



W.P.No.21376 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.21376 of 2024

Dr. V.Vijayaragavendiran

... Petitioner

Vs

1. The Medical Services Recruitment Board,
Rep. by its Chairman,
7th Floor, DMS Building 359, Anna Salai,
Chennai – 600 006.

2. The Government of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare (B1) Department,
Chennai – 600 009.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to call the petitioner for counselling immediately or within a time frame fixed by this Court and to disclose to him all the existing vacancies in the State of Tamil Nadu so as to be chosen by him during the counselling immediately and to issue posting orders to him in the place so chosen by him during the



W.P.No.21376 of 2024

counselling within a time frame as may be fixed by this Court and direct the respondents to pay the petitioner the cost of the litigation as may be fixed by this Court.

For Petitioner : Mr. N.Subramaniam

For Respondents : Mr. L.Murugavelu,
Standing Counsel (for R1)

Mr. M.Bindran,
Additional Government Pleader (for R2)

ORDER

With the consent of both sides, this Writ Petition has been taken up for disposal at the admission stage itself.

2. This Writ Petition is filed for directing the first respondent to call the petitioner for counseling for the post of Assistant Surgeon.

3. The petitioner, qualified with an MBBS degree, was selected by the Short Service Commission for 5 years and served in the Indian Army. The petitioner was boarded out/retired due to medical disability and receives a medical disability pension. Meanwhile, the first respondent notified



W.P.No.21376 of 2024

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recruitment for the post of Assistant Surgeon for 223 vacancies, which was later modified to 1021 vacancies, without providing any quota for Ex-servicemen as stipulated under Section 27(C) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as 'the Act' for short). Therefore, the petitioner applied under the BC General quota. The petitioner had to take two examinations and requested that 5% of the quota be executed for Ex-servicemen.

3.1. Thereafter, the second respondent issued G.O. (Ms) No. 400, Health and Family Welfare (B1) Department dated 29.12.2023, directing the first respondent to follow the turn and rotation for Ex-servicemen specified in Schedule-VII read with Section 27(c) of the Act in the selection to the post of Assistant Surgeons (Group-B Post). This was done on the same day the corrigendum to the written examination result was published, in which the petitioner had secured 51.58 out of 100 marks. However, he was not called for certificate verification. Therefore, the petitioner was constrained to file W.P. No. 2608 of 2024 and obtained an interim order to keep one post vacant. The petitioner was called for certificate verification on 20.02.2024.



W.P.No.21376 of 2024

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After appearing for certificate verification, the petitioner was not called for counseling, despite it being held on various dates.

4. The learned counsel appearing for the respondents, on instructions, stated that the petitioner did not complete his five years of service in the Army. They also pointed out the notification, which states that for the purpose of this clause, a person will be deemed to be not in the service of the Indian Union or of a State in India if a period of five years has not elapsed since his first appointment to a service of the Indian Union or of a State in India. It is in no way connected to the condition that the petitioner served less than five years in the Army.

5. It is also seen from the Notification that the petitioner is very much eligible to be appointed as Assistant Surgeon, since any person who had served in any rank in the Armed Forces of the Union and had retired or been released on or after 01.07.1987 from such service on medical grounds attributable to military service or circumstances beyond his control is eligible to be appointed as Assistant Surgeon. Therefore, if the petitioner is otherwise



W.P.No.21376 of 2024

qualified, he is eligible to be appointed as Assistant Surgeon.

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6. In view of the above, the first respondent and the Appointing Authority are directed to call the petitioner for counseling, and if he is otherwise eligible, appoint him to the post of Assistant Surgeon within a period of two weeks from the date of receipt of a copy of this order.

7. With the above directions, this Writ Petition is disposed of. No costs.

29.07.2024

Index:Yes/No
Neutral Citation/Yes/No
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W.P.No.21376 of 2024

To
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7th Floor, DMS Building 359, Anna Salai,
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2. The Secretary,
The Government of Tamil Nadu,
Health and Family Welfare (B1) Department,
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W.P.No.21376 of 2024

G.K.ILANTHIRAIYAN, J.

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W.P.No.21376 of 2024

29.07.2024