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W.P.No.20647 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	24.01.2024
<i>Pronounced on</i>	14.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULAW.P. No.20647 of 2021

M.S.Sheena

/vs/

...

Petitioner

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.

2. The Medical Services Recruitment Board (MRB),
Rep. by its Secretary,
7th Floor, D.M.S.Buildings,
359 Anna Salai, Teynampet,
Chennai – 600 006.

3. The Director of Medical and Rural Health Services,
3rd Floor, DMS Building,
No.359, Anna Salai,
Chennai – 600 006.

... Respondents

(R3 is impleaded as per the order dated 09.01.2024 made in
W.M.P.No.277/2024 in W.P.No.20647/2021)

Writ Petition is filed under Article 226 of the Constitution of India



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to issue a writ of certiorarified mandamus calling for the records relating to the order passed by the second respondent in Ref.No.2077/MRB/E6/2019, dated 11.02.2020 and quash the same consequentially direct the respondents to appoint the petitioner as a Nurse (SNCU) from the date of recruitment of employees as per the notification No.1/MRB/2019 dated 06.02.2019 and pay all the attendant benefits.

For Petitioner : Mr.K.M.Ramesh
Senior Counsel
for Mr.A.R.Nixon

For Respondents ... Mr. M.Rajendran
Additional Government Pleader for R1

Mr.L.Murugavel (MRB) for R2

ORDER

This writ petition has been filed to quash the order of the second respondent dated 11.02.2020 passed in Ref.No.2077/MRB/E6/2019 and consequently direct the respondents to appoint the petitioner as a Nurse (SNCU) from the date of recruitment of employees as per the notification No.1/MRB/2019 dated 06.02.2019 and pay all the attendant benefits.

2. The petitioner is a registered Nurse and she practiced in Anathapuri Hospital and Research Institute, Tiruvananthapuram, Kerala.



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The said hospital has 18 Newborn Intensive Care Units. The Medical Services Recruitment Board (MRB) called for applications for recruitment to the post of 'Nurses (Sick Newborn Care Unit)'. The petitioner applied for the said post and she fulfilled the required educational qualification. She also attended the written examination and secured 48.50 marks. The provisional selection list published on 10.09.2019 was deleted and a second revised list was released on 28.09.2019 by newly adding the names recommended by one Ekam Foundation.

2.1 The petitioner filed a Writ Petition in W.P.No.34215 of 2019 to verify her certificate and appoint her as 'Staff Nurse'. This Court vide order dated 16.12.2019 directed the second respondent herein to consider the representation of the petitioner and to inform her with regard to the certificates. But the said order was not properly complied. The respondent constituted an Expert Committee and the Expert Committee has not considered the other persons who have been selected by the Medical Services Recruitment board. Since the Board had given an adverse opinion about the certificates produced by the petitioner, the



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petitioner's appointment was rejected vide proceedings of the Medical Services Recruitment Board in Reference No.2077/ MRB / E6 2019 dated 11.02.2020. Aggrieved over which the petitioner has filed this writ petition.

3. Mr.K.M.Ramesh, the learned Senior Counsel for the petitioner, submitted that the respondents did not verify the certificates produced by the petitioner with regard to her experience in a proper manner; the Expert Committee has been constituted despite the orders of the Court and rules of the recruitment notification does not warrant the same; the selected candidates were sponsored by the Ekam Foundation; one of the Expert Committee members has bias in favour of Ekam Foundation and he had interacted with the Ekam Foundation about the selection of candidates sponsored by them; the verification has not been properly done and the persons selected through Ekam Foundation did not have the required qualification; there is no genuineness in the certificate produced by the other selectees with regard to their experience; as per the information obtained by the petitioner through Right To Information Act, the hospitals in which some of the selectees have worked and for whom



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appointments have been given, did not have 12 beds and Newborn Intensive care unit, but the certificates produced by those candidates were accepted to be true and they have been appointed; the petitioner who had secured higher marks than the other selectees was purposefully ignored to be considered for the appointment; the provisional selection list has been prepared with an intention to accommodate the persons selected through Ekam Foundation.

4. Mr.L.Murugavel, the learned Standing Counsel for the second respondent, submitted that in compliance of the earlier order dated 16.12.2019 made in W.P.No.34215 of 2019, the certificates produced by the petitioner were verified and they were found to be not genuine; however in the impugned order itself the reasons for not accepting the certificate produced by the petitioner has been stated; the direction given by this Court in the order dated 16.12.2019 in W.P.No.34215 of 2019 has been scrupulously complied and the petitioner cannot have any grievance on it; since the petitioner's eligibility as produced by the certificate is not correct she was not given with any appointment.



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5. The notification dated 06.02.2019 has been issued for recruitment of 520 Nurses (Sick Newborn Care Unit). Apart from the educational qualification, the candidates are required to possess the following additional qualification :

“ A certificate of at least three years experience in Sick Newborn Care Unit with 12 bed strength in the Government Institutions / Hospitals and Private Hospitals of having an in-house Obstetric department with turnover of at least 1000 deliveries per year except hilly areas / hard to reach / sparse facilities area or in the Government Institutions / Hospitals and Private Hospitals with paediatric facility with turnover of at least 500 neonatal admissions per year.”

6. It is the submission of the petitioner that though she had produced the certificate evidencing her additional qualification of three years experience in Sick Newborn Care Unit, she has not been considered. The petitioner had appeared for written examination and secured 48.50 marks and this was not denied by the respondents.

