



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD)No.12282 of 2020

and

W.M.P. (MD) No.10533 of 2020

Dr.B.Dinesh Kumar,
Assistant Surgeon,
Vadamadurai Primary Health Centre,
Vadamadurai,
Dindigul District.

...Petitioner

-Vs-

- 1) The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai 600 009
- 2) The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
VOC Nagar, Park Town,
Chennai 600 003
- 3) The Director of Public Health
and Preventive Medicine,
Public Health & Preventive Medicine Department,
No.359, Anna Salai,
Chennai 600 006

...Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings in R.No.14383/E1/S4/2020 dated 1.4.2020 and quash the same as illegal and consequently to direct the 1st respondent to select and appoint the petitioner by direct recruitment to the post of Health Officer in Tamil Nadu Public Health Service 2013-2014 under Most Backward Class/De notified community (MBC/DC) category in the light of proceedings issued by the 2nd respondent in his proceedings in Memorandum No.7315/OTD-A1/2014-2 dated 10.9.2015 in Class 3(ii) and in the light of resignation of one of the appointee viz., Dr.M.Vinoth, whose resignation was accepted by the 1st respondent in his proceedings in G.O.(D) No.329 Health & Family Welfare (L2) Department dated 13.03.2020 within the period that may be stipulated by this Court.



For Petitioner : Mr.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For RR 1 & 3 : Mrs.J.Padmavathi Devi,
Special Government Pleader

For R2 : Mr.D.Sivaraman,
Standing counsel.

O R D E R

Challenge is made to the order passed by the 3rd respondent in his proceedings in R.No.14383/E1/S4/2020, dated 1.4.2020 and also prayed for a consequential direction to the 1st respondent to select and appoint the petitioner in the post of Health Officer through direct recruitment in the Tamil Nadu Public Health Service 2013-2014 under Most Backward Class/De-notified community (MBC/DC) category in the light of the proceedings issued by the 2nd respondent in his proceedings, dated 10.9.2015 and in the light of the resignation of one of the appointee viz., Dr.M.Vinoth, whose resignation was accepted by the 1st respondent, vide G.O.(D).No.329, Health & Family Welfare (L2) Department, dated 13.03.2020.

2. The necessary facts, which are required to be noticed for the disposal of this writ petition, are as follows:

(i) The petitioner is a qualified Doctor to hold the post of Assistant Surgeon in the Tamil Nadu Public Health Service. While so, in order to fill up 33 vacancies to the post of Health Officer in the Tamil Nadu Public Health Service, on the basis of the request given by the State Government, the second respondent/Tamil Nadu Public Service Commission (TNPSC) issued a notification in Notification No.22 of 2014 dated 10.12.2014 inviting applications from the eligible candidates. Accordingly, the petitioner was also one among the applicants, who participated in the selection process competing with others and after the selection process was over, the provisional selection list was published on 01.09.2015 by the second respondent. Though the petitioner was not selected based on the marks he obtained, he was placed in S.No.1 in the reserved list meant for Most Backward Class (MBC)/De-notified community (General). On 10.09.2015, the second respondent/TNPSC also sent an individual communication to the petitioner stating that, since the petitioner obtained 322.00 marks, accordingly, he has



been placed at S.No.1 in the reserved list meant for MBC/De-notified communities (General).

(ii) As per the procedure in vogue, those selectees of the Service Commission, if appointed by the Appointing Authority and they have not joined on or before a particular date or joined and left for the reason of resignation or otherwise including death, if that kind of vacancies arise, the same would be then and there communicated by the Department concerned to the Service Commission for operating the reserved list from the concerned communal categories or General Turn, as the case may be. In other words, the reserved list published for each of the communal category by the Service Commission for every single category of posts, selection list and reserve list would be valid until the next selection is made and the selection list is published.

(iii) In this context, it is the case of the petitioner that, since he has been placed at S.No.1 in the wait list for MBC/ De-notified community (General), he was waiting, if any vacancy arises due to non-joining of selected candidates of that communal category or joined and left. While so, one Dr.M.Vinoth, who was appointed and joined service under MBC/ De-notified community (General) category, had submitted his resignation due to personal reasons and in view of the said resignation, since the post became vacant, which is meant for or reserved for MBC/ De-notified community (General) category, to which communal category, the petitioner also belongs and since he is already in the wait list as S.No.1 candidate, he seems to have made a request to the third respondent as well as the second respondent to appoint him as Health Officer.

(iv) When such a request was not considered, the petitioner had approached this Court and filed a writ petition in W.P.(MD) No.15922 of 2019, which came to be decided on 08.08.2019, where, this Court passed an order stating that, since Dr.M.Vinoth, though had sent the resignation, the same was not accepted, because, as per the bond condition executed, at the time of joining service, he had to remit a sum of Rs.1,44,806/- to the employer i.e., the Municipality, where he worked and only thereafter his resignation would be accepted. Therefore, unless the resignation is accepted and Government Order to that effect is issued, the question of considering the candidature of the petitioner does not arise, which means, once the resignation is accepted and the post has become vacant in the eye of law, the request of the petitioner would be considered.

