

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 8-1-2015

Delivered on : 8-4-2015

Coram:

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition Nos.21058 & 25867 of 2007, 14827 of 2008 and
22182, 22496 & 24665 of 2011 & all connected pending MPs

Tamilnadu Health Inspectors Association
rep.by State Vice President S.Sivaguru

...Petitioner in
WP.21058/2007

T.Ravimohan

...Petitioner in
WP.25867/2007

- 1.D.Sitharthan
- 2.R.Ayiram
- 3.M.Rajendran
- 4.S.Rajamanickam
- 5.P.Valarmathi
- 6.P.Vetriventhan
- 7.P.Indiragandhi
- 8.V.Kannan
- 9.M.Sivalingam
- 10.K.Elavarasu
- 11.R.Ravichandran
- 12.S.Gopinathan
- 13.R.Sankar
- 14.K.Thiruchelvam
- 15.T.Sambandam
- 16.P.Sasikala
- 17.S.Chandran
- 18.S.Chandrasekar
- 19.S.Gopalakrishnan
- 20.S.Ramani
- 21.S.Immanuel
- 22.K.Palanisamy
- 23.A.Jayachandran
- 24.A.Apparajan

TamilNadu Anti Malaria Field Cum Lab Asst. Assn,
rep.by its State President.

... Petitioner in
W.P.14827/2008

25.M.Sivashankar
26.Tamilselvan
27.R.Velusamy
28.M.Dharmaraju
29.R.Manohar
30.R.Murugan
31.K.Ganesan
32.K.Balasubramanian
33.A.Panneerselvam
34.K.R.Mohan
35.Dakshinamurthy
36.P.Ravindran

... Petitioners in
WP.No.22182/2011

1.V.Shanmugavel
2.K.Subramanian
3.T.Chandran
4.K.Jeyalakshmi
5.S.Ravichandran
6.N.Balaji
7.V.Ponnusamy

....Petitioners in
WP.No.22496/2011

1.N.Pandiyan
2.P.Selvaraju
3.A.Arokiamary
4.C.Santhi
5.N.Bhama
6.R.Radha
7.N.Nirmala
8.J.Vimala
9.G.Nirmala

...Petitioners in
WP.No.24665/2011

1. State of Tamil Nadu, rep.by Secretary
to Government, Health & Family Welfare,
Fort.St.George, Chennai-9.

... R1 in WP.Nos.
21058 & 25867/2007,
14827/2008

2. The Secretary to Government, Finance
Department, Fort.St.George, Chennai-9.

3. The Secretary to Government, Personnel
& Administrative Reforms, Fort.St.
George, Chennai-9.

... R2 & R3 in
WP.No.21058/2007

4. The Director of Public Health & Preventive Medicine, Teynampet, Chennai-6. ...R4 in WP.No.21058/2007 & R2 in WP.Nos.25867/2007, 14827/2008 & 22182, 22496 & 24665/2011
5. Mr.G.Thangamani, Joint Secretary to Government, Health & Family Welfare Department, Secretariat, Chennai-9. ... R5 in WP.No.21058/2007
6. Tamil Nadu Anti Malaria Field cum Lab Assistant Association, rep.by its State President R.Navaneetham (R6 impleaded as per order dated 10.7.2014 by VRSJ in MP.No.2 of 2008 in WP.No.21058 of 2007) ...R6 in WP.No.21058/2007 & Petitioner in WP.No.14827 of 2008
7. The Commissioner of Food Safety, Government of Tamil Nadu, Office of the Director of Health Services, Teynampet, Chennai-6. ... R1 in WP.Nos.22182, 22496 & 24665/2011
8. The Joint Director, Prevention of Food Adulteration, Office of the Public Health & Preventive Medicine, DMS Complex, Teynampet, Chennai-6. ... R3 in WP.Nos.22182, 22496 & 24665/2011
9. R.Sankaranarayanan ... R4 in WP.Nos.22182 & 22496/2011
- 10.K.V.Saravanan
- 11.C.Vairava Rathinam
- 12.R.Govindan
- 13.Anbupalani (impleaded as per order dated 18.10.2011 by MMSJ in MP.No.4/2011 in WP.No.22182/2011) ...R5 to R8 in WP. No.22182/2011
- 14.T.Stalin Rajarathinam
- 15.C.Sundaramurthi
- 16.S.Thiyagarajan
- 17.S.Murugan (impleaded as per order dated 9.11.2011 by MMSJ in MP.No.5/2011 in WP.No.22182/2011) ...R9 to R12 in WP. No.22182/2011

