

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.Nos.16488 of 2012, 34494 to 34498 of 2013,
4552 and 4553 of 2015
and Connected MPs

V.Reghuvaran Nair ... Petitioner in W.P.No.16488/12
L.R.Jobin ... Petitioner in W.P.No.34494/13
T.Jose ... Petitioner in W.P.No.34495/13
J.Viju ... Petitioner in W.P.No.34496/13
J.N.Shajin @ Arul ... Petitioner in W.P.No.34497/13
T.Justin Raj ... Petitioner in W.P.No.34498/13
K.Balagopal Nair ... Petitioner in W.P.No.4552/13
T.Sivanandan ... Petitioner in W.P.No.4553/13

versus

1. STATE OF TAMILNADU
REP BY ITS SECRETARY
DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE
FORT ST.GEORGE
CHENNAI 9
2. THE DIRECTOR
PUBLIC HEALTH AND PREVENTIVE MEDICINE
D.M.S. COMPOUND
TEYNAMPET, CHENNAI 18 ... Respondents in all W.Ps

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Mandamus directing respondents to appoint the petitioner as Health Inspector Grade II with effect from 13.1.2011 when 55 others were appointed as such as per G.O.305 issued 1st respondent dt 22.9.2009 with continuity of service arrears of salary appropriate seniority and all other attendant benefits award costs in W.P.No.16488/2012

W.P.Nos.34494 to 34498 of 2013 and 4552 and 4553 of 2015:-

Petitions praying to issue a Writ of Certiorarified Mandamus, Calling for the records on the file of the 2nd respondent bearing No.R.No.51077/ Trg/S1/2011 dated 20.9.2011, 10.10.2011 quash the same as illegal and unconstitutional and consequently direct the respondents to appoint the petitioner as Health Inspector Grade II

with effect from 13.1.2011 when 55 others were appointed as such with continuity of service, arrears of salary, appropriate seniority and all other attendant benefits, award costs and pass such other further orders.

For petitioners Ms.Vaigai, in W.P.Nos.4552 and 4553 of 2015

Ms.Anna Mathew,
in W.P.Nos.16488 of 2012, 34494 to 34498 of 2013

For respondents Mr.M.S.Ramesh,
Additional Government Pleader

COMMON ORDER

The Government of Tamil Nadu have issued a specific order, directing appointment of 55 Diploma Holders, who have successfully completed Sanitary Inspector Course conducted by All India Training Institute of Self Government at Bangalore, Belgaum, Cochin and Mumbai, as Health Inspectors Grade II, after verifying the genuineness of certificates. The second respondent, contrary to the said direction, conducted interview for those 55 candidates along with other candidates sponsored by the employment exchange and 16 other candidates of his choice, who have not been sponsored by the employment exchange, and rejected the candidature of the petitioners herein on the ground that they have not secured the cut off marks.

2. The petitioners are therefore before this Court for a Writ of Mandamus directing the respondents to appoint them as Health Inspector Grade II, in strict compliance of the Government Order in G.O.Ms.No.305 Public Health and Family Welfare Department, dated 22 September 2009.

Brief facts :-

3. The petitioners joined the Sanitary Inspector training course conducted by All India Local Self Government Institution based at Bangalore, Belgaum, Cochin and Mumbai. The certificate issued by the institute is recognized by the Central Government. Similarly, several State Governments have also recognized the Diploma offered by the said institution. The Government of Tamil Nadu insisted that only those candidates who have completed Sanitary Inspector Training Course in Tamil Nadu alone would be appointed as Health Inspector. The petitioners along with others made a request to the Government to consider them for appointment. The Government appointed a one man committee to examine the infrastructure and syllabus followed by the institutions at Belgaum, Jaipur, Mumbai, Bangalore, Ongole and Trivandrum. The Committee, after verification, submitted its report to the effect that the infrastructure and syllabus in those institutions were equal to the training imparted by the institutions

located in Tamil Nadu. The second respondent taking into account the recommendation made by the committee, submitted a proposal dated 26 March 2008, to the Government, recommending to give one time relaxation of Rule 5(b)(iii) of Public Health Subordinate Service ad hoc rules and appoint the petitioners and other Sanitary Inspectors as Health Inspectors Grade II, in the existing posts.