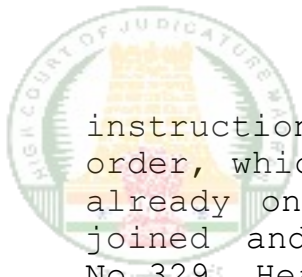


(v) Taking into account of this factor, this Court dismissed the said writ petition in W.P.(MD) No.15922 of 2019 filed by the petitioner, as a premature one. Subsequently, it seems that, the said Dr.Vinoth on 21.10.2019 remitted the said amount of Rs.1,44,806/- and based on which, his resignation, for the purpose of accepting the same, seems to have been forwarded to the Government. However, before the Government issued a Government Order and when the issue was pending, the petitioner seems to have made one more request to the respondents herein to consider his candidature for appointment by operating the reserved list. At that juncture, he also filed a Writ petition in W.P.(MD) No.1566 of 2020, where, this Court by order dated 27.01.2020, directed the third respondent herein, who was the third respondent in that writ petition also, to consider the representation of the petitioner dated 28.11.2019 within a period of six weeks and to pass orders on merits. Subsequent to the said order, the resignation of Dr.Vinoth was accepted by the Government and accordingly G.O.(D) No.329, Health and Family Welfare (L2) Department, dated 13.03.2020 was issued by the first respondent.

(vi) Following the same, the third respondent now, by the impugned order, dated 01.04.2020, has stated that, the resignation of Dr.M.Vinoth has been accepted by the Government through G.O.(D) No.329, Health and Family Welfare (L2) Department, dated 13.03.2020 and the petitioner was further informed that, the estimate of vacancy for the post of Health Officer would be sent to the TNPSC, who, after completing the selection process, would select the eligible candidates as per rules and the same would be sent to the Government i.e. the Health Department, who would make appointment to the selectees.

(vii) By stating this, the impugned order, dated 01.04.2020 has been issued. However, absolutely nothing is mentioned in the impugned order as to whether the request of the petitioner has been considered, or whether it was accepted or rejected. Therefore, having no other option, the petitioner, challenging the said order dated 01.04.2020 of the third respondent, has filed this writ petition with the aforesaid prayer.

3. This Court, after hearing Mr.M.Ajmal Khan, learned senior counsel appearing for the petitioner as well as Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents 1 and 3, had passed an order on 22.09.2020 to get



instructions to the effect that, on what basis the content of the order, which is impugned herein, dated 01.04.2020, has been made, as already one Dr.M.Vinoth, who had been selected in MBC quota, had joined and left the service by way of resignation and G.O.(D) No.329, Health and Family Welfare (L2) Department, dated 13.03.2020 also has been issued to that effect and the same also has been taken note of by the third respondent in the impugned order itself and despite the orders passed by this Court in W.P.(MD) No.1566 of 2020, dated 27.01.2020, why the third respondent has not chosen to operate the wait list meant for MBC quota against the petitioner, who is admittedly placed under S.No.1, which had to be explained before this Court.

4. Pursuant to the said order passed by this Court on 22.09.2020, the third respondent had sent the positional note to this Court on 23.09.2020, where he has stated the following:

"In this connection, it is submitted that, the name of the petitioner was not included in the reserve list of candidates furnished by the second respondent to first respondent for issue of appointment to the post of Health Officer. Hence the request of the petitioner was not considered."

...

In view of the above facts, it is submitted that the name of the petitioner was not included in the reserve list of candidates furnished by the second respondent to first respondent for issue of appointment to the post of Health Officer. Hence, the request of the petitioner was not considered. But only on inclusion of the petitioner's name in the reserve list furnished by the second respondent to the first respondent for the year of selection 2013-2014, Appointment Orders as Health Officer in Tamil Nadu Public Health Service can be issued by the first respondent."

5. After seeing the said written statement / positional note given by the third respondent to state that, the name of the petitioner is not at all available in the wait list provided by the second respondent/TNPSC to the first and third respondents, who are the Appointing Authorities, and in order to ascertain the fact, this Court on 24.09.2020 has passed the following orders:

"8.Pursuant to the said order dated 22.09.2020, the learned Government Advocate appearing for the respondents 1 and 3 has filed a positional note, wherein, among other things, the following is the reason given by the respondents 1 and 3, for not picking up the candidature of the petitioner from the reserve list for consideration of giving appointment order. In order to appreciate the same, the said reason cited in the positional note is extracted hereunder :



"In this connection, it is submitted that, the name of the petitioner was not included in the reserve list of candidates furnished by the second respondent to first respondent for issue of appointment to the post of Health Officer. Hence the request of the petitioner was not considered."

9. Therefore, the stand now taken by the respondents 1 and 3 is that, the TNPSC has not at all sent the name of the petitioner in the wait list candidates meant for MBC/DC (General), therefore, the petitioner could not be given appointment. This stand also conveys the meaning that, had the TNPSC sent the wait list candidates for the communal category of MBC/DC (General), where, as claimed by the petitioner, if his name stood at Serial No.1, he would have been appointed.

