

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.15780 of 2015, 11255 & 15004 of 2016

W.P.No.15780 of 2015:

The Tamil Nadu State Food Safety  
Officers Welfare Association  
Madhavaram, Chennai-60  
rep by its General Secretary  
Mr.A.Rajhagopal

.. Petitioner

-vs-

1. The State of Tamil Nadu  
rep by its Principal Secretary  
Health and Family Welfare Department  
Fort St.George, Chennai
  2. The Commissioner of Food Safety  
Tamil Nadu Food Safety and  
Drug Administration Department  
359, Anna Salai, Chennai-6
  3. The Director of Public Health  
and Preventive Medicine  
Government of Tamil Nadu  
359, Anna Salai, Chennai-6
  4. Tamil Nadu Food Safety Officers Association  
Reg.No.273/2012 rep by its Secretary  
R.Rabindranath, S/o A.Ramamurthy  
No.17/19, Thiruneermalai Road  
Nagalkeni, Chrompet, Chennai 600 044  
(R4 impleaded as per order dt.17.2.2016  
in M.P.No.2/2015 in W.P.No.15780/15)
  5. Tamil Nadu Food Safety Department  
Officials Association rep by its State Secretary  
B.Edward Vedanayagam  
S/o S.Benjamin  
No.82/95, Seran Salai  
Therkku Kadu, Attur Post  
Salem  
(R5 impleaded as per order dt. 27.4.2016  
in W.M.P.No.1601 of 2016 in W.P.No.15780/15)
- Respondents ..

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, forbearing the respondents from making any promotion, finalising seniority or resorting to transfer in violation of the rules without first implementing directions of this Hon'ble Court in W.P.No.24952 of 2013 dated 21.8.2014.

For Petitioner :: Mr.V.Vijay Shankar

For Respondents :: Mr.A.Kumar  
Special Government Pleader  
for R1 to R3  
Mr.R.Singaravelan  
Senior Counsel for  
Mr.R.Jayaprakash for R4  
Mr.M.Guruprasad for R5

W.P.Nos.11255 & 15004 of 2016:

P.Vijayakumar ... Petitioner in W.P.No.11255 of 2016  
S.Kesavaraj ... Petitioner in W.P.No.15004 of 2016

-vs-

The Commissioner  
Department of Food Safety and  
Drug Administration  
5<sup>th</sup> Floor, DMS Campus  
359, Anna Salai  
Teynampet, Chennai 600 006 ... Respondent in both the W.P's

W.P.No.11255 of 2016 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent to consider the representation dated 12.03.2016, to consider for a transfer to the vacant positions either at Vadamadurai Block or Natham Block or at Palani Block at Dindigul District within a time stipulated by this Hon'ble Court.

W.P.No.15004 of 2016 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent to consider the representation dated 29.03.2016, for a transfer to the vacant positions either at Coimbatore Corporation Saibaba Colony, Race Course, RG Street-I, RG Street-II or at Vadavalli, which is near to petitioner's parents' place of residence to take care of petitioner ageing father and mother within a time stipulated by this Hon'ble Court.

For Petitioners            ::     Mr.K.Krishna  
For Respondent            ::     Mr.S.Gunasekaran  
                                         Additional Government Pleader

COMMON ORDER

The General Secretary of Tamil Nadu State Food Safety Officers Welfare Association, Madhavaram, Chennai has brought the Writ Petition No.15780 of 2015 seeking a writ of mandamus or direction forbearing the official respondents from making any promotion, finalising the seniority or resorting to transfer in violation of the rules without first implementing the directions of this Court in W.P.No.24952 of 2013 dated 21.8.2014.

2. Mr.V.Vijay Shankar, learned counsel appearing for the petitioner Association has submitted that the members of petitioner Association, consisting of 148 members, are working as Food Safety Officers under the jurisdiction of the Commissioner, Tamil Nadu Food Safety and Drug Administration Department, the second respondent herein. He has also submitted that the members of the petitioner Association were previously working as Sanitary Inspectors/Sanitary Officers in different Corporations/Municipalities/Town Panchayats and all of them have successfully undergone the Food Inspector Training under Rule 8 of the Prevention of Food Adulteration Rules, 1955. Thereafter, they were notified as Food Inspectors under the said Rule and were discharging the duties of Food Inspectors in the respective departments and that their services were governed by the Tamil Nadu Municipal Public Health Services Regulations, 1970. While so, there were other officers working in the rural areas who are in different categories such as Health Inspector Grade-I, Grade-IB and Health Inspector Grade-II and working in different Primary Health Centres under the control of the Director of Public Health and Preventive Medicine with a lower scale of pay compared to the scale of pay received by the members of the petitioner Association. However, on account of the acute shortage of Food Inspectors, the Government permitted such Health Inspectors working in the Primary Health Centres to be posted as Food Inspectors in the rural areas and their services are governed by the Tamil Nadu Public Health Subordinate Service Rules. In this background, he has stated that there are two sets of Food Inspectors, one working in urban areas like the members of the petitioner Association and others working in the rural areas.

