WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23878 of 2022
and
W.M.P(MD)Nos.17946 to 17948 of 2022

J.U.Jisha ... Petitioner

Vs

1.The State represented by
The Secretary,
Human Resources Management Department,
Secretariat, Fort St.George, Chennai.

2.The State represented by
The Chief Secretary,
Health and Family Welfare (C1) Department,
Secretariat, Fort St.George, Chennai.

3.The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai – 600 006.

4.The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai – 600 006.

https://www.mhc.tn.gov.in/judis

WEB COPY

5.The Director,
Health and Family Welfare (C1) Department,
Secretariat, Fort St.George, Chennai.

6.The Director,
Employment and Training Deparment,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government order issued by the first respondent vide G.O(Ms)No.133, Human Resources Management (M) Department dated 01.12.2021 and the consequential impugned Government order issued by the second respondent vide G.O(Ms)No.208, Health and Family Welfare (C2) Department dated 11.07.2022 and the consequential impugned Notification issued by the fourth respondent vide Notification No.11/MRB/2022 dated 11.10.2022 and quash the same as illegal insofar as clause 6B (Note) and 7 is concerned and consequently direct the respondents to allow the petitioner to participate in the examination for the post of Assistant Surgeon without insisting upon the Tamil Language Qualifying paper within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
for M/s. Ajmal Associates

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.R.Suresh Kumar
Additional Government Pleader
for R.1, R.2, R.5 & R.6

https://www.mhc.tn.gov.in/judis

WEB COPY

Mr.T.S.Mohamed Mohideen
Standing Counsel for R.3 & R.4

ORDER

Heard the learned Senior counsel appearing for the writ petitioner, the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents 1, 2, 5 and 6 and the learned Standing Counsel appearing for the respondents 3 and 4.

2.The writ petitioner is a holder of MBBS Degree. She has registered herself with the Medical Council of India. She is Malayali by birth and she had done her studies in Kerala. She got married to a Tamilian on 21.08.2020 and presently residing at Manavalakurichi, Kanyakumari District. The petitioner was appointed as COVID Contract Medical Officer at Government Medical College, Asaripallam, Nagercoil on 04.06.2021. The petitioner is an aspirant for the post of Assistant Surgeon. Her grievance is that in the notification issued by the Medical Services Recruitment Board, passing of Tamil test has been made as a threshold requirement. The recruiting agency, namely, the fourth respondent Medical Services Recruitment Board in turn had acted pursuant to the impugned G.O(Ms)No.133 Human Resources Management (M) Department dated 01.12.2021 and consequential G.O(Ms)No.208 Health and Family Welfare (C2) Department dated 11.07.2022.

https://www.mhc.tn.gov.in/judis

WEB COPY

3.The contention of the learned Senior Counsel is that the impugned Government Orders as well as the recruitment notification are not in consonance with Section 21 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The learned Senior counsel took me through all the averments set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned government orders insofar as the requirement is concerned and allow the writ petition as prayed for.

4.The respondents have filed counter affidavits. The learned Standing Counsel for the Board submitted that the Board has merely carried out the mandate issued by the Government.

5.The learned Additional Advocate General appearing for the State submitted that the impugned Government Orders are the outcome of policy decision of the government. In fact, the issue was debated on the floor of the Legislative Assembly. The learned Additional Advocate General relying on the written instructions given by the Government submitted that the issue raised in this writ petition is under active consideration of the Government and prayed for adjournment of the case by two months. He would also submit that the issue is quite sensitive and therefore, this Court may not proceed to adjudicate the issue right today. He called upon this Court to bear in mind

https://www.mhc.tn.gov.in/judis

WEB COPY

the object behind the introduction of the ***Tamil Nadu Appointment on preferential basis in the Services under the State of Persons Studied in Tamil Medium Act, 2010*** whereby preference in the appointment in the services under the State is given to persons who obtained education qualifications through Tamil Medium of Instruction.

6.The core contention of the learned Additional Advocate General is that the Government has taken a policy decision that only Tamil knowing persons will have to be inducted in Government service and to test the adequate knowledge of the candidates, it is proposed to conduct the test as a part of the recruitment process. There is nothing inherently objectionable to the introduction of the test in the impugned recruitment notification. He pressed for dismissal of writ petition.