10. In the provisional selection list published by the TNPSC dated 01.09.2015 the registration number of the petitioner is mentioned under MBC/DC (General) category that he has been kept under wait list. Subsequently, on 10.09.2015, the TNPSC also sent a separate intimation to the petitioner categorically stating that the petitioner's name has been placed at Serial No.1 in the wait list category.

11. When that being so, this Court is wondering on what basis the respondents 1 and 3 are now stating that, the name of the petitioner has not been sponsored by the TNPSC in the wait list candidates meant for MBC/DC (General) category. In the first round of litigation which came up before this Court in W.P.(MD)No.15922 of 2019 as quoted above, the stand of the Government or the Department was that, Dr.Vinoth, who also belongs to MBC/DC (General) category, was selected and appointed and after joining service, he resigned, but his resignation was not accepted for want of the amount in lieu of execution of a bond to the Government since was not paid.

12. This stand also discloses that, once Dr.Vinoth's resignation is accepted, there cannot be any further impediment for consideration of the petitioner's name and since the resignation of Dr.Vinoth has not been accepted so far, the question of considering the name of the petitioner being in the wait list under the same communal category, would not arise. When the fact remains so, now the resignation of Dr.Vinoth since has been accepted and a Government Order to that effect has been issued in G.O. (D).No.329 dated 13.03.2020, and the import of the Government Order also has been quoted above. However, now



the respondents have taken a different stand stating that, the name of the petitioner has not at all been sponsored by the TNPSC in the wait list candidates as claimed by the petitioner.

13.This Court is facing wonder after wonder while traversing these facts, in respect of the petitioner and his three rounds of litigations. Therefore, inorder to ascertain the actual facts, this Court wants to peruse the original records pertaining to the following :

a) The list of wait list candidates sent by TNPSC pursuant to the selection relates to notification No.22 of 2014 dated 10.12.2014 in respect of candidates belongs to MBC / DC(General).

b)Since five (5) vacancies were earmarked for MBC/DC(General) category in the notification, who are all the five selectees originally made to that category to be filled up, their names, details and also the details where they have been posted and whether those five people, except Dr.Vinoth, had been continuously working till date, if so, the details.

c) the details with regard to Dr.Vinoth as to when his resignation was accepted and after issuance of the G.O.(D)No.329 dated 13.03.2020, whether the respondents explored the possibility of operating the reserve list meant for MBC / DC(General) and if so, the related file shall also be produced.

14. Mr.D.Sivaraman, learned Standing Counsel takes notice for the second respondent who shall also produce the relevant records mentioned above as available with the second respondent/ TNPSC before this Court.

15.The aforesaid original files and the details sought for, shall be produced before the Court by the respondents 1 and 2 without fail on 30.09.2020. It is made clear that, on that date, if those details and files are not produced before this Court for whatever reasons, this Court will not hesitate to draw adverse inference against the respondents 1 and 3 and accordingly, will proceed to finalize the issue raised in this writ petition, on the basis of the available records / materials.

16.The learned Government Advocate appearing for the respondents shall communicate the same to the respondents 1 and 2 for prompt compliance of this order.

17.Call on 30.09.2020."

6. Accordingly and pursuant to the said order, dated 24.09.2020, both TNPSC as well as the third respondent have produced
<https://hcservices.ecourts.gov.in/hcservices/>



the relevant records. In fact, the second respondent / TNPSC has also filed typed set of documents, which are the photo copies of the relevant documents of the records furnished. Along with the documents, the TNPSC, by its Deputy Secretary, has filed a positional note, where, it has stated that, the Commission issued notification on 10.12.2014 notifying 33 vacancies for direct recruitment to the post of Health Officer in the Tamil Nadu Public Health Services 2013-14. After selection process was over, the petitioner Dr.V.Dinesh Kumar had been placed in the reserved list in the category of MBC/DC(General)(1) category . The TNPSC has further stated in the positional note that, the petitioner, on 28.04.2020, has requested to appoint him in the place of the candidate, who had resigned (Dr.M.Vinoth) from the post of Health Officer, as no proposal for allotment of substitute candidate from the reserved list in the place of resigned candidate has been received from the Government, his request could not be complied with and the said fact was also communicated to the petitioner on 04.06.2020. By stating these aspects in the positional note, the second respondent / TNPSC has ultimately stated the following:

"(v) In this regard it is further submitted that proposal for allotment of substitute candidate from the reserve list in the place of resigned candidate (Dr.M.Vinoth) has not yet been received from the Government till date. If such proposal is received from the Government, next eligible candidate to be considered for selection from the Reserve list is Dr.B.Dinesh Kumar".

7. This positional note was signed by the Deputy Secretary / Under Secretary on 29.09.2020. Therefore, it has become quite clear that, till 29.09.2020, the first and third respondents have not sent any communication to the second respondent/ TNPSC to operate the reserved list meant for MBC/DC(General) category.