3. It is the further claim of the learned counsel for the petitioner that all the members of the petitioner Association were directly recruited as Sanitary Inspectors in different

urban areas. However, they were later on designated as Food Inspectors under the Prevention of Food Adulteration Rules, 1955 and after coming into force of the Food Safety Act, all of them have been absorbed by the second respondent as Food Safety Officers. On the other hand, the Health Inspectors Grade-I came from lower cadre such as Health Inspector Grade-IB and Grade II carrying lesser pay scale and promoted from the lower post. At the same time, the members of the petitioner Association are directly recruited officers to the post of Sanitary Inspector. Hence the services of the officers working in urban areas and rural areas are covered by different sets of rules which are not interchangeable, because their scales of pay are also different with the persons working in the urban areas. Besides, in terms of Section 73-A of the Tamil Nadu District Municipalities Act, the officers of municipalities and corporations like the members of the petitioner Association cannot be transferred to rural areas, but they can be transferred only to the municipal or corporation areas, because there is a legal embargo for transfer of officers from urban areas to rural areas and vice versa. The Government has also not so far framed any service regulations providing for the absorption of the urban and rural officers as envisaged under the Food Safety and Standards Act. Without preparing the seniority list of Food Safety Officers, the official respondents are attempting for the counselling and resorting to transfers by interchanging the two different categories of officers working in urban and rural areas. Therefore, the petitioner Association filed W.P.No.24952 of 2013 seeking a writ of mandamus to forbear the respondents 1 & 2 therein from drawing up any seniority list/panel of Food Safety Officers working under the second respondent for posting, counselling, promotion, without first framing the service regulations, guidelines based on the date of respective Food Safety Officers discharging their duties as Food Inspectors and not otherwise. One Mr.V.Raveendran also filed another W.P.No.24661 of 2013 seeking a writ of mandamus to direct the respondents to finalise the seniority list for the post of Food Safety Officer appointed as per the notification in G.O.Ms.No.151, Health and Family Welfare (AB2) Department dated 20.4.2012, based on the scale of pay for the post of Food Inspector and the date of appointment to the post of Food Inspector on acquiring requisite qualification as per Rule 8 of the Prevention of Food Adulteration Rules, 1955 and to proceed with the counselling for transfer on such seniority within a time frame to be fixed by this Court. This Court, by order dated 21.8.2014, accepting the counter affidavit filed by the Commissioner of Tamil Nadu Food Safety and Drug Administration Department, the second respondent therein that the fixation of seniority would be taken note of after framing of the Rules for the post of Food Safety Officer, directed the Government to form a Committee as per the letter dated 21.1.2013 addressed by the Commissioner of Tamil Nadu Food Safety and Drug Administration

Department and to give instructions to the Committee to frame rules within a period of six months from the date of the order with a further direction to the respondents therein not to fix the seniority till the exercise of framing of Rules was over.

4. Narrating the above chain of events, the learned counsel for the petitioner further submitted that though the six months time limit got expired, the respondents are trying to disturb the existing scenario by means of transferring the Food Safety Officers from the urban areas to the rural areas and vice versa and such act on the part of the respondents would greatly disturb the existing working arrangement and place the members of the petitioner Association in a disadvantageous position. On this basis he prayed for issuance of a writ of mandamus, forbearing the official respondents from making any promotion, finalising the seniority or resorting to transfer in violation of the rules without first implementing the order passed by this Court in W.P.No.24952 of 2013 dated 21.8.2014, on the repeated ground that the members of the petitioner Association cannot be transferred to rural areas and the officers from the rural areas cannot seek for transfer to urban areas, because there is an embargo under Section 73-A of the Tamil Nadu District Municipalities Act for the official respondents to make such transfers.