18.T.Chitra

19.V.Thangaraj

20.J.Joseph Sornapandian

(impleaded as per order dated 10.7.2014 by VRSJ in

MP.No.1/2013 in WP.No.22182/2011)

...R13 to R15 in

WP.No.22182/2011

21.S.Velmurugan

...R4 in WP.No.

24665/2011

PETITIONS under Article 226 of The Constitution of India praying for the issuance of (i) a Writ of Certiorarified Mandamus to call for the concerned records relating to G.O.Ms.No.216 Health & Family Welfare (N1) Department dated 12.6.2007 passed by the first respondent, quash the same and consequently direct the first respondent to make promotions to the post of Health Inspector Grade I strictly in accordance with G.O.Ms.No.1507 Health, Indian Medicine and Homoeopathy and Family Welfare Department dated 16.8.1989 issued by the first respondent (WP.No.21058 of 2007); (ii) a Writ of Certiorari to call for the records of the order passed by the first respondent in G.O.Ms.No.216 Health & Family Welfare (N-1) Department dated 12.6.2007 and quash the same (WP.No.25867 of 2007); (iii) a Writ of Mandamus to direct the respondents to implement G.O.Ms.No.216 Health & Family Welfare (N1) Department dated 12.6.2007 passed by the first respondent and dispose of the petitioner association's representation dated 15.2.2008, 17.3.2008 and 7.4.2008 (WP.No.14827 of 2008); and (iv) a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent dated 20.9.2011 having Ref.No.80849/FSSA/2011/S2, quash the same and direct the first respondent to reappoint the petitioners as Food Safety Officers in the local area as originally notified in the proceedings dated 5.8.2011 (WP.Nos.22182, 22496 & 24665 of 2011).

For Petitioner in WP.No.21058/2007 : Mr.M.Gnanasekar

For Petitioner in WP.No.25867/2007 : Mr.G.Sankaran

For Petitioner in WP.No.14827/2008 &

R6 in WP.No.21058/2007 : Mr.S.Ilamvaludhi

For Petitioners in WP.Nos.22182,

22496 & 24665/2011 :

: Mrs.Nalini Chidambaram, SC
for Mrs.C.Uma

For R1 to R4 in WP.No.21058/2007;

R1 & R2 in both WP.Nos.25867/2007 &

14827 of 2008; R1 to R3 in WP.Nos.

22182, 22496 & 24665/2011

: AGP (W)

For R4 in WP.Nos.22182, 22496 &
24665/2011

: Mr.N.G.R.Prasad for
M/s.Row & Reddy

For R5 to R8 in WP.No.22182/2011

: Mr.K.Selvaraj

For R9 to R12 in WP.No.22182/2011

: Mr.S.M.Subramaniam

For R13 to R15 in WP.No.24665/2011

: Mr.V.Raghavachari

R5 in WP.No.21058 of 2007

: Printed and no appearance

R6 in WP.No.24665/2011

: Printed & no appearance

COMMON ORDER

A scheme known as Multi Purpose Health Scheme was introduced in the State of Tamil Nadu, way back in 1982 under G.O.Ms.No.1936 dated 29.9.1982. For implementation of the Scheme, various posts of multi purpose health workers were created. In order to regulate the terms and conditions of their services, the Government issued G.O.Ms.No.1507 Health & Family Welfare Department dated 16.8.1989, prescribing the method of appointment, appointing authority, qualifications, pay, etc., for the posts of Multi Purpose Health Assistant, Multi Purpose Health Workers (Female), Multi Purpose Health Supervisors and Sector Health Nurse. Under the aforesaid Rules, issued in exercise of the power conferred by the Proviso to Article 309, the post of Multi Purpose Health Assistant was to constitute a distinct category in Class II and the other three posts are to constitute distinct categories in Class I of the Tamil Nadu Health Subordinate Service.

