



W.P.(MD)No.6538 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 24.01.2025

DELIVERED ON : 27.01.2025

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.6538 of 2019

and

W.M.P(MD)Nos.5250 to 5252 of 2019 & 12657 of 2023

- 1.A.Arumugam,
S/o K.Ayyar,
3/37-2, Meenakshinagar,
Naravankulam,
Thirumangalam Taluk,
Madurai District.
- 2.M.Sathiaseelan,
S/o K.Mookiah,
4E, Vignesh Arcade,
Anantha Avenue,
E.B.Road, Trichy-2.
- 3.C.Natarajan,
S/o G.Chinnapaiyan,
Murugan Koil Street,
SIPCOT, Poondiyankuppam,
Cuddalore.
- 4.K.Raja,
S/o K.Sukkirian,
Kurumber Street,
Gangavalli Post,
Saled District.

... Petitioners

Vs.



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1.The State of Tamil Nadu,
Represented by its Secretary for Health and Family Welfare,
Fort St.George,
Chennai-9.

2.The Secretary,
Department for Adi Dravidar and Tribal Welfare,
Fort St.George,
Chennai-9.

3.The Secretary,
The Tamil Nadu Medical Service Recruitment Board,
7th Floor, DMS Building,
Chennai.

... Respondents

Prayer in W.P(MD)No.6538 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent by his impugned Notification No.3/MRB/2019, dated 15.02.2019 in so far as to clause 7 of the notification and quash the same and direct the 3rd respondent to adhere to statewide seniority for the backlog vacancy which existed before the amendment of the recruitment rules, dated 16.12.2024 and pass other order as this Court may deem fit.

Prayer in W.M.P(MD)No.5250 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to dispense with the production of certified copy of the impugned Notification No. 3/MRB/2019, dated 15.02.2019 pending disposal of the above writ petition.

Prayer in W.M.P(MD)No.5251 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to pass an interim stay, stay of all further proceedings of the 3rd respondent by his impugned



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Notification No.3/MRB/2019, dated 15.02.2019 pending disposal of the above writ petition.

Prayer in W.M.P(MD)No.5252 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to pass an direction, directing the 3rd respondent to give effect to Rule 22(d) of Tamil Nadu Subordinate Service Rules from and among the persons shortlisted in the year, 2014 under SC (non-priority category-men) by selecting and appointing these petitioners pending disposal of the above writ petition.

Prayer in W.M.P(MD)No.12657 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to delete the name of the petitioner/first respondent herein namely, the State of Tamil Nadu represented by its Secretary to Health and Family Welfare, Fort St.George, Chennai-600 009 from the cause title of the above writ petition on the grounds of mis-joinder of parties.

For Petitioner	: Mr.K.Prabakaran
For R1 & R2	: Mr.S.R.A.,Ramachandran Additional Government Pleader
For R3	: Mr.V.Ramesh Standing Counsel

ORDER

Heard both sides.

2. The four writ petitioners before this Court, have completed their school final, i.e., the higher secondary course, and have also got a diploma in Pharmacy. They have registered themselves with the TN Pharmacy



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Council and their names with the employment exchange. While the first three Petitioners registered themselves in the employment exchange in 1998, the fourth one did so in 1999. All of them belong to the Scheduled Caste.

3. It is their case that the Medical Service Recruitment Board called for candidates totalling 1445 to fill up 323 vacancies by their notification dated 09.01.2014. In the list for certificate verification, 1st Petitioner claims that he was in the Serial No.205, the 2nd Petitioner 200, 3rd Petitioner 196, and the 4th Petitioner 225. They went for certificate verification and after completing the certificate verification, a selection list dated 17.02.2014 was published by the MRB. It is their case that from the selection list persons upto Serial No.192 was considered and two persons by the name S.Chidambaram (S1.No.163) and C.Sakthivel (S1.No.190), who belong to Scheduled Caste, did not join. Therefore, these vacancies should be considered as backlog vacancies.

4. The petitioners argue that these backlog vacancies should have been filled as per the recruitment process of 2014 under the earlier rules, without applying the amended recruitment rules of 2014, which introduced weightage to academic performance and public advertisement.