5. A detailed counter affidavit has been filed by the respondents 1 to 3. Mr.A.Kumar, learned Special Government Pleader appearing for the official respondents urged this Court to dismiss the writ petition, as it is neither maintainable factually nor legally. Repelling the contention made by the petitioner's counsel that there were two sets of Food Inspectors, one set of officers working in urban areas and others working in rural areas receiving different scales of pay, he submitted that the said contention is totally false and misconceived, inasmuch as as G.O.Ms.No.347, Health and Family Welfare (AB2) Department dated 20.12.2011 directed the creation of 385 posts of Food Safety Officers for rural areas and 199 posts of Food Safety Officers for urban areas in the same scale of pay of Rs.9300-34800+GP 4400. The said Government Order also further made it clear that the office of the Food Safety Officer should be established in the respective Block Primary Health Centre in the rural area and in the respective Corporation/Municipality in respect of the urban area. Therefore, there is no difference in the scale of pay between the officers working in the rural area and urban area, as all of them are receiving the same scale of pay. Adding further, the learned Special Government Pleader submitted that though separate orders for the appointment of Food Safety Officers in the rural and urban areas were made, the scale of pay for all of them is one and the same. When the second respondent herein, in exercise of powers conferred under Section 37 of the Food Safety

and Standards Act, appointed 544 Food Safety Officers for the purpose of performing the functions under the Act, Rules and the Regulations made thereunder, the question of absorption in the Tamil Nadu Food Safety and Drug Administration Department will arise only after framing of the service rules, which is under progress.

6. Continuing his arguments, he submitted that in the Department of Tamil Nadu Food Safety and Drug Administration, there is no post of Health Inspector Grade-IB and Grade-II, because all the Food Safety Officers working in the rural and urban areas are receiving the same scale of pay. This apart, till this date, no promotion has been given to the Food Safety Officers, because as on today, there is no avenue of promotion to them and that the promotion may be created only after the framing of the service rules in this regard. Since the question of seniority arises from the date of joining the post and after framing of the service rules, the department is at liberty to transfer the Food Safety Officers from one place to another place based on the counselling for the welfare of the Food Safety Officers. With regard to the general transfer counselling, he submitted that the Tamil Nadu Food Safety Officers Association with Registration No.273 of 2012, in their letter dated 12.2.2015, has requested for conduct of the general transfer counselling for the Food Safety Officers who are working far away from the city and the order passed by this Court in W.P.Nos.24661 & 24952 of 2013 dated 21.8.2014 does not injunct or prohibit the holding of such transfer counselling. He also submitted that the order of transfer will be issued only to those who are in the service cadre, for which the members of the petitioner Association will not be affected in any manner. He also further submitted that when all the 148 members of the petitioner Association working as Food Safety Officers have given a declaration that they are willing to work as Food Safety Officers in common mode, the question of disturbance between the members of the petitioner Association and others will not arise. Therefore, the petitioner Association cannot raise the question of any dispute regarding the designated officers like Doctors as they are not the members of the petitioner Association. Again replying to the contention of the petitioner's counsel that there is an embargo for the respondents under Section 73-A of the Tamil Nadu District Municipalities Act to make the transfer, the learned Special Government Pleader submitted that the said provision will be attracted only if the officers are willing to get promotion in their parent department and in the absence of any service rules for the Food Safety Officers, it is not necessary to refer to the said provision. Concluding his arguments, he submitted that in tune with the direction issued by this Court in W.P.Nos.24661 & 24952 of 2013 dated 21.8.2014, a Committee has been constituted in G.O.(D) No.253 dated 21.8.2014 and the framing of rules is also under progress. Once

the process gets over, the Rules will be issued in due course after getting approval from the Government. Therefore, he submitted that the petitioner Association cannot canvass the prayer sought for in the writ petition.

7. Mr.R.Singaravelan, learned senior counsel appearing for the fourth respondent/Tamil Nadu Food Safety Officers Association with Registration No.273 of 2012 has submitted that when there is no service rules framed, no seniority has been till date fixed. While so, when all of the officers are working in the same station from the date of notification without any transfer, the Government came forward to conduct the transfer counselling. Opposing the conduct of transfer counselling, the petitioner Association and another filed W.P.Nos.24952 & 24661 of 2013 seeking to frame the service rules and to fix the seniority. This Court had also, by order dated 21.8.2014, directed the Government to form a Committee with further instructions to the Committee to frame the rules within a period of six months therefrom, in the meanwhile, not to fix the seniority till the framing of rules was made. Therefore, the fourth respondent Association filed W.P.No.17249 of 2015 seeking a mandamus to the second respondent to conduct the general transfer counselling, in the light of the proceedings issued by the Government in Letter No.21755/AB2/2013-1 dated 20.8.2013, by considering their representation dated 12.2.2015. This Court, by order dated 17.6.2015, disposed of the said writ petition with a direction to the second respondent to consider the said representation in the light of the aforementioned proceedings and to pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of copy of the order. Thereafter, when the second respondent proposed to conduct the counselling, the writ petitioner has stalled the proceedings by showing the order passed in W.P.Nos.24661 & 24952 of 2013 dated 21.8.2014, which speaks only about the seniority/promotion and not about the transfer. This apart, the petitioner Association has also filed W.P.No.21418 of 2014 for the very same relief and withdrew the same. In view of their conduct in withdrawing the writ petition with the same prayer, the respondents 1 to 3 are entitled to proceed with the arrangements for holding the general transfer counselling, in which all the members of the petitioner Association can also take part. Therefore, the petitioner Association cannot have any grievance now, when the members of the said Association are also entitled to take part in the general transfer counselling.

