



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM

THE HONOURABLE MRS. JUSTICE S. SRIMATHY

W.P. (MD) No. 8997 of 2016

and

W.M.P. (MD) Nos. 7177 to 7179 of 2016

WEB COPY

S. Thiruppathi

... Petitioner

VS

1. The State of Tamilnadu

represented by its Secretary to Government,
Public Health and Family Welfare Department,
Secretariat, Chennai.

2. The Director of Public Health and Preventive Medicine,
No. 359 Anna Salai,
Teynampet, Chennai 6.

3. The Director of Employment And Training,
Guindy, Chennai 32.

... 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 pertaining to the Impugned Order in Na.ka.44320/Payirchi/E/4 and 3 km dated 03.09.2011 on the file of the Respondent No.2 and the consequent Impugned Order in NeeVa2/339/2011 dated 05.02.2016 on the file of the Respondent No.3 and quash the same as illegal and consequently, direct the Respondent No.2 to appoint the petitioner in the post of Health Inspector Grade II sanctioned vide G.O(D)No.305 Health and Family Welfare Department dated 22.09.2009 with consequential benefits.

For Petitioner : Mr.B.Prasannavinuth

For Respondents : Mr.S.Kameswaran

Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 03.09.2011 and the consequential order dated 05.02.2016 and consequently, direct the respondents to appoint the petitioner in the post of Health Inspector Grade-II, sanctioned, vide G.O.(D) No.305, Health and Family Welfare Department, dated 22.09.2009.

2. The brief facts of the case are that the petitioner belongs to Scheduled Caste-Arunthathiyar Community and has completed Higher Secondary course in the year 1997 and joined in Diploma Course in Sanitary Inspector Training conducted by All India Institute of



Local Self Government, Bombay in its Institute at Thiruvananthapuram. The petitioner passed the said Diploma in Sanitary Inspector Training Course in the year 2004 and the petitioner registered his name based on the Diploma Qualification on 12.08.2004 with the District Employment Office, Tirunelveli. The petitioner submitted that for the appointment as Health Inspector Grade-II, one should pass 10th standard and possess the certificate issued by the Director of Public Health and Preventive Medicine or Multi-Purpose Health Worker (Male) Certificate issued by an Institute recognized by the Government of Tamil Nadu or a Certificate issued by the Director of Public Health and Preventive for Training as Sanitary Inspector issued by any Institute Recognized by the Government of Tamil Nadu. The certificate issued by the All India Institute of Local Self Government, Bombay was not recognized as equivalent. One Mr. Srinivasa Regupathy and others submitted a representation to the Government to recognize the certificate issued by the Local Self Government, Bombay. The above representation was considered and in the said report it is stated that 1376 posts of Health Inspector Grade-II are kept vacant for want of qualified candidates. Considering the report of the second respondent herein, Government has issued orders in G.O.(D)No.305, Health and Family Welfare Department, dated 22.09.2009, in favour of the candidates who belong to Tamil Nadu but had undergone Training Course in Bombay and have registered their name in the Employment Exchange so as to appoint them in the post of Health Inspector Grade-II. While relaxing the rule, the Government has permitted the second respondent herein to make recruitment only for 55 Health Inspector Grade-II by getting the list of eligible persons.

3. The respondents have called for a list in the proportion of 1:5 i.e., totally a list of 243 candidates for appointment in 55 vacancies. Even though the petitioner was in the seniority list, his name was not sponsored by the third respondent. The petitioner submitted a representation to include his name in the list of 53 candidates and consider the petitioner for an appointment. Since the respondents has failed to do so, the petitioner approached this Court in W.P.(MD)No.28723 of 2010 and this Court, vide order, dated 20.12.2010 directed the respondents to dispose the petitioner's representation. Since the same was not considered, a contempt proceeding was initiated on 04.08.2011.