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The petitioners rely on Rule 22(d) of the Tamil Nadu State Subordinate Service Rules, which mandates that unfilled reserved vacancies shall be carried forward as backlog vacancies and filled in subsequent recruitment cycles. They assert that their legitimate expectation of being considered for backlog vacancies based on seniority and employment exchange registration was frustrated by the retrospective application of the amended recruitment rules. They further allege that the 3rd Respondent acted arbitrarily by treating backlog vacancies on par with fresh vacancies under the new rules.

5. The 3rd Respondent argues that the amended recruitment rules, introduced via G.O.(Ms)No.401 dated 16.12.2014, are legally valid and binding. These amendments align with constitutional principles of equality by opening public employment to all eligible candidates through public advertisement, rather than restricting it to employment exchange seniority. They assert that filling backlog vacancies must follow the current recruitment rules and that reverting to the pre-2014 process would violate Article 14 of the Constitution. The respondents highlight that two recruitment cycles (in 2016 and 2019) have been conducted under the amended rules, and the petitioners participated in these processes without success. Therefore, their challenge to the amended rules is unsustainable.



6. It was stated that in W.P.No.25062 of 2012 filed by one S. Karuppiah, this Court by order dated. 18.07.2014 had given direction to the Respondents to conduct a special drive to fill up the backlog vacancies within a reasonable time. In that operative portion, the Hon'ble Division Bench observed as follows:

"4. The learned Government Pleader appearing for respondents 1 and 2 submitted that in order to make sure that 18% reservation meant for Scheduled Caste and 1% for Scheduled Tribes in employment pertaining to all the departments, a High-Level Committee has been constituted as per the Government Order passed in G.O.Ms.No.3, Adi Dravidar and Tribal Welfare (TD2) Department, dated 05.01.2012, to review and ensure shortfall vacancies. The Committee will finalize the programme and have discussions with the Secretary to Government of each Department in this regard. Thereafter, the report will be sent to the Government for issuing appropriate orders.

5. In view of the specific stand taken by respondents 1 and 2, we deem it fit to direct the High-Level Committee constituted as per the Government Order dated 05.01.2012 to finalize the programme and arrive at the shortfall vacancies for Scheduled Caste and Scheduled Tribes. Thereafter, the Committee will have to send the Report to the Government for issuing appropriate orders. The entire exercise will have to be done by the Committee as well as the respondents within a period of six months from the date of a copy of this order.

The writ petition stands disposed of with the above observation."

7. After the above-said undertaking given by the respondent State, the Government amended the recruitment rules for various categories of



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posts in the medical institutions vide G.O.(Ms)No.401 Health and Family Welfare Department dated 16.12.2014. It was stated in the said Government Order that the Medical Services Recruitment Board sent proposals for amendment based on the judgment of this court in W.A.No. 1027 of 2013 dated 09.06.2014, by which the Hon'ble Division Bench upheld the order of the Learned Single Judge, who directed that the selection through public employment only by calling candidates from employment exchanges alone is not valid, and applications can be called for through public advertisements. It was observed in W.A.No.1027 of 2013 as under:-

“ 11. The learned single Judge has followed the above said decisions and held that selecting persons in public employment, on the basis of the list of candidates sponsored by the Employment Exchange alone, is in violation of Articles 14 and 16 of the Constitution of India, as it denies opportunity to all the eligible persons to participate in selection in public employment.”

8. It was stated in the Government order that they have considered the proposals by the MRB and made appropriate amendments to the rules even in the matter of giving weightage to marks obtained in the educational qualifications prescribed for various posts. In respect of Paramedical and Technical staff, the amendment to the Rule was as follows:



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"All direct recruitments to the post of Paramedical and technical staff shall be done through a selection process based on open advertisement (in at least two newspapers and one of which must be in vernacular languages), along with notifying the vacancies with the Employment Exchange. After obtaining the eligible list sponsored by the Employment Exchange, open advertisement in at least two newspapers, (one of which must be in the vernacular language) be published inviting application. The list of candidates sponsored by the Employment Exchange be intimated to apply for the concerned post, as per the advertisement, to the Medical Services Recruitment Board. The process of selection shall be based on the marks obtained by the candidates in various examinations by giving weightage to their academic performance (up to two decimals in percentage) as detailed below:

Minimum educational qualification required for the post	Weightage of marks		
	Degree/Diploma Certificate	HSC/P.U.C	SSLC/10 th
a. Degree	50%	30%	20%
b. Diploma	50%	30%	20%
c. Certificate with PUC/HSC qualification	50%	30%	20%
d. Certificate with SSLC	60%	NA	40%
e. Minimum General Educational Qualification (SSSLC Pass)	NA	NA	100%

(NA-Not Applicable)"

9. The Petitioners cannot have any quarrel over the amendment made to the Recruitment Rules. Under Article 309 of the Constitution, the Government can regulate the recruitment and conditions of persons



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appointed to public services and posts in connection with the affairs of the state. Such rules can even have retrospective effect. While making changes, it can also be done unilaterally by the State. It was held by the Supreme Court in ***Rosham Lal Tandon Vs. Union of India, AIR 1967 SC 1889*** as under:-

".....But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee."

