



WP No. 16777 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-07-2025

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

WP No. 16777 of 2025

AND

WMP NOS.19019 & 19018 OF 2025

1. S.Siddarth

S/o G. Sithiresan,

No.45/25w, Nandha Gopalan Kovil

South Street, Cumbum,

Theni District - 625 516.

2.Annamalai D

Son Of Dharuman,

No.1682(1), MGR Nagar,

Mangalam Pudur,

Tiruvannamalai 606 752.

3.Dr. Amirthaselvarajan.D

Son Of Dhevanandh,

78A, Kariyangudi Chetty Street,

Velippalayam,

Nagappattinam - 611 001.

Petitioner(s)

Vs

1. State Represented by

The Secretary To Government,

Health And Family Welfare



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Department,
Fort St. George, Chennai - 600 009.

2.The Medical Service Recruitment
Board
Represented By Its Member Secretary,
DMS Building, Teynampet,
Chennai - 600 106.

3.The Director
Indian Medicine And Homoeopathy,
Chennai 600 106.

Respondent(s)

PRAYER

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records relating to Corrigendum issued by the 2nd respondent dated 15.04.2025, modifying of the detailed Notification No. 09/MRB/2020, Dated 14.08.2020 and 26.10.2021, the Revised Distribution of Vacancies for the post of Assistant Medical Officer / Lecturer Grade - II (Yoga and Naturopathy) and quash the same.

For Petitioner(s): Mr.P.Raja
P. Kumanan
M. Mathankumar

For Respondent(s): Mr.Tippu Sultan
G.A For R1, R3
M/s.L.Murugavelu, SC For R2



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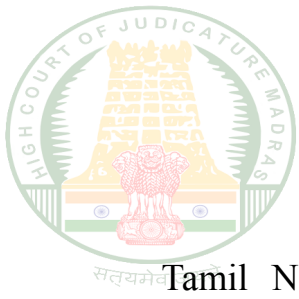
ORDER

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This writ petition has been filed seeking to call for the records relating to Corrigendum issued by the 2nd respondent dated 15.04.2025, modifying of the detailed Notification No.09/MRB/2020, Dated 14.08.2020 and 26.10.2021, the Revised Distribution of Vacancies for the post of Assistant Medical Officer / Lecturer Grade - II (Yoga and Naturopathy) and quash the same.

2. Heard Mr.P.Raja, learned counsel for the petitioners, Mr.Tippu Sultan, learned Government Advocate for the respondents 1 and 3 and Mr.L.Murugavelu, learned Standing Counsel for the 2nd respondent.

3. The learned counsel for the petitioners would submit that the petitioners have completed BNYS course in May 2021, and they have completed their internship in June 2023 and thereby, they are eligible for the post of Assistant Medical Officer / Lecturer Grade - II (Yoga and Naturopathy). It is the contention of the petitioner that the 2nd respondent issued Notification on 14.08.2020 to fill up three vacancies in the post of Assistant Medical Officer/ Lecturer Grade - II (Yoga and Naturopathy). Again the 2nd respondent issued another Notification on 26.10.2021 increasing the vacancy position from 3 to 35. According to the Notification, the eligibility criteria is, apart from getting Diploma in Naturopathy, the candidates must also registered their name in the



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Tamil Nadu Board of Indian Medicine. Though the petitioners secured Diploma, they could not apply for the post, as they could not register their names before the Tamil Nadu Board of Indian Medicine, which could only be done after completing the internship. Therefore, it is their contention that immediately after their registration before the Board, they became eligible since 2022. While waiting for the next call for, all of a sudden, the 2nd respondent has issued a Corrigendum on 15.04.2025 increasing the posts from 35 to 54 that too after finalising the selection process, which according to the petitioners would directly affect the petitioners and similarly placed persons. Hence, prayed to interfere with the impugned Corrigendum. In support of his contention, the learned counsel relied upon the following judgements:-

1. The judgment of Kerala High Court in ***WA.No.275 of 2022 [Bindu B.Kumar and another Vs. Guruvayur Devaswom and others]***;
2. ***Rakhi Ray and Others Vs. High Court of Delhi and others*** reported in ***(2010) 2 SCC 637***.