4. The contention of the petitioner is that the respondent had given a list of selected candidates and it was found that totally five persons, who were junior to the petitioner as per employment seniority have been selected i.e., serial numbers 2, 3, 5, 6 and 37. The said persons were registered their name in the year 2007. But the petitioner's seniority date is 12.08.2004. Further 16 person's employment seniority was also not mentioned in the selection list. The respondents submitted that the petitioner's name was not in the employment seniority list, therefore his name was not considered, and the same was vehemently refuted by the petitioner. In the



meantime, the said 16 candidates were terminated from service as per the order, dated 13.08.2012. Thereafter, the petitioner submitted a detailed representation dated 16.09.2015 and 05.01.2016. Since the petitioner was not granted inspite of seniority, the petitioner has filed this writ petition.

WEB COPY

5. The respondents have filed a counter affidavit stating that even though the list was called for through Employment Exchange, it is based on the Communal Rotation and based on the marks, the said 55 persons were selected and appointed. Out of 90 candidates, 53 candidates who have obtained marks in the interview alone were considered for the appointment. The issue of considering to relax the Rule was considered by the High Court in W.P. (MD) No. 1606 of 2014 and vide order, dated 19.01.2015, the issue was upheld. Since the selection is based on the Rules as applicable, the petitioner is not entitled to be considered.

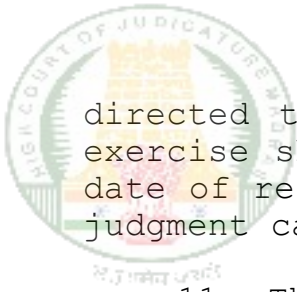
6. Heard Mr. Prasanna Vinoth, learned Counsel appearing for the petitioner and Mr. S. Kameshwaran, Government Advocate (Civil side)

7. The petitioner has also filed a re-joinder denying the allegation as stated in the counter affidavit. It is seen from the selection that the respondents have not issued any paper publication for the selection and the selection was considered in the year 2014. Any recruitment process ought to be followed by taking the names from the Employment Exchange and also paper publication ought to be issued as per the judgment rendered by the Supreme Court in Excise Superintendent Malkapatnam, Krishna District A.P. Vs. K.B.N. Visweshwara Rao reported in (1996) 6 SCC 216 and in Union of India Vs. Hargopal reported in (1987) 3 SCC 308. Admittedly, the respondents have not issued any paper publication at all. It is also seen from the records that there is no written examination. However, there is an interview and based on the interview marks, the respondents have stated that the candidates were selected.

8. It is seen from the records that the respondents have appointed 16 persons and subsequently, their appointments were cancelled. It is submitted that the said 16 persons approached the High Court at Principal Bench and this Court has given the favorable order to the said 16 persons and they have been appointed in the said post.

9. The contention of the petitioner is that the juniors to the petitioner as per employment seniority have been selected i.e., the name in Serial Nos. 2, 5, 6 and 37 are juniors to the petitioner and hence, the respondents have erred in giving the proper seniority list and hence the petitioner is entitled to the relief. The said error has caused the petitioner's valuable right.

10. Therefore, this Court is of the considered opinion that the petitioner is entitled to be appointed. The respondents are



directed to grant one post and appoint the petitioner. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. It is made clear that this judgment cannot be shown as precedent for any other candidates.

11. The third respondent is liable to pay cost for the error committed, however, the learned Government Pleader prayed not to impose the cost. Therefore, this Court warns the third respondent that in future the 3rd respondent shall not commit such error.

12. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Secretary to Government,
Public Health and Family Welfare Department,
Secretariat, Chennai.
2. The Director of Public Health and Preventive Medicine,
No.359 Anna Salai,
Teynampet, Chennai 6.
3. The Director of Employment And Training,
Guindy, Chennai 32.

+1 CC to M/s.AN.RAMANATHAN, Advocate (SR-15928 & 16211[F] dated 01/04/2022)

+1 CC to M/s.SPL GP (SR-16060 & 16062[F] dated 01/04/2022)

Order made in

W.P. (MD) No. 8997 of 2016

31.03.2022

nsn(CO)

TR(21.04.2022) 4P 6C