7. Earlier, the very same petitioner has filed a Writ Petition in W.P.No.34215 of 2019 seeking a direction to verify the petitioner's certificates and appoint her as Staff Nurse (SNCU) as per the notification



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dated 06.02.2019. In the said writ petition, the following direction has

been issued:

“ 5. In view of the above developments, there shall be a direction to the second respondent to consider the representation made by the petitioner and inform the petitioner with regard to the certificates and other documents that were sent by her through speed post for verification and intimate her if she has been selected or rejected and the reasons for the same. Only with this information, the petitioner will be able to workout her remedy, if in case, she has not been selected. This whole exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. The petitioner is directed to give a fresh representation to the second respondent along with a copy of this order.”

8. The learned Standing Counsel for the second respondent submitted that as per the above direction, the experience certificate produced by the petitioner has been verified by constituting an Expert Committee and the Expert Committee rejected the said certificate for the following reasons:

“ i. As per eligibility criteria No.2, Extra mural (out born Unit), should be part of Paediatric facility with a turnover of at least 500 Neo Natal admission per year is mandatory but Anathapuri Hospital Private Limited, Tiruvandram, Kerala is having only 350 to 400 natal



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admission per year. Hence, this institution has not fulfilled the said eligibility criteria.

ii. As per eligibility criteria No.3, turnover of at least 1000 deliveries per year (Exception Hilly / Hard to reach spare area) is mandatory but Anathapuri Hospital Private Limited, Tiruvandram, Kerala, is having only 800-1000 deliveries per year. Hence, this institution has not fulfilled the eligibility criteria.”

9. However, it is submitted by the learned Senior Counsel for the petitioner that the appointment orders have been issued to other candidates who have produced the experience certificate which were not scrutinized by any Scrutiny Committee. It is the allegation of the petitioner that the petitioner's case was handled in a biased manner by constituting a special committee of seven members.

10. One of the members of the Expert Committee Dr.Srinevasan, M.D.(Paediatric), State IMNCI Nodal Coordinator, State IMNCI Nodal Centre, Chennai, has interest in Ekam Foundation through which the candidates for recruitment were sponsored. Certain alleged irregularities have also been shown to the Court that Dr.Srinevasan is interested in Ekam Foundation and the selection process was done in a biased manner.



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Attention was also drawn to the information obtained under Right To Information Act, by the petitioner in respect of the experience certificate produced by some of the selected candidates. On the basis of the said orders, it is claimed that some of the selected candidates have produced experience certificate in certain hospitals, but they actually did not have 12 bed strength as required in the notification.

11. The petitioner has got higher marks in the written examination than the other candidates who were selected to the post. It is also shown to the Court that the certificate of experience produced by some of the candidates by name R.Lakshmi, S.Kavitha, K.Manivalli and A.Saranya were not true since the hospitals in which they have worked have less than 12 number of bed strength and they do not have a turnover of 1000 deliveries and 500 neonatal admissions per year.

12. It is claimed that the respondents overlooked the said facts while appointing other candidates but they have underestimated the hospital in which the petitioner had served and rejected her experience certificate.



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13. A seven member committee has been constituted for certificate verification. It is alleged that the respondents did not adopt uniform procedure for certificate verification and even the expert committee constituted in this regard has bias in favour of certain candidates. The petitioner did not challenge the selection process by impleading all the selected candidates as parties to this proceedings. However, some of the records obtained under the Right To Information Act would show that the hospitals in which certain selected candidates worked, did not meet the bed strength or turnover of deliveries and Neonatal Admissions.

14. Different yardsticks ought not to have been adopted by the respondents while selecting the candidates in contradiction to the norms prescribed in the notification. If relaxation is shown here and there in respect of the required number of bed strength, turnover of deliveries and neonatal admissions and some of the candidates are benefitted due to that, the same should have been extended to the petitioner also.

15. The petitioner cannot say that there should not be any Expert



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Committee for certificate verification. As per the submission of the respondents, the committee has been constituted as early as on 26.08.2019 and the provisional selection list was published on 28.09.2019. The petitioner submitted that two provisional list has been prepared with an intention to accommodate those nurses through Ekam Foundation. The materials have also been shown that one of the Expert Committee member is interested in Ekam Foundation.

16. Since the selection list has been published after the constitution of Expert Committee, it cannot be said that the Expert Committee has been constituted only for the purpose of scrutinizing the petitioner's certificate and not for others. It can neither be claimed that the information about the constitution of the Expert Committee should have been stated in the notification. It is up to the recruiting authorities to have their own infrastructure facilities to verify the certificates produced by the candidates and those details need not form part of the notification.

17. The hospital where the petitioner has gained experience is said to be the hospital which has 18 bed strength and it has the required



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turnover of deliveries and neonatal admissions. The Expert Committee could have got required information from the Ananthapuri Hospital where the petitioner worked earlier and verified the particulars prescribed in the certificate produced by the petitioner. Hence, I feel the respondents shall be directed to reconsider the candidature of the petitioner on properly getting the information from the Ananthapuri Hospital.

18. In the result the Writ Petition is partly allowed and the impugned order passed by the second respondent in Ref.No.2077/MRB/E6/2019 dated 11.02.2020 is hereby set aside and the respondents are directed to reconsider the candidature of the petitioner on getting the information properly from the Ananthapuri Hospital and Research Institute, Tiruvananthapuram, Kerala and appoint the petitioner, if she is so eligible.

14.02.2024

Index: Yes
Speaking order
Netural citation : Yes
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R.N.MANJULA ,J.

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To:

1. The Secretary,
The Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.
2. The Medical Services Recruitment Board (MRB),
Rep. by its Secretary,
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359 Anna Salai, Teynampet,
Chennai – 600 006.
3. The Director of Medical and Rural Health Services,
3rd Floor, DMS Building,
No.359, Anna Salai,
Chennai – 600 006.

Pre-delivery order in
W.P.No.20647 of 2021

14.02.2024