4. Per contra, the learned Standing Counsel appearing for the 2nd respondent would vehemently contend that initially for the post of Assistant Medical Officer Grade II, 3 posts were notified. However, due to Covid Pandemic, the Examination could not be conducted and again the vacancy was revised to 35 vide Notification dated 26.10.2021. The learned Standing Counsel would further submit that as per the earlier Notification dated 14.08.2020, there



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were 425 applications, and subsequently, through their second Notification dated 26.10.2021, they received another 612 applications. Thus, in total, for notified vacancy of 35, there were 1037 applications. It is their specific contention that the Notification itself has a clause for increasing the post and that the vacancy referred to is only indicative in nature. The learned counsel would further submit that in 2025 the vacancy increased from 35 to 54, hence, they issued the impugned Corrigendum on 15.04.2025 to increase the vacancies. It is the specific submission of the learned Standing Counsel that in view of the clause contained in the Notification itself giving power to the 2nd respondent to increase the vacancy position, the petitioner cannot have any grievance against the Corrigendum, and such position was approved by the learned Single Judge of this Court in WP.(MD).No.13171 of 2017 [***Dr.Sagaya Panimalar Vs. The State of Tamil Nadu***]. Hence, prayed to dismiss the writ petition.

5. I have given my anxious consideration to either side submissions.

6. Now the short point to be considered in the present writ petition is, Can the Recruiting Agency increase the number of vacancies, after finalising the selection process?

7. Before we delve into the legal aspects, it is appropriate to extract the admitted positions.



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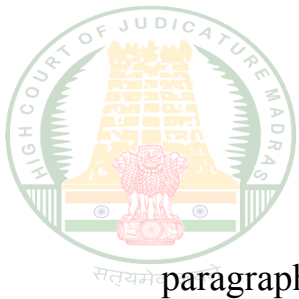
a) On 14.08.2020, 3 vacancies were notified and last date for submission of applications fixed on 10.09.2020 and the date of examination was tentatively fixed on 3rd week of September, 2020.

b) Due to Covid-19 Pandemic related lock down and on administrative reasons, no examination was conducted as mentioned in the above referred first Notification.

c) In the meanwhile, the 3rd respondent has issued 2nd Notification on 26.10.2021 for the increased vacancy of 35, having last date of application on 10.11.2020, and tentative exam date is November, 2021.

8. It appears that based on the second Notification, the examination was conducted on 23.03.2025 and subsequently, the results were also published. After the publication of results, the impugned Notification dated 15.04.2025 was issued increasing the vacancy from 35 to 54.

9. Now, let us analyse the legal aspects. The main contention put forth by the learned counsel for the petitioners is that, if the 2nd respondent is allowed to increase the vacancy position after selection process is over, it would offend the Articles 14 and 16 of the Constitution of India, as the persons qualified as per the impugned Notification were not allowed to participate in the examination. In this regard, the learned counsel relied upon the Full Bench decision of Kerala High Court in *WA.No.275 of 2022* [cited supra]. The Full Bench have considered the similar aspects to its length and breadth and ultimately in



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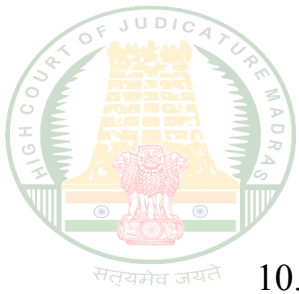
paragraph 23 observed as follows:-

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*“23. Now what remains is the question as to the circumstances under which vacancies over the notified vacancies could be filled up. The Apex Court in **Rakhi Ray** (supra) had after holding that such filling up is neither permissible nor desirable, went on to state that such exercise can be carried out only in a rare and exceptional circumstance and in emergent situations that too after adopting a policy decision based on some rationale. The same view was taken in **Prem Sing** (supra) as well. It would be relevant to note that though such an observation was made in **Rakhi Ray** (supra), while deciding the issue it was held that appointment made beyond the number of vacancies advertised is without jurisdiction and is violative of Articles 14 and 16(1) of the Constitution of India, and is a nullity and cannot be enforceable under law. The Division Bench in the reference order has spelled out certain circumstances under which such deviations can be allowed. **We are of the view that deviation from the rule that vacancies cannot be filled beyond the number advertised is only permissible under rare and exceptional circumstances or in emergent situations. Such deviations are allowed only when a policy decision is taken based on a sound rationale.**”*

[Emphasis supplied by this Court]

According to the above ratio, the filling up the vacancy over and above the notified vacancies, is neither permissible nor desirable, and the same can be done only in rare and exceptional circumstances and must be based upon the policy decision.



