

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P. No.8446 of 2013 and
W.M.P.No.1 of 2013

G.Ramesh

... Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep.by its Secretary,
Health and Family Welfare Department,
St.George Fort,
Chennai - 9.
 - 2.The Commissioner,
Food Safety and Medicine Department (Food Section),
359, Anna Salai,
Chennai - 6.
 - 3.The Director,
Public Health & Preventive Medicine,
359, Anna Salai, Chennai-6.
 - 4.The Public Analyst (in-charge),
Office of the Public Analyst,
Food Analysis Laboratory,
Coimbatore - 18.
- ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus, or any other Writ order of direction in the nature of Writ, directing the respondents 1 to 3 to appoint the petitioner as Food Inspector with effect from 25.05.2011 as per the Rule 8 of Food Adulteration Rules, 1955 and convert the post as Food Safety Officer, under clause 2 of Rule 2.1.3 of the Food Safety and Standard Rules 2011, after issuing the Food Analyst Training Completion Certificate, as appointed by others who are all completed the training on 25.05.2011 along with the petitioner's and pay all the benefits.

For Petitioner : Mr.N.Balamuralikrishnan

For Respondents: Mr.A.Zakkir Hussain
Government Advocate

O R D E R

The Writ petitioner being an employee working in the department of Public Health and Preventive Medicine in the Cadre of Health Inspector, Grade-II, has filed this Writ petition for directing the R1 to R3 to appoint him as Food Inspector now redesignated as Food Safety Officer with effect from 25.05.2011, as per Rule 8 of the Prevention of Food Adulteration Rules 1955 and convert the post as Food Safety Officer under class 2 of Rule 2.1.3 of the Food Safety and Standard Rules 2011.

2. The petitioner is a permanent employee of the Department of Public Health and Preventive Medicine and his service rights and conditions are protected in the Department under the Rules. The relief sought for in this Writ petition is for appointment to the Department of "Food Safety". Consequent to the new enactment, namely the Food Safety and Standards Act, the separate Department was constituted by the State of Tamil Nadu and the Commissioner of Food Safety is the Head of the Department. The Person who possessed, required qualification prescribed under the Food Safety and Standards Act shall be considered for appointment to the Post of Food Safety Officer by the Commissioner of Food Safety. Section 3 deals with definitions and sub Class(t) defines "Food Safety Officer means the Officer appointed under section 37".

Section 37 contemplates procedure for appointment as extracted hereunder:

"Food Safety Officer: (1) The Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, as Food safety Officers for such local areas as he may assign to them for the purpose of performing functions under this Act and the rules and regulations made thereunder.

(2) The State Government may authorise any officer of the State Government having the qualifications prescribed under Sub-section (1) to perform the functions of a Food Safety Officer within a specified jurisdiction."

As per section 37, the Commissioner of Food Safety shall by notification appoint the qualified person for the post of Food Safety Officer. Thus, the Commissioner of Food Safety is the appointing authority for the post of Food Safety Officer under the Act. The powers of Food Safety Officer are enumerated

under section 38 of the Act. To perform the Duties and Responsibilities of the post of Food Safety Officer, a sub class is contemplated under the Act and the person aspiring for the post should fulfil the required qualification as per the Act.

3. The Writ petitioner pursuant to the Government Order enabling the Commissioner of Food Safety to appoint the persons already working in the Department of Public Health and Preventive Medicine, attended the Training Course. Even during the training period, he was not allowed to continue and hence along with some other candidates, the Writ petitioner also filed W.P.No.11818/2011 for continuation of Training Course. This Court has passed an order in a batch of Writ petitions on 23.08.2012, allowing all the Writ petitions and permitted the Writ petitioner herein also to continue the training course for appointment to the post of Food Safety Officer. Accordingly, the petitioner fulfilled the qualifications required for appointment to the post of Food Safety Officer.

4. The learned counsel appearing for the Writ petitioner contended that though the Writ petitioner has acquired the required qualifications, he was not appointed along with the other candidates, who were qualified to hold the post Food Safety Officer. To substantiate the same, the learned counsel produced an order issued by the Commissioner of Food Safety in proceedings dated 01.12.2011, wherein 23 persons working in the cadre of Health Inspector Grade-II in the Department of Public Health and Preventive Medicine were appointed as Food Safety Officer in exercise of the powers conferred to the Commissioner of Food Safety under section 37 of the Food Safety and Standards Act 2006.

5. When all other qualified persons are appointed as Food Safety Officer, the Writ petitioner alone has been discriminated and accordingly, he is entitled to appoint as Food Safety Officer, is the sole contention raised by the learned counsel for the Writ Petitioner.

6. To deal with the arguments advanced by the learned counsel, it is relevant to look into the provisions of the Act more specifically section 37 of the Act. Section 37 of the Act clearly provides the manner in which the post of Food Safety Officer to be filled up. Accordingly, the Commissioner of Food Safety shall, by Notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, as Food Safety Officers for such local areas as he may assign to them for the purpose of performing functions under the Act and Rules and Regulations made thereunder.

7. Therefore, it is clear that the Commissioner of Food Safety has to issue a notification for the purpose of appointing the Food Safety Officers. By virtue of the opportunity provided by the Government, some of the qualified persons working in cadre of Health Inspector Grade-II, Department of Public Health and Preventive Medicine, were appointed to the post of Food Safety Officer, based on the notification issued by the Commissioner of Food Safety. Thus, appointment of Food Safety Officer is independent and to be made in accordance with the provisions of the Food Safety and Standard Act, 2006.

8. Further, the Department of Food Safety is an independent Department, unconnected with the Department of Public Health and Preventive Medicine. The employees working in one Department cannot claim appointment to any other Department as a matter of right. If any candidate is qualified and in possession of the required qualifications under the Act and Rules, he can also aspire and participate in the selection process and the appointment can never be claimed as a matter of right, is the legal principle laid down by the Hon'ble Apex Court of India.

9. Mere completion of the Training Course are possessing the required qualification will not confer any right on any candidate to seek appointment through the Writ petition, under Article 226 of the Constitution of India. Such being the legal regime, this Court is not inclined to consider the claim of the Writ petitioner for appointment to the post of Food Safety Officer, on the basis that he has acquired training as well as possessing the required qualification to the post of Food Safety Officer and such an appointment can never be automatic nor this Court has any power to issue such appointment order in favour of the Writ petitioner. The procedures contemplated under the Food Safety and Standards Act, 2006, has to be followed by the authorities for appointing the Food Safety Officers.

10. Accordingly, the Writ petition is devoid of merits and stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rpa/gsk

To

- 1.The Secretary,
The Government of Tamil Nadu,
Health and Family Welfare Department,
St.George Fort,
Chennai - 9.
- 2.The Commissioner,
Food Safety and Medicine Department (Food Section),
359, Anna Salai,
Chennai - 6.
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Public Health & Preventive Medicine,
359, Anna Salai, Chennai-6.
- 4.The Public Analyst (in-charge),
Office of the Public Analyst,
Food Analysis Laboratory,
Coimbatore - 18.

+1cc to the Government Pleader Sr.36541

+1cc to Mr.N.Balamuralikrishnan, Advocate,

S.R.No.25832 (06.06.2017)

W.P. No.8446 of 2013

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