2. The said Government Order was amended by G.O.Ms.No.4, Health & Family Welfare dated 4.1.1993. By the said amendment, Basic Health Workers, Vaccinators or Cholera Workers and Multi Purpose Health Assistants with experience of a period not more than five years were stipulated for appointment.

3. After the issue of the Rules, an association by name Multi Purpose Health Assistant Trainees Association filed an application in O.A.No.6900 of 1995 on the file of the Tamil Nadu Administrative Tribunal, seeking a direction to appoint the members of their association, to the post of Multi Purpose Health Assistant, which was subsequently to be re-designated as Health Inspector Grade III. The said application was disposed of by the Tribunal by an order dated 26.2.1997 with a direction to the respondents to consider the cases of the petitioners as and when vacancies arose, by relaxation of the Rules wherever necessary.

4. In the meantime, the Lab Assistants and Field Assistants made representations for promotion to the post of Health Inspector Grade I, upon completion of ten years of service. Their representations were recommended by the Director of Public Health and Preventive Medicine for favourable consideration, subject to certain terms and conditions.

5. On the basis of the representations, the Government passed a Government Order in G.O.Ms.No.216 Health & Family Welfare dated 12.6.2007, permitting the Director of Public Health to impart training to 470 Lab Assistants, who had completed ten years of service, for the purpose of appointing them in a phased manner as Health Inspectors Grade I.

6. Challenging the said Government Order in G.O.Ms.No.216 dated 12.6.2007, the Tamil Nadu Health Inspectors Association filed the first writ petition in W.P.No.21058 of 2007. The said writ petition was admitted on 21.6.2007. Subsequently, another person by name T.Ravimohan, working as Multi Purpose Health Assistant/Health Inspector Grade II, came up with a writ petition in W.P.No.25867 of 2007, challenging the Government Order in G.O.Ms.No.216. This writ petition was admitted on 27.11.2007.

7. During the pendency of the above two writ petitions, the Tamil Nadu Anti Malaria Field cum Lab Assistants Association came up with a writ petition in W.P.No.14827 of 2008 for a Mandamus to direct the Government to implement G.O.Ms.No.216 dated 12.6.2007. This writ petition was also admitted on 27.6.2008 and was directed to be tagged along with the first two writ petitions.

8. In the meantime, the Parliament enacted the Food Safety and Standards Act, 2006 and various provisions of the Act came into force on various dates from 15.10.2007 to 31.7.2009. The enforcement of the provisions of the Act was entrusted with officers known as Food Safety Officers, to be appointed under Section 37 of the Act.

9. Therefore, in accordance with the provisions of the Act, the Director of Public Health and Preventive Medicine sent a batch of Health Inspectors to undergo training in food analysis, from February 2011. After the completion of training for about three months, the Director of Public Health and Preventive Medicine issued proceedings dated 3.8.2011 permitting those Health Inspectors Grade II to act as Food Inspectors under the Prevention of Food Adulteration Act. As a matter of fact, the Prevention of Food Adulteration Act actually stood repealed in terms of Section 97(1) read with Second Schedule to the Food Safety and Standards Act, 2006. But, nevertheless, the

proceedings of the Director dated 3.8.2011 nominated the Health Inspectors only to act as Food Inspectors under the Prevention of Food Adulteration Act.

10. It appears that through an electronic mail allegedly sent on 5/6th of August 2011, a group of about 385 persons were nominated as Food Safety Officers under Section 37 of the Food Safety and Standards Act, 2006. But, within a month thereof, the Commissioner of Food Safety issued a proceedings dated 20.9.2011 cancelling the earlier notification dated 5.8.2011 and notifying another list of about 385 persons as Food Safety Officers under Section 37 of the Act. Therefore, challenging these proceedings, three batches of persons have come up with W.P.Nos.22182, 22496 and 24665 of 2011, praying not only for quashing the proceedings of the Commissioner of Food Safety dated 20.9.2011, but also seeking re-appointment as Food Safety Officers. Therefore, all the writ petitions were clubbed together and taken up for disposal.

