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W.P.No.1967

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2022

PRONOUNCED ON : .09.2022

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD
W.P.No.1967 of 2010

S.Chandran

... Petitioner

Vs

1.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.

2.The Director of Public Health,
And Preventive Medicine,
Anna Salai, Chennai – 600 006.

3.K.Murugesan

4.T.Ezhilarasu

5.U.Manikandan

6.R.Singaravelu

7.S.Senthilnathan

8.A.Ganapathy

9.K.Karnan

10.A.Veeraiah

11.S.Kingson

12.P.Sivakumar

13.R.Elangovan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the entire records of the 2nd



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respondent proceedings in R.No.65763/E2/S2/09-2, dated 22.09.2009 and quash the said proceedings in so far as the non-inclusion of the petitioner name above Sl.No.2 in the said proceedings and consequently direct the respondents to include the name of the petitioner above in serial No.2 in the panel year 2009-2010 in his proceedings R.No.65763/E2/S2/09-2, dated 22.09.2009 and direct the respondent to promote the petitioner as Entomological Assistant from the date on which 3rd respondent was promoted as Entomological Assistant with all consequential service benefits such as notional promotion seniority, pay scale, perquisites etc.,

For Petitioner : Mr.D.Balaraman

For Respondents : Mr.G.Nanmaran for R1 and R2
Special Government Pleader
for R3 to R13 – no appearance

ORDER

This Writ Petition has been filed to call for the entire records of the 2nd respondent proceedings in R.No.65763/E2/S2/09-2, dated 22.09.2009 and quash the said proceedings in so far as the non-inclusion of the petitioner name above Sl.No.2 in the said proceedings and consequently direct the respondents to include the name of the petitioner above in serial No.2 in the panel year 2009-2010 in his proceedings R.No.65763/E2/S2/09-2, dated 22.09.2009 and direct the respondent to promote the petitioner as Entomological Assistant from the date on



which 3rd respondent was promoted as Entomological Assistant with all consequential service benefits such as notional promotion seniority, pay scale, perquisites etc.,

2.The petitioner case of the petitioner is that he had acquired B.Sc., (Zoology) degree in the year 1983. The petitioner underwent Lab Assistant Training conducted by the Department of Public Health and Preventive Medicine, Tamil Nadu during October,1990 till April,1991 and was appointed as Laboratory Assistant by the proceedings of the Director of Public Health and Preventive Medicines, in his proceedings dated 19.03.1992. The post of Laboratory Assistant is governed by Tamil Nadu Health Subordinate Service Rules. The post of Laboratory Technician Grade-II sanctioned to the Primary Health Centres, the nomenclature of the said post has changes as Laboratory Assistant in G.O.Ms.No.1346, Health, Indian Medicine and Homeopathy and Family Welfare Department, dated 23.07.1990.

3.The post of the Laboratory Assistant is under Category-4, Clause-I under Tamil Nadu Public Health Subordinate Service. The next avenue of promotion is Health Inspector under Category-3, the further promotion is Entomological



Assistant under Category-2. The method of recruitment for the post of Health Inspector was from Laboratory Assistant (Malaria), Senior Laboratory Assistant, Technician Propaganda Section, Health visitor of the Public Health Department, Tamil Nadu Sanitary Inspectors and Health Assistants and Field Assistants from Public Health Department etc., who are direct recruitment of persons in the order of preference noted below without prejudice to the rule relating to reservation of appointments. The educational qualification for Laboratory Assistant is S.S.L.C. In so far as the post of Entomological Assistant, the method of recruitment in the special rules were amended in the year 1996 under G.O.Ms.No.491, Health and Family Welfare Department, dated 27.09.1996. The amended rules are as follows:-

(1) In the Tabular Column under rule 2, under the heading “Class I” for the entries in the second column, against the entry 2. “Entomological Assistant” in the first column thereof, the following entries shall be substituted, namely:-

(a)(i) by promotion from among the holders of the post of Health Inspector, Grade-I or

(ii) by promotion from among the holders of the post of Health Inspector, Grade-II if no qualified persons are available for appointment by the method under item (1): or

....



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(2) *In the Annexure, under the heading “Class 1” for the entries in Column (2) against the category “2 Entomological Assistant” in Column (i) thereof, the following entries shall be substituted, namely:-*

“(i) For appointment of promotion:

Degree in Zoology with five years experience in the feeder category.

“(ii) For appointment by direct recruitment:

Master's Degree in Zoology or Master's Degree in Medical Entomology”.

