

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.8599 of 2008
and
M.P.No.2 of 2008

1.K.Srinivasan

2.K.Subramani

3.M.Sakthivel

4.A.Perumal

5.M.Lakshmana Singh

6.P.Vadivel

7.K.Anandan

....Petitioners

- Vs -

1.The Secretary to Government,
Health and Family Welfare Department,
Fort. St.George,
Chennai-9.

2.The Director of Public Health
And Preventive Medicine
D.M.S. Compound,
Teynampet,
Chennai-6.

... Respondents

Prayer :- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned G.O.Ms.No.216 Health and Family Welfare Department dated 12.06.2007 and quash the same as ultravires to the Adhoc Rules and consequently direct the Respondents not to promote persons who do not posses the required qualification as per the Adhoc Rules in G.O.Ms.No.1507 Health Indian Medicine and Homeopathy and Family Welfare Department dated 16.08.1989 to the post of Health Inspector Grade-I.

For Petitioners : Mr.R.Prem Narayanan

For Respondents : Mr. Thangavadhana Balakrishnan
Additional Government Pleader

ORDER

The petitioners prayed for issuance of Writ of Certiorarified Mandamus to quash the impugned G.O.Ms.No.216 Health and Family Welfare Department dated 12.06.2007 as ultravires to the Adhoc Rules and consequently direct the Respondents not to promote persons who do not possess the required qualification as per the Adhoc Rules in G.O.Ms.No.1507 Health Indian Medicine and Homeopathy and Family Welfare Department dated 16.08.1989 to the post of Health Inspector Grade-I.

2. The learned counsel for the petitioners would submit that the petitioners were working in the cadre of Health Inspector Grade-II in the Department of Public Health and Preventive Medicine and their next avenue for promotion is Health Inspector Grade-I and they are qualified for the said post, as per the Adhoc Rules issued for the post of Health Inspector Grade-I in G.O.Ms.No.1507 Health Indian Medicine and Homeopathy and Family Welfare Department, dated 16.08.1989. As per the Adhoc Rules, for the post of Multi-purpose Health Supervisor now re-designated as Health Inspector Grade-I, the feeder category is Multi purpose Health Assistant now re-designated as Health Inspector Grade-II. However, the educational qualification prescribed in the Adhoc Rules, is that, the candidate must have passed S.S.L.C and Sanitary Inspector Course of one year from Gandhigram University or from any other recognized Institution by the Department of Public Health.

3. The learned counsel for the petitioners would further submit that, as per G.O.Ms.No.216, the Lab Assistants who have completed ten years of service shall be directly appointed as Health Inspector Grade-I by giving six months training. The said post of Lab Assistant is not a feeder category to the post of Health Inspector Grade-I. Further, it is not equivalent to Health Inspector Grade-II. He would further submit that, the 1st respondent issued a clarification based on the impugned G.O.Ms.No.216, stating that the Lab Assistants after getting six months training shall be appointed as Health Inspector Grade-I. The post of Laboratory Assistant is having further promotional avenues to the post of Lab Technician Grade-II and Grade-I. Therefore, accommodating them in the post of Health Inspector Grade-I will permanently affect the promotional

opportunities of the petitioners herein and hence, they have challenged the said G.O commonly.

4. The learned counsel for the respondents would submit that the counter has been filed on behalf of the respondents. In the counter, it is stated that 1st respondent has issued G.O.Ms.No.216, Health and Family Welfare Department, dated 12.06.2007 permitting the 2nd respondent, the Director of Public Health and Preventive Medicine to impart six months training in Multi Purpose Health Worker Scheme to Laboratory Assistants those who have completed ten years of service according to their seniority then promote them as Health Inspector Grade-I as per the said training.

