



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.02.2015

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)Nos.11010 to 11016 of 2011

T.GURUNATHAN ... Petitioner in WP(MD). 11010/ 2011
R.THANGASAMY ... Petitioner in WP(MD). 11011/ 2011
P.KANNAN ... Petitioner in WP(MD). 11012/ 2011
K.RAVICHANDRAN ... Petitioner in WP(MD). 11013/ 2011
S.RAVISANKAR ... Petitioner in WP(MD). 11014/ 2011
J.GREGORY ... Petitioner in WP(MD). 11015/ 2011
P.SIVAKUMAR ... Petitioner in WP(MD). 11016/ 2011

Vs.

- 1.The State of Tamil Nadu,
Rep. by it's Secretary to Government,
Health and Family Welfare Department,
Chennai-9.
- 2.The Director,
Public Health and Preventive Medicine,
DMS Compound,
Teynampet,
Chennai-6.

... Respondents in all WPs

Prayer in W.P(MD).Nos.11010 to 11016 of 2011:

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to promote the petitioner to the post of Health Inspector Grade I retrospectively w.e.f., 12.04.1995, 10.07.1994, 01.07.1996, 03.07.1996, 24.07.1994, 12.04.1995 and 28.06.1996 respectively in accordance with the ad-hoc rules framed under Article 309 of the Constitution of India under G.O.Ms.No.1507 dated 16.08.1989 and in the light of the recommendation made by the 2nd respondent in his proceedings No.1/nU.1/2010 dated 06.06.2011 with all monetary benefits within the period that may be stipulated by this Hon'ble Court.



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For Petitioner : Mr. Ajmal Khan
Senior Counsel for
M/s. Ajmal Associates
For Respondents : Mr. M. Murugan
Govt. Advocate

COMMON ORDER

Since the issue involved in these writ petitions are one and the same a common order is passed.

2. The petitioners have come up with these writ petitions to direct the 1st respondent to promote the petitioners to the post of Health Inspector Grade I retrospectively w.e.f., 12.04.1995, 10.07.1994, 01.07.1996, 03.07.1996, 24.07.1994, 12.04.1995 and 28.06.1996 respectively in accordance with the ad-hoc rules framed under Article 309 of the Constitution of India under G.O.Ms.No.1507 dated 16.08.1989 and in the light of the recommendation made by the 2nd respondent in his proceedings Na.Ka.No.116911/gBeh.1/nU.1/2010 dated 06.06.2011 with all monetary benefits within a period that may be stipulated by this Hon'ble Court.

3 The first respondent implemented Multipurpose Health Workers Scheme in the year 1982. The first respondent framed ad-hoc Rules under Article 309 of the Constitution of India in G.O.Ms.No.1507 Health Indian Medicine & Homeopathy & Family Welfare Department, dated 16.08.1989. The qualification for appointment to the post of Multipurpose Health Assistant is a pass in S.S.L.C., and certificate granted by the Director of Public Health and Preventive Medicine or by any other recognized institute approved by the Government of Tamil Nadu for having undergone the long term Multipurpose Health Worker Training Course.

4. The petitioners were appointed as Multipurpose Health Assistants after being sponsored through Employment Exchange and undergoing one year training given by the first respondent.

5. The post of Multipurpose Health Assistant was re-designated as Health Inspector, Grade-II, which is the feeder category of Health Inspector Grade-I. As per the ad-hoc Rules, the qualification for appointment to the post of Health Inspector Grade-I is 5 years experience in Health Inspector Grade-II.