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10. At this juncture, the learned Standing Counsel relied upon the judgment of the learned Single Judge of this Court in **WP(MD).No.13171 of 2017** [cited supra], wherein the learned Single Judge in paragraph 21 has held that in an emergent situation and in exceptional circumstances, over and above the notified vacancies can be filled up. While looking at the facts of the case, the Government justified before the Court that, there are exceptional circumstances for such appointment on account of the sudden outbreak of dengue fever in the State. Further, the National Human Rights Commission also suo motu took the plight of patients suffering due to the shortage of Doctors in the Government Hospital. It is in this background, the learned Single Judge, after satisfying with the above exceptional circumstances, by referring to the clause in the Notification that the Recruiting Authority can vary the vacancy accepted the excess appointment over and above the notified vacancies.

11. But, in the case in hand, while harmoniously reading the counter statement, this Court absolutely does not find any exceptional circumstances, so as to justify the increasing of the vacancy from 35 to 54, that too after completing the selection process. The Hon'ble Supreme Court in **Rakhi Ray's** case [cited supra], has categorically declared that only in a rare and exceptional circumstances, filling up of excess posts more than the notifying vacancies could be allowed. Here, this Court does not find any iota of material for such an exceptional circumstances. In the instant case, admittedly the petitioners were



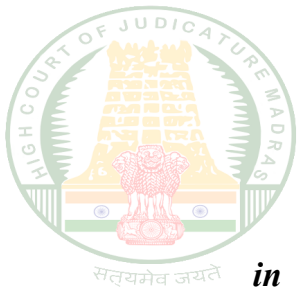
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not qualified as per the second Notification. However, before the impugned Corrigendum, the petitioners become qualified and eligible to apply. Apart from the petitioners, definitely there may be many other similarly situated persons. When such large number of candidates are longing for public employment and wait for a fresh Notification, in the absence of any rare and exceptional circumstances, if the respondents are allowed to fill up the increased vacancies, that too after the completion of selection process, then the same would affect the subsequently qualified candidates.

12. In this connection, this Court would like to refer the judgment of the Hon'ble Supreme Court in *Hoshiar Singh Vs. State of Haryana and others* reported in **1993 Supp (4) SCC 377**. The relevant paragraph is paragraph 10 and the same reads as under:-

*“10. The learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. **Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned***



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in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.”

[Emphasis supplied by this Court]

13. Thus, in view of the above detailed discussion, this Court is of the indubitable view that the Corrigendum dated 15.04.2025 increasing the vacancies to 54 is offending under Article 14 & 16 of the Constitution of India, hence, the same is liable to be quashed.

14. In the result, this writ petition stands allowed and the impugned order dated 15.04.2025 is hereby quashed. It is made clear that the 2nd respondent is at liberty to fill up the 35 vacancies, as notified in their Notification dated 26.10.2021. There shall be no order as to costs. Consequently, connected WMPs are also closed.

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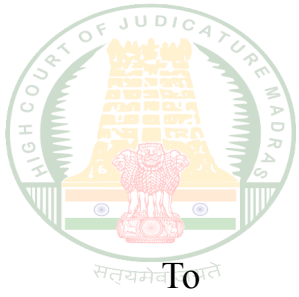
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Index: Yes

Speaking order

Internet: Yes

Neutral Citation: Yes/No



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To

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Health And Family Welfare
Department, Fort St. George,
Chennai - 600 009.

2.The Medical Service Recruitment
Board
Represented By Its Member Secretary,
DMS Building, Teynampet,
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