



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.7407 of 2021

and

W.M.P(MD)No.5590 of 2021

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R.Rajendran

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Health & Family Welfare,
Fort St. George,
Chennai-600 009.

2.The Director of Public Health and Preventive Medicines
Chennai.

3.Thiru.N.Muralidharan

... Respondents

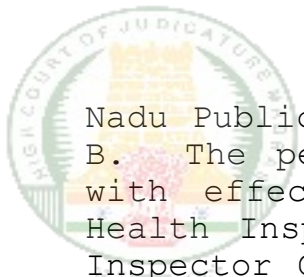
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent herein in Proceedings R.No.8478/MP2/S1/2020-7, dated 10.02.2021, quash the same and further direct the second respondent to post the writ petitioner as Block Health Supervisor at GPHC, Mulanur, Tiruppur HUD.

For Petitioner	: Mr.D.Sivaraman
For R1 & R2	: Mr.P.Subbaraj
	Government Advocate
For R3	: Mr.T.Lajapathi Roy

ORDER

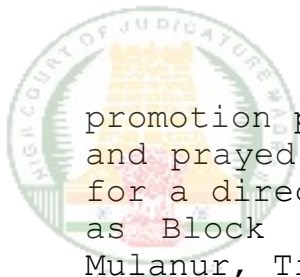
This writ petition is filed to quash the impugned order, dated 10.02.2021 passed by the second respondent in Proceedings R.No.8478/MP2/S1/2020-7 and further direct the second respondent to post the writ petitioner as Block Health Supervisor at GPHC, Mulanur, Tiruppur HUD.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Leprosy Inspector on 21.05.1991 in the Tamil Nadu Medical Services Department and was posted at Sub Centre Gujiliamparai under GLCU Vendasandur. After the Leprosy Department was wound up, all the Leprosy Inspectors working under the erstwhile Units were absorbed into the services of the Tamil



Nadu Public Health Services and posted as Health Inspectors Grade 1-B. The petitioner was also posted as Health Inspector Grade 1-B with effect from 01.08.1997. Subsequently, he was promoted as Health Inspector Grade-I. The next avenue of promotion for Health Inspector Grade-I is to the post of Block Health Supervisor. The second respondent maintains State-wide seniority list in the post of Health Inspector Grade-I eligible to be promoted to the post of Block Health Supervisor. The promotions will be granted by conducting promotion counseling. The last promotion counseling was conducted in the year 2017. The Health Inspector Grade-I/Multipurpose Health Supervisor stood in between Sl.No.5091 and 5850 in the seniority list, were called for promotion counseling in the year 2017 and they were promoted. The petitioner is at Sl.No.5910 in the said seniority list. The promotion counseling was not conducted from the year 2017. Only by the efforts taken by various Associations and filing writ petitions, the second respondent finalised the list of Health Inspector Grade-I eligible to be promoted to the post of Block Health Supervisor for the panel year 2019-2020. Further, the second respondent did not conduct promotion counseling as per the guidelines issued in G.O.(2D) No.131, Health and Family Welfare (A1) Department, dated 20.11.2007. By deviating from the guidelines issued in G.O.(2D) No.131, Health and Family Welfare (A1) Department, dated 20.11.2017, the second respondent called for options for the place of posting from the Health Inspector Grade-I, who are included in the panel for promotion to the post of Block Health Supervisor for the year 2019-2020. The petitioner gave three preferential places. In the option, Mulanur- Tiruppur District was the petitioner's first preference. According to the petitioner, he is having sufficient seniority in the panel to be posted in the place of his first choice. The petitioner, on promotion, was posted at GPHC, Panjapatti, Karur District, which is his third option vide the proceeding of the second respondent, dated 10.02.2021. On enquiry, the petitioner came to know that the third respondent was posted at Mulanur, Tiruppur District, which is the first preference of the petitioner.