4. The Government, taking into account the recommendation made by the second respondent, issued an order in G.O.Ms.No.305, Public Health and Family Welfare Department, dated 22 September 2009, directing verification of certificates and to appoint all the 55 candidates as Health Inspector Grade II. The second respondent notwithstanding the Government direction to appoint these candidates, called for a list from the employment exchange, fixed cut off marks and interviewed candidates. The petitioners were not given appointment on the ground that they have not secured the prescribed cut off marks.

5. According to the petitioners, the Government have made it very clear that all the 55 Sanitary Inspectors would be accommodated against the existing vacancies. However, contrary to the said Government Order, the second respondent conducted interview, after fixing cut off marks arbitrarily and appointed only a few, out of 55. The petitioners have taken up a further contention that cut off marks were arbitrarily fixed inasmuch as cut off marks for general category was fixed at 19, whereas it was fixed at 20 for Scheduled Caste candidates. The petitioners have taken up a further contention that the second respondent included the names of 16 candidates by back door who have not been sponsored by the employment exchange. The Government subsequently directed the second respondent to cancel the appointment of those 16 candidates as they were appointed through back and side door. The petitioners therefore wanted the second respondent to appoint them also taking into account the large number of vacancies existing in the post of Health Inspector Grade II.

6. The second respondent filed a counter affidavit indicating the procedure adopted for selection to the post of Health Inspector Grade II. According to the second respondent, pursuant to the Government Order in G.O.Ms.No.305 Public Health and Family Welfare Department, dated 22 September 2009, a list of candidates who have studied the said course outside Tamil Nadu was called for from the office of Employment Exchange, Guindy. The second respondent fixed the minimum cut off marks differently for different communities. According to the second respondent, petitioners secured less marks and as such, they were not selected.

Submissions :-

7. Ms.Vaigai, the learned counsel for the petitioners in W.P.Nos.4552 and 4553 of 2015 contended that the Government issued an order in G.O.Ms.No.305 Public Health and Family Welfare Department, dated 22 September 2009, solely for the purpose of accommodating 55

trained Sanitary Inspectors which includes the petitioners. The second respondent without any authority, conducted interview and eliminated eligible candidates. The learned counsel contended that even according to the second respondent, selection was made by conducting interview. According to the learned counsel, the second respondent was not correct in adopting the process of interview and prescribing cut off marks. The learned counsel contended that large number of post of Health Inspector Grade II, are vacant and as such, the petitioners could also be accommodated.

8. Ms. Anna Mathew, learned counsel for petitioners in W.P.Nos.16488 of 2012, 34494 to 34498 of 2013 submitted that the second respondent favoured 16 candidates by calling them for interview. The performance of the petitioners were compared with those 16 candidates and they were ultimately selected. The Government cancelled their appointment. The petitioners therefore should be appointed in their place.

9. The learned Additional Government Pleader submitted that the second respondent adopted a transparent method to select the candidates. All the 55 candidates were interviewed along with candidates sponsored by the employment exchange. According to the learned Additional Government Pleader, the petitioners secured low marks and as such, they were not selected.

The issue :-

10. The core question that arises for consideration is whether the second respondent was justified in holding interview for the purpose of selection notwithstanding the directions issued in G.O.Ms.No.305 Public Health and Family Welfare Department, dated 22 September 2009, to the effect that Director should take necessary action to verify the genuineness of educational qualification certificates and appoint 55 Sanitary Inspectors as Health Inspectors Grade II.

Discussion :-

11. The Government of Tamil Nadu pursuant to the representation submitted by the Sanitary Inspectors who have undergone the diploma course outside Tamil Nadu appointed Dr.Selva Vinayagam, as one man commission, to inspect the concerned institutions and submit a report. The Committee submitted a comprehensive report to the effect that the institutions are having necessary infrastructural facilities. The Committee was of the view that standard of syllabus in all those institutions is on par with the Health Worker Training syllabus adopted by the Public Health Department, Chennai. Based on the said report, Director of Public Health and Preventive Medicine, the second respondent herein, made a recommendation to the Government to relax the provisions of the ad hoc rules as a special case, so as to appoint the Diploma Holders from Tamil Nadu who have completed training elsewhere as Health Inspector Grade II. The Government examined the issue and ultimately relaxed Rule 5(b)(iii) of Public

Health Subordinate Service adhoc rules for the post of Health Inspector Grade II, by facilitating the appointment of persons belonging to the State of Tamil Nadu who have completed the required training as Sanitary Inspectors, for appointment to the post of Health Inspectors Grade II.