8. In this context, pursuant to my order dated 24.09.2020, the third respondent has also produced the relevant records, from where, certain factors are revealed. On 24.12.2019, the third respondent (the erstwhile incumbent) has written a letter to the Secretary to the Government / first respondent which reads thus:

"I have to state that Dr.M.Vinoth is a candidate selected by the Tamil Nadu Public Service Commission for appointment as Health Officer in Tamil Nadu Public Health Service for the year 2013-14 and his name has been approved by Government among others in the Government Order first cited. He has been posted to work as Municipal Health Officer, Rajapalayam Municipality, Rajapalayam vide G.O.(Rt) No.785, Health and Family Welfare (L2) Department, dated 29.06.2016 and he has joined duty as such on 01.07.2016. He has been deputed to undergo Orientation Training Course for three months from 21.03.2016 to 20.06.2016. While working as Municipal Health officer, Rajapalayam Municipality, Rajapalayam he



has applied for Extraordinary Leave from 02.09.2016 to 16.09.2016 due to ill health and later he has submitted his resignation letter dated 21.10.2019 to accept his resignation with effect from 02.09.2016 due to personal reasons. He has contractual obligation to serve the Government for five years till 30.06.2021 or till retirement for having undergone Orientation Training Course at Government cost respectively. For any failure on his part to serve the Government, he has executed bond for repayment of Rs.1,44,806/- for having underwent OTC at Government cost. The above mentioned amount has been repaid by the individual into the relevant Government Head of Account.

2. The resignation proposal has been examined with reference to G.O.Ms.No.144, Personnel & Administrative Reforms (S) Department, dated 17.06.1998 and the particulars are furnished in the annexure and sent to Government for acceptance.

3. I enclose the following documents in original for kind perusal of the Government.

1. Original remittance challan.

2. His resignation letter.

3. Letter No.NOC.2415/VAC-24/2019, dated 16.11.2019 of the Director of Vigilance and Anti Corruption, Chennai 6 in which the clearance report has been obtained.

4. I request early orders of the Government in the matter."

9. Subsequently, the very same third respondent has written another letter to the first respondent on 03.03.2020, where, he has stated the following:-

"I have to state that in the reference cited proposal has been submitted to the Government for acceptance of resignation submitted by Dr.M.Vinoth in the post of Health Officer in Tamil Nadu Public Health Service.

2. In the meanwhile one Dr.B.Dinesh Kumar, a reserve list candidate of 2013-14 Health Officer selection has filed writ petition W.P.No.1566 of 2020 before the Hon'ble High Court of Madras, Madurai Bench with a prayer to appoint him as Health Officer for the year 2013-2014 in Tamil Nadu Public Health Service.

3. In the Judgment order made in the High Court of Madras, Madurai Bench, dated 27.01.2020 in respect of W.P.No.1566 of 2020 it is directed as, 'In the view of the aforesaid developments, it would be appropriate to direct the third respondent herein to consider the petitioner's representation dated 28.11.2019 within stipulated time. Accordingly, there shall be a direction to the third respondent to consider the petitioner's representation, dated 28.11.2019, on its own merits and pass appropriate



orders within a period of six(6) weeks from the date of receipt of a copy of this order. It is made that this Court has not expressed any of its view with regard to the claim made by the petitioner in his representation and it is for the third respondent to consider it in accordance with law'.

4. In the above circumstances, I request the Government to issue early orders in regard to the acceptance of resignation submitted by Dr.M.Vinoth so as to enable this office to send a reply to the petitioner as per the direction in the judgment delivered."

10. Only thereafter, G.O.(D) No.329, Health and Family Welfare (L2) Department, dated 13.03.2020 was issued by the first respondent accepting the resignation of Dr.M.Vinoth.

11. Only at this juncture, i.e. after G.O.(D) No.329, Health and Family Welfare (L2) Department was issued on 13.03.2020, now, the impugned order has been passed by the third respondent on 01.04.2020, where, he has taken note of the fact that, the G.O., was issued, where the resignation of Dr.M.Vinoth was accepted. However, he has stated the following in the impugned order, dated 01.04.2020.

"In the light of the Judgement delivered by the High Court of Madras, Madurai Bench, dated 27.01.2020 in W.P.No.1566 of 2020 filed by Dr.B.Dineshkumar, the representation of the petitioner in the reference first cited has been examined. In this connection, he is informed that the resignation submitted by Dr.M.Vinoth, while working as Municipal Health Officer, Rajapalayam Municipality, Rajapalayam has been accepted by the Government vide G.O., third cited. (Copy enclosed).

3) He is further informed that estimate of vacancy for the post of Health Officer in Tamil Nadu Public Health Service is being submitted by this office every year to the Tamil Nadu Public Service Commission through the Government. Tamil Nadu Public Service Commission will select the eligible candidates as per rules for the post of Health Officer in Tamil Nadu Public Health Service and allot the selected candidates to the Government. Government being the appointing authority to the post of Health Officer in Tamil Nadu Public Health Service will issue appointing orders for the selected candidate."