7.I carefully considered the rival contentions and went through the materials on record. The Hon'ble Apex Court in ***Ispat Industries Ltd. vs. Commissioner of Customs, Mumbai (2006) 12 SCC 583*** observed as follows :

> *"...it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (The Pure Theory of Law)in every legal system there is a hierarchy of laws, and whenever*

https://www.mhc.tn.gov.in/judis

WEB COPY

there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer the norm in the higher layer will prevail (see Kelsen's `The General Theory of Law and State').

In our country this hierarchy is as follows:
1) The Constitution of India;
2) The Statutory Law, which may be either Parliamentary Law or Law made by the State Legislature;
3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.;
4) Administrative orders or executive instructions without any statutory backing."

If there is any conflict between the two layers, the one above will prevail. It is a basic principle of law that an order issued by the Government cannot be ultra vires the primary Act. The Tamil Nadu Government Servants (Conditions of Service) Act, 2016 had already been enacted and it is holding the field. Section 21 of the said Act deals with linguistic qualification. It reads as follows:

*"**21.**(1) No person shall be eligible for appointment to any service by direct recruitment unless he has an adequate knowledge of the official language of the State, namely, Tamil:*

https://www.mhc.tn.gov.in/judis

WEB COPY

Provided that a person, being otherwise qualified for appointment to the post to which recruitment is to be made, may apply for recruitment to the post, despite the fact that, at the time of such application, he does not possess an adequate knowledge of Tamil.

Explanation.—*For the purpose of this section, a person shall be deemed to have an adequate knowledge of Tamil, if—*

(i) in the case of a post for which the educational qualification prescribed is the minimum general educational qualification and above, he has passed the S.S.L.C. Examination or its equivalent examination with Tamil as one of the languages; or Studied the High School Course in Tamil medium and passed the S.S.L.C. Examination or its equivalent examination in Tamil medium; or passed the Second Class Language Test in Tamil conducted by the Commission;

(ii) in the case of a post for which the educational qualification prescribed is VIII Standard and above, but below S.S.L.C., he has studied in Tamil medium in those standards or passed the Language Test in Tamil referred to in sub-section (1) of section 22; and

(iii) in the case of a post for which the educational qualification prescribed is below VIII Standard, he has studied in Tamil medium in those standards or passed the oral test in Tamil referred to in sub-section (2) of section 22.

https://www.mhc.tn.gov.in/judis

WEB COPY

(2) Every such candidate as is referred to in the proviso to sub-section (1) shall, if selected and appointed on or after the 9th February 1996, pass the Second Class Language Test in Tamil conducted by the Commission, or pass the language Test in Tamil referred to in sub-section (1) of section 22 conducted by the appointing authority or pass the oral test referred to in sub-section (2) of section 22 conducted by the appointing authority, as the case may be, within a period of two years from the date of his appointment. If he fails to pass the said Language Test within the said period of two years, he shall be discharged from service.

(3) The syllabus for the Second Class Language Test in Tamil referred to in this section shall be as specified in Schedule-IV."

From a bare reading of the aforesaid statutory provisions, one can easily come to the conclusion that the Government employee must possess adequate knowledge of Tamil but it is not the threshold requirement. Even after entering service, within two years, it is enough the employee concerned acquires knowledge of language. The acquisition of knowledge will be evident by passing the prescribed test. When the primary legislation grants two years time to any prospective candidate to acquire knowledge in Tamil, it is not open to the respondents to introduce the said requirement as the threshold level. The impugned condition is patently in violation of Section 21 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

https://www.mhc.tn.gov.in/judis

WEB COPY

It is set aside. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

01.12.2022

Index : Yes / No

Internet : Yes/ No

mga

To

1.The Secretary,
Human Resources Management Department,
Secretariat, Fort St.George, Chennai.

2.The Chief Secretary,
Health and Family Welfare (C1) Department,
Secretariat, Fort St.George, Chennai.

3.The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai – 600 006.

4.The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Teynampet, Chennai – 600 006.

5.The Director, Health and Family Welfare (C1) Department,
Secretariat, Fort St.George, Chennai.

6.The Director, Employment and Training Deparment, Chennai.

https://www.mhc.tn.gov.in/judis

WEB COPY

G.R.SWAMINATHAN, J.

mga

W.P(MD)No.23878 of 2022
and
W.M.P(MD)Nos.17946 to 17948 of 2022

01.12.2022