8. Mr.M.Guruprasad, learned counsel appearing for the impleaded fifth respondent, namely, the Tamil Nadu Food Safety Department Officials Association also adopted the arguments of the learned senior counsel for the fourth respondent.

9. Heard the learned counsel for the parties.

10. I find full force in the submissions made by the learned Special Government Pleader for the respondents 1 to 3 and the learned senior counsel for the respondent No.4 and the learned counsel for the respondent No.5. At the outset, it is more pertinent to refer to the order passed by this Court in W.P.Nos.24952 & 24661 of 2013 filed by the petitioner Association and another, wherein this Court, by order dated 21.8.2014, has observed as follows:-

"2. The second respondent filed a counter affidavit and in paragraph No.7, it is stated that the fixation of seniority will be taken note of after framing of Rules for the above post.

3. It is submitted by the learned counsel for the petitioners that the statement made in paragraph No.7 of the counter affidavit may be recorded and the Government may be directed to frame rules within a short period and thereafter proceed with the fixation of seniority.

4. It is submitted by the learned Government Advocate that as per the letter dated 21.01.2013, issued by the Commissioner in/c, Tamil Nadu Food and 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."

11. In deference to the above direction, a Committee has been formed in G.O.(D)No.253 dated 21.8.2014 and the counter affidavit filed by the respondents 1 to 3 has also made it clear that the service rules will be framed after getting concurrence from the Government. However, due to administrative exigencies,

since the fourth respondent Association has made a representation dated 12.2.2015 seeking a mandamus to conduct transfer counselling for the Food Safety Officers who are working far away from the city to come to urban areas, the respondents have decided to issue the orders of transfer only to those who are in the service cadre. As the members of the petitioner Association are not going to be affected because of this process of counseling for general transfer, they cannot ask for any injunction against the respondents not to hold any general transfer counselling. Therefore, their prayer in this regard is repelled. In addition thereto, G.O.Ms.No.347, Health and Family Welfare (AB2) Department dated 20.12.2011 makes it clear that the pay scale for 385 posts of Food Safety Officers for rural areas and 199 posts of Food Safety Officers for urban areas has been fixed at Rs.9300-34800+GP 4400. The said Government Order has also accorded sanction for the creation of 385 posts of Food Safety Officers for rural areas and 199 posts of Food Safety Officers for urban areas in the aforesaid scale of pay with the object of implementing the Food Safety and Standards Act, 2006 and the Rules made thereunder in the areas notified. When the said order also further states that the offices of the Food Safety Officers should be established in the respective Block Primary Health Centre in the rural area and in the respective Corporation/Municipality in respect of urban area, the weak argument advanced by the learned counsel for the petitioner that there is a difference in the scales of pay between the officers working in the urban areas and rural areas, is totally untenable and unacceptable. Hence, the petitioner is not entitled to maintain the writ petition.

12. As rightly submitted by the learned Special Government Pleader for the respondents 1 to 3, though separate appointment orders for the Food Safety Officers in the rural and urban areas were made, since the scale of pay for all of them is one and the same, the second respondent-Commissioner, in exercise of powers conferred under Section 37 of the Food Safety and Standards Act, had appointed 544 Food Safety Officers and therefore the prayer of the petitioner Association that no one should be transferred from the rural area to urban area and vice versa is totally misconceived. This apart, the order passed by this Court in W.P.Nos.24661 & 24952 of 2013 on 21.8.2014 does not prohibit or injunct the respondents from holding the general transfer counselling. Therefore, it is not open for the petitioner to maintain the prayer for injunction. Moreover, when administrative exigency arises for transfer in public interest, the appointing authority is always legally empowered to effect such transfers. Only in this background, the general transfer counselling has been organised. Therefore, I do not find any justification on the part of the petitioner Association to canvass the prayer for not holding the transfer counselling. It is also not in dispute that all the 148 members of the

petitioner Association working as Food Safety Officers have already given a declaration that they are willing to work as Food Safety Officers in common mode. Therefore, the averment that the members of the petitioner Association will not work in rural areas and the officers working in rural areas should not be transferred to urban areas, is also again misplaced and the same is liable to fall to the ground.