12. On a reading of the content made in the impugned order, this Court feels that, the third respondent, though has noted the fact that G.O., was issued accepting the resignation of Dr.M.Vinoth, he has not stated anything about the plea raised by the petitioner to operate the reserved list and consequently give appointment to him as Health Officer in the vacancy caused by Dr.M.Vinoth, which



is earmarked for the communal category MBC/ DC notified (General). Instead of meeting the plea raised by the petitioner, purposely, the third respondent in the second paragraph of the impugned order has stated something which is irrelevant to the point in issue. Now, pursuant to my order dated 24.09.2020 as quoted above, Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the first and third respondents, has produced a copy of the two letters, one is the letter, dated 25.09.2020 of the third respondent addressed to the first respondent and another one, is the letter, dated 29.09.2020 of the first respondent addressed to the second respondent.

13. In the letter dated 25.09.2020, the third respondent has stated the following:

"In the above circumstances, in the light of the Judgment delivered by the Honourable High Court of Madras, Madurai Bench dated 27.01.2020 in W.P(MD) No.1566 of 2020 filed by the petitioner a reply has been furnished to the petitioner in accordance with law vide this office R.No.14383/E1/S4/2020, dated 01.04.2020 (copy enclosed).

In the reference cited, Government Advocate, Madurai Bench of Madras High Court has stated that Dr.B.Dinesh Kumar has filed W.P.(MD) No.12282 of 2020 before the Honourable High Court of Madurai with the same prayer to quash the R.No.14383/E1/S4/2020, dated 01.04.2020 as illegal and consequently to direct the first respondent to select and appoint the petitioner by direct recruitment to the post of Health Officer in Tamil Nadu Public Health Service 2014-2014 under most Backward / Denotified Community (MBC/BC) in the light of proceedings issued by the second respondent in his proceedings in memorandum No.7315/OTD/A1/2014-2, dated 10.09.2015 in Class III(ii) and in the light of resignation letter dated 29.10.2019 submitted by Dr.M.Vinoth, whose resignation was accepted by the first respondent in his proceedings G.O.(D) No.329, Health and Family Welfare (L2) Department, dated 13.03.2020 within the period that may be stipulated by the Honourable court. He has further requested for filing written statement as the Writ Petition is posted for hearing on 24.09.2020.

Accordingly Position Note has been sent to the Government pleader, Madurai Bench of Madras High Court vide reference second cited appraising the facts of the case and to obtain 2 months time for filing Counter affidavit when the case comes up for hearing in the Honourable Court.



Further I have to state that the Special Government Pleader, Madurai Bench of Madras High Court over phone on 24.09.2020 has requested this office to address Government to move the Tamil Nadu Public Service Commission for allotment of reserve list candidate for the vacancy arisen due to the resignation of Dr.M.Vinoth from the post of Health Officer.

In the reference 3rd cited, interim order has been issued stating for production of original file before the Court by the respondents 1 and 2 without fail on 30.09.2020. If the details and files are not produced before the Court for whatever reasons, this Court will not hesitate to draw adverse inference against the respondents 1 and 3 and accordingly, will proceed to finalize the issue raised in this writ petition, on the basis of the available records/ materials.

In this connection, I have to state that Dr.M.Dineshkumar in his representations dated 28.11.2019 and 02.03.2020 has requested to appoint him as Health officer in the vacancy caused due to the resignation of Dr.M.Vinoth (MBC Candidate) from the post of Health officer in Tamil Nadu Public Health Service as per 3(ii) of Memorandum No.7315/ OTD/A1/2014-2, dated 10.09.2015 of Tamil Nadu public Service Commission.

In the above circumstances, I request the Government to kindly move the Tamil Nadu Public Service Commission to release the reserve list candidates of the year 2013-2014 for the post of Health Officer in Tamil Nadu Public Health Service for the two vacancies arisen due to the resignation of Dr.M.Vinoth, (MBC/DC) and Dr.M.Santhoshkumar, (BC(OBCM)) candidates n Sl.No/.10 and 16 respectively appointed vide G.O.(D) No.54, Health and Family Welfare (L2) department, dated 15.02.2016.

I request early orders of the Government in the matter."

14. Pursuant to the said letter of the third respondent, dated 25.09.2020, the first respondent, vide his letter, dated 29.09.2020 addressed to the second respondent, stating the following:-

"7. In the reference 12th cited, the Director of Public Health and Preventive Medicine has sent Position Note to the Government Pleader, Madurai Bench of Madras High Court appraising the facts of the case and to obtain 2 months time for filing counter Affidavit when the case is taken up for hearing in the Honourable Court. The Special Government Pleader, Madurai Bench of Madras High



Court on 24.09.2020 has requested the Director of Public Health and Preventive Medicine over phone to address the Government to move the Tamil Nadu Public Service Commission for allotment of candidate from the reserve list for the vacancy arisen due to the resignation of Dr.M.Vinoth from the post of Health Officer.

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8. In the reference 14th cited, the Honourable High Court Madurai bench of Madras High Court in its interim order has directed for production of original files before the Court by the respondents 1 and 2 without fail on 30.09.2020. if the details and files are not produced before the court for whatsoever reasons, the Court will not hesitate to draw adverse inference against the respondents 1 and 3 and accordingly, will proceed to finalize the issue raised in the Writ Petition, on the basis of the available records/ materials.

