

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:9-4-2015

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THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

WRIT PETITION No.10375 of 2015

B.Edward Vedanayagam

... Petitioner

vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort St.George,
Chennai-600 009.

2. The Commissioner,
Tamil Nadu Food Safety and Drugs
Administration Department,
DMS Campus,
No.359, Anna Salai,
Teynampet,
Chennai-600 006

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records pertaining to R.No.5880/2014/SI/FSSA dated 11.02.2015 and to quash the same as illegal, incompetent and ultravires and consequently direct the second respondent to transfer the petitioner to anyone of the vacant places at Chennai.

For petitioner : Mr.R.Jayaprakash

For respondents : Mr.S.Gunasekaran,G.A.

ORDER

Heard Mr.R.Jayaprakash, the learned counsel for the petitioner and Mr.S.Gunasekaran, the learned Government Advocate appearing for the respondents and with the consent of parties, the writ petition itself is taken up for final disposal.

2.The petitioner joined the Government Service as Leprosy Inspector in the year 1988. He was notified as Food Safety Officer, Ellapuram Block, Thiruvallur District in September 2011. He made a representation, dated 27.4.2014, seeking transfer to Chennai on medical grounds, since he underwent two major heart surgeries (the medical records running to 30 pages are also enclosed in the typed set of papers). Thereafter, the petitioner filed a writ petition in W.P.No.17097 of 2014 seeking a direction to the respondents to dispose of his representation. This Court, vide order dated 7.11.2014, directed the second respondent to pass orders on the petitioner's representation.

3. Now the second respondent passed the impugned order refusing to consider the request of the petitioner on the ground that without fixing the seniority, transfer cannot be considered. It is stated that the fixation of seniority has to be done in the light of the order dated 21.08.2014 made in W.P.No.24661 and 24952 of 2013.

4. I have perused the order dated 21.08.2014 made in W.P.Nos.24661 and 24952 of 2013, wherein, this Court directed the second respondent herein to frame the Rules within a period of six months from 21.08.2014 and directed the respondents not to fix the seniority till framing of such Rules. Paragraph Nos.4 and 5 of the order dated 21.08.2014 are usefully extracted hereunder.

"4.It is submitted by the learned Government Advocate that as per the letter dated 21.01.2013, issued by the Commissioner, Tamil Nadu Food Safety and Drug Administration Department addressed to the Government, a Committee has to be formed consisting of Members stated therein and have requested the Government to pass necessary orders for formation of Committee, but, till date the Committee has not been formed. However, the learned Government Advocate submitted that the Committee would be formed and Rules would be framed within six months.

5.Recording the submissions of the learned Government Advocate, the Government is directed to form the Committee as per the letter addressed to the second respondent dated 21.01.2013 and give instructions to the committee to frame Rules within a period of six months from today. The respondents are also directed not to fix the seniority till the exercise of framing of Rules over as stated above."

5. Now six months have elapsed and as such, there is no justification in stating that the seniority is not yet fixed. The second respondent shall comply with the order dated 21.08.2014, made in W.P.No.24661 and 24952 of 2013, by framing the Rules and fixing the seniority as per the said Rules. However, the framing of Rules and fixing of seniority is nothing to do with the request for transfer. It is absolutely the discretion of the second respondent to accept or reject the request of the petitioner for transfer based on various exigencies and on administrative reasons. When an employee pleads that he underwent two heart surgeries, the same could be considered as a ground for transfer. However, the genuineness of the request, the availability of vacancies in the said place and all other relevant issues have to be gone into by the second respondent. But the second respondent cannot reject the transfer on the ground that seniority is yet to be fixed. By observing so, I am not expressing my view that the second respondent should consider positively the request of the petitioner for transfer to Chennai, but the petitioner's request has to be considered based on the materials provided by him and the second respondent is at liberty to pass orders on merits and in accordance with law. But the request of the petitioner cannot be declined on the ground that seniority is yet to be fixed.

6. For all the above said reasons, the impugned order is set aside and the matter is remitted back to the second respondent, who shall take into account all the materials produced by the petitioner and the health ground pleaded by him that he underwent twice the heart surgery and pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of accordingly. No costs. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort St.George,
Chennai-600 009.

2. The Commissioner,
Tamil Nadu Food Safety and Drugs
Administration Department,
DMS Campus,
No.359, Anna Salai,
Teynampet,
Chennai-600 006

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.19926
+1cc to the Government Pleader, S.R.No.19893

W.P No.10375/2015

RJ(CO)
CA(30/04/2015)



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