12. The Government, in paragraph 8 of the order in G.O.Ms.No.305, dated 22 September 2009, issued the following direction to the Director of Public Health and Preventive Medicine.

"8. The Director of Public Health and Preventive Medicine is requested to take necessary action to verify the genuineness of the educational qualification certificates and to appoint them as Health Inspector Grade II".

13. The original file produced by the learned Additional Government Pleader shows that the second respondent, instead of appointing 55 candidates, including the petitioners, as per the order in G.O.Ms.No.305, dated 22 September 2009, constituted a committee to interview the candidates. The second respondent requested the employment exchange to forward a list of candidates. Those candidates were also interviewed along with the petitioners. The second respondent, in addition to the candidates sponsored by the employment exchange, interviewed 16 other candidates who were neither the beneficiaries of the Government Order in G.O.Ms.No.305 nor sponsored by the employment exchange.

14. The selection file shows that the second respondent fixed cut off marks in the following manner :-

S.No.	Category	Total number of candidates	Minimum of cut off marks
1	GT	17	19
2	BC	14	20
3	BC (M)	1	21
4	MBC	11	20
5	SC	9	20
6	SC (A)	1	19
7	ST	-	-
	Total	53	

15. The file does not contain any material to show that marks were awarded by the Selection Committee, taking into account different aspects like personality, qualification, experience etc. Candidates were given marks out of 30. Criteria adopted by the Selection Committee to assess the merit is not clear from the file. Even the minutes of the Selection committee is not found in the file. Though it was recorded in the file notes that 250 questions would be

prepared, there is nothing on record to show that questions were prepared and marks were given on the basis of answers given by the candidates. The second respondent arbitrarily fixed the cut off marks and arbitrarily awarded marks also. There was no direction from the Government to conduct interview for selecting candidates. The Government have issued the order very specifically to accommodate 55 Sanitary Inspectors who have undergone Diploma Course outside the State. Such being the position, the second respondent was not justified in conducting interview for the purpose of elimination of candidates named in the Government Order in G.O.Ms.No.305, dated 22 September 2009.

16. The second respondent adopted back door method to accommodate 16 candidates who were earlier employed on daily wages. Those 16 persons were appointed after rejecting the candidature of the petitioners. The Government subsequently noted this illegality and fraud and issued a show cause notice to the second respondent. The second respondent in its explanation admitted that those 16 candidates were not sponsored by the employment exchange. According to the second respondent, 16 candidates were appointed temporarily in 2011 and they have been working for the past 5 months. The second respondent requested the Government to ratify the selection taking into account the fact that there are more number of vacancies existing in the post of Health Inspector. The Government, not convinced with the explanation, by order dated 28 September 2011, directed the second respondent to cancel the appointment of 16 candidates whose names were not sponsored by the employment exchange. The second respondent issued a consequential order cancelling all the 16 appointments. Therefore, it is very clear that the second respondent adopted a dubious method to eliminate the named Sanitary Inspectors for whose benefit the order in G.O.Ms.No.305, dated 22 September 2009 was issued. The second respondent also tried to appoint 16 candidates through back door, to the exclusion of eligible candidates like the petitioner.

17. The Courts have, time and again, deprecated the practice of conducting selection only by the method of interview. In the subject case, there was no written test. It was 100% interview. Cut off marks were fixed without any rationale. Marks were also awarded in a highly arbitrary manner.

18. The Government have taken a conscious decision to accommodate 55 Sanitary Inspectors from Tamil Nadu who have undergone their studies outside the State. The Government have made it very clear that the Order was issued for appointing the unemployed persons belonging to Tamil Nadu who have completed diploma course for the post of Sanitary Inspector. Their names were shown in the annexure to the Government Order. The second respondent was expected only to verify the certificates of named candidates and appoint them as Health Inspector Grade II. The second respondent, by giving a go-by to the Government Order, adopted his own procedure and appointed

individuals of his choice, who were neither recommended by employment exchange nor covered by Government Order in G.O.Ms.No.305 dated 22 September 2009. The petitioners are therefore correct in their contention that the selection is liable to be set aside.