9. In the reference 15th cited, I am to state that Dr.M.Dinesh Kumar in his representations dated 28.11.2019 and 02.03.2020 has requested to appoint him as Health Officer in the vacancy caused due to the resignation of Dr.M.Vinoth (MBC candidate) from the post of Health Officer in Tamil Nadu Public Health Service as per 3(ii) of Memorandum No.7315/ OTD/A1/2014-2, dated 10.09.2015 of Tamil Nadu Service Commission.

10. In view of the above, I am, therefore, to request you to take necessary action for filing up the vacancies arisen due to resignation of Dr.M.Vinoth and Dr.M.Santhoshkumar (Sl.No.10 and 16) for appointment to the post of Health Officer in TamilNadu Public Health Service.

11. This may kindly be treated as 'Most immediate'."

15. I have perused all those documents both in original as well as photo copies and the positional note submitted by the third respondent, dated 23.09.2020 and the positional note submitted by the second respondent, dated 29.09.2020. It is an admitted fact that, the petitioner's candidature has been placed at S.No.1 in the wait list meant for MBC/ DC (General) by the second respondent/ TNPSC. A public notice or publication has already been made in this regard by the second respondent/TNPSC releasing the provisional list of selected candidates, including the reserved list candidates, as early as on 01.09.2015 itself, where, in the reserved list category, the register number of the petitioner is found placed as S.No.1 in the wait list meant for MBC/ DC (General). It is not only in the category of MBC/ DC (General) but in every communal category, such reserved list has been published by the second



respondent/TNPSC, like General Turn, General Turn (Women), General Turn (Ortho) C/F, MBC/DC, MBC/DC(W), BC, BC(W), BC(Ortho), BCM(W), ST, SC(A), SC and SC(W).

16. Therefore, in each of the communal category, reserved list has been published by the second respondent/ TNPSC. Both the State Government and its instrumentalities, i.e., the Departments concerned, are well aware about the method of Recruitment in Government appointments of the State in the posts, which are coming under the purview of the second respondent TNPSC. If it is a single category post, the second respondent / TNPSC will certainly have a reserved list depending upon the marks and rank obtained by each of the candidates. Once the candidate selected and appointed has not joined and/or joined and left for any reason including resignation, due to which, vacancy arises and before which, no subsequent notification issued and selection list is published, till such time, the reserved list published by the second respondent / TNPSC shall be in operation. Therefore, from among the candidates, in the wait list of the concerned communal category depending upon the arising of vacancy, the Appointing Authority shall write to the second respondent / TNPSC to operate the reserved list and sponsor the candidates for immediate appointment.

17. This is the procedure being adopted in all the Departments and this procedure is very well known to every officer in the rank of Director or Secretary to the Government.

18. That is the reason why, now, after this Court pulled up the respondent department by passing orders after orders, the Director, ie., the third respondent has sent a detailed letter only on 25.09.2020 to the first respondent to write to the second respondent / TNPSC to operate the wait list, pursuant to which, the first respondent only on 29.09.2020 writes a letter to the second respondent/ TNPSC to operate the reserved list.

19. When that being the position, the very same third respondent in his positional note, dated 23.09.2020 submitted before this Court, has made a categorical statement that, the name of the petitioner was not included in the reserved list of candidates furnished by the second respondent to the first respondent for issuance of appointment. This position has been reiterated atleast in two places in the positional note, dated 23.09.2020 of the third respondent, which has already been extracted herein above.

20. It is also to be noted that, the learned Special Government Pleader during the argument has submitted that, the present incumbent of the third respondent office has joined only in May 2020. However, his predecessor, who might have been there in the third respondent office till the present incumbent joins in May, has already written two letters to the first respondent, one is dated 24.12.2019 and another one is dated 03.03.2020 and the content in entirety of the two letters have already been extracted hereinabove.



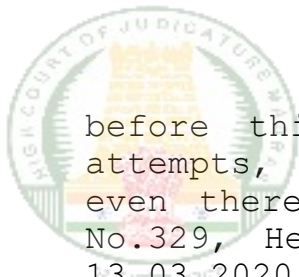
21. In the said letter, dated 24.12.2019, the earlier incumbent of the third respondent office has stated that, Dr.M.Vinoth has remitted the amount in lieu of the bond and therefore, the resignation can be accepted. The very same earlier incumbent on 03.03.2020 writes a second letter, where, he has mentioned about the earlier writ petition in W.P.(MD) No.1566 of 2020 filed by the petitioner and he has made a request to the first respondent that, the Government has to issue early orders to the acceptance of resignation submitted by Dr.M.Vinoth, so as to enable this office, i.e. the office of the Director, to send a reply to the petitioner, as per the direction of this Court.

22. Only at that juncture, G.O.(D) No.329, Health and Family Welfare (L2) Department was issued on 13.03.2020 and this has also been taken note of by the said incumbent of the third respondent office, which is reflected in the impugned order itself. However, the third respondent (earlier incumbent) in the impugned order, dated 01.04.2020 has stated nothing about the operation of the reserved list and nothing was explained about the alleged reason that, the name of the petitioner is not found in the reserved list furnished by the second respondent to the third or first respondents. The said reason, though unlawful, however, has been taken only now in the positional note, dated 23.09.2020, as if that, the reserved list submitted by the second respondent/ TNPSC does not have the name of the petitioner, as claimed by him.