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6. The petitioners had completed 5 years of service as Health Inspector Grade-II as on 12.04.1995, 10.07.1994,



01.07.1996, 03.07.1996, 24.07.1994, 12.04.1995 and 28.06.1996 respectively. The first respondent by G.O.Ms.No.593, dated 11.09.1995 fixed qualifying experience as 20 years of service in Health Inspector Grade-II for upgradation as Health Inspector Grade-I. In view of the said G.O., the petitioners were not promoted as Health Inspector Grade-I. The said G.O., is contrary to the ad-hoc rules framed under Article 309 of the Constitution of India. Subsequently, the first respondent issued a clarification by his letter No.48575/N2/2000-9, dated 28.05.2002 stating that the G.O.Ms.No.593 regarding promotion is applicable only to persons absorbed as Multipurpose Health Assistants and will not apply to directly recruited Multipurpose Health Assistants now re-designated as Health Inspector Grade-II, appointed as per ad-hoc rules issued in G.O.Ms.No.1507, dated 16.08.1989.

7.While so, the first respondent decided to integrate the Leprosy Control scheme with Multipurpose Health Workers Scheme and issued G.O.Ms.No.320, dated 29.06.1997. The Leprosy Inspectors were re-designated as Health Inspector Grade-I B as they did not have any necessary training as per Adhoc Rules. Subsequently, the first respondent issued G.O.Ms.No.382, Health and Family Welfare (N1) Department, dated 12.10.2007 re-designating the candidates, who were working as Health Inspector Grade-I B to Health Inspector Grade-I w.e.f., 12.10.2007 and they were placed Juniors to the candidates in the cadre of Health Inspector Grade-I, who are already working as Health Inspector Grade-I. The petitioners were promoted as Health Inspector Grade-I on 01.02.2006. Hence there redesignated persons were shown as Juniors.

8.The Erstwhile Leprosy Inspector redesignated as Health Inspectors Grade-I challenged Clause i,iv and v of G.O.Ms.No.382, dated 12.10.2007 by filing a writ Petition in W.P.No.17578 of 2008 before the Principal Bench of this Court. This Court by the order, dated 23.07.2010 allowed the writ petition. As per the orders of this Court Leprosy Inspectors were re-designated as Health Inspector Grade-I with retrospective effect from 01.08.1997. By this order, the petitioners and others become juniors.

9. The first respondent filed S.L.P(Civil) No.4572 of 2011 challenging the order dated 23.07.2010 of this Court made in W.P.No.17578 of 2008. The petitioners and others similarly placed persons filed batch of writ petitions praying for direction to retrospectively promote them as Health Inspector Grade-I from the date they become eligible to be promoted. This Court by the order, dated 13.07.2007 with a direction to the respondents to consider their case for regularization from the date of acquiring qualification for promotions.



10. The petitioners and others through their Association gave a representation, dated 28.02.2011 to the second respondent. The second respondent sent a recommendation to the first respondent by his proceedings dated 06.06.2011 stating that the petitioners are eligible for promotion as Health Inspector Grade-I w.e.f., 1995. The first respondent has not taken any action on the representation, dated 28.02.2011 and proceedings of the second respondent, dated 06.06.2011. Therefore, the petitioners have filed the present writ petitions for the relief stated supra.

11. The second respondent filed a common counter denying the various averments made by the petitioners. The second respondent in the counter stated that:-

a) The Health Inspectors Grade-II are eligible for promotion to Health Inspectors Grade-I on completion of 5 years of service.

b) The promotion is subject to availability of vacancies.

c) There were 963 excess staff in Multipurpose Health supervisor (Health Inspector Grade-I). They were allowed to continue in the said post till their retirement.

d) Persons, who were absorbed as Health Inspector Grade-II were promoted as Health Inspector Grade-I on completion of 20 years of service.

e) The first respondent by policy decision integrated Leprosy Control Scheme with Public Health Department.

f) Health Inspectors working in Leprosy Control Scheme on integration were designated as Health Inspectors Grade-I B. Subsequently, they were re-designated as Health Inspector Grade-I from the date of re-designation.

g) Health Inspectors Grade-II cannot claim automatic promotion to Health Inspectors Grade-I. However the second respondent has sent proposal to the first respondent by the proceedings in R.No.116911/M.P.2/S1/2010 dated 06.06.2011 and the same is under consideration of the first respondent.