4. The 2nd respondent prepared a provisional list of qualified candidates to fill up the post of Entomological Assistants from the categories of Health Inspectors, Grade I and II and Laboratory Assistants in his proceedings dated 24.01.1997. The proceedings consisted of 111 candidates out of which S.No.1 to 13 are Health Inspectors Grade I and II and from S.No.14 to 111, Laboratory Assistants, who are possessing degree qualification were included. The petitioner was promoted as Health Inspector Grade-I on 06.01.2009 by the proceedings of the 2nd respondent and the petitioner joined as Health Inspector Grade-1 at Government Primary Health Centre, Kadambattur. The 2nd respondent in his proceedings dated 31.01.2007 prepared provisional seniority of Laboratory Assistant as on 01.01.2007. In the said seniority list the petitioner seniority is Sl.No.340. Whereas the seniority of the respondents 3 to 13 are as follows:



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<i>Name</i>	<i>Seniority No in the feeder category</i>
Chandran (petitioner)	340
K.Murugesan	590
T.Ezhilarasu	595
U.Manikandan	605
R.Singaravelu	615
S.Senthinathan	618
A.Ganapathy	623
K.Karanan	631
A.Veeraiah	642
S.Kingson	662
P.Sivakumar	671
R.Elangovan	735

5.In the year 2009, certain vacancies in the post of Entomological Assistants arose in the Department. The 2nd respondent in his proceedings R.No.65763/E2/S2/09-2, dated 22.09.2009 stated that “the name of the individuals approved in the regular panel for the post of Entomological Assistants in Tamil Nadu Public Health Subordinate Service for the panel year 2009 and 2010 communicated”. The 2nd respondent included 12 candidates, out of which except one Mr.Gunasekaran, the remaining 11 candidates are far juniors to the petitioner were included in the said panel. The said panel was not communicated to any of the individuals whose seniority were affected and the petitioner has also not received any such communication from the 2nd respondent



with reference to the said panel. The 2nd respondent appointed 11 candidates, respondents 3 to 13 to the post of Entomological Assistants in his proceedings in R.No.65763/E2/S2/09 1-11, dated 04.10.2009. The appointment order were issued on sunday (04.10.2009) and the candidates have joined in the promoted post next day. The proceedings were kept in a confidential manner to prevent the qualified seniors like the petitioner from challenging the same. The proceedings of the 2nd respondent appointing the junior most Laboratory Assistants overlooking the petitioner and similarly placed persons as Entomological Assistant are contrary to service rules and law. The petitioner also gave his representation dated 03.11.2009 and brought to the notice of the said facts to the 2nd respondent and also requested to include his name in the 2009-2010 panel and promote as Entomological Assistant from the date of which the juniors were promoted to till date. The same was not considered. Aggrieved by the above said order passed by the 2nd respondent, the petitioner has come forward with the present Writ Petition.

6.The learned counsel appearing for the petitioner submitted that in the provisional seniority list of the Entomological Assistant as on 01.01.2007, the petitioner was in S.No.340. The petitioner has worked for 17 years in the Feeder



Category. Since, the juniors of the petitioner were promoted in the year 2016, the petitioner opted for Voluntary Retirement Scheme in the year, 2017. The petitioner has submitted his willingness for appointment as Entomological Assistant to the 2nd respondent as early as on 30.12.1997. The petitioner under R.T.I. Act obtained information, in which the Assistant Director of Public Health, Nagapattinam by order dated 06.01.2010 has promoted on Mr.M.Sesachalam, Health Inspector as Entomological Assistant within a year from the post of Health Inspector Grade-I. One another person by the name Mr.S.Shivashankar was also promoted as Entomological Assistant within two years from the date of his promotion as Health Inspector. Hence, the petitioner is entitled for notional promotion as Entomological Assistant with effect from 04.10.2009, date on which the 3rd respondent was promoted as Entomological Assistant.

7.A counter affidavit was filed on behalf of the 2nd respondent. For better appreciation the relevant paragraphs of the said counter affidavit is extracted hereunder:-

“4.With regard to para 10, it is submitted that the averment & made by the petitioner is not correct. It is humbly stated that on the crucial date (15.03.2009) for preparation of panel for promotion to the post of Entomological Assistant in the Tamil Nadu



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Public Health Subordinate Services for the panel year 2009-10 the petitioner was not eligible to be included in the panel due to the following reasons:

(a)The petitioner was temporarily promoted as Health Inspector Grade-I under Rule 39 (a)(i) of the Tamil Nadu State and Subordinate Services and his services were not regularized in the post of Health Inspector Grade I on the crucial date for preparation of panel for promotion to the post of Entomological Assistant.

(b)As per provision laid down in the amended Special Rules for the Tamil Nadu Public Health Subordinate Services in G.O.Ms.No.491 Health and Family Welfare Department, dated 27.9.96 the eligible candidate for the post of Entomological Assistant should have five years experience in the feeder category, whereas, the petitioner was promoted as Health Inspector Grade-I (i.e.Feeder Category) only during January 2009 and does not have five years experience in the post of Health Inspector Grade-I on the crucial date (15.3.2009 for the preparation of panel for promotion to the post of Entomological Assistant for the panel year 2009-10.

....

6.With regard to ground B to F it is submitted that even though the petitioner is senior to respondents 3 to 14 in the post of Laboratory Technician Grade-III he was promoted as Health



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Inspect Grade I during the year 2009 the question of seniority for the promotion to the post of Entomological Assistant for the panel year 2009-2010 does not arise.