23. All these communications, especially the content of the impugned order as well as the content in the positional note of the third respondent, dated 01.04.2020 and 23.09.2020 respectively make it abundantly clear that, either the third respondent (both the incumbents) have not understood the very functioning of the Department or Government or they have been pretending for the reason best known to them to avoid giving appointment to the petitioner by operating the wait list. In both ways, this Court feels that, the action in the negative or inaction, on the part of the third respondent makes him to unbecoming of a Government servant.

24. The reason for this observation, which is passing on the mind of this Court, is that, because, the petitioner, being a qualified doctor having participated in the competitive examination conducted by the second respondent/ TNPSC, had secured good marks i.e. 322.00, however, as one or two marks was short of the cut off marks in the said communal category, he was not selected, however, he has been placed in S.No.1 in the wait list, which is meant for operation whenever, even one vacancy of that communal category arises till the next selection is published.

25. In order to get his legitimate right of getting appointment in view of the vacancy arisen due to resignation of one Dr.M.Vinoth, the petitioner made the first attempt by filing a writ petition



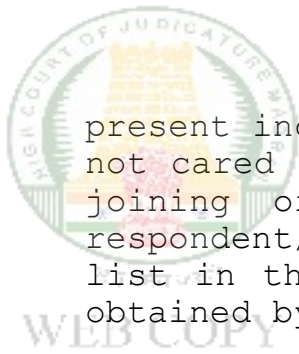
before this Court and thereafter, since he failed in all his attempts, he filed the second writ petition before this Court and even thereafter, when the decks have been cleared, where G.O.(D) No.329, Health and Family Welfare (L2) Department was issued on 13.03.2020 accepting the resignation of Dr.M.Vinoth, where, in the eye of law, clear vacancy has arisen in MBC/DC (General) category, absolutely, there can be no reason on the part of the third respondent or first respondent in not giving appointment to the petitioner by operating the wait list.

26. In this context, the learned standing counsel appearing for the second respondent / TNPSC by relying upon the typed set of documents, records as well as the positional note, has made it very clear that, till 29.09.2020, no communication or request has come either from the third or from first respondent to the second respondent / TNPSC to operate the wait list to sponsor the candidate to fill up the post, for which, vacancy was caused because of the resignation of Dr.M.Vinoth.

27. However, today at the time of hearing, the learned standing counsel appearing for the second respondent / TNPSC has stated that, yesterday i.e on 30.09.2020, a request from the first respondent to operate the wait list for MBC/DC General category and one more communal category has been received by the second respondent/ TNPSC and accordingly, they will act upon as soon as possible. In this context, the learned Special Government Pleader also, by producing the said communication of the first respondent, dated 29.09.2020, has submitted that, only on 29.09.2020, the Government has written to the second respondent/ TNPSC to operate the wait list candidates.

28. In this context, if we look at the letter of the third respondent, dated 25.09.2020 addressed to the first respondent, one more interesting factor is available to be noticed, where, along with the request for operating the wait list candidates for MBC/DC (G) category, due to the vacancy arisen, pursuant to the resignation of Dr.M.Vinoth, the third respondent also requested the Government to make a request, in turn to the second respondent/ TNPSC to operate the wait list for BC (OBCM) for the vacancy arisen due to the resignation of one Dr.Santhosh Kumar. It is further interesting to be noted that, in the case of Dr.Santhosh Kumar, he had resigned on 11.04.2017 and accepting his resignation, the Government issued G.O.(D) No.852 Health and Family Welfare Department, dated 13.04.2017. Therefore, even in respect of one vacancy arisen on 13.04.2017, till 25.09.2020 the third respondent office has not cared to fill up the post and has not requested the Government to write letter to the second respondent/ TNPSC to operate the wait list.

29. Therefore, this factor has clearly established that, the office of the third respondent, whether the earlier incumbent or the



present incumbent or any predecessors of the present incumbent, have not cared to fill up the post, where the vacancy caused due to non-joining or joining and left category, for which, the second respondent/ TNPSC already selected candidates and kept in the wait list in the respective communal category, depending upon the marks obtained by them.

30. This kind of lethargic attitude on the part of the officials, like the third respondent office, which is a public utility Department, has indicated a caution that, **'all is not well'**. If the office, like the third respondent office, is acting like this, by giving wrong or misleading information to the Court or by filing unverified report before this Court, for the sake of giving some answer to the Court, it has also made it clear that, these officers, who are occupying in the higher position in the Government, that too, in the Department like the Health Department, which is one of the important public utility Department, are not in service motive and they are also not sincere to the Government, where they are working and also to the people, for whom, they are expected to serve.

