



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)Nos.7092 and 7093 of 2013

and

M.P. (MD)Nos.1 and 1 of 2013

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W.P. (MD)No.7092 of 2013:-

R.Mohanraj

:Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat, Chennai-9.
- 2.The Director of Public Health Preventive Medicine,
Teynampet, Chennai -6.
- 3.The Deputy Director of Health Services,
Nagercoil, Kanyakumari District.
- 4.The Block Medical Officer,
Primary Health Centre,
Kuttakuzhi, Viyanoor Post,
Kanyakumari District.

:Respondents

PRAYER: Writ Revision Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorari, to call for the records relating to the impugned termination order passed by the third respondent, in his proceedings R.No.557/A1/11-2, dated 10.04.2013 and the consequential order passed by the fourth respondent in his proceedings in Na.Ka.No.115/A2/2013, dated 17.04.2013.

For Petitioner

:Mr.C.Venkateshkumar

for M/s.Ajmal Associates

For Respondent

:Mr.M.Jeyakumar

Additional Government Pleader

W.P. (MD)No.7093 of 2013:-

K.Jeyachandra Babu

:Petitioner

vs.

- 1.The State of Tamil Nadu,
<https://hcservices.ecourts.gov.in/hcservices/>



represented by its Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat, Chennai-9.

2.The Director of Public Health Preventive Medicine,
Teynampet, Chennai -6.

3.The Deputy Director of Health Services,
Nagercoil, Kanyakumari District.

4.The Block Medical Officer,
Primary Health Centre,
Killiyoor, Tholayavattom Post,
Kanyakumari District.

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PRAYER: Writ Revision Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorari, to call for the records relating to the impugned termination order passed by the third respondent, in his proceedings R.No.557/A1/11-2, dated 10.04.2013 and the consequential order passed by the fourth respondent in his proceedings in R.No.102/A1/13, dated 17.04.2013.

For Petitioner

:Mr.C.Venkateshkumar
for M/s.Ajmal Associates

For Respondent

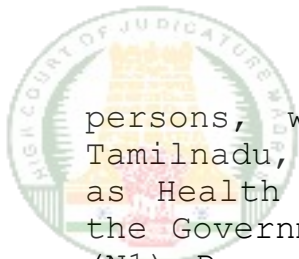
:Mr.M.Jeyakumar
Additional Government Pleader

COMMON ORDER

These Writ Petitions are filed for issuing a Writ of Certiorari to quash the proceedings of the third respondent, dated 10.04.2013 and the consequential order passed by the fourth respondent, dated 17.04.2013.

2.The petitioners herein have completed Diploma in Sanitary Inspector at All India Institute of Local Self Government Institution, Bombay, and the petitioners have registered the same in the Employment Exchange, Nagercoil. It is stated that the petitioners are fully eligible for appointment to the post of Health Inspector Grade-II. It is stated that the names of petitioners were not originally sponsored by the Employment Exchange on the ground that the petitioners had acquired Diploma in Sanitary Inspector at All India Institute of Local Self Government Institution, Bombay, which is outside the State of Tamil Nadu.

3.It appears that the petitioners and similarly placed

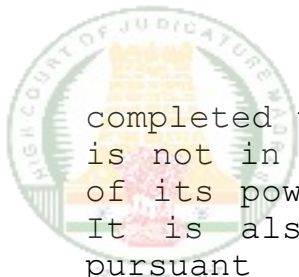


persons, who have completed their Diploma outside the State of Tamilnadu, sent a representation to the Government to appoint them as Health Inspector Grade-II. Accepting the said representation, the Government had issued G.O.Ms.No.305, Health and Family Welfare (N1) Department, dated 22.09.2009 relaxing Rule 5(b)(iii) of Tamil Nadu Public Health Subordinate Service. The Government directed the second respondent, namely, the Director of Public Health and Preventive Medicine, Chennai, to appoint the petitioners and others to the post of Health Inspector Grade-II, Tamil Nadu Public Health Subordinate Service, as one time measure by direct recruitment through Employment Exchange. It is not in dispute that the second respondent issued called letter based on the recommendation of Commissioner of Employment and Training, Guindy. It is stated that the petitioners appeared for the interview along with necessary certificates and by proceedings of the second respondent, dated 13.01.2011, the petitioners were appointed as Health Inspector Grade-II in different places in Nagercoil.