3. The learned counsel appearing for the petitioner further submitted that the third respondent is not eligible to be promoted in the panel for the year 2019-2020, as he has relinquished his right of promotion for three years in the promotion counseling conducted in the year 2017. Therefore, he is not eligible to be considered for promotion for three years. According to the records of the second respondent, the relinquishment of promotion exercised by the third respondent started from June, 2017 and ends only in June, 2020. The promotion order, dated 10.02.2021, was relating to the panel for the year 2019-2020, hence, the third respondent is not eligible to be promoted in the panel for the year 2019-2020. Hence, the petitioner gave representation to the second respondent. The second respondent has not passed any orders. Hence, the petitioner



promotion posting the third respondent in Mulanur, Tiruppur District and prayed for setting aside the order of the second respondent and for a direction to the second respondent to post the writ petitioner as Block Health Supervisor at Government Primary Health Centre, Mulanur, Tiruppur District.

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4. The second respondent filed counter affidavit on behalf of the respondents. Mr.P.Subbaraj, learned Government Advocate appearing for the respondents 1 and 2 referred various averments in the counter affidavit and submitted that the next avenue of promotion from the post of Health Inspector Grade-I is Block Health Supervisor. The petitioner's name was found place in the seniority list at Sl.No.5910, whereas, the third respondent's name was found place at Sl.No.5507. The third respondent has also opted for Mulanur, Tiruppur District, as his first choice, hence, the third respondent was promoted and posted at Mulanur. There was no vacancy at GPHC, Vellakovil, Tiruppur District, the second option cited by the petitioner and hence, the petitioner was promoted as Block Health Supervisor and posted at GPHC, Panjapati, Karur District as per his third option and prayed for dismissal of the writ petition.

5. The learned counsel appearing for the third respondent submitted that the third respondent relinquished his right in the year 2017 for three years and the said period came to end in the year 2020 and therefore, he is eligible for being considered for promotion. The third respondent was promoted and posted only on 10.02.2021 when three years of relinquishment period was over. Hence, the second respondent has rightly promoted the third respondent on 10.02.2021. The learned counsel appearing for the third respondent further submitted that the third respondent has not opted Mulanur, Tiruppur District, as his first choice, and he opted Veerapandi, Devadhanampatti and Dombucheri in Theni District and submitted that the petitioner can be transferred and posted as Mulanur and the request of the third respondent may be considered and he may be posted as per his request.

6. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the respondents 1 & 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

7. The main contention of the learned counsel appearing for the petitioner is that the third respondent relinquished his right of promotion to the post of Block Health Supervisor in the year June 2017. For three years, i.e., from June 2017, he is not eligible for being considered for promotion. The second respondent erroneously considered the third respondent for promotion in the panel prepared for the year 2019-2020 and posted the third respondent in the place of Mulanur, which is the first preference of the petitioner. The second respondent filed counter affidavit, wherein, the second respondent denied the case of the petitioner that till June



2020, the third respondent cannot be considered for promotion. The second respondent also did not deny the fact that the panel for promotion for the year 2019-2020, was prepared much earlier to June 2020. Their only stand in the counter affidavit is that the third respondent is senior to the petitioner in the seniority list and therefore, the third respondent was posted in the place of his first choice. According the learned counsel appearing for the third respondent, the third respondent has not opted for Mulanur, as his first preference. The respondents 1 & 2 have not denied the contention of the learned counsel appearing for the petitioner that the third respondent is not eligible to be considered for promotion till June 2020 and inclusion of his name in the panel for the year 2019-2020, is erroneous. Failure on the part of respondents to substantiate the right of third respondent to be included in the panel for the year 2019-2020 which was prepared much prior to June 2020, the promotion and posting of the third respondent at Mulanur, is invalid.

8. The learned counsel appearing for the third respondent submitted that a direction may be issued to the second respondent to consider the third respondent for inclusion of his name for the subsequent year. It is open to the third respondent to give representation to the second respondent, for redressal of his grievance.

9. For the above reason, the impugned order of the second respondent, dated 10.02.2021, is set aside and the second respondent is directed to post the writ petitioner as Block Health Supervisor at GPHC, Mulanur, Tiruppur HUD.

10. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

am

To

1.The Principal Secretary,
Department of Health & Family Welfare,
Fort St. George,
Chennai-600 009.



2.The Director of Public Health and Preventive Medicines
Chennai.

+1 CC to M/s.SPL GP (SR-21331[F] dated 06/07/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-21282[F] dated 06/07/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-21271[F] dated
06/07/2021)

W.P. (MD)No.7407 of 2021

05.07.2021

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