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W.P.Nos.27342/2019 & 962 & 963/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.27342 / 2019 and 962 & 963 / 2020
and W.M.P.Nos.1181 & 1177/2020, 21935/2021, 26775/2019
& 7782 & 7966/2022

W.P.No.27342/2019

M.Sudalaikani

... Petitioner

/vs/

1. The State of Tamil Nadu,
rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.
2. The Medical Services Recruitment Board (MRB),
rep. by its Member Secretary,
7th Floor, DMS Building,
359, Anna Salai, Teynampet,
Chennai – 600 006.
3. The Director of Medical Education,
Kilpauk, Chennai – 600 010.
4. The Director of Medical & Rural Health Services,
DMS Building, 359, Anna Salai,
Teynampet, Chennai – 600 006.
5. R.Divya
6. P.Abisha
7. U.Deepalakshmi



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8. K.Degavalli
9. Janani Sivaji
10. A.Agnianbu
11. S.Joy Ebenezer
12. J.Manimegalai
13. C.Sandeep
14. B.Somasundararaj

... Respondents

(R5 to R14 are impleaded as per order dated 12.02.2024 in W.M.P.No.34837/2019 in W.P.No.27342/2019)

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the second respondent culminating in the provisional selection list dated 28.08.2019 made in Notification No.05/MRB/2018, and quash the same and consequently direct the second respondent to complete the selection process as per the rules in force as on date of the notification dated 06.03.2018 made in Notification No.05/MRB/2018.

For Petitioner ... Mrs.G.Thilagavathy
Senior Counsel

For Respondents ... Mr.G.Ameedius
Govt. Advocate for R1, R3 & R4

Mr.L.Murugavel
Standing Counsel for R2

Mr.R.Jayaprakash for R5 to R14

W.P.No.962/2020



W.P.Nos.27342/2019 & 962 & 963/2020

Linga Pandi M

... Petitioner

/vs/

1. The State of Tamil Nadu,
rep. by its Principal Secretary,
Health and Family Welfare Department,
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4. The Director of Medical & Rural Health Services,
DMS Building, 359, Anna Salai,
Teynampet, Chennai – 600 006.
5. A. Suparna
6. R. Sangeetha
7. J. Aathilakshmi
8. S. Joy Ebenezer
9. S. Saranya
10. N. Pradeepa
11. U. Deepalakshmi
12. A. Ponni
13. P. S. Mary Siji
14. A. Nancy
15. R. Divya
16. K. Malathy
17. A. Agnianbu
18. P. Abisha
19. F. Sayera Banu
20. T. Priya
21. S. Balakrishnan



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22. T.Jhancy
23. M.Supriya
24. B.Somasundararaj
25. S.Janani Sivaji
26. C.Sandeep
27. J.Manimegalai
28. K.Degavalli
29. Pillappan

... Respondents

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For Petitioner ... Mrs.G.Thilagavathy
Senior Counsel

For Respondents ... Mr.G.Ameedius
Govt. Advocate for R1, R3 & R4

Mr.L.Murugavel
Standing Counsel for R2

Mr.R.Jayaprakash for RR8,15, 23 to 25

No appearance for RR 11,15,17 & 18



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W.P.No.963/2020

WEB COPY A.Kolamuthu

... Petitioner

/vs/

1. The State of Tamil Nadu,
rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.
2. The Medical Services Recruitment Board (MRB),
rep. by its Member Secretary,
7th Floor, DMS Building,
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Chennai – 600 006.
3. The Director of Medical Education,
Kilpauk, Chennai – 600 010.
4. The Director of Medical & Rural Health Services,
DMS Building, 359, Anna Salai,
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5. A.Suparna
6. R.Sangeetha
7. J.Aathilakshmi
8. S.Joy Ebenezer
9. S.Saranya
10. N.Pradeepa
11. U.Deepalakshmi
12. A.Ponni
13. P.S.Mary Siji
14. A.Nancy
15. R.Divya
16. K.Malathy
17. A.Agnianbu
18. P.Abisha
19. F.Sayera Banu



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20. T.Priya
21. S.Balakrishnan
22. T.Jhancy
23. M.Supriya
24. B.Somasundararaj
25. S.Janani Sivaji
26. C.Sandeep
27. J.Manimegalai
28. K.Degavalli
29. Pillappan

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the second respondent culminating in the provisional selection list dated 28.08.2019 made in Notification No.05/MRB/2018, and quash the same and consequently direct the second respondent to complete the selection process as per the rules in force as on date of the notification dated 06.03.2018 made in Notification No.05/MRB/2018.

