



W.A.(MD)No.73 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.07.2025

CORAM

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HON'BLE MR.JUSTICE K.RAJASEKAR**

**WA(MD)No.73 of 2024
and
CMP(MD)No.726 of 2024**

1.The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

... Appellants

Vs.

1.V.Chandralega

2.The Member Secretary,
Medical Services Recruitment Board (MRB),
359, Anna Salai, DMS Compound,
Teynampet, Chennai - 600 018.

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in WP(MD)No.1381 of 2023 dated 11.04.2023 on the file of this Court.



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W.A.(MD)No.73 of 2024

For Appellants : Mr.Veerakathiravan,
Additional Advocate General,
Assisted by Mr.C.Venkateshkumar,
Special Government Pleader.

For Respondents : Mr.K.Navaneetharaja for R1

Mr.V.Ramesh for R2

JUDGMENT
(By G.R.SWAMINATHAN, J.)

The State is on appeal challenging the order dated 11.04.2023 passed by the learned Single Judge allowing WP(MD)No.1381 of 2023 filed by the first respondent herein.

2.The first respondent herein belongs to a scheduled caste. She is an aspirant for the post of Dark Room Assistant. She has passed higher secondary course. The syllabus did not have science subject. She had also cleared what is known as Certificate of Radiological Assistant (CRA) course in the year 2009 – 2010. Notification inviting applications from eligible candidates was issued on 16.03.2022. The candidates were only given weightage marks and there was no holding of any written examination. The writ petitioner scored 79.33 marks. However, her

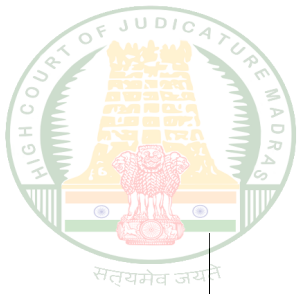


W.A.(MD)No.73 of 2024

name was not included in the provisional selection list. Challenging her exclusion, she filed W.P.(MD)No.1381 of 2023. The learned Single Judge vide order dated 11.04.2023 allowed the writ petition. Aggrieved by the same, the State has filed this writ appeal.

3.The learned Additional Advocate General for the appellants pointed out that contra view has been taken by another learned Single Judge of this Court sitting in the Principal Seat. He drew our attention to the order dated 18.08.2023 made in W.P.No.768 of 2023. Our attention was also drawn to the eligible qualification for the post of Dark Room Assistant as set out in the notification. It reads as follows:-

S.No.	Name of the post	Qualification
1.	Dark Room Assistant	<i>i. A pass in Higher Secondary Course with Science Subjects (a) Physics, Chemistry, Botany and Zoology; (or) (b) Physics, Chemistry, Biology and any one of the related subjects (viz) Mathematics or Computer Science; and ii. Certificate of having successfully completed the training course for Dark Room Assistant of any Institution recognised by the State Government (or) Government of India.</i>



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W.A.(MD)No.73 of 2024

Provided that if candidates with the certificates of Dark Room Assistant are not available, then candidates with Certificate Of Radiological Assistant of any Institution recognised by the State Government or Government of India with or without science in Higher Secondary Course, shall be appointed.

Provided also that if candidate with the certificate of Radiological Assistant are also not available then candidates with Diploma in Radio Diagnosis or Diploma in Radio Therapy of any Institution recognised by the State Government or Government of India shall be appointed.

4.The learned Additional Advocate General submitted that the learned Single Judge in W.P.No.768 of 2023 had correctly construed the relevant rule and held that the rule should be read as a whole and that only those who have passed in Science subject can be considered. In other words, even if candidates with the Certificate of Dark Room Assistant are not available, only those candidates with CRA with science subject in higher secondary course alone can be considered for appointment. He wanted us to adopt the reasoning in W.P.No.768 of 2023 and set aside the order of the learned Single Judge.



W.A.(MD)No.73 of 2024

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5.Per contra, the learned counsel for the writ petitioner submitted that the order of the learned Single Judge is well reasoned and that it does not call for interference.

6.We carefully considered the rival contentions and went through the materials on record. It is seen that the Special Rules for the post of Dark Room Assistant prior to 2015 prescribed the education qualification as follows:-

“4.Prior to issuing above amendment to the Special Rules for the post of Dark Room Assistant during the year 2015, the educational qualifications were prescribed as follows:-

Certificate of having successfully completed the training course for Dark Room Assistant.

Provided that the preference shall be given to candidates who have passed the CRA examination.

Provided further that the above qualifications shall not be necessary in the case of X-ray Attendant, who has put in a service of not less than 15 years as X-ray Attendant in the



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W.A.(MD)No.73 of 2024

Radiology Department of the Teaching and Other hospital where adequate specialist exist to learn and understand the dark room procedure and techniques and on the speciality recommendation radiologists regarding suitability for the post of Dark Room Assistant.”

7.Subsequently, in the year 2015 vide G.O.(Ms)No.304 Health and Family Welfare Department dated 07.10.2015, the qualification was amended as follows:-

“i. A pass in Higher Secondary Course with Science Subjects

(a) Physics, Chemistry, Botany and Zoology;

(or)

(b) Physics, Chemistry, Biology and any one of the related subjects (viz) Mathematics or Computer Science;

and

ii. Certificate of having successfully completed the training course for Dark Room Assistant of any Institution recognised by the State Government (or) Government of India.

