

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.18063 of 2012

P.Senthil Kumar

... Petitioner

Vs

1. The Director of Public Health and Preventive
Medicine,
DMS Compound,
Chennai-600 006.

2. The Commissioner of Food Safety,
O/o. Commissionerate of Food Safety,
Chennai-600 006.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the letter bearing ref.No.R.No.20400/FSSA/2008/S2 dated 27.02.2012 of the 2nd Respondent and quash the same as being illegal, arbitrary, discriminatory and in violation of Article 14 of the Constitution of India and consequently direct the 1st respondent to correct the certificate dated 10.10.2011 incorporating the word "successfully" in tune with the communication given by the Food Analysis Laboratory, King Institute Campus, Guindy, Chennai, w.e.f.13.04.2011 in.e. The day after his successful completion of Training, 2nd respondent to notify the petitioner as Food Safety Officer as was done in the case of the petitioners colleagues who were sent for training on Food Inspection and sampling work along with him on 7.6.2010 and to give all monetary and other attendant benefits as otherwise it would amount to discrimination and would be in violation of Article 14, 16 and 21 of the Constitution of India.

For Petitioner : Mr.K.Srinivsamurthy
for M/s.Row & Reddy

For Respondents : Mr.T.M.Pappiah
Spl. Govt. Pleader

O R D E R

The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, calling for the records relating to the letter bearing

ref.No.R.No.20400/FSSA/2008/S2dated.27.02.2012 of the 2nd Respondent and quash the same as being illegal, arbitrary, discriminatory and in violation of Article 14 of the Constitution of India and consequently direct the 1st respondent to correct the certificate dated 10.10.2011 incorporating the word "successfully" in tune with the communication given by the Food Analysis Laboratory, King Institute Campus, Guindy, Chennai, w.e.f.13.04.2011 in.e. The day after his successful completion of Training, 2nd respondent to notify the petitioner as Food Safety Officer as was done in the case of the petitioners colleagues who were sent for training on Food Inspection and sampling work along with him on 7.6.2010 and to give all monetary and other attendant benefits as otherwise it would amount to discrimination and would be in violation of Article 14, 16 and 21 of the Constitution of India."

2. The petitioner joined as Sanitary Inspector under the respondents. On 07.06.2010, the petitioner along with 52 others deputed for Food Inspection and Sampling work training for 40 days Lab Training, 35 days field training, 15 days practical and theory examination. The petitioner along with others completed 40 days Lab Training and relieved on 01.08.2010 for Lab training. The Field Training commenced on 02.08.2010 at Dindugal Municipality.

3.While so, the petitioner came to be suspended from service on 12.08.2010 pending disciplinary action against him. In view of his suspension, the petitioner was relieved from field training. However, his batch-mates were relieved from field training on 03.09.2010. Subsequently, the suspension order came to be revoked on 19.01.2011 and the petitioner restored to duty. Thereafter, the petitioner joined field training and completed the same on 05.03.2011.

4.The first respondent, in the mean while, by proceedings dated 22.03.2011, notified 52 colleagues of petitioners as 'Food Inspectors'. However, the petitioner could not be notified as 'Food Inspector', in view of non-completion of field training. However, on 12.04.2011, the petitioner had successfully completed the training and written examination. Thereafter, the petitioner has submitted a representation on 02.05.2011 and followed by several reminders viz., 15.06.2011, 25.07.2011, 29.07.2011, 30.07.2011 and 01.08.2011, to notify him as Food Inspector on par with 52 colleagues, who were originally joined along with the petitioner for initial training and completed the same. Since there was no action on the representations from the competent authority, the petitioner approached this Court in W.P.No.18225 of 2011, seeking a direction to the respondent to notify him as Food Inspector with effect from 13.04.2011, i.e. the day after his successful completion of training and to give all consequential benefits.

5. This Court by order dated 04.08.2011, disposed of the writ petition by allowing the same and directing the first respondent to issue the necessary certificate by 08.08.2011. By then, original

Prevention of Food Adulteration Act, 1954 was replaced by Food Safety and Standards Rules 2011 framed under Food Safety and Standards Act, 2006 (Central Act 34 of 2006). The same had come into effect on 05.08.2011. After the New Act/Rules came into force, on 20.09.2011, several juniors of the petitioner who were sent for training after petitioner notified as Food Safety Officers. In fact, 52 colleagues of the petitioner were also notified as Food Safety Officer on 20.09.2011 under the New Act.

