

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 16116 of 2016

G.Ramesh

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner Food Safety & Drug Administration,
D.M.S., Teynampet,
Chennai - 600 045.
... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to consider his representation dated 07.03.2016, within a time frame to be fixed by this Court.

For Petitioner	:	Mr.A.Mohamed Ismail
For Respondents	:	Mr.M.Perumal
		Government Advocate

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O R D E R

The learned counsel appearing for the writ petitioner raised the claim of the writ petitioner based on the training undergone by the writ petitioner in relation to the Food Analysis Laboratory in Coimbatore.

2.The learned counsel contended that the Government is providing the training programme for the employees working in the cadre of Health Inspector Grade-II both in the State Department as well as in the Municipalities and Corporation. Therefore, the benefit of training are extended to all these employees both working in the State Department as well as in the Corporation and Municipalities, in view of the fact that the writ petitioner had completed the training programme and he is entitled for appointment to the post of Food Safety Officer.

3.The learned counsel further states that the writ petitioner is waiting for such an appointment and the respondents have not considered his representation in this regard. This Court is of the view that Section 37 of the Food Safety Act, 2006 provides for the appointment of a Food Safety Officer by the Commissioner of Food Safety under the Act. The provisions state that the Commissioner of Food Safety shall, by notification shall appoint such person seems fit, having the qualification prescribed by the Central Government as Food Safety Officer for the local areas as such may assign to them for the purpose of performing function under its act and the rules and regulations made there under. Thus, it is clear that the procedures for appointing the Food Safety Officer are contemplated under the provisions of the Act. It is for the Commissioner to prepare a proper selection list, in accordance with the procedures and thereafter issue appointment orders in accord with the section 37 of the Act.

4.Appointment can never be claimed as a matter of right. Mere completion of training will not confer a person to seek appointment to a particular post. Completion of training is to be construed as acquiring of a required qualification and such an acquisition of required qualification need not reach the point of appointment. In other words, mere acquiring a qualification by a candidate will not confer any right to seek appointment. Appointment to the post is to be under taken by the appointing authority, in accordance with the Act and the Rules. Thus, it is for the Commissioner of Food Safety or the Competent Authority in this regard to initiate action and fill up the post of Food Safety Officer, in accordance with the rules. The petitioner being an employee of the Town Panchayat cannot claim the appointment to the post of Food Safety Officer by way of submitting a representation.

5.This Court cannot issue any such order in the nature of recommendation, so as to consider the representation submitted by the writ petitioner for appointment to the post of Food Safety Officer. Only in the event of establishing of legal right no such direction can be issued under Article 226 of the Constitution of India. Establishment of right is pre condition for entertaining the writ petition under Article 226 of the Constitution of India and in the absence of any such right no such direction as such sought for in this writ petition can be granted. Except by stating that the writ petitioner had completed the training to the post of Food Safety Officer, the writ petitioner has not established any right so as to issue or to consider his representation in relation to the appointment to the post of Food Safety Officer. Thus no further consideration is required to be under taken on the ground raised in this writ petition.

6. Accordingly, the writ petition stands dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai 600 009.
2. The Commissioner Food Safety & Drug Administration,
D.M.S., Teynampet,
Chennai 600 045.

+1 C.C. to M/S.A.Mohamed Ismail Advocate SR.NO. 71052

+1 C.C. to The Government Pleader SR.NO. 70680

W.P.No. 16116 of 2016

T.R (12/10/2017)

सत्यमेव जयते

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