13. For all the aforementioned reasons, W.P.No.15780 of 2015 fails and it is accordingly dismissed. Consequently, interim order stands vacated and the M.P.Nos.1 & 3 of 2015, W.M.P.Nos.5925 & 5926 of 2016 are also dismissed. No costs.

14. In the light of the above, Writ Petition Nos.11255 & 15004 of 2016 filed by Mr.P.Vijayakumar and Mr.S.Kesavaraj seeking for a writ of mandamus, directing the respondent-Commissioner, Department of Food Safety and Drug Administration, Chennai to consider their representations dated 12.3.2016 and 29.3.2016 for transfer to vacant positions either at Vadamadurai Block or Natham Block or Palani Block at Dindigul District and either at Coimbatore Corporation Saibaba Colony or at Vadavalli respectively, also cannot be entertained, since they can very well make the prayer for transfer as and when the respondents 1 to 3 hold the general transfer counselling. Accordingly, W.P.Nos.11255 & 15004 of 2016 are also dismissed. No costs.

Sd/-  
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

ss

To

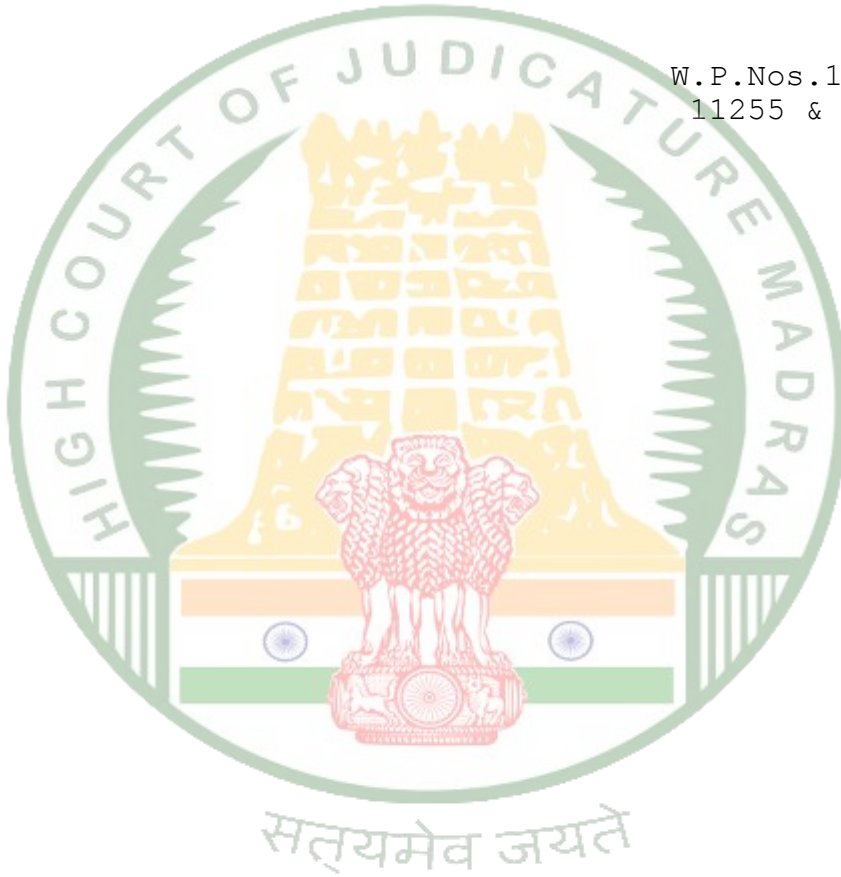
1. The Principal Secretary to Government  
Health and Family Welfare Department  
Fort St.George  
Chennai 600 009
2. The Commissioner  
Tamil Nadu Food Safety and  
Drug Administration Department  
359, Anna Salai  
Chennai 600 006

3. The Director of Public Health  
and Preventive Medicine  
359, Anna Salai  
Chennai 600 006

1 cc to Mr.R. Jayaprakash, Advocate, Sr. 26484  
1 cc to Mr.V. Vijay Shankar, Advocate, Sr. 26432  
1 cc to M/s. M. Guruprasad, Advocate, Sr. 27168  
1 cc to Government Pleader, Sr. 26824  
2 ccs to Mr.Krishna, Advocate sr 26741, 26743[8/6/16]

W.P.Nos.15780 of 2015,  
11255 & 15004 of 2016

AD (CO)  
kk 5/5



WEB COPY