



W.A(MD)No.367 of 2015

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 23.04.2024**

**CORAM**

**JUSTICE N. SESHASAYEE  
and  
JUSTICE P.VADAMALAI**

W.A(MD) No.367 of 2015  
and  
M.P(MD)No.1 of 2015

Maruthuva Aaivaga Nuthunar  
Munnetra Sangam(CMLT),  
No.1/303, Vaikai 10th Cross Street,  
Srinagar,  
Iyer Bungalow,  
Madurai – 17,  
Rep. by its President, S.Balamurugan

... Appellant/Petitioner

Vs.

1.The State of Tamilnadu,  
Rep. by its Secretary to Government,  
Health & Family Welfare Department,  
Fort St. George,  
Chennai.

2.The Director,  
Director of Medical Education,  
Kilpauk,  
Chennai.



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3.The Director,  
Director of Medical and Rural Health Services,  
DMS Campus,  
Thenampettai,  
Chennai.

4.The Director(ESI),  
Director of Medical and Rural  
Health Services,  
DMS Campus,  
Thenampettai,  
Chennai.

5.The Director of Public Health &  
Preventive Medicine,  
Chennai.

... Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order  
made in W.P(MD)No.4075 of 2010, dated 10.03.2015.

For Appellant :Mr.D.Selvanayagam

For Respondents :Mr.R.Baskaran,  
Additional Advocate General, assisted by

Mr.N.Muthu Vijayan,  
Special Government Pleader



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## **JUDGMENT**

(Judgment of the Court was delivered by N.Seshasayee, J.)

This writ appeal is directed against the order of a learned Single Judge in W.P(MD)No.4075 of 2010, dated 10.03.2015.

2. The facts that lead up to the institution of this writ appeal may be briefly stated:

- a) In the field of Medical Laboratory Technician, up to the academic year 1992 – 1993, there was only a One Year Certificate Programme and those who have successfully completed the Certificate Course were appointed as Lab Technicians.
- b) While so, on 23.07.1993, the Government came out with two executive orders in G.O.Ms.No.1048 and 1049 both of Health and Family Welfare Department. Vide G.O.Ms.No.1048, the Government declares



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that pursuant to the request made by the Tamil Nadu Medical Laboratory Technicians Association, the Laboratory Technician Course was upgraded to Two Year Diploma Course and this would imply that the one year Certificate Programme which was hitherto in vogue has come to an end. Vide G.O.Ms.No.1049, the Government had directed the Director of Medical Education to provide the window for the qualified in-service Lab Technicians who had passed the Certificate Programme to upgrade their qualification by joining the Diploma Course. This in essence satisfies the need to negotiate with the in-service certificate holders for better career prospects. What the said G.O., underscores is that the Government is keen only to upgrade the educational qualification.

- c) It appears that till the advent of G.O.Ms.Nos.1048 and 1049 referred to above, those who had passed the One Year Certificate Programme will be considered for employment based on recommendation of the employment exchange in terms of the District-wise seniority that it maintained. It is also underscored that to provide job to those who



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have completed the Certificate Programme, the Government had also created the Grade III Lab Technician posts for which the qualification prescribed is only a Certificate Programme.

- d) It is in this backdrop, the Government came up with G.O.Ms.No.39 Health and Family Welfare Department (C2) Department, dated 05.02.2007. Vide this G.O., certain amendments were brought in '*Special Rules for the Tamil Nadu Medical Subordinate Service*'. In this, the penultimate paragraph is critical and it reads as below.

*'A Diploma in Medical Laboratory Technology Course (two years duration) conducted by the King Institute of Preventive Medicine or from any other institution recognized by the Government of Tamil Nadu for his purpose. Provided that, if candidates with the above qualification are not available than candidates with Certificate in Medical Laboratory Technology (one year) duration conducted by the Institution recognized by the Government of Tamil Nadu for this purpose may be appointed.'*



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e) The validity of the G.O., came to be challenged by some of those who have completed the Certificate Programme in a batch of writ petition in W.P(MD)No.18237 of 2007. Vide his order dated 23.10.2007, the learned Single Judge of this Court upheld the legality of G.O.Ms.No.39 and proceeded to observe that the intent behind the G.O., is to prefer the Diploma Holders for the Post of Lab Technician Grade II and if there is any vacancy, that must be filled up with the One Year Certificate Holders. The Court has also noted that at the time of pronouncing its orders, there were 442 vacancies in the Post of Lab Technician Grade II, of which, 332 candidates have possessed their Two Year Diploma Programme and only 110 posts were remained vacant. The Court directed that the certificate holders in Lab Technician may be used to fill up in the rest of the vacancy. Subsequently, the Government came up with G.O.Ms.No.22 of the same Department, dated 29.01.2010. Vide this G.O., the Government directed maintaining of State-wise Seniority instead of District-Wise Seniority. This G.O.22 came to be challenged in the present writ petition.



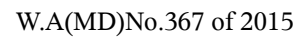
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3. The learned Single Judge in essence upheld this. Somewhere in the order, the learned Single Judge has considered that the issue involved eventually voice down to a prayer for equating those who have passed One Year Certificate Programme with those who have passed Two Year Diploma Programme.

4. Heard both sides.

5. G.O.Ms.No.22, dated 29.01.2010, is challenged by the Society of Lab Technician which is essentially directed against the intent of the Government to maintain State-Wise Seniority. According to the Society, if District-Wise Seniority is maintained, it provides greater prospects for its members to seek employment of Grade - III Lab Technician through employment exchange but if it is replaced by a State-Wise Seniority, then it kills the prospects of many of its members to seek public employment.



7. The issue is short. The Government's decision to maintain a State-wise seniority for being considered for the Post of Lab Technician cannot be considered as bad in law. At the end of the day, it is a prerogative of the Government as to how to give opportunities to the citizens. This apart, the law has since changed. No public employment at whichever level can be filled up through a single channel namely employment exchange. There is a present need to go for a public invitation for inviting application from eligible candidates for appointment to the Post of any public employment. Therefore, in the fitness of things, the members of the appellant Society are still eligible to be considered for being considered for the Post of Lab Technician if they are otherwise eligible and whenever the Government proposes to invite applications from eligible candidates, and there the doctrine of



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equity envisaged under Article 16 of the Constitution of India ends. To state it differently, the right to apply for public employment does not extend to the extent of requiring one's appointment to a specific post. Thus G.O.Ms.No.22 operates in a limited space and the opportunity to the members of the appellant society is not snatched in any other way.

8. Such of the members of the Society who are eligible for considering for the Post of Grade-III Lab Technician can still seek employment if there are opportunities available to them and to underscore, they have a right to apply but do not have a right to be appointed.

9. For the above reasons, this Court does not find any merit in this writ appeal and the writ appeal stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S., J.) (P.V.M., J.)  
23.04.2024

NCC : Yes/No  
Index : Yes/No  
PM



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