

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.37660 of 2016

S.Pugalenthir

... Petitioner

Vs.

- 1 The Director of Public Health and Preventive Medicines,
DMS Complex, Teynampet,
Anna Salai, Chennai - 600 006.
- 2 The Secretary to Government Health Department,
Fort St. George, Madras - 600 009.
- 3 The Deputy Director of Health Service,
Tanjavur - 613 001. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st respondent to dispose of petitioner appeal dated 27.06.2016 within a specified period.

For Petitioner : M/s.V.Bhiman

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The present writ petition has been filed seeking a Mandamus directing the first respondent to dispose of petitioner appeal dated 27.06.2016 within a specified period.

3.In the petition it has been averred that the third respondent had given advertisement in 'Thinamani' Trichy Edition alone on 02.06.2015 calling for Multi Purpose Hospital Worker to work in sixty eight Government Primary Health Centres on rotation basis. The said workers will be paid daily wages as fixed by the District Collector and the application along with Educational Qualification and other documents should reach the third respondent before 5.45 p.m. on 12.06.2015. The said advertisement was issued in Na.Ka.No.7511/A7/2014 dated

27.05.2015 and the educational qualification has been given as ability to read and write Tamil and the maximum age for the persons belonging to Scheduled Caste and Scheduled Tribe is below 35 years as on 01.01.2015.

4.It is further averred that the second respondent has to issue necessary orders to the third respondent for the purpose of issuing advertisement to call for posts and they have to be sanctioned by the first respondent and the salary has to be fixed by the said respondent. The petitioner registered himself with the District Employment Office, Tanjavur on 03.05.2001 and the next renewal date is during May, 2016. While so, the third respondent vide letter in Na.Ka.No.7511/2014/A7 dated 12.11.2015 directed the petitioner to appear for a personal interview on 26.11.2015 at 10.00 a.m. along with the birth certificate, caste certificate, experience certificate and the Employment Exchange registration card in original.

5.It is further averred that the interview was conducted by three persons and only formal questions were asked to the petitioner and the questions were answered properly by the petitioner. Thereafter, several persons were issued with appointment order, but the petitioner was not issued with the same. Hence, the petitioner sent a letter to the third respondent and a reply was given that the entire selection was made on the basis of G.O.Ms.No.325 Health and Family Welfare Department dated 20.11.2012.

6.It is further averred that though the minimum educational qualification fixed is only the ability to read and write Tamil, persons with higher qualification and registered between 2003 and 2015 and belonging to Orathanadu Taluk was given postings and the method of selection is not transparent. The petitioner has already completed 25 years of age and cannot renew his registration with the Employment Exchange and further, the persons who have registered after him have been selected and given appointment orders.

7.It is further averred that the petitioner filed W.P.No.17761 of 2016 and this Court vide order dated 12.05.2016 directed the respondents to consider his representation within a time frame. Thereafter, the third respondent by a non-speaking order had informed that he has obtained less marks and hence his candidature was rejected. Hence, he filed an appeal to the first respondent and the same is still pending. Hence, this petition.

8.Heard the submissions of the learned counsel appearing for the petitioner and the learned Special Government Pleader who takes notice for the respondents.

9. The relief sought for by the petitioner is for issuance of Mandamus for a direction to the first respondent to dispose of the appeal. Already the petitioner's representation was considered and was rejected on the ground that he has obtained less marks and hence his candidature was rejected. Hence, this Court is not inclined to give such a direction.

10. In this context, it will be useful to refer to the decision of the Division Bench of this Court in the case of (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, wherein the Division Bench of this Court held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on para Nos. 18 to 210 of the decision of the Honourable Supreme Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and

consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

11. Thus, it is evident from the decision of the Honourable Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. It is also evident that there is no straight-jacket formula to be adopted by the Court in simply issuing a direction to consider one's representation without examining the consequences if such a direction is issued. In this case also, the direction as sought for by the petitioner, if issued, will result in adverse and serious consequences whereby the first respondent will be forced to discharge his statutory duty, which he is not bound to do at the instance of the petitioner.

12. For all the above reasons, the writ petition fails and therefore it is dismissed. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1 The Director of Public Health and
Preventive Medicines,
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- 2 The Secretary to Government
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Fort St. George, Madras - 600 009.
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+1 cc to M/s.V.Bhiman,advocate,sr.67955

+1 cc to Govt.Pleader,sr.68363.

gmI (co)
krd 26/12

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