4.Nearly after two years, the third respondent issued a show cause notice, as to why the services of the petitioners should not be terminated, since the petitioners had not been sponsored through Employment Exchange. Though the petitioners and the other similarly placed persons have challenged the show cause notice by filing writ petition, this Court after considering the fact that show cause notice alone was challenged in the writ petition, dismissed the writ petition, giving liberty to the petitioners to challenge adverse order, if any passed, pursuant to the show cause notice. Later, the Deputy Director of Health Service, Kanyakumari, the third respondent herein, terminated the services of the petitioners under Rule 10(a) (i) of Tamil Nadu State and Subordinate Service Rules with immediate effect. The fourth respondent, thereafter, passed the consequential order relieving petitioners from the post, in which they were working prior to the order of termination. Challenging the order of termination and the consequential order passed by the fourth respondent, the petitioners have preferred the above writ petition.

5.It is stated that this Court has granted an order staying the operation of impugned orders, and that by virtue of interim order granted by this Court, the petitioners are continuing in service.

6.The learned Counsel for the petitioners submitted that the names of the petitioners though were not sponsored earlier, on the ground that the Diploma obtained by them was from the Institution outside the State, by virtue of G.O.Ms.No.305, Public Health and Family Welfare Department, dated 22.09.2009, relaxing Rule 5(b)(iii) of Tamil Nadu Public Health Subordinate Service Rules, the petitioners were eligible and the Government has directed the second respondent to appoint all the 55 individuals including the

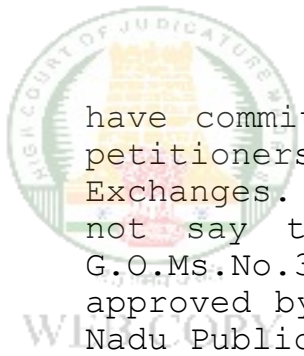


completed their Diploma course outside the State of Tamil Nadu. It is not in dispute that the Government order was passed in exercise of its power conferred under Article 309 of Constitution of India. It is also not in dispute that the petitioners were appointed pursuant to the relaxation given by the Government vide G.O.Ms.No.305, dated 22.09.2009. As per Government Order, the second respondent was directed to appoint 55 persons including the petitioners, who have registered their qualification in Employment Exchange along with others with the ratio of 1:5 and the relaxation of Rule 5(b)(iii) of Tamil Nadu Public Health Subordinate Service Rules was issued as one time measure. The second respondent was also directed to verify the genuineness of certificates produced by all the persons, in respect of whom, there was relaxation by the Government.

7. In the present case, the fact that the petitioners' names were registered in the Employment Exchange is not seriously disputed. It was only on account of the fact that the names of petitioners were not sponsored on the specific ground that they had acquired Diploma in Sanitary Inspector at All India Institute of Local Self Government Institution, Bombay, which is outside State of Tamil Nadu, they approached the Government for relaxing the Rules. Pursuant to the order of Government, vide G.O.Ms.No.305, dated 22.09.2009, the Commissioner, Employment and Training, Guindy, called upon the petitioners for attending the interview along with necessary documents on 29.10.2010.

8. From the sequence of events, the petitioners appeared for interview, after receiving the communication, dated 16.12.2010, from the Director of Public Health and Preventive Medicine. In this communication, it is stated that as per communications received from the Commissioner, Employment and Training, Guindy, dated 08.11.2010 and 06.11.2012, the petitioners were nominated by the Commissioner, Employment and Training, Guindy, Chennai, pursuant to the Government Order issued by the Government, vide G.O.Ms.No.305, dated 22.09.2009. The inter departmental communication would reveal that the petitioners' names were registered in the concerned Employment Exchange.