11. I have heard Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the petitioners in the last three writ petitions, Mr.M. Gnanasekar, learned counsel appearing for the petitioner in the first writ petition, Mr.G.Sankaran, learned counsel appearing for the petitioner in the second writ petition, Mr.S.Ilamvazhudhi, learned counsel appearing for the petitioner in the third writ petition, the learned Additional Government Pleader appearing for the State, Mr.N.G.R.Prasad, learned counsel appearing for the fourth respondent in the last three writ petitions as well as Mr.K. Selvaraj, Mr.S.M.Subramaniam and Mr.V.Raghavachari learned counsel appearing for the respective impleaded parties in W.P.No.22182 of 2011.

12. As seen from the narration of facts, the first two writ petitions challenge G.O.Ms.No.216 dated 12.6.2007 and the third writ petition seeks implementation of G.O.Ms.No.216. The other three writ petitions challenge the cancellation of the order designating the writ petitioners as Food Safety Officers under Section 37 of the Central Act 34 of 2006. Therefore, all the six writ petitions are to be divided into two groups and dealt with.

WRIT PETITIONS CHALLENGING OR SUPPORTING G.O.MS.No.216 :

13. Before considering the grounds on which G.O.Ms.No.216 is challenged, it is necessary to take note of the background, in which, G.O.Ms. No.216 came to be issued. It appears that the Tamil Nadu Anti Malaria Laboratory Assistants and Field Assistants Association was demanding for a long time, the opening up of a promotional avenue. In order to consider their long pending grievance, the Director of Public Health and Preventive Medicine formed a Core Committee

comprising of about 8 Members namely (i) Personnel Officer (ii) Joint Director (Primary Health Centre) (iii) Joint Director (Prevention of Food Adulteration Act) (iv) Joint Director (Immunisation) (v) Joint Director (Administration) (vi) Deputy Director of Health Services, Dharmapuri (vii) Deputy Director of Public Health, Poonamallee and (viii) Administrative Officer (Vector Control). The Core Group made certain recommendations. The recommendations were examined by the Director of Public Health and a proposal was sent to impart training to the Laboratory Assistants, who had completed 10 years of service and to promote them as Health Inspectors Grade I. These proposals were accepted and G.O.Ms.No. 216 was issued.

14. As pointed out in the counter affidavit of the Government, the Laboratory Assistants and Field Assistants formed the feeder categories to the post of Health Inspector Grade I under the Special Rules for Tamil Nadu Public Health Subordinate Service, prior to the implementation of the Multi Purpose Scheme. But, they should have acquired the qualification of passing the Sanitary Inspector Certificate Course.

15. But, when the Multi Purpose Health Scheme was introduced with effect from 4.11.1988, the feeder categories of Vaccinators, Basic Health Workers and Cholera Workers were merged into a single category of Multi Purpose Health Assistants (Health Inspectors Grade II), for which, fresh Ad hoc Rules were framed in G.O.Ms.No.1507 Health dated 16.8.1989. As per these Rules, the post of Multi Purpose Health Assistant (Health Inspector Grade II) became only feeder category for the post of Multi Purpose Health Supervisor (Health Inspector Grade I).

16. Since the above change eliminated the feeder categories of Laboratory Assistants, Field Assistants, etc., the Government issued G.O.Ms. No.185 Health dated 5.5.1998 making the Laboratory Assistants having a Sanitary Inspector's certificate as eligible for promotion as Health Inspector Grade I. It is relevant to note that the conduct of the Sanitary Inspector's course was dispensed with, on and from 4.11.1988 after the introduction of the Multi Purpose Health Scheme. As a consequence, Laboratory Assistants and Field Assistants alone had opportunity to undergo the Sanitary Inspector's course, leading to frustration. This is why their association made a representation, which led to the constitution of the Core Committee, based upon whose recommendations, the impugned G.O.Ms.No.216 was passed.

17. It is claimed in the counter affidavit filed by the Government that at the time when the Core Committee's recommendations and the proposals sent by the Director of Public Health were

considered by the Government, there were 660 posts of Health Inspector Grade I vacant and that already sufficient number of persons had reached the minimum time scale of pay. Therefore, the Government found that the relaxation to Rule 5 of the Ad hoc Rules in favour of those persons will be beneficial to the Department as well as to the individuals, without any additional financial burden. Even while relaxing Rule 5, the Government had not granted a wholesale relaxation. What the Government had done was only to modify the multi purpose health worker training course of a longer duration into a condensed course of a duration of six months.