10. It has been held that the power to make rules by the Govt. includes power to make amendment to the rules also and that too with retrospective effect. In ***Rajkumar vs. Union of India*** reported in **1975 (4) SCC 13**, the Supreme Court observed as follows:

"There is no doubt that the rule is a valid rule because it is now well established that rules made under the proviso to Art. 309 of the Constitution are legislative in character and, therefore, can be given effect to retrospectively."



11. It has been held that even in the absence of statutory rules, the Government can take a policy decision and the courts are not expected to interfere with such policy decisions. In ***Col. A.S. Sangwan Vs. Union of India*** reported in ***1980 Supp(1) SCC 559***, it was observed as under:

“If it chooses to re-frame policy which necessitates a fresh selection, then it will be open the Central Government to make such a selection in such fair manner as it decides..... We should not be misunderstood to lay down the proposition that it is not open to the Central Government to make any policy, regarding any matter including the selection to the Directorate of Military Farms, at any time it likes, provided its acts justly and fairly.”

12. Therefore, it will not be open to the Petitioners to impugn the amended rules framed by the Government. In fact, it is pointed out in the counter affidavit filed by the 3rd Respondent MRB that based on the amended rule selections were held in the year 2016 and in 2019 again 353 vacancies were published on 01.03.2019. The Petitioners have also admitted that they had applied for the posts for which notifications were made on 15.02.2019. However, it was their contention that it was done under protest.

13. The Petitioners having been not successful either under the old rules or under the amended rules have now come forward to contend that



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they should be considered under the backlog vacancies for which a direction was given by this court as noted earlier. This argument is really misconceived. It is one thing to state that there should be backlog vacancies to be filled by the State so that the persons who are eligible for reservation under Article 16 will be adequately represented in the services of the state. It is another thing to state that such backlog vacancies should be filled up only as per the old procedure for recruitment and not as per the amendment. Such a contention can never be accepted in law. If the State wants to fill up the backlog vacancies as exist today, it should be done only as per the amended rules and not the position prior to the amendment.

14. The Supreme Court in *Jitendra Kumar & Ors vs State of Haryana* reported in *2008 (2) SCC 161* has held that the doctrine of legitimate expectation will not apply to recruitments and it is for the State to appoint persons in accordance with the rules and regulations. It was held as under:

'In Food Corpn. Of India and Others v. Bhanu Lodh and Others [(2005) 3 SCC 618], this Court held:

"14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some



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provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review.

31. It is, therefore, evident that whereas the selectee as such has no legal right, the superior court in exercise of its judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of malafide or arbitrariness on its part. Each case, therefore, must be considered on its own merit."

15. It must also be held the Petitioners having participated in the subsequent recruitments held as per the amended rules cannot go back and challenge the new procedure for recruitment. In any event, their contention regarding filling up backlog vacancies as per the old procedure does not arise. The writ petition is misconceived and will stand dismissed. All Miscellaneous Petitions are dismissed. No costs.

16. Before closing it must be stated as to why the Respondent State had filed WMP(MD) No.12657 of 2023 seeking for deletion of their name from the cause title. Such a petition is misconceived especially when the recruitment rules are under challenge and the State having framed the



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rules has to defend the same and it is a necessary and proper party in such a case. Hence WMP(MD)No.12657 is dismissed as frivolous and misconceived. However, there will be no order as to costs.

27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Secretary for Health and Family Welfare,
Fort St.George,
Chennai-9.
- 2.The Secretary,
Department for Adi Dravidar and Tribal Welfare,
Fort St.George,
Chennai-9.
- 3.The Secretary,
The Tamil Nadu Medical Service Recruitment Board,
7th Floor, DMS Building,
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DR.A.D.MARIA CLETE, J.
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