



W.P.(MD)No.8015 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 8015 of 2016

and

W.M.P(MD)No. 6564 of 2016

1. L.James Amritha Raj
2. S.Poovanan
3. K.Pratheesh Kumar
4. Raja

... Petitioners

Vs.

- 1.The Secretary to Government,
Health and Family Welfare (L.1) Department,
Fort Saint George, Chennai- 600 009.
2. The Director of Town Panchayats,
Kuralagam,
Chennai – 600 001.
3. The Director of Public Health and
Preventive Medicine,
Anna Salai,
Chennai – 600 006.
4. The Director of Employment and Training,
Guindy,
Chennai – 600 032.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records connected with the Government order issued in G.O.(PA)No.84 Health and Family Welfare (L.1)Department dated 23.01.2015 passed by the 1st respondent and quash the same and consequently direct the respondents to appoint the petitioners for the post of Sanitary Inspectors as per the G.O.Ms.No.104 dated 20.11.2012 of Tamil Nadu Municipal Public Health Services Regulation, 1970.

For Petitioners : Mr.C.Susi Kumar

For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition is filed to quash the G.O.(PA) No.84, Health and Family Welfare (L.1) Department, dated 23.01.2015 and consequential direction to the respondents to appoint the petitioners for the post of Sanitary Inspector, as per G.O.Ms.No.104, dated 20.11.2012.

2. Heard Mr.C.Susi Kumar, learned counsel appearing for the petitioners and Mr.M.Lingadurai, learned Special Government Pleader, appearing for the respondents. Perused the material documents available on record.



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3. The petitioners have completed graduation in Science (Chemistry) and have completed P.G. Diploma Course in Sanitation (Sanitary Inspector Course) in Gandhigram University. Based on the qualification, the petitioners are eligible to be appointed as Sanitary Inspector. Therefore, as per G.O.(PA)No.84, dated 23.01.2015, the respondents directed 62 Field Workers/Sanitary Supervisors to undergo one year training as Sanitary Inspector. There are certain conditions prescribed for the appointment. The 62 persons have to submit their willingness to undergo training and the training is based on their own expenses and the Government is not sponsoring the said expenses. The trainers should deposit a sum of Rs.10,000/-, if the said 62 persons agreed to deposit and submit willingness to go for training, they should be sent for training.

4. The contention of the petitioners is that the said G.O. was passed without taking into consideration of the eligible available candidates, who have registered in the concerned employment exchange. The petitioners have registered with the qualification of graduation in Science PG., Diploma in the year 2013 itself, but the said G.O. was passed only in the year 2015. In the said G.O., it is stated, since there are no qualified candidates in the Employment



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Exchange with the said qualification for the Sanitary Inspector, the government decided to selected 62 candidates to undergo training, so that the said 62 candidates would acquire qualification. Since the petitioners (unemployed youth) are available, the respondents cannot issue G.O. and allow the in-house candidates to go for training. In other words, the available candidates should not be given promotion and the persons waiting in the employment exchange should be appointed in the place. Moreover, because the in-house candidates were already recruited, for that reason the in-house candidates cannot have a right than the petitioners. For which, the petitioners relied on the judgment passed by the Hon'ble Division Bench in W.A.No.236 and 237 of 2007 and W.A.No.1029 of 2010 dated 29.07.2011. The said writ appeal was filed by the Sanitary Inspectors Association. The Association claims that they are in-house candidates and they should be sent for training. In the said appeal, the Hon'ble Division Bench held as follows:

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“36. Acquisition of qualification prescribed for a post, has to be done by an individual, seeking promotion to the higher post. Members of the petitioner's association cannot claim that there is a mandate on the part of the Department to sponsor their names for



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training. They have not acquired any vested right, on the basis of the then existing rules, prior to the amendment and hence, the decisions relied on, are not in strict sense, applicable to the facts of this case”.

The said writ appeal is filed by the in-house candidate association and has prayed to direct the respondents to send them for training. The Hon’ble Division Bench held since the possession of qualification should be done by the individual, they do not have any statutory right to claim promotion to the higher post, without acquiring the prescribed qualification. And also held that the inhouse candidates do not have any statutory right to claim to send for training as well. In other words, since the inhouse candidates have no statutory right to claim to send for training, the claim of the inhouse candidates were declined in the writ appeal. At the same breath, the persons waiting in the employment exchange also do not have no statutory right to claim to recruit them in the government service. Therefore, the claim of the petitioners that the training is against the said order is writ appeal is incorrect. Therefore, this Court is of the considered opinion both the inhouse candidates have no statutory right to direct the government to send for training and also the candidates waiting in the employment exchange also have no statutory right to recruit them in the post. It is the Government who has



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right to decide based on various factors including the financial commitment of the Government. In the present case, even though the claim of the inhouse candidates were declined by the Court, the Government have taken up a policy decision to send the inhouse candidates for training. The Government have taken financial implications into consideration, thereafter taken a policy decision to train the inhouse candidates and hence there is no wrong in such policy decision. It is also seen that the government is not spending on the training and the training cost is borne by the candidates themselves.

5. The Learned Counsel appearing for the petitioner submitted that the government should be a model employer and they should recruit the qualified candidate rather than going for promotion from inhouse candidate. In short, the petitioner is seeking to interfere with the government policy decision. This contention cannot be accepted since government has all data within its purview and is empowered to act based on the said data. The employer cannot be forced to recruit new employees, when there are employees with other qualifications except one qualification which would be achieved by training. Exactly the government has taken such policy decision, hence this Court is of the considered opinion it is



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absolutely prudent decision of the government and this Court is not inclined to interfere in the decision.

6. The claim of the writ petitioners is to call for list of eligible candidates, thereafter appoint them seniority maintained in the Employment Exchange. The said process of recruitment was already held as illegal and against Article 14 and 19. The respondents should call for all the eligible candidates, through paper publication as well apart from list from employment exchange. Thereafter, the respondents should conduct interview and follow the rules of reservation with priority categories. Therefore, the claim of the petitioners to appoint based on Employment seniority is not acceptable and, on this ground also the petitioner is not entitled to relief.

7. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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