6. While matter stood thus, the respondents have not complied with the direction issued by this Court in the aforesaid writ petition, dated 04.08.2011. The respondents have merely issued certificate certifying the petitioner as having completed the training on 10.10.2011. Since mere notification of completion of training in the absence of notifying him as Food Inspector/Food Safety Officer did not allow him to discharge his duties under the Act and Rules as Food Inspector/Food Safety Officer, he submitted a representation for notifying him as Food Inspector/Food Safety Officer, on 13.10.2011.

7. According to the petitioner, even subsequent batch comprising several persons who were admittedly juniors of the petitioner were notified by the respondents as Food Safety Officers on 01.12.2012. The second respondent eventually passed an order dated 27.02.2012, rejecting the request of the petitioner stating that the petitioner did not possess the qualification as per the New Act and he had not already been appointed as Food Inspector under the provisions of Prevention of Food Adulteration Act, 1954. Since the rejection order was passed in violation of order passed by this Court dated 04.08.2011 in W.P.No.18225 of 2011, a Contempt Petition was filed in Cont. P. No.842 of 2012. However, the Contempt Petition came to be closed by directing the petitioner to challenge the rejection order. Therefore, the petitioner is before this Court challenging the rejection order of the second respondent by proceedings dated 27.02.2012.

8. While the above writ petition is admitted by this Court on 22.11.2012, an interim order was passed, directing the respondents to keep one seat vacant till the disposal of the writ petition.

9. Mr.K.Srinivasamurthy, the learned counsel for the petitioner would submit that for no valid reason, the second respondent has rejected the claim of the petitioner on the ground that the petitioner did not possess the qualification as per the New Act. Even as per the old Act, the petitioner was sent for training and successfully completed the same. In fact, this Court by its earlier order dated 04.08.2011 issued a direction to the first respondent to issue a certificate meaning he ought to be notified as Food Inspector which is equivalent to Food Safety Officer under the New Act. However, the petitioner was merely issued with the certificate for completion of training without notifying him as Food Inspector/Food Safety Officer.

10. The learned counsel would also submit that all 52
<https://hcservices.ecourts.gov.in/hcservices/>

colleagues of the petitioner were notified as Food Safety Officers on 20.09.2011, after coming into force of the New Act and subsequently, his juniors were also notified as Food Safety Officers on 01.12.2012. That being the case, there is no justification for denying the said benefit of the notification to the petitioner alone as that would amount to discrimination and violative of Article 14 of the Constitution of India.

11. Upon notice, Mr.T.M.Pappiah, the learned Special Government Pleader entered appearance on behalf of the respondents and filed a counter affidavit.

12. In the counter affidavit, it was stated that the petitioner was suspended during the course of training and therefore, he did not consequently attend all the days of training and the training period was truncated because of the fact that the petitioner was suspended during the period of training. The learned Special Government Pleader would reiterate the averment contained in the counter affidavit during the course of arguments. However, this Court is of the view that it is not open to the learned Special Government Pleader to urge this point in the face of the decision rendered by this Court in W.P.No.18225 of 2011 dated 04.08.2011. More over, the Special Government Pleader would submit that the petitioner was charge sheeted and enquiry proceedings were initiated. Therefore, he was not rightly notified as Food Inspector or Food Safety Officer as the case may. At this, the learned counsel for the petitioner would submit that the charges which were framed against the petitioner and the disciplinary action subsequently came to be dropped admittedly. Therefore, the reasons as stated by the respondents are not valid and acceptable and therefore that cannot be the reason for not notifying the petitioner as Food Inspector/Food Safety Officer.

13. This Court has considered the rival submissions made by both parties and perused the materials and pleadings placed on record.

14. From the facts and materials placed before this Court, it is made clear that the petitioner was allowed to complete the training successfully even before the New Act came into effect on 05.08.2011. This fact cannot be disputed by the respondents. More over, this Court, directed the respondents to issue certificate to the petitioner by its order dated 04.08.2011 in W.P.No.18225 of 2011. Therefore, this Court is of the considered view that the said direction includes the notification of the petitioner as Food Safety Officer, since the only ground on which the prayer in the writ petition was resisted that the petitioner did not complete the training at one stretch but and subsequently completed the training. When the said contention was negated by the learned Judge of this Court as invalid, the only course open to the respondents is to issue a proper notification notifying the petitioner as Food Inspector /Food Safety Officer as the case may