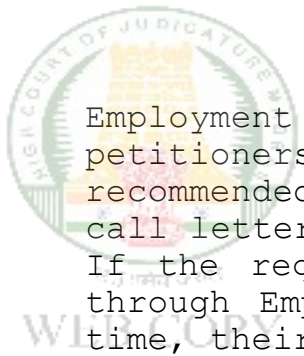
9. The learned Counsel for the petitioners would submit that a learned Single Judge of this Court allowed similar Writ Petitions filed by the petitioners therein, who are similarly placed. By order, dated 08.04.2019 a batch of Writ Petitions filed by several persons, who were terminated from service in the post of Health Inspector Grade-II, were allowed by a common order. From the order in W.P.Nos.12781 to 12786 of 2013, this Court is fully convinced that the case on hand is similar to the above writ petition and the orders impugned in the present Writ Petitions and the orders challenged in the batch of Writ Petitions are one and the same. The learned Single Judge, after considering the grievance of the petitioners therein, came to the conclusion that the respondents



have committed great illegality by terminating the services of the petitioners, who got their names sponsored by the Employment Exchanges. With regard to the qualification, the impugned order does not say that the petitioners are not qualified. By virtue of G.O.Ms.No.305, dated 22.09.2009, the petitioners' qualification was approved by the Government by relaxing the Rule 5(b)(iii) of Tamil Nadu Public Health Subordinate Service Rules.

10.The third respondent filed a detailed counter affidavit. It is surprising to note that the third respondent has come up with a case that the Government has passed order only to consider the case of petitioners and others and to relax the qualification for them and that the requirement of getting the names through Employment Exchange has not been relaxed. It is further stated that based on the instructions of Government to issue termination order to the petitioners, whose names have not been sponsored by the Employment Exchange, the order of termination has been issued. It is useful to refer to the Government Order, vide G.O.Ms.No.305, dated 22.09.1996 in this context. This order specifically refers to the requirement of getting names sponsored through Employment Exchange. Therefore, the learned Special Government Pleader submitted that the petitioners are entitled for appointment, if their names are sponsored through Employment Exchange. Pursuant to the Government Order, it is admitted that the call letters were issued to the petitioners based on the qualification and recommendations of Commissioner of Employment and Training, Guindy. The communication received from the Commissioner of Employment and Training, Guindy was internal and the second respondent sent a call letter to the petitioners by specifically referring to the said communication. In such circumstances, it is too late for the third respondent to contend that the names of petitioners were not sponsored through Employment Exchange. It is not open to the respondents to terminate the services of the petitioners by referring to the irregularity in the process of selection, after this length of time. The position that the petitioners' names have been registered with the District Employment Exchange is neither denied nor disputed. Mere non observance may not be a vital aspect to revoke appointment, having regard to the factual circumstances and events pointed out.

11.The qualification of petitioners is admitted. The only ground on which the impugned order came to be passed is that the names of petitioners were not sponsored by Employment Exchange. As pointed out earlier, the petitioners' name have been duly registered in the Employment Exchange with the qualification. It was only because, the petitioners' name were not sponsored by the concerned Employment Exchange, the petitioners and others have approached the Government for relaxing the Rules. Accordingly, the Government has relaxed Rules with the specific direction to the second respondent to appoint the persons, whose names are found in the Government Order in the post of Health Inspector Grade-II. Merely because, the



Employment and Training, Guindy, it cannot be presumed that the petitioners' names were not sponsored by Employment Exchange. As recommended by the Commissioner of Employment and Training, Guindy, call letters were issued to the petitioners and they were appointed. If the requirement of getting the names of petitioners sponsored through Employment Exchange is insisted, at the relevant point of time, their names would have been sponsored.

12. In view of the discussion made above, this Court is of the view that the impugned orders cannot be sustained. As a result, these writ petitions are allowed. The order passed by the third respondent, dated 10.04.2013 and the fourth respondent dated 17.04.2013 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

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

2. The Director of Public Health Preventive Medicine,
Teynampet, Chennai -6.

3. The Deputy Director of Health Services,
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Kuttakuzhi, Viyanoor Post,
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Primary Health Centre,
Killiyoor, Tholayavattom Post,
Kanyakumari District.

+2 CC to M/s. AJMAL ASSOCIATES, Advocate (SR-94566[F] dated 25/10/2019), SR-94568[F]

+1 CC to M/s. SPL GP (SR-94263[F] dated 24/10/2019)

W.P. (MD) Nos. 7092 and 7093 of 2013

23.10.2019

KK/SAR/05.11.2019/6P-9C/

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