



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2021

CORAM

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

W.P. (MD)No.21966 of 2016

and

W.M.P. (MD)No.15703 of 2016

WEB COPY

D.Rajendran

... Petitioner

vs.

1.State of Tamil Nadu

represented by its Secretary,

Department of Public Health and Family Welfare,

Fort St.George, Chennai

2.The Director,

Public Health and Preventive Medicine,

D.M.S.Compound,

Teynampet, Chennai -18.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in R.No.7906/Trg/S4/2016, dated 23.04.2016 and quash the same as illegal and consequently, to direct the respondents to appoint the petitioner as Health Inspector Grade II with effect from 13.01.2011, when 55 others were appointed as such with continuity of service, arrears of salary, appropriate seniority and all other attendant benefits.

For Petitioner : Mr.A.Sivasubramanian

For Respondents : Mr.M.Linga Durai

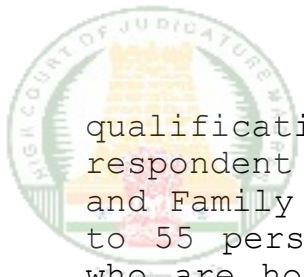
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent, dated 23.04.2016, and to direct the respondents to appoint the petitioner as Health Inspector Grade II with effect from 13.01.2011 with continuity of service, arrears of salary, appropriate seniority and all other attendant benefits.

2.Heard Mr.A.Sivasubramanian, learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents.

3.The petitioner states that he obtained diploma certificate in the course of Sanitary Inspector in All India Institute of Local Self Government, Bombay. The petitioner registered his



qualification in employment exchange on 24.02.1993. The first respondent issued Government Order vide G.O.Ms.No.305, Public Health and Family Welfare Department, dated 22.09.2009, to give appointment to 55 persons as Health Inspector Grade II from among the persons who are holding the diploma certificate issued by the Institute of Local Self Government based at Bangalore, Belgaum, Cochin and Mumbai and other States, are also eligible to participate in the selection process by relaxing the rules, so that the persons, who belonged to this State but had obtained certificates from institutions in other States would get employment.

4.The petitioner applied to the said post and he was called for interview for the post of Health Inspector Grade II on 16.12.2010. The petitioner's candidature was rejected vide impugned order, dated 23.04.2016, on the grounds that the petitioner has not secured the required marks in the interview and that the concession vide G.O.Ms.No.305, Public Health and Family Welfare Department, dated 22.09.2009, cannot be granted, as the concession was by way of one time measure. In the impugned order itself, it is mentioned that the order of the learned Single Judge of this Court in W.P.No.25673 of 2013, which was filed at the instance of the persons, who were similarly placed, was challenged in the appeal in W.A.No.1606 of 2014 and that the order of learned Single Judge had been stayed.

5.From the facts narrated before this Court by the learned Counsel for the petitioner as well as the learned Government Advocate, it is seen that several candidates, who have completed Sanitary Inspector training course in All India Institute of Local Self Government outside the State of Tamil Nadu, made representations to the Government to recognise the certificates obtained by them in Sanitary Inspector course so as to make them eligible to apply for the post of Sanitary Inspector or Health Inspector Grade II. After appointment of One Man Committee, the Government relaxed the rules and directed to appoint 55 candidates, who belong to Tamil Nadu, but completed the required course in the Institutes, which are situated outside Tamil Nadu and recognised by the Government of Tamil Nadu.

6.Pursuant to G.O.Ms.No.305, dated 22.09.2009, it is stated that 55 candidates, who completed their course out side Tamil Nadu were selected by relaxing the Rule 5(b)(iii) of Tamil Nadu Public Health Subordinate Service Rules, 2000. It was also mentioned in the Government Order that selection should be in the ratio of 1:5. The Government has given one time relaxation to accommodate the candidates, who belong to the State of Tamil Nadu.

7.Thereafter, several other persons who are similarly placed filed Writ Petitions before this Court for issuance of Writ of Mandamus to direct the respondents to appoint them as Health



Inspector Grade-II with effect from 13.01.2011. It is not in dispute that 55 candidates were appointed following G.O.Ms.No.305, dated 22.09.2009. The petitioners in the batch of Writ Petitions are also candidates, who completed Sanitary Inspector course conducted by All India Institute of Local Self Government, Bangalore, Belgaum, Cochin and Mumbai. The grievance of the petitioners therein was that the Director of Health and Preventive Medicine, the second respondent herein, conducted interview for all the candidates along with the candidates, who have not been sponsored by the employment exchange and rejected the candidatures of all the petitioners on the ground that they have not secured the cut off marks. Though it is contended by the learned Additional Government Pleader in the above case that 55 candidates were interviewed along the candidates sponsored by employment exchange and the petitioners therein secured only low marks, this Court went into the issue whether the second respondent was justified in holding the interview for the purpose of selection notwithstanding the direction issued in G.O.Ms.No.305, dated 22.09.2009. By order, dated 26.03.2015 in W.P.No.16488 of 2012, and other 7 Writ Petitions were allowed with directions.