5. Prior to implementation of Multi Purpose Health Worker Scheme, the Lab Assistants and Field Assistants were one among the feeder categories to the post of Health Inspector Grade-I as per Special Rules of Tamil Nadu Public Health Subordinate Services, but they should have acquired Sanitary Inspector Certificate Course. At that time, the Multi Purpose Health Worker Scheme was introduced with effect from 04.11.1988, the erstwhile feeder categories such as Vaccinators, Basic Health Workers and Special Cholera Workers were merged into single category of Multi Purpose Health Assistants (Health Inspector Grade-II). For which fresh Adhoc Rules were framed in G.O.Ms.No.1507, Health and Family Welfare Department, dated 16.08.1989. As per the said Rules, the post of Multi Purpose Health Assistant (Health Inspector Grade-II) becoming the feeder category for the post of Multi purpose Health Supervisor (Health Inspector Grade-I). Since the above change eliminated the feeder categories of Lab Assistants, Field Assistants, etc., the Government issued G.O.Ms.No.185, Health and Family Welfare Department, dated 05.05.1998, making the Lab Assistants having certificate of Sanitary Inspector Course are eligible for promotion as Health Inspector Grade-I. The conduction of Sanitary Inspectors, the course had been dispensed with, with effect from 04.11.1988 after the introduction of Multi Purpose Health Worker Scheme. Hence the Lab Assistants and Field Assistants have lost their opportunities to undergo the Sanitary Inspector training course. Hence, based on their representations, G.O.Ms.No.216 was passed.

6. When those categories of employees conflicted against each other, the Government have to take a stand pass orders which cannot be termed as malafide. Since the Sanitary Inspector Training Course was abolished prior to 04.11.1988, 10 years earlier when the Multi Purpose Health Worker Scheme was introduced, G.O.Ms.No.216 was passed. The Lab Assistants underwent training after completion of ten years of service and they were appointed as Health Inspector Grade-I in July 2008.

Subsequently others were appointed as per Rule 39(a)(i) of the General Rules. The writ petition filed by Tamil Nadu Health Inspector Association challenging the said G.O. has been dismissed by the Hon'ble Court upholding G.O.Ms.No.216, stating that there is no violation in the orders passed by the respondents who had examined the request of the Lab Assistants and they have also brought into control of the Director of Public Health and Preventive Medicine and they have been given promotion only after undergoing training and has been absorbed as Health Inspector Grade-I which carries the scale of pay of Rs.4500-125-7000.

7. This Hon'ble High Court in W.P.No.2249 of 2006 and W.P.No.9185 of 2007 has directed the Director of Public Health and Preventive Medicine for drawal of panel for the post of Block Health Supervisor only from the qualified Health Inspector Grade-I. Accordingly, the Government have issued G.O.Ms.No.73, Health and Family Welfare Department, dated 28.02.2008 permitting the Director of Public Health and preventive Medicine to implement the order of the High Court dated 21.11.2007 made in W.P.No.25608 of 2006 etc., batch. In the light of the above judgment, G.O has been issued and promotions were given to the Health Inspector Grade-I who are having the Sanitary Inspector Certificate, as Block Health Supervisor.

8. According to G.O.Ms.No.216 dated 12.06.2007, the Lab Assistants who have completed 10 years of service according to their seniority, have to be promoted as Health Inspector Grade-I after completing their six months training. Already, this Hon'ble Court has decided this issue, by upholding the G.O's and hence, nothing survives in this Writ petition for further adjudication. The Writ petition filed by the petitioner, is following the earlier order is dismissed and as many persons have been already promoted, the petitioners request cannot be adhered to.

9. In view of the above said facts and circumstances, this Writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

vji / nsd

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Health and Family Welfare Department,
Fort. St.George,
Chennai-9.

2.The Director of Public Health
And Preventive Medicine
D.M.S. Compound,
Teynampet,
Chennai-6.

+1cc to Mr.R.Prem Narayanan, Advocate, S.R.No.76052/18
+1cc to the Government Pleader, S.R.No.76806 & 76448

W.P.No.8599 of 2008
and
M.P.No. 2 of 2008

NA (CO)
KAK (27/02/2019)



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