18. Keeping the above factual background in mind, if we come back to the grounds of attack to G.O.Ms.No.216, it is seen that the Government Order is assailed primarily on the ground that it is contrary to the Special Rules. But, the said contention cannot be upheld in view of the fact that G.O. Ms.No.216 has been passed as seen from the counter affidavit, in relaxation of Rule 5 of the Ad hoc Rules. Therefore, an order passed in relaxation of the Rules cannot be assailed as violative of the Rules. The power of relaxation is admittedly available to the Government even under the General Rules. This power is not taken away by the Special Rules. Hence, the main ground on which the Government Order is assailed cannot be sustained.

19. The impugned order is also assailed on the ground that it suffers from non application of mind and is a mala fide exercise of power. But, the counter affidavits filed by the respondents elaborate the reasons for the issue of G.O.Ms.No.216. Therefore, I do not think that there was any non application of mind. When several categories of employees, who have conflicting claims against each other, mount pressure upon the Government, the Government may have to take a stand that may please one group and displease the other. This cannot be termed as mala fide. No other valid ground is raised in the first two writ petitions for assailing the Government Order. Hence, I am of the considered view that the first two writ petitions deserve to be dismissed. Accordingly, W.P.Nos.21058 and 25867 of 2007 are dismissed.

20. In so far as the third writ petition is concerned, it is for a Mandamus to direct the respondents to send the members of the petitioner association for training. It appears that they have already been sent for training and the writ petition has become infructuous. Accordingly, W.P.No. 14827 of 2008 is closed as having become infructuous.

WRIT PETITIONS CHALLENGING THE CANCELLATION OF APPOINTMENT AS FOOD SAFETY OFFICERS :

21. The main and only grievance of the petitioners in the three writ petitions filed in 2011, after promoting them as Food Safety Officers on 5.8.2011, the first respondent reverted them on 20.9.2011 and appointed other persons without assigning any reasons and without any notice. According to the writ petitioners, the respondents have treated Health Inspectors Grade II as seniors to Health Inspectors Grade I merely on the basis of total length of service and this had vitiated the impugned order.

22. In order to test the validity of the challenge, it is necessary to see the manner in which the petitioners in the writ petitions of the year 2011 came into service. All of them were sponsored by the Employment Exchange in August 1989 for selection for undergoing training as Laboratory Assistants. The petitioners were graduates in Botany or Zoology or Chemistry. After selection, they underwent training and got appointed as Laboratory Assistants in the Public Health Department in the year 1992. This post of Lab Assistant was redesignated as Lab Technician Grade III.

23. By G.O.Ms.No.185 dated 5.5.1998, the post of Lab Assistant was made as the feeder category for the post of Health Inspector Grade I, provided the incumbent had completed a certificate course in Sanitary Inspectorship. However, the Sanitary Inspector Training Course was abolished at least ten years earlier on 4.11.1988, when the Multi Purpose Health Scheme was introduced. Therefore, in order to alleviate the sufferings of these persons, G.O.Ms.No.216 dated 12.6.2007 was passed. In pursuance of the said order, the first batch of Lab Assistants numbering about 250 underwent training in the year 2008 after completion of ten years. They were appointed as Health Inspectors Grade I in July 2008. The next batch was appointed in January 2009. They were all appointed under Rule 39(a)(i) of the General Rules.

24. In February 2011, those Health Inspectors Grade I having a degree in science were chosen for a three months' training on food inspection and sampling work. The writ petitioners underwent training from 16.2.2011. Thereafter, they were appointed as Food Inspectors by the proceedings dated 3.8.2011. But, this appointment, as stated earlier, was under the Prevention of Food Adulteration Act.

25. However, the Prevention of Food Adulteration Act was repealed by Section 97(1) read with Second Schedule to the Food Safety and

Standards Act, 2006. Unfortunately, as pointed earlier, the Food Safety and Standards Act came into force on different dates ranging from 15.10.2007 to 31.7.2009. But, in so far as Section 97(1) is concerned, the Central Government appointed 5.8.2011 as the date from which the Prevention of Food Adulteration Act, 1954 was to be repealed.