Provided that if candidates with the certificates of Dark Room Assistant are not available, then candidates with



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W.A.(MD)No.73 of 2024

Certificate Of Radiological Assistant of any Institution recognised by the State Government or Government of India with or without science in Higher Secondary Course, shall be appointed.

Provided also that if candidate with the certificate of Radiological Assistant are also not available then candidates with Diploma in Radio Diagnosis or Diploma in Radio Therapy of any Institution recognized by the State Government or Government of India shall be appointed.”

8. There was yet another change in policy of the government which is evident from G.O.(Ms)No.104 Health and Family Welfare Department dated 26.02.2021. Paragraph Nos.9 to 11 of the said government order read as follows:-

“9. In the circumstances, the Government is considering to add a proviso in the Special Rules (Branch-IV-General) of Tamil Nadu Medical Subordinate Service for the post of Dark Room Assistant to the effect that the candidates who have passed the HSC without Science subject who possess Certified Radiological Assistant qualification are also eligible for applying for the post of Dark Room Assistant.

10. Meanwhile, the Director of Medical Education has stated that due to the COVID pandemic, the post of Dark Room



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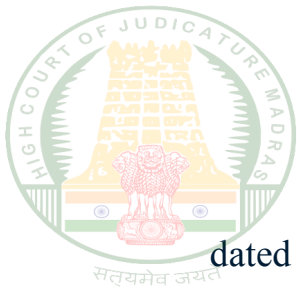


W.A.(MD)No.73 of 2024

Assistant is very much essential to cope up the hectic work load in the Radiology Department of the Hospitals under the control of his directorate. Due to scarcity of Dark Room Assistant, there is great difficulty in running the Radiology Department smoothly. He has therefore requested the Government to issue necessary permission to fill up the existing vacancies of Dark Room Assistant with Science or without Science in Higher Secondary Course by relaxing the Special rules to this effect “as a one time measure” to fill up the existing vacancies.

11.In the circumstances, the Government have decided to issue an executive order so as to enable all the said candidates to participate in the recruitment for the post of Dark Room Assistant, pending amendment of the Special Rules and to fill up the vacancy in the post of Dark Room Assistant. The Government accordingly do and hereby direct that the Director of Medical Education / Medical Services Recruitment Board be permitted to fill up the vacancy in the post Dark Room Assistant from the candidates who have passed Higher Secondary without Science subjects and possess Certificate in Radiological Assistant course qualification pending issue of amendment to this effect, through the Medical Services Recruitment Board.”

9.Pursuant to the policy change which was contemplated as one time measure, G.O.(Ms)No.385 Health and Family Welfare Department



W.A.(MD)No.73 of 2024

dated 27.08.2021 was issued. By virtue of this amendment, the following proviso was introduced:-

“Provided that if candidates with the certificate of Dark Room Assistant are not available then candidates with Certificate of Radiological Assistant of any Institution recognized by the State Government or Government of India, with or without science in Higher Secondary Course, shall be appointed.”

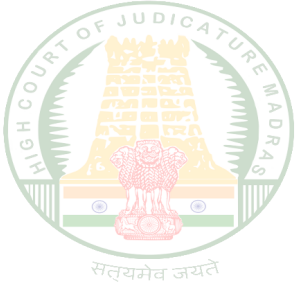
10.The expression “with or without science” was a conscious amendment made to the Special Rules. It is true that in the main provision, science subjects have been prescribed as essential part of the educational qualification. But as a one time measure, a departure has been made. We cannot lose sight of the fact that when this departure was made, the Covid pandemic was at its peak. That is why, the authorities felt it necessary to consider even those having CRA without science subject as eligible candidates. No doubt, this departure found in the proviso is at odds with the stipulation in the main provision. But it is a well settled principle of interpretation that here the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the

9/12



W.A.(MD)No.73 of 2024

section as the proviso speaks the latter intention of the makers and that a proviso may sometimes contain a substantive provision [vide (2020) 8 SCC 129 (Indore Development Authority v. Manoharlal)] . Of course, there are several principles based on which a proviso can be construed. It is upto the Court to choose the most relevant principle depending on the context. If we go by the interpretation set out vide order dated 18.08.2023 in W.P.No.768 of 2023, the very purpose of introducing the expression “or without” will be rendered redundant. It is for this reason that we are unable to endorse the view taken by a learned Single Judge made in W.P.No.768 of 2023 vide order dated 18.08.2023. It is well settled that amendments should be presumed to have been made consciously and every word should be given its fullest meaning and weight. This expression should be construed by taking into account the background in which G.O.(Ms)No.104 Health and Family Welfare Department dated 26.02.2021 was issued. This is all the more so because the validity of the aforesaid government order was upheld by the Hon'ble First Bench vide order dated 18.08.2022 in W.P.No.20413 of 2022.



W.A.(MD)No.73 of 2024

WEB COPY

11.In this view of the matter, we sustain the order of the learned Single Judge. The writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.,) & (K.R.S. J.,)
25.07.2025**

NCC : Yes/No
Index : Yes / No
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