For Petitioner ... Mrs.G.Thilagavathy
Senior Counsel

For Respondents ... Mr.G.Ameedius
Govt. Advocate for R1, R3 & R4

Mr.L.Murugavel
Standing Counsel for R2

Mr.R.Jayaprakash for RR8,15, 23 to 25



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No appearance for RR 11,15,17 & 18

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COMMON ORDER

Heard Mrs.G.Thilakavathy, the learned Senior Counsel, for the petitioners, Mr.G.Ameedius, the learned Government Advocate, for R1, R3 and R4, Mr.L.Murugavel, the learned counsel for the second respondent and Mr.R.Jayaprakash for R5 to 14 in W.P.No.27342/2019 and R8,R15, R23 to R25 in W.P.Nos.962 & 963/2020.

2. The petitioners who are Diploma Holders (Radiological Therapy Technology) have applied to the post of Radiotherapy Technician in response to the notification dated 06.03.2018 vide Notification No.05/MRB/2018 and got provisionally selected as per the provisional selection list released by the second respondent on 28.08.2019 and they have filed these writ petitions challenging the provisional selection list dated 28.08.2019 made in Notification No.05/MRB/2018 and to direct the second respondent to complete the selection process as per the rules in force as on date of the notification dated 06.03.2018 made in Notification No.05/MRB/2018.



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3. Mr.G.Thilagavathi, the learned Senior Counsel for the petitioners, submitted that originally the persons who have got the certificate in Diploma in Radiological Therapy Technology were allowed to do the functions of Radiotherapy Technician in all Medical Departments; later the degree course in the said subject also got introduced and hence the degree holders were also considered as persons eligible to apply for the said post; subsequently various litigations have been filed by both the Diploma and Degree holders for seeking various reliefs.

3.1 The Writ Petition in W.P.No.4761 of 2018 filed by some of the Degree holders for considering their qualification for the appointment to the post of Radiotherapy Technician was allowed; accordingly, the notification was modified in order to include the persons qualified by getting a degree in Radiological Therapy Technology; however the petitioners who are the Diploma Holders have challenged the subsequent corrigendum issued to include the Degree holders who have applied to the post.

3.2 The selection process as per notification dated 06.03.2018 ought



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to have been completed and the Degree holders should not have been allowed to apply to the post notified under Notification dated 06.03.2018; the rules of recruitment ought to have been amended subsequently in pursuant to the order passed in W.P.No.4761/2018 dated 15.03.2018 and thereafter a fresh notification should be issued if vacancies arises, by including the Diploma holders also as eligible persons for applying for the said post.

4. Mr.R.Jayaprakash, the learned counsel for the respondents 5 to 14 in W.P.No.27342/2019 and for the respondents 8,15, 23 to 25 in W.P.Nos.962 & 963/2020, submitted that the amendment brought to the notification on 09.11.2018 has not been challenged by the petitioners herein and they have participated in the selection process and now they cannot question the same; the appointment order has been issued on 10.09.2019 to all the selectees which include 23 Degree holders and two Diploma holders; some of the diploma holders have filed the Writ Petitions in W.P.No.26961, 34492 & 34494 of 2019 by challenging the selection list dated 28.09.2019 and in which the following order has been passed:



“13. After the Corrigendum was issued, the selection was considered by taking into consideration both the Diploma Holders and the Degree Holders. The respondents had taken note of the explanation (2) to Section 25 of the Act, which provides that a Degree Holder must be deemed to possess a higher qualification than a Diploma Holder.

14. The above provision came up for consideration before a Division Bench of this Court in W.A.No.1306 of 2019. The relevant portions of the said judgment are extracted hereunder:

“10(a) Rule 25 of the Tamil Nadu Government Service (Conditions of Service) Act, 2016. Defines Special qualifications. Explanation II is extracted below :-

In cases where the special rules prescribe a Diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification.

(b) The Explanation II is very clear that in case the special rules prescribe Diploma as the essential qualification then a degree in that subject would be a higher qualification.

11(a) Similar issue came up for consideration before the Hon’ble Supreme Court in Jyothi K.K. And others vs. Kerala Public Service Commission and others.. 2010(15) SCC 596.

(b) In Jyothi K.K., the required qualification for appointment to the post of Sub Engineer (Electrical) in the Kerala State Electricity Board was a Diploma in Electrical Engineering of a recognized institution after three years of study. The Kerala Public Service Commission was not prepared



to receive applications from the holders of B.Tech Degree in Electrical Engineering or Bachelor Degree in Electrical Engineer. The Writ Petition filed before the High Court was dismissed. The matter was taken up before the Hon'ble Supreme Court.

(c) The Supreme Court found that Rule 10(a)(ii) of the Rules made the degree in the relevant subject a higher qualification enabling the degree holders also to compete with the Diploma Holders.