26. On and from 05.8.2011, the Prevention of Food Adulteration Act, 1954 ceased to exist. This is why the writ petitioners in the last three writ petitions have taken a very curious stand, namely (i) that by the proceedings dated 03.8.2011, the Director of Public Health and Preventive Medicine permitted the writ petitioners to act as Food Inspectors under the Prevention of Food Adulteration Act, and (ii) that by electronic mail dated 05.8.2011, the same Director of Public Health and Preventive Medicine appointed the petitioners as Food Safety Officers under the new Act, on the basis that they had acted as Food Inspectors under the repealed enactment.

27. But, unfortunately, there is nothing on record to show that the petitioners in the last three writ petitions actually joined duty as Food Inspectors, pursuant to the order dated 03.8.2011. Additionally, the copy of the print out of the e-mail bearing date 05.8.2011 filed by the writ petitioners, raises serious doubts. It is an electronic mail. The date as printed in the relevant column below the columns intended for subject and from address, what is typed is "Saturday, August 6, 2011, 4:09 pm". Therefore, I do not know how the date 05.8.2011 got typed or printed therein on the right hand side top corner. The date 05.8.2011 appears to have been typed manually.

28. There are also two more facts which create lot of doubts about the e-mail dated 05.8.2011. These doubts are (i) that it does not even refer to the proceedings dated 03.8.2011, though it is issued by the very same officer, namely, the Director of Public Health and Preventive Medicine, and (ii) that under Section 37 of the Food Safety and Standards Act, it is only the Commissioner of Food Safety who is empowered to notify the Food Safety Officers. But, the mail has emanated from the desk of the Director of Public Health and Preventive Medicine.

29. The Director of Public Health and Preventive Medicine was one Dr.R.T.Porkaipandian, as seen from the proceedings dated 03.8.2011. But, the Commissioner of Food Safety was Tmt.Girija Vaithiyanathan, I.A.S., as seen from the proceedings dated 20.9.2011. Therefore, I doubt whether the petitioners were actually designated as Food Safety Officers at all. A person can be appointed as the Commissioner of Food Safety only as per the procedure prescribed by Section 30. The

State Government does not appear to have appointed the Director of Public Health and Preventive Medicine as the Commissioner of Food Safety under Section 30.

30. Moreover, the post of Food Safety Officer appointed under Section 37(1) of the Act, is not a post created within the cadre strength of the Department and the recruitment to the said post is not governed by the statutory rules under the proviso to Article 309 of the Constitution. Therefore, appointment to the said post under Section 37(1) cannot be claimed as a matter of right, unless the posts held by the writ petitioners formed the feeder category and also the Rules enabled promotion to those posts.

31. As a matter of fact, the Central Government had already issued a set of Rules known as Food Safety and Standards Rules, 2010, way back in April 2010, in exercise of the power conferred by various provisions including Section 37 of the Food Safety and Standards Act, 2006. Rule 3.1.3 of those Rules contains the prescription regarding the qualifications to be possessed by a person appointed as a Food Safety Officer. Rule 3.1.3 reads as follows:

"3.1.3: Food Safety Officer

1. Qualification: Food Safety Officer shall be a whole time officer and shall, on the date on which he is so appointed fulfill the following the qualifications:

- i. Hold a degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or degree in Science with Chemistry as one of the subjects from a recognised University, or
- ii. possess any other qualification notified by the Central Government, or
- iii. is a graduate in medicine and has received training in food safety, sampling and surveillance approved for the purpose by the Central Government or State Government or

And

- iv. has successfully completed training, for a specified period in food safety, food inspection and sampling under an Institute or Institution approved for the purpose by the Food Authority.

Provided that a person who has already been appointed as a Food Inspector under the provisions of Prevention of Food Adulteration Act 1954 on the date of commencement of these Rules, may perform the duties of the Food Safety Officer if notified by the

State/Central Government if the Officer fulfils such other conditions as may be prescribed for the post of Food Safety Officer by the State Government.

Provided further that the State Government may, in cases where a Medical Officer of health administration of local area has been performing the function of food Inspector under the PFA, assign the powers and duties of Food Safety Officer to such Medical Officer in charge of health administration of that area.