15. More over, this Court has taken note of the fact that the petitioner's colleagues numbering 52 persons have been notified as Food Safety Officers on 20.09.2012 as per new act (Food Safety and standards Act, 2006 (34 of 2006) and subsequently, the second batch of his juniors were also notified as Food Safety Officers on 01.12.2012. That being the case, the denial of such notification of the petitioner, notifying him as Food Inspector/Food Safety Officer is per se discriminatory and cannot be countenanced either in law or on facts. The other reason cited by the respondent that there was a disciplinary action pending against the petitioner cannot also be considered as a valid piece of submission in view of subsequent development that the disciplinary action was dropped as the charges were not established against the petitioner. Therefore, this Court does not see any justification in not notifying the petitioner the Food Safety Officer under the New Act viz., Food Safety Standards Act, 2006 and Rules framed therein.

16. In view of the above narrative, this Court has no hesitation to allow this writ petition. Therefore, the impugned order passed by the second respondent by proceedings No.R.No.20400/FSSA/2008/S2 dated 27.02.2012, is hereby set aside and the respondents are directed to notify the petitioner as Food Inspector/Food Safety Officer with effect from 13.04.2011 and subsequently notifying him as Food Safety Officer under Food Safety Standards Act and Rules framed thereunder and to grant him all benefits as admissible. This direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

17. With the above direction, this Writ Petition stands allowed. No costs.

Kal

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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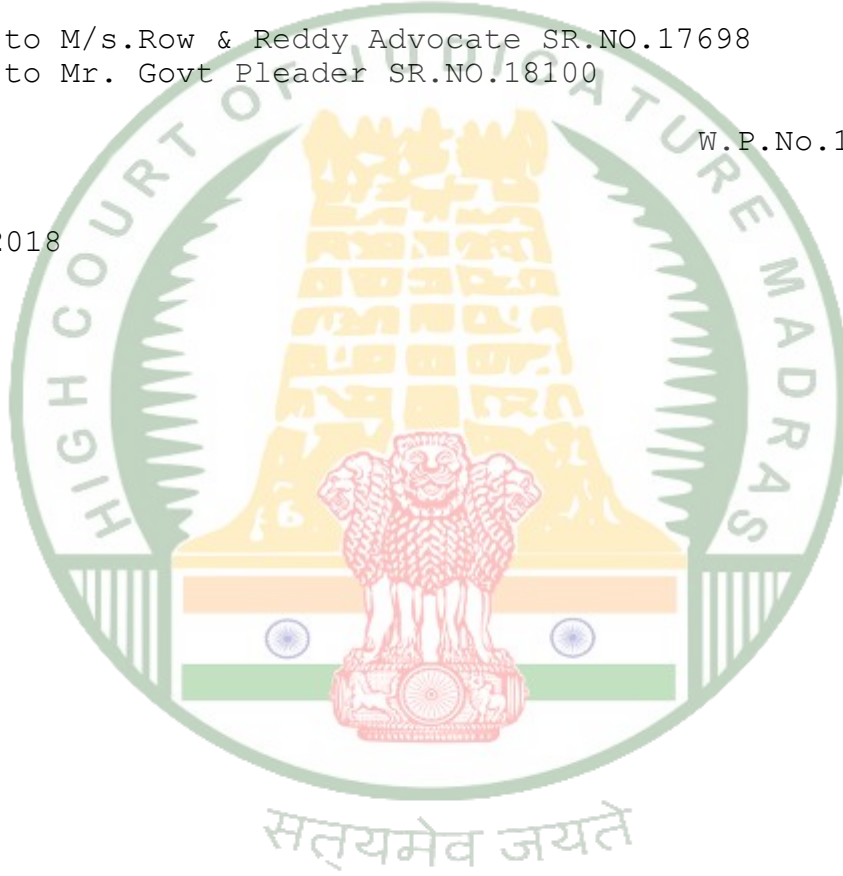
To

1. The Director of Public Health and Preventive
Medicine,
DMS Compound,
Chennai-600 006.
2. The Commissioner of Food Safety,
O/o. Commissionerate of Food Safety,
Chennai-600 006.

+1CC to M/s.Row & Reddy Advocate SR.NO.17698
+1CC to Mr. Govt Pleader SR.NO.18100

W.P.No.18063 of 2012

SKS[CO]
MK:28/03/2018



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