Rule 10(a)(ii) reads as follows:

“10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.” (emphasis supplied)

(d) The Supreme Court on a reading of the Rule in the light of the selection notification and the condition regarding eligibility criteria, held that if a person had required the higher qualification in the same faculty, such qualifications can be stated to presuppose the acquisition of the lower qualification. The Hon'ble Supreme Court therefore allowed the appeal filed by the Degree holders by holding that they are also eligible to apply for the post for which qualification is only a Diploma.

12. The Supreme Court decided Zahoor Ahmad on the peculiar facts of the said case. There was no special rules in Zahoor Ahmad, like the one in Kerala State and Subordinate Services Rules, considered by the Hon'ble Supreme Court in Jyoti K.K. cited supra. However, in the State of Tamil



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Nadu there is a specific Rule making Degree a higher qualification, in case Diploma is the essential qualification.

13. The judgment relied on by the learned Senior Counsel for the appellant has no relevance to the issue raised herein. In Zahoor Ahmad, the Supreme Court found that unlike in Jyoti K.K., there was no service rules in the State of Jammu and Kashmir, which prescribe that a degree would be treated as higher qualification in case Diploma is the essential qualification for a particular post. The Supreme Court in paragraph 22 of the said Judgment, explained the ratio of the decision in Jyoti K.K., which was rendered on the basis of rule 10(a)(ii) of the Kerala State Subordinate Services Rules, 1956.

14. The following observation contained in Zahoor Ahmad, would make the position clear:-

22. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be



determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome.

23. 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 administration, it is trite law, fall within the domain 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. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.

15. The decision of the Supreme Court in Jyoti K.K. Is applicable



to the case on hand. Here also, there is a rule which provides that in case Diploma is the essential qualification, degree in the relevant subject would be a higher qualification.”

15. In the above judgment, the general rule, which gives a statutory recognition to Degree Holders than Diploma Holders, is upheld. This aspect also has a lot of significance in the present case.

16. In view of the above discussion, this Court does not find any illegality in the selection process, that was undertaken by the respondents. Now, the selection process is over and 25 candidates have already been selected and they are not before this Court. If the petitioners had any grievance on the Corrigendum or the relevant Section under the Tamil Nadu Government Servants (Condition of Service) Act, 2016, they should have challenged the same and, without doing so, they cannot maintain the present relief that has been sought for before this Court, since the selection has already taken place in accordance with the Notification, Corrigendum and the Tamil Nadu Government Servants (Condition of Service) Act, 2016. Once the selection has taken place within the four corners of the available Rules, this Court cannot interfere with such selection, unless the Rules concerned are put to challenge.”

5. Mr.L.Murugavel, the learned Standing Counsel for second respondent, submitted that the petitioners who have participated in the selection process did not reach the zone of consideration in view of their marks obtained below cut off.



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6. The grievances of the petitioners is understood in view of the fact that they were the persons who have found to be qualified for the job of Radiotherapy Technician till the introduction of the Degree course in Radiological Therapy Technology. In fact the Degree holders were not considered when the notification was issued on 06.03.2018. Subsequently in various litigations, the Degree holders were considered to be possessing higher qualification in view of the basic qualification for the post is Diploma in Radiological Therapy Technology.

7. As per Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, a person is eligible for appointment in any service, class or category, if he / she possesses such qualifications and has passed such special test as prescribed in that behalf in the special rules or possess such other qualifications as have been declared to be higher than or equivalent to said special qualification or special tests. As per the Explanation II of Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in cases where the special rule prescribes a diploma in particular subject as qualification, then a degree in that subject shall be deemed to be a higher qualification. While amending



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the Act so as to include the degree holders also to be eligible to compete for the said post, it would have been good if the apportionment of the post as against the degree holders and diploma holders was earmarked. If such a ratio between the degree holders and diploma holders in the available vacancies is fixed that would have avoided several litigations in this regard.

8. Since the diploma holders were originally eligible for the said post and the degree in the same course was introduced at a later point of time, the diploma holders who have been aspiring for the said post all along got disappointed and further that cannot be a level playing field between the persons having basic qualification and higher qualification. However the selectees have already been given with the appointment order and now they are working in their respective place of posting. Thus, it is too late to pass any order affecting the very recruitment process and the selection of the candidates.

9. While issuing notification for future vacancies for the post of Radiotherapy Technician, the plight of the diploma holders shall also be



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considered by the respondents and suitable amendments should also be made to the rules of recruitment so as to provide fair and equal opportunity between two sets of people who are eligible to apply for the post of Radiographer. Barring the above observation, no relief can be granted to the petitioner as of now.

10. In view of the above observations, these writ petitions are disposed. No costs. Connected miscellaneous petitions are closed.

22.02.2024

Index: Yes / No
Speaking order / Non-speaking order
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To:

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1. The Principal Secretary,
State of Tamil Nadu,
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R.N.MANJULA ,J.

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