8.This Court found that the selection and the whole interview conducted by the second respondent was illegal. Since the selected candidates were not before this Court, the learned Single Judge of this Court, after deprecating the procedure followed in the selection, found that the whole selection process is arbitrary. However, without setting set aside the selection made in 2011, this Court directed the respondents to appoint the petitioners as Health Inspector Grade II in the light of G.O.Ms.No.305, Public Health and Family Welfare Department, dated 22.09.2009.

9.The petitioner filed the above Writ Petition placing reliance on the order of learned Single Judge in a batch of Writ Petitions in W.P.No.16488 of 2012 and batch, dated 26.03.2015. The learned Counsel for the petitioner also relied upon a judgment of learned Single Judge of this Court in W.P.No.25673 of 2013, which was filed by a Welfare Association of Unemployed Sanitary Inspector and Health Inspector Training Employees, to consider the petitioner's members of the association for appointment to the post of Health Inspector Grade-II and Sanitary Inspector in the Government service on the basis of diploma certificate obtained from Pondicherry in Sanitary course. Relying upon G.O.Ms.No.305, dated 22.09.2009 and subsequent G.O.(D)No.310, Municipal Administration and Water Supply Department, dated 27.07.2008, this Court issued a positive direction to the respondents herein to provide them employment. When the order was challenged in the appeal in W.A.No.1606 of 2014, the Honourable Division Bench of this Court, set aside the order of learned Single Judge and disposed of the Writ Appeal in the following lines:

"4. There is no question of issuing a Mandamus in a matter of this nature. The Government must be in a

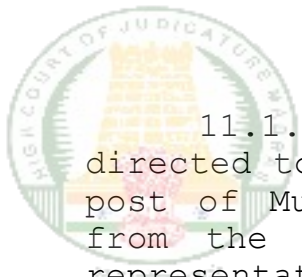


position to consider the qualification obtained by the members of the first respondent Association before taking a decision to treat such qualification as equivalent for appointment to the post of Multi purpose Health Worker. The Government has also to consider the duration of course, the syllabus and all other relevant factors before taking a decision as to whether the Diploma in Sanitation awarded by the Pondicherry University is equivalent to the qualification prescribed for appointment to the post of Multi purpose Health Worker. Since such an exercise was not conducted by the learned single Judge, we are constrained to set aside the order impugned in this appeal.

5. We set aside the direction given by the learned single Judge in the order dated 12 November, 2013 in W.P.No.25673 of 2013. We give liberty to the first respondent or its members to submit a comprehensive representation to the first appellant. In case any such representation is given, the same shall be considered and disposed of on merits and as per law. The first appellant must also consider the earlier orders issued by the Government giving concession to the candidates who hails from Tamil Nadu and obtained the Diploma from Pondicherry."

10.It is now admitted before this Court that the post of Sanitary Inspector has now been redesignated as Multipurpose Health Worker. The learned Counsel for the petitioner relied upon the direction issued in the earlier Writ Petition and submitted that the petitioner should also be considered in the light of the direction issued by this Court in W.P.No.25673 of 2013 filed by the similarly placed persons. It is to be noted that the order of learned Single Judge of this Court relied upon by the petitioner was set aside by the the Honourable Division Bench of this Court in the appeal preferred by the respondents herein in W.A.No.1606 of 2014. Since the Honourable Division Bench has given a direction to the petitioner in the earlier Writ Petition to submit a comprehensive representation and directed the respondents to pass appropriate orders, the learned Counsel for the petitioner submitted that the present Writ Petition may also be disposed of by giving liberty to the petitioner to submit a fresh representation to the first respondent, who in turn, may pass appropriate orders.

11.Considering the nature of order passed by the Honourable Division Bench of this Court in W.A.No.1606 of 2016 and the nature of orders passed by this Court in the batch of Writ Petitions, this Court is also inclined to dispose of the Writ Petition with the following directions:



11.1.The Writ Petition is closed. However, the petitioner is directed to submit a fresh representation seeking appointment to the post of Multipurpose Health Worker within a period of four weeks from the date of receipt of a copy of this order. On such representation being submitted by the petitioner, the first respondent shall consider and dispose of the said representation on merits and in accordance with law particularly with reference to the qualification of petitioner for the post of Multipurpose Health Worker, within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr/tmg

To

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

2.The Director,
Public Health and Preventive Medicine,
D.M.S.Compound,
Teynampet, Chennai -18.

+1 CC to M/s.SPL. GP (SR-29752[F] dated 21/09/2021)

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PS (CO)
KB(06.10.2021) 5P 4C