



W.A.(MD).No.419 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A.(MD).No.419 of 2018
and
C.M.P.(MD).No.2510 of 2018

The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building,
No.359, Anna Salai,
Teynampet, Chennai – 600 006.

... Appellant / Respondent

Vs.

1.M.Ramakrishnan
Petitioner

... 1st Respondent/Writ

2.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai – 600 009.

... 2nd Respondent/1st

Respondent

PRAYER: Writ Appeal filed under Section 15 of Letters Patent Act,
praying to allow the Writ Appeal and set aside the order dated
17.08.2017 made in W.P.(MD).No.13451 of 2017.



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For Appellant : Mr.V.Ramesh
Standing Counsel
For R-1 : No appearance
For R-2 : Mr.A.Kannan
Additional Government Pleader

JUDGMENT

**(Judgment of the Court was made by A.D.JAGADISH
CHANDIRA,J.)**

This intra-Court appeal has been filed against the order passed by the learned Single Judge in W.P.(MD).No.13451 of 2017 dated 17.08.2017, setting aside the impugned order as illegal and consequently, directing the first respondent to consider the writ petitioner for the post of Nurse (Men).

2. For the sake of convenience, the parties herein are referred to as per their rank and status before the Writ Court.

3.1. The case of writ petitioner is that he had completed three years Diploma in General Nursing and Midwifery course and in addition, he has completed six months internship programme in Psychiatry. Besides that, the writ petitioner is a physically challenged person with 40% disability. The second respondent had issued notification dated



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19.04.2015 for recruitment of 7243 Nurses, out of which, 451 vacancies were earmarked to Nurses(Men) category. It is the further case of the writ petitioner that he was issued with the hall ticket for the competitive examination, in which, he had secured 59.50 marks out of 100 marks and thereafter, he was directed to appear for certificate verification on 09.11.2016. Later, the second respondent had released a list of provisionally selected candidates and the name of the writ petitioner was not found in the selected list of candidates. Thereby, the writ petitioner had earlier approached this Court by filing W.P.(MD).No.691 of 2017 seeking a Writ of Mandamus, directing the second respondent to appoint him as a Nurse(Men) as per the Notification No.1/2015 dated 19.04.2015 on the basis of his representation dated 03.01.2017.

3.2. Earlier, this Court, after considering the limited scope of the prayer and without going into the merits of the matter, had directed the second respondent to consider the representation of the writ petitioner dated 03.01.2017 and pass appropriate orders. However, the second respondent finding that the writ petitioner has not produced any certificate to substantiate that he has undergone six months training in Psychiatry after successful completion of the training in General



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Nursing, had rejected the petitioner's claim vide impugned order dated 24.02.2017. Challenging the same, the writ petitioner had approached this Court by filing W.P.(MD).No.13451 of 2017 and this Court, taking into consideration the certificate issued by the Principal, Sacred Heart Nursing College, GNM Course, Madurai dated 08.08.2017, showing that the writ petitioner has completed six months internship programme in Mental Health Nursing and Psychiatric Nursing, had quashed the impugned order of rejection dated 24.02.2017 and had directed the first respondent to consider the writ petitioner to the post of Nurse(Men).

4. Aggrieved over the order passed by the learned Single Judge, the present Writ Appeal has been filed by the respondent/Board.

5. Mr.V.Ramesh, learned Standing Counsel appearing for the appellant, would submit that as per the notification issued by the appellant dated 19.04.2015, the required educational qualification for the post of Nurse(Men) is a successful training for a period not less than three years in General Nursing in an institution approved by the State Government and successful completion of training in Psychiatry for a period of six months after successful completion of training in General



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Nursing in the case of candidates admitted for training on or after 1st January, 1952 and that he should possess the basic degree in Nursing from a University or institution recognised by UGC for the purpose of its financial grant. He would further submit that since the writ petitioner has not produced any certificate for possessing either of the above qualification and that he had only produced the certificate for completion of Diploma in General Nursing and Midwifery, he was found to be ineligible, whereas, the learned Single Judge without considering the same, had set aside the impugned order and had directed the appellant to consider the writ petitioner for the post for which he was not qualified. He would submit that when the Board had stipulated requisite conditions and instructions, they have the force of law and they have to be strictly considered and the Constitutional Courts by exercising powers under Article 226 of the Constitution of India cannot modify or relax the conditions issued by the Board. In support of his submission, the learned Standing Counsel for the appellant would rely on the judgment of the Hon'ble Apex Court in *The State of Tamil Nadu and others Vs. G.Hemalatha and another*, passed in *Civil Appeal No.6669 of 2019 dated 28.08.2019*, wherein, it is held as follows:



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“7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission”.

The learned Standing Counsel would further submit that on the date of filing of the Writ Petition, the writ petitioner was not possessing the required qualification and the certificate dated 08.08.2017 has been obtained by the writ petitioner from the institution pending Writ Petition and after filing of the counter affidavit only.

6. Heard the learned Standing Counsel for the appellant and the learned Additional Government Pleader appearing for the second respondent. Though notice has been served on the first respondent/writ petitioner and his name has been printed in the cause list, there is no representation for the writ petitioner.



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7. Having gone through the records, we find that the writ petitioner has completed Diploma in General Nursing and Midwifery at Sacred Heart Nursing College, Madurai, whereas, as per the Notification No.1/MRB/2015 dated 19.04.2015, the educational qualification required for the post of Nurse (Men) is given as follows:

“NURSES (MEN):

(i) A successful training for a period of not less than three years in General Nursing in an institution approved by the State Government and successful completion of training in Psychiatry for a period of six months after successful completion of training in General Nursing in the case of candidates admitted for training on or after the 1st January 1952.

B) Possession of basic degree in Nursing from a University or institution recognised by UGC for the purpose of its financial grant.”

The Hon'ble Apex Court has time and again held that the mandatory directions issued under the notification are to be strictly complied with and upon failure, they cannot be relaxed. In the present case, the writ petitioner has not produced any certificates for possessing either of the above qualification, whereas, he has produced the certificate for



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completion of Diploma in General Nursing and Midwifery, which was not the required qualification for the said post. Further, we find that on the date of notification, he was not having the requisite qualification and he has produced a certificate dated 08.08.2017, which shows that only subsequent to the notification, he has obtained the certificate. The learned Single Judge has not considered the same and thereby, the order of the learned Single Judge is liable to be set aside.

8. Accordingly, the order passed by the learned Single Judge in W.P.(MD).No.13451 of 2017 dated 17.08.2017 is set aside and the Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(A.D.J.C.,J.) (K.R.S.,J.)
22.07.2024

NCC : Yes / No

Index : Yes / No

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To

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1. The Commissioner,
Department of Hindu Religious and Charitable
Endowment Board,
Chennai – 34.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Board,
Tirunelveli.



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and
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