It is humbly stated that on the crucial date (i.e. 15.03.2009) for the panel year no Health Inspector Grade-I and Grade-II were qualified for promotion as Entomological Assistant as per the existing Special Rules for the Tamil Nadu Public Health Subordinate Services governing the post of Entomological Assistant. Hence, the 3 to 14 respondents was promoted as Entomological Assistant since they possessed the requisite qualification for the post of Entomological Assistant as per the existing Special Rules.”

8.Heard the learned counsel appearing on both side and perused the materials available on record.

9.In the present case, it is pertinent to note the provisional seniority list of the Laboratory Assistants as on 01.01.2007 vide proceedings of the 2nd respondent dated 13.01.2007 and in this seniority list, the petitioner seniority is S.No.340, whereas, S.No of the respondents 3 to 13 are 590, 595, 605, 615, 618, 623, 631, 642, 662, 671 and 735. Hence, it is crystal clear and evident that the respondents 3 to 13 are far juniors to the petitioner in the year, 2009. The 2nd



respondent in his proceedings dated 22.09.2009 stated that the name of the individuals in the regular panel for the post of Entomological Assistants in Tamil Nadu Public Health Subordinate Service Rules for the year 2009-2010 communicated. The 2nd respondent included 12 candidates out of which one Mr.Gunasekaran, senior to the petitioner and the remaining 11 candidates are far juniors to the petitioner were included in the said panel and they are none other than the respondents 3 to 13 are promoted as Entomological Assistants vide 2nd respondents proceedings R.No.65763/E2/S2/09 1-11 dated 04.10.2009 and the appointment orders were issued on Sunday (04.10.2009) and the candidates were asked to report for duty on next day i.e., Monday. The petitioner also gave a representation dated 03.11.2009 to include his name in the panel 2009-2010 and promote him as Entomological Assistant and till date the same was not considered by the 2nd respondent.

10.For better appreciation, under Section 26 of the Tamil Nadu Public Health Subordinate Service, the relevant portion is extracted hereunder:-

“2.Appointment:- (a)...

2.Entomological Assistant (1) (i)by promotion from among the holders of the post of Health Inspector

Grade I; or

(ii)by the promotion from among the holders of the post of Health Inspector,



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Grade-II, if no qualified persons are available for appointment by the method under item(i); or

(iii)by promotion from among the holders of the post of Laboratory Assistants if no qualified persons are available for appointment by the method under items (i) and (ii); or

(2) by direct recruitment, if no qualified persons are available for appointment by promotion

ANNEXURE
(Referred to in Rule (b))

Class	Category	Qualification
2.	<u>Entomological Assistant</u>	<u>(i) For appointment by promotion - Degree in Zoology with five years experience in the feeder category.</u> (ii) For appointment by direct recruitment - Master's degree in Zoology or Master's degree in Medical Entomology.

11.In the counter affidavit filed by the 2nd respondent, it is stated that a per the provisions laid down in the amended Special Rules for the Tamil Nadu Subordinate Services in G.O.Ms.No.491 Health and Family Welfare Department dated 27.09.1996, the eligible candidates for the post of Entomological Assistant should have five years experience in the Feeder Category, whereas, the petitioner



was promoted as Health Inspector-I (Feeder Category) only during the year January, 2009 and does not have five years experience on the crucial date (15.03.2009) for the preparation for the post of Entomological Assistant for the panel year 2009-2010.

12.It is pertinent to note that the petitioner has worked for seventeen years in the Feeder Category and according to the said G.O. the eligible candidate should have five years experience in the Feeder Category only. So, according to the above said G.O. the petitioner is eligible for appointment as Entomological Assistant with effect from 04.10.2009 on par with the juniors, who are the respondents 3 to 13 in the Writ Petition.

13.The non-consideration of the petitioner's name for inclusion in the panel for the year 2009-2010, though he is senior to the respondents 3 to 13 is a clear case of discrimination and it is in violation of Article 14 of the Constitution of India. The proceedings of the 2nd respondent Vide No.65763/E2/S2/09 1-11 dated 04.10.2009, promoting the respondents 3 to 13 as Entomological Assistants is passed with a malafied intention and had also amounts to arbitrary exercise of powers as conferred on him.



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14.In view of the above facts and circumstances of the case, the order passed by the 2nd respondent R.No.65763/E2/S2/09-2, dated 22.09.2009 is hereby quashed and the 2nd respondent is directed to include the name of the petitioner as Entomological Assistant with effect from 04.10.2009 (notionally) with all consequential service benefits such as notional promotion seniority, pay scale, perquisites etc., on which date the respondents 3 to 13 were promoted as Entomological Assistants.

15.In the result, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

.09.2022

Index: Yes/No
Internet: Yes/No
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J.SATHYA NARAYANA PRASAD, J.

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To

- 1.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Public Health,
And Preventive Medicine,
Anna Salai, Chennai – 600 006.



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