



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.11860 of 2011

and

M.P(MD)Nos.2 & 3 of 2011

Kailashsundaram

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2. The Commissioner of Food Safety
Fort St. George,
Chennai-6.

3.S.Ibrahim,
Sanitary Officer, Puliangudi Municipality,
Puliangudi, Tirunelveli District.
(3rd respondent representing himself and
Other Sanitary Inspectors who are
appointed as Food Safety Officers and
who have obtained only a basic Degree
In applied Chemistry through Distance
Education Programmed of Annamalai University
or other Universities or a Diploma in Food
Technology from (Indira Gandhi National Open
University) or other Institutions which had no
approval for the Courses from Distance Education
Council)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in connection with the impugned order of second respondent vide proceedings Ref.F.No.80849/FSSA/2011/S2, dated 20.09.2011 in so far as it relates to the appointment of third respondent and other persons who have basic degree in applied Chemistry through Distance Education Programme of Annamalai University or other Institutions or only a Diploma in Food Technology from Indira Gandhi National Open University or



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other institutions which had no valid approval from Distance Education Council for such courses and quash the same.

For Petitioner : No appearance

For R1 & R2 : Mr.M.Muthu,
Additional Government Pleader

For R3 : Mr.D.Selvaraj

ORDER

The writ petition is filed challenging the order of appointment passed by the second respondent vide proceedings, dated 20.09.2011. The writ petitioner is working as a Sanitary Inspector in Kadayanallur Municipality.

2.On a perusal of the order, dated 20.09.2011, the Commissioner of Food Safety issued a notification under the provisions of the Food Safety and Standards Act, 2006 appointing the Food Safety Officers. In the order impugned, 148 candidates were appointed as Food Safety Officers and the third respondent is also one amongst them.

3.None appeared for the writ petitioner and the learned Additional Government Pleader appearing on behalf of the respondents 1 & 2 made a submission that the second respondent issued a notification appointing 148 candidates as Food Safety Officers under the provisions of the Food Safety and Standards Act, 2006 and the writ petitioner cannot claim the appointment as a matter of right. The writ petitioner has challenged the appointment order of 148 candidates without impleading all those candidates. Thus, the writ petition deserves to be rejected.

4.The learned counsel appearing on behalf of the third respondent states that the appointment was made in accordance with the provisions of the said Act and therefore, there is no infirmity as such. Further, the third respondent was fully qualified to hold the post of Food Safety Officer and therefore, the writ petitioner cannot seek quashing of the said order.

5.Considering the arguments of the learned Additional Government Pleader and the learned counsel appearing on behalf of the third respondent, this Court is of an opinion that Section 37 of the Food Safety and Standards Act, 2006 provides appointment of Food Safety Officer.

Section 37(1) states that " The Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, in accordance with 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."

6. Thus, it is made clear that the Commissioner of Food Safety is the competent authority to appoint the Food Safety Officer by issuing notification. The writ petitioner is already working as Sanitary Inspector in Kadayanallur Municipality and the appointment of Food Safety Officer can never be claimed as a matter of right. The Commissioner of Food Safety is an independent Department and there is no provision to promote or appoint these persons under the Act or under the Rules. Contrarily, the Commissioner of Food Safety alone is the competent authority to prepare the eligible candidates and thereafter, appoint those persons. The writ petitioner has not established any legal right in respect of providing an appointment to him as Food Safety Officer. An appointment made by any public authority can be questioned provided if such appointments are made by not following the provisions of law and if there are malpractices or corrupt activities. In the absence of any one of the legal grounds, the order of appointment of Food Safety Officer issued under Section 37 of the Food Safety and Standards Act, 2006 cannot be quashed on the ground that the writ petitioner is also eligible or qualified for appointment. Mere eligibility alone cannot be a criteria for seeking appointment by way of filing the writ petition. In the present case, the writ petitioner has not established that there is any irregularity or illegality in respect of the order of appointment of Food Safety Officer under Section 37 of the said Act.

7. If there are some unqualified persons got appointment then the writ petitioner ought to have impleaded all those un-qualified persons and seek the remedy to quash those appointments. Contrarily, certain grounds are raised with regard to the Educational Qualifications without impleading the persons, who are not qualified, and the details of those candidates. In respect of the third respondent, the learned counsel for the third respondent states that the third respondent has completed SSLC, Higher Secondary course and thereafter, obtained a degree of B.Sc., Chemistry. Thus, he is fully qualified and the Government of Tamil Nadu is not accepting the open University degree and in respect of the degree obtained by the third respondent is valid as per the pattern prescribed by the University Grand Commission. Therefore, there is no infirmity in respect of the appointment of the third respondent. Further, it is brought to the notice of this Court that the third respondent has already retired from service on attaining the age of superannuation on 28.02.2017. This being the factum of the case, no further adjudication needs to be undertaken in respect of other grounds raised in this writ petition.

8. Accordingly, the writ petition stands dismissed. However,



there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(W)

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/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2. The Commissioner of Food Safety
Fort St. George,
Chennai-6.

+ 1 cc TO Mr.S.Chellapandian , Advocate in SR No. 46411

+ 1 cc TO Mr.D.Selvaraj , Advocate in SR No. 46458

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AE/JC/SAR1/19.02.2018/4P/5C

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