19. The further question is as to whether this Court should set aside the selection made in the year 2011.

20. The selected candidates are not before this Court.

21. The learned Additional Government Pleader on instructions, submitted that there are several vacancies in the post of Health Inspector Grade II. Such being the factual position, I am of the view that interest of justice would be sub-served by directing the respondents to appoint the petitioners as Health Inspectors Grade II, pursuant to the Government Order in G.O.Ms.No.305 dated 22 September 2009, without setting aside the selection already made.

22. The Government have already granted age relaxation to the petitioners and similarly placed Sanitary Inspectors who have undergone Diploma Course outside the State. Age limit is therefore not a problem for appointing the petitioners as Health Inspector Grade II. It is also not necessary to disturb the appointment of others in view of large number of vacancies in the post of Health Inspector Grade II. I am therefore of the view that immediate steps should be taken by the respondents to appoint the petitioners as Health Inspectors Grade-II.

Disposition :-

23. In the result, a writ in the nature of a Writ of Mandamus is issued, directing the respondents to appoint the petitioners as Health Inspector Grade II, in the light of Government Order in G.O.Ms.No.305 Public Health and Family Welfare Department, dated 22 September 2009 and more particularly, paragraph 8 of the said order. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

24. In the upshot, I allow the Writ Petitions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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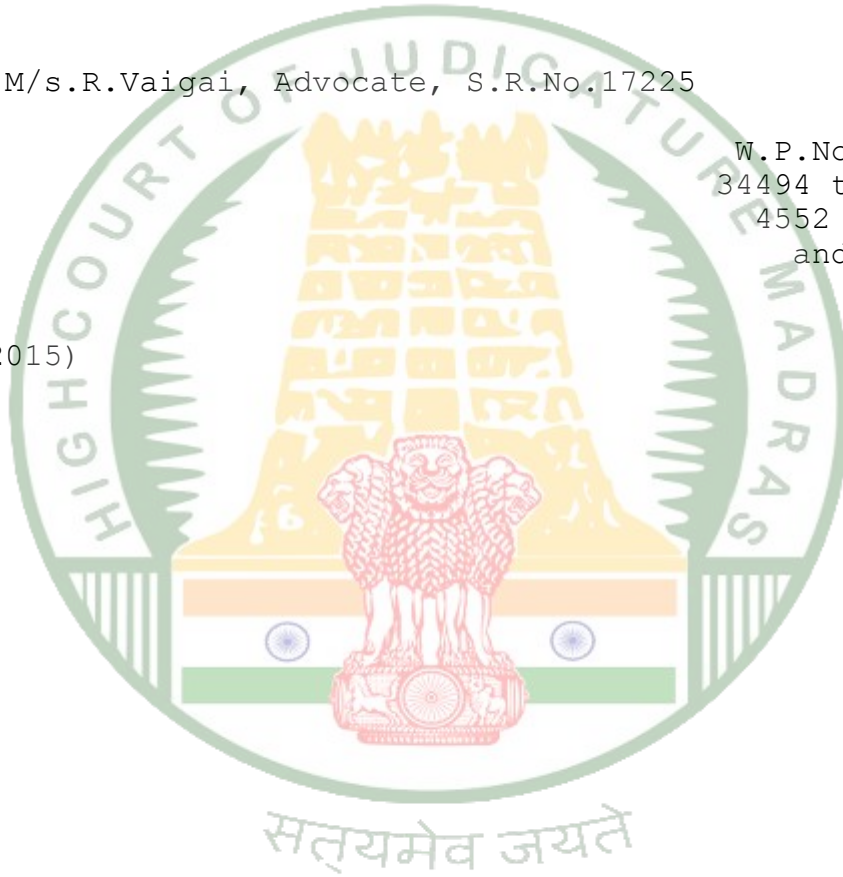
To

1. THE SECRETARY
DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE
FORT ST.GEORGE
CHENNAI 9
2. THE DIRECTOR
PUBLIC HEALTH AND PREVENTIVE MEDICINE
D.M.S. COMPOUND
TEYNAMPET, CHENNAI 18

+2cc's to M/s.R.Vaigai, Advocate, S.R.No.17225

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34494 to 34498 of 2013,
4552 and 4553 of 2015
and Connected MPs.

SAI(CO)
CA(21/04/2015)



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