

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.12700 OF 2009

AND

W.M.P.NO.1 OF 2009

P.Subramaniam

... Petitioner

Vs.

1. The Joint Director of Health Services,
Namakkal, Namakkal District.

2. The District Employment Officer,
Namakkal, Namakkal District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, call for the records relating to the impugned order of the first respondent in Na.Ka.No.497/Ni-2/2007 dated 28.05.2009 and quash the same and direct the first respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : M/s.S.S.Jothivani

For Respondents : Mr.N.Inbarajan, AGP

O R D E R

This Writ Petition has been filed to quash the impugned order of the first respondent in Na.Ka.No.497/Ni-2/2007 dated 28.05.2009 and direct the first respondent to reinstate the petitioner to service with all attendant benefits.

2.The petitioner was appointed as a Driver on 13.11.2007 after an interview was conducted by the first respondent/Joint Director of Health Services, Namakkal. By the impugned order dated 28.05.2009, the petitioner was however discharged from service on the ground that the petitioner was over aged at the time of his appointment.

3.Challenging the same, the present writ petition has been filed. It is submitted that the impugned order has been passed in violation of principles of natural justice as no notice was

issued to the petitioner and without calling for any explanation from the petitioner.

4. It is therefore submitted that the impugned is liable to be quashed and the petitioner deserves to be reinstated as driver with the respondents.

5. The respondents have filed their common counter affidavit, wherein, they stated that the District Employment Officer had sent a list based on the 1:1 ratio. The date of birth of the petitioner was 12.03.1969 and as per the notification, the age limit for a person belonging to the Most Backward Class (MBC) was 37 years. On the crucial date, i.e. on 31.10.2007, the petitioner was aged 38 years and therefore wrongly appointed. The appointment of the petitioner arose on account of the fact that the petitioner's name was shown in the open competition and in any event, the appointment was temporary and his service could be terminated at any time.

6. It is further submitted that the mistake on account of the wrong entry made in the computer data. Since the petitioner was over aged, he was not entitled to be appointed and was therefore rightly discharged from his service.

7. In the counter, the respondents have referred to several Government Orders (G.Os.), which did not form part of the discussion in the impugned order. Since the impugned order has been passed in violation of principles of natural justice and the impugned order is sought to be justified based on the several G.Os. now, I am inclined to quash the same and remit the case back to the first respondent to pass a fresh order, on merits, within a period of three months from the date of receipt of a copy of this order. The impugned order, which stands quashed in this order, shall be treated as a "Show Cause Notice". Therefore, the petitioner shall file reply to the same before the first respondent within such time. The petitioner shall be heard before the fresh order is passed.

8. This Writ Petition is allowed with the above observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jas/jen

To

1. The Joint Director of Health Services,
Namakkal, Namakkal District.

2. The District Employment Officer,
Namakkal, Namakkal District.

+1cc to M/s.S.S.Jothivani, Advocate, S.R.No.23631

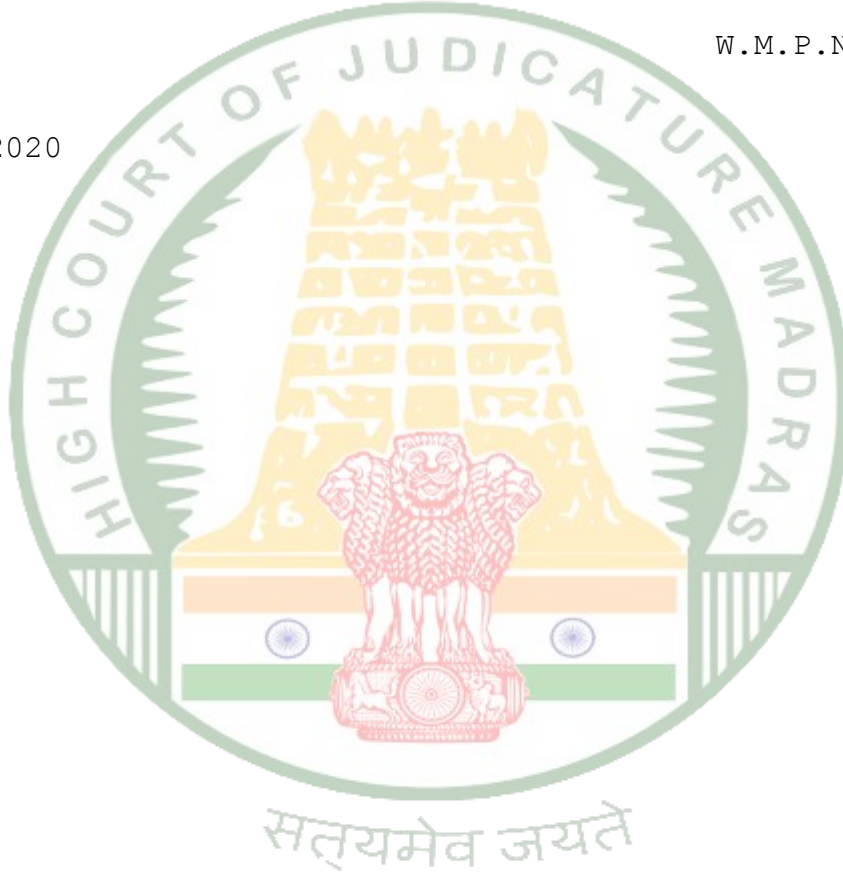
+1cc to the Government Pleader, S.R.No.24089

W.P.No.12700 of 2009

and

W.M.P.No.1 of 2009

LN(CO)
CS/17/07/2020



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