and direct the first respondent to appoint petitioner as a Pharmacist (Siddha) as per the Notification No.03/MRB/2022 dated 25.02.2022 forthwith.

2. W.P.No.15860 of 2022 has been filed for the issuance of Writ of Declaration, declaring that para 6B of the Notification of the respondent in



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No.03/MRB/2022 dated 25.02.2022 which prescribed educational qualifications for the post of Pharmacist (Siddha) is unconstitutional, null and void and unenforceable in law.

3. Heard the learned counsel on either side and perused the materials available on record.

4. The petitioner had studied Diploma in Siddha Pharmacy in Mother Theresa Post Graduate and Research Institute of Health and Sciences, Puducherry. Pursuant to the Notification, dated 25.02.2022 issued by the first respondent, calling for applications for the appointment to the post of Pharmacist (Siddha), the petitioner had applied for the same. The petitioner was qualified to the post of Pharmacist (Siddha) and he was called for certificate verification. After completion of certificate verification, the first respondent had published a list of candidates who do not possess prescribed qualification for the post of Pharmacist (Siddha). Based on the educational qualification, certificates were uploaded in on-line.



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5. It is relevant to extract the educational qualification mentioned in para 6B of the notification dated 25.02.2022 as follows:-

<i>Sl.No.</i>	<i>Name of the Post</i>	<i>Qualification</i>
1.	Pharmacist (Siddha)	1) Diploma in Indian System of Medicine; (or) 2) Diploma in Pharmacy in Siddha; (or) 3) Diploma in Integrated Pharmacy (DIP) conducted by the Government of Tamil Nadu. “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.”

6. The petitioner is qualified with Diploma in Siddha Pharmacy. He is fully qualified as per the notification to apply for the post of Pharmacist (Siddha), since the notification does not bar any candidate who completed Pharmacist (Siddha) in other States.



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7. A perusal of the counter revealed that three courses conducted by the Government of Tamil Nadu are only the educational qualification for the post of Pharmacist (Siddha). That apart, the Government of Tamil Nadu had issued an amendment to the special rules in G.O.Ms.No.301, Health and Family Welfare (IM2-1) dated 30.08.2017 to safeguard the candidates who have already studied Diploma in Pharmacy (Siddha) in Tamil Nadu has been stopped from the Academic Year 2009-2010 and also needs to be given priority over and above the newly introduced course of Integrated Pharmacy whereby candidates will study all four streams of Indian Medicine, namely, Siddha, Ayurveda, Unani and Homoeopathy. Therefore, priority is given for the reason that the candidates qualified in the newly introduced diploma in integrated pharmacy can be appointed in all the above mentioned four Indian System of Medicine. Admittedly, the petitioner had completed Diploma in Siddha Pharmacy, only in the year 2017, in Mother Theresa Post Graduate and Research Institute of Health and Sciences, Puducherry.

8. The notification is clear that the three courses viz., 1) Diploma in Indian System of Medicine; 2) Diploma in Pharmacy in Siddha; 3) Diploma in Integrated Pharmacy (DIP), conducted by the Government of Tamil Nadu



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alone are eligible for the post of Pharmacist (Siddha). Therefore, the candidates cannot compel the employer to consider the very same qualification obtained from other States.

9. In this regard, it is relevant to rely upon the Judgment of the Hon'ble Supreme Court of India reported in **2010 15 SCC 596** in the case of **Jyoti K.K Vs. Kerala Public Service Commission**, wherein it has held as follows:-

“ 27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administrative decision making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure.”

10. Thus, this Court cannot direct either relaxation or issue direction to the respondents to consider the request made by the petitioner to appoint him in the post of Pharmacist (Siddha) by quashing the list published by the first respondent listing the ineligible candidates for the post of Pharmacist (Siddha). Further the prescription of the eligibility criteria is within the



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exclusive domain of the recruitment agency or the employer. The Judicial review in these cases is limited to circumstances wherein the eligible criteria has been prescribed in a capricious manner.

11. In view of the above, this Court finds no infirmity or illegality in the notification published by the first respondent in Notification No.03/MRB/2022 dated 25.02.2022 and these writ petitions are devoid of merits and are liable to be dismissed. Accordingly, these writ petitions are dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

07.02.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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To

1. The Member Secretary,
Medical Services Recruitment Board (MRB),
Government of Tamil Nadu,
7th Floor, D.M.S.Building,
No.359, Anna Salai, Teynampet,
Chennai-600 006.
2. The Secretary to Government,
Department of Health and Family Welfare,
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