31. The petitioner, after three rounds of litigation and after enormous efforts, now, is in a position to get succeeded in this writ petition and thereafter, he will get the appointment order at the hands of the respondents, especially, the first and third respondents, though he is fully entitled to the same long back. In view of this kind of attitude on the part of the respondents, especially, the third respondent, a considerable judicial time of this Court has been consumed unnecessarily, as the Court had to ask particulars after particulars and records and for further particulars, where, not only in the impugned order but also in the positional note, either confusing statements or misleading contentions have been given by the third respondent and ultimately, especially, through the records submitted by the second respondent/ TNPSC, this Court is able to find out the truth and sensing that the Court will definitely find out the truth and fix the responsibility on the third respondent, he has hurriedly written a letter only on 25.09.2020 to the first respondent, who, in turn, has written a letter only on 29.09.2020 to the second respondent to operate the wait list. All these developments have given a room for great suspicion against the third respondent, who, for the reason best known to him, has obviously and purposely given misleading or confusing statement before this Court. Therefore, this Court feels that, while allowing this writ petition, some suitable directions also can be given to the Government to enquire into the matter and if need be, disciplinary proceedings can also be initiated against the third respondent.

32. In view of the aforesaid discussions and factual matrix of the case and having heard the learned counsel appearing for all the



parties and after perusal of the records produced, this Court is inclined to dispose of this writ petition with the following orders:-

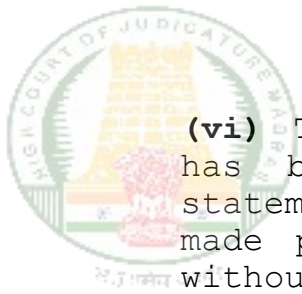
(i) The impugned order passed by the 3rd respondent in his proceedings in R.No.14383/E1/S4/2020, dated 1.4.2020 is quashed;

(ii) A direction, therefore, is hereby given to the second respondent to act upon immediately on the letter sent by the first respondent, dated 29.09.2020 addressed to the second respondent and accordingly, operate the reserved list meant for MBC/DC (General) for the post of Health Officer in the Tamil Nadu Public Health Services 2013-14, for which, selection was conducted by the second respondent / TNPSC, following the issuance of notification in No.22 of 2014, dated 10.12.2014, within a period of four weeks from the date of receipt of a copy of this order;

(iii) On receipt of the communication sponsoring the candidature of the petitioner, who is undoubtedly in S. No.1 in the wait list meant for MBC/DC (General), to fill up the post of Health Officer, which vacancy caused due to the resignation of one Dr.M.Vinoth, whose resignation has been accepted by the Government through G.O.(D) No.329, Health and Family Welfare (L2) Department, issued on 13.03.2020, the Appointing Authority / first respondent shall issue order of appointment as Health Officer to the petitioner within a period of two weeks thereafter;

(iv) The first respondent is hereby directed to call for the entire files in this regard, and appoint an Officer, not below the rank of Joint Secretary to the Government, to enquire into the matter as to why such misleading statements were filed by the third respondent before this Court including the confused content, purposely made by the third respondent in the impugned order, dated 01.04.2020 and based on such enquiry report, it is for the first respondent to decide to initiate disciplinary action against the third respondent, if any substance to that effect is unearthed, pursuant to the said enquiry;

(v) If any such decision is made by the first respondent accordingly to initiate disciplinary proceedings against the third respondent, the same shall be initiated immediately and proceeded in accordance with law;



(vi) That apart, since the judicial time of this Court has been considerably consumed by giving misleading statements / reasons or confusing statements / content made purposely in the impugned order, dated 01.04.2020 without seeing the earlier directions given by this Court, by the incumbent of the third respondent's office as well as the earlier incumbent in the office of the third respondent, both are equally liable to be fixed. Therefore, while conducting the enquiry by the first respondent as indicated above, the role of both the present incumbent as well as the earlier incumbent in the office of the third respondent shall be taken note of; and

(vii) Accordingly, a cost of Rs.10,000/- (Rupees Ten Thousand only) is imposed on the present incumbent (Dr.T.S.Selvavinayagam) at the third respondent office and another Rs.10,000/- (Rupees Ten Thousand only) is imposed on the earlier incumbent (Dr.K.Kulanthaisamy) of the third respondent office, which shall be paid in the name of the Registrar (Administration), Madurai Bench of Madras High Court, in order to augment the COVID-19 situation within a period of two weeks from the date of receipt of a copy of this order.

33. With these directions and observations, this Writ Petition is ordered accordingly, with the aforesaid costs on the earlier incumbent as well as the present incumbent holding the office of the third respondent only. Consequently, connected W.M.P.(MD) No.10533 of 2020 is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sts/RR

To:

- 1) The Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai 600 009



2) The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
VOC Nagar, Park Town,
Chennai 600 003

3) The Director of Public Health
and Preventive Medicine,
Public Health & Preventive Medicine Department,
No.359, Anna Salai, Chennai - 600 006

+1 CC to Mr.D. SIVARAMAN, Advocate (SR-18884[F] dated 05/10/2020)

+1 CC to SPL GP (SR-19094[F] dated 05/10/2020)

Order made in
W.P. (MD) No.12282 of 2020
01.10.2020

VB (19.10.2020) 20P 6C