h) On the writ petitions filed by the erstwhile leprosy control scheme employees, this Court held that they should be treated as Health Inspectors Grade-I with effect from 01.08.1997.

i) The Division Bench of this Court directed the Leprosy Inspectors on integration into Multipurpose Health Inspectors as on 01.08.1997 should be treated as Health Inspector Grade-I and they should be given promotion as Block Health Supervisor and Technical



j)The Special Leave Petitions have been filed by the affected individuals and service associations were dismissed by the Apex Court on 23.07.2010.

k) The provisional seniority list in the posts of Health Inspector Grade I has been prepared with the following categories of personnel and published.

a. Qualified and unqualified Health Inspectors promoted as Health Inspector Grade I during the year 1995.

b. Re-designated Health Inspector Grade I as on 01.08.1997.

c. The Lab Assistants promoted as Health Inspector Grade I during the year 1998.

d. Health Inspector Grade II promoted as Health Inspector Grade I during the year 2005 and 2006.

e. The Laboratory Assistants promoted as Health Inspector Grade I during the year 2008-2009.

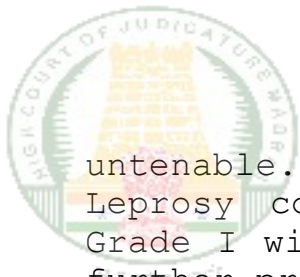
f. The Health Inspector Grade II promoted as Health Inspector Grade I during the year 2012.

12. In view of the above, the learned counsel appearing for the respondents prayed for dismissal of the writ petition.

13. Heard Mr.Ajmal Khan, learned counsel appearing for the petitioners and Mr.M.Murugan, learned Government Advocate appearing for the respondents.

14. The learned Senior counsel for the petitioner contended that the petitioners are entitled to be promoted as Health Inspector Grade-I on completion of 5 years of service as Health Inspector Grade-II. Due to confusion created by G.O.Ms.No.592, dated 11.09.1995 where the qualifying experience was fixed as 20 years for promotion from Health Inspector Grade-II to Health Inspector Grade-I, the petitioners were not promoted on completion of 5 years of service. Therefore, the senior counsel for the petitioner contended that the petitioners are entitled to be promoted as Health Inspector Grade-I on completion of 5 years of service before 01.08.1997 when the employees of erstwhile Leprosy Control scheme were re-designated as Health Inspector Grade-I. In that case, the petitioner's will be seniors to such designated Health Inspector Grade-I. The said contention of the senior counsel has considerable force.

15. The contention of second respondent that promotion from Health Inspector Grade II to Health Inspector Grade I on completion of 5 years is not automatic and promotion can be made only on availability of vacancy and there were excess staff are



untenable. By the order of this Court erstwhile employees of Leprosy control scheme were redesignated as Health Inspector Grade I with retrospective effect and also being considered for further promotion.

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16. The second respondent sent a recommendation to the first respondent on 06.06.2011 for promotion of petitioners on completion of 5 years of service. In view of the said recommendation, it is not open to the second respondent to now contend that the relief sought for by the petitioners are not feasible.

17. In such circumstances, the first respondent is directed to consider the promotion of the petitioners as Health Inspector Grade I with effect from 12.04.1995, 10.07.1994, 01.07.1996, 03.07.1996, 24.07.1994, 12.04.1995 and 28.06.1996 respectively taking into account the Health Inspector Grade II are entitled to promotion as Health Inspector Grade I on completion of 5 years of service and the recommendation of second respondent and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

18. With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare Department,
Chennai-9.

2. The Director,
Public Health and Preventive Medicine,
DMS Compound,
Teynampet, Chennai-6.

+7cc to M/s. Ajmal Associates, Advocate Sr.No. 8940

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AA/10.03.2015/6p- 10c/

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