

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.5858 of 2016

and

WMP Nos.5203 to 5205 & 34319 of 2016

M.Senthil Kumar

..Petitioner

..Vs..

- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
- 2.The Director of Public Health and
Preventive Medicine,
Teynampet,
Chennai-600 006.
3. The Deputy Director,
Health Services, Salem,
Salem-636 001.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent impugned notification dated 22.01.2016 and quash the same consequently directing the 3rd respondent to issue a fresh notification in accordance with the order of this Hon'ble Court dated 02.08.2012 in W.P.No.26162 of 2010 confirmed in W.A.No.1027 of 2013 dated 09.06.2014 and G.O.Ms.No.44 dated 11.03.2015 and proceed with the selection as per law.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.J.Ramesh
for Additional Government Pleader

ORDER

The recruitment notification issued by the Deputy Director, Health Services, Salem for appointment to the post of Driver on 22.01.2016 is under challenge in this writ petition.

2.The learned counsel who is appearing on behalf of the writ petitioner states that the writ petitioner is fully qualified for an appointment to the post of Driver. He registered his name in the District Employment Exchange. However, the name of the writ petitioner had not been sponsored for the purpose of attending an interview to be conducted pursuant to the impugned notification. However, the interim order was passed by this Court at the admission stage, and therefore, the respondents have not proceeded with the process of selection. Now after a lapse of about 2 ½ years, the Competent Authorities cannot proceed based on the notification issued in the year 2016. This apart, the name of the writ petitioner had not been sponsored during the relevant point of time, and therefore, a fresh process of recruitment is to be undertaken for the purpose of filling up the post of Driver or otherwise.

3.The grievance of the writ petitioner is that he is entitled for age relaxation based on certain Government orders. Further, he had registered his name in the Employment Exchange, and he is renewing periodically. In spite of that, the name of the writ petitioner has not been sponsored. Thus, he is constrained to move the present writ petition.

4.The learned counsel appearing on behalf of the respondents opposed the contention by stating that the name of the writ petitioner had not been sponsored by the District Employment Exchange, and he cannot be permitted to perform in the selection. Pursuant to the interim order granted by this Court, the selection process was not proceeded with. Under these circumstances, the authorities may be permitted to fill the post of Driver by issuing a fresh notification, to undertake a fresh recruitment process.

5.Appointment can never be claimed as a matter of right. All appointments are to be made only under the constitutional scheme and by following the recruitment rules in force. Equal opportunity for public employment is a constitutional mandate. There cannot be any discrimination in respect of providing opportunities to participate in the selection process for appointment to any public post. Thus, the Authorities Competent are bound to follow the recruitment rules strictly while undertaking the process of recruitment. Any default in

this regard would be viewed seriously, and the Authorities committing any such irregularity in respect of not adhering of the recruitment rules are liable for prosecution under the disciplinary and appeal rules.

6. In these circumstances, the petitioner has to follow the process of selection in the manner known to law. In respect of the impugned notification, which was issued in the year 2016, now the same cannot be allowed to go on account of the efflux of time. Thus, the Authorities Competent have to ascertain the present vacancy position in respect of the post of Driver, and accordingly, proceed with the selection process if an administrative decision is taken in this regard. Filling up the post in a department is an administrative prerogative and the decision is to be taken by the Competent Authorities.

7. Accordingly, if any decision is taken to fill up the vacant post, then the Authorities Competent are bound to follow the recruitment rules in force. In order to comply with the constitutional recruitment of providing equal opportunity, a wide publication/notification is required and all eligible candidates shall be provided with an opportunity to participate in the process of selection. Thus, the notification or otherwise cannot be issued in a restricted manner and the same shall be issued in a widely circulated newspapers and through media. The procedures contemplated for this purpose are also to be followed, and therefore, in respect of the present writ petition, no further consideration is required.

8. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.

2.The Director of Public Health and
Preventive Medicine,
Teynampet, Chennai-600 006.

3.The Deputy Director,
Health Services, Salem,
Salem-636 001.

+ 1 cc to The Government Pleader Sr.No.32248

MR(CO)
RRI 11/05/2018

W.P.No.5858 of 2016



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