Provided further also that he/she shall undergo a specialised training laid down by the Food Authority within a period of two years from the commencement of the Act."

32. In the light of the aforesaid Rules, which had already come into effect in April 2010, the petitioners could not have been appointed as Food Safety Officers on 05.8.2011, unless they had possessed the qualifications prescribed therein.

33. As seen from the first proviso to Rule 3.1.3, a person who has already been appointed as Food Inspector under the Prevention of Food Adulteration Act, 1954, on the date of commencement of the Rules may perform the duties of the Food Safety Officer, if notified by the Central or State Government. In the case of hand, the petitioners were not appointed as Food Inspectors under the 1954 Rules on the date of commencement of the Rules. Therefore, I do not think that the petitioners can lay a claim.

34. Two objections are primarily raised to the proceedings dated 20.9.2011. They are (i) that those proceedings are bereft of reasons, and (ii) that they have been passed in violation of the principles of natural justice.

35. But, both the above contentions are unsustainable. The proceeding dated 20.9.2011 is not an order visiting the petitioners with any civil consequences. It is an order passed in exercise of the statutory power under Section 37(1), appointing a few persons as Food Safety Officers in certain areas. Therefore, the question of providing reasons does not arise. The question of violation of the principles of natural justice also does not arise, in view of the fact that the post is not shown to be a promotional post, carrying higher pay and allowances, so as to result in civil consequences.

36. The petitioners have produced a letter bearing No.28594/AB2/2013-3 dated 25.11.2013 sent by the Secretary to the Government, Health and Family Welfare to the Commissioner of Tamil

Nadu, Food Safety and Drug Administration. It is seen from the said communication that it was only in the year 2013 (after two years of the impugned orders) that the question of fixation of pay to the Food Safety Officers was taken up. The Government had decided under the said communication to grant permission to fix the pay of the Food Safety Officer, depending upon the post from which they were re-deployed. Therefore, it is clear that the post did not carry a higher scale of pay so as to enable the writ petitioners to complain of civil consequences and violation of the principles of natural justice.

37. As I have pointed out earlier, even if the writ petitioners are taken to have been appointed as Food Safety Officers by the proceedings dated 05.8.2011, the validity of such appointment is highly doubtful. First of all, it was not issued by the Commissioner of Food Safety, but was sent by Director of Public Health and Preventive Medicine. It is not the case of the petitioners that they satisfy Rule 3.1.3. After the notification of the aforesaid Rules in April 2010, the petitioners could not have been appointed unless they had fulfilled those qualifications.

38. In view of the above, the other three writ petitions, namely 22182, 22496 & 24665 of 2011 also deserve to be dismissed. Accordingly, they are dismissed. In fine, all the writ petitions are dismissed. No costs. Consequently, connected M.Ps. are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

RS/kpl

To

1. The Secretary to Government of Tamil Nadu,
Health & Family Welfare,
Fort.St.George, Chennai-9.
2. The Secretary to Government,
Finance Department,
Fort.St.George,
Chennai-9.

3. The Secretary to Government,
Personnel & Administrative Reforms,
Fort.St.George,
Chennai-9.
4. The Director of Public Health & Preventive Medicine,
Teynampet,
Chennai-6.
5. The Commissioner of Food Safety,
Government of Tamil Nadu,
Office of the Director of Health Services,
Teynampet, Chennai-6.
6. The Joint Director, Prevention of Food Adulteration,
Office of the Public Health & Preventive Medicine,
DMS Complex, Teynampet,
Chennai-6.
7. The Joint Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai - 9.

+2cc's to M/s.C.Uma, Advocate, S.R.No.19186 & 19187
+1cc to Mr.G.Sankaran, Advocate, S.R.No.19705
+1cc to Mr.S.M.Subramaniam, Advocate, S.R.No.19967
+1cc to M/s.Row & Reddy, Advocate, S.R.No.19369
+1cc to Mr.V.Raghvachari, Advocate, S.R.No.19229
+1cc to Mr.K.Selvaraj, Advocate, S.R.No.19233
+1cc to the Government Pleader, S.R.No.19671

IN WP.NO.21058 OF 2007
ETC. CASES

RV(CO)
CA(20/04/2015)

सत्यमेव जयते

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