



WP.(MD).Nos.4589 to 4594 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.4589 to 4594 of 2022

N.Janaki Panneer Selvam	... Petitioner in W.P.(MD)No.4589 of 2022
R.Tinesh Babu	... Petitioner in W.P.(MD)No.4590 of 2022
R.Vasunanthan	... Petitioner in W.P.(MD)No.4591 of 2022
C.Donald	... Petitioner in W.P.(MD)No.4592 of 2022
P.Velayutham	... Petitioner in W.P.(MD)No.4593 of 2022
A.Piramanayagam	... Petitioner in W.P.(MD)No.4594 of 2022

Vs.

- 1.The Chaiman,
General Insurance Public Sector Association,
3rd Floor, Jeevan Vihar Building,
Parliament Street, New Delhi – 110 001.
- 2.The Chairman cum Managing Director,
The Oriental Insurance Company Ltd.,
Head Office, Oriental House,



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A-25/27, Asif Ali Road, New Delhi – 110 002.

3.The Chairman cum Managing Director,
The New India Assurance Company Ltd.,
Head Office No.85, M.G.Road Fort,
Mumbai – 400 001.

4.The Chairman cum Managing Director,
The United India Insurance Company Ltd.,
Head Office No.24, Whites Road,
Chennai – 600 014.

5.The Chairman cum Managing Director,
The National Insurance Company Ltd.,
Head Office No.3, Middleton Street,
Kolkata – 700 071.

6.The Finance Secretary,
Ministry of Finance,
Jeevan Deep Building, Sansad Margh,
New Delhi -110 001.

... Respondents in all W.Ps.

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent Nos.1 to 5 to take necessary steps to appoint the petitioners as Marketing Officers, in light of the resolution /decision taken in the meeting held on 04.03.2016 by the 1st respondent especially on the applications received by the respondent no.4 from the petitioners for the post of “Marketing Officers” as per the direction of this Court in W.P.Nos.10305, 10312, 10297, 10300, 10314 and 10309 of 2021 respectively dated 23.04.2021.



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For Petitioner (in all W.Ps.) : Mr.D.Hari
For Respondents 2, 3 and 5 : Mr.C.Karthick
(in all W.Ps.) Central Government Standing Counsel
For 1st Respondent : Mr.K.Govindarajan
(in all W.Ps.)
For 4th Respondent : Mr.G.Prabhu Rajadurai
(in all W.Ps.)
For 1st Respondent : No Appearance

COMMON ORDER

These Writ Petitions have been filed for issuance of a Writ of Mandamus, seeking to direct the respondent Nos.1 to 5 to take necessary steps to appoint the petitioners as Marketing Officer, in light of the resolution /decision taken in the meeting held on 04.03.2016 by the 1st respondent especially on the applications received by the respondent no.4 from the petitioners for the post of “Marketing Officers” as per the direction of this Court in W.P.Nos. 10305, 10312, 10297, 10300, 10314 and 10309 of 2021 respectively dated 23.04.2021.

2.In the year 2000, the respondents 2 to 5 were made independent Companies and the General Insurance Corporation was converted into reinsurer. Subsequently, the respondents 2 to 5 formed an Association known as General Insurance Public Sector Association of India. One among the Chairpersons of the



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respondents 2 to 5, would become the Chairman of the said General Insurance Public Sector Association of India (herein to be mentioned as GIPSA), that is, the first respondent.

3.All the petitioners herein have been serving under the fourth respondent as General Insurance Agents for the past more than one decade. The general insurance agents of the respondents 2 to 5 act as a liaison personality between the general public and respondents 2 to 5. The agents working under the respondents 2 to 5 were given preference with certain relaxations especially in age which would be relaxed for the years.

4.The said agents worked with the respondents 2 to 5 continuously and other education criteria to be appointed in the cadre of Inspectors initially was then altered to be called Marketing Officers which was subsequently designated as Development Officers . Most of the retired Development Officers who have now been appointed as business associates of the respondents 2 to 5, were appointed as Development Officers , who initially worked as agents under the respondents 2 to 5. The Development Officer under respondents 2 to 5 is to appointment and assist agents in



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procuring general insurance business, apart from procuring general insurance business in his own as well.

5.All the said businesses procured by the Development Officer and the agents working under him will be credited to the concerned Development Officers organisation and accordingly the remuneration with respect to the core and non-core allowances would be given to the said Development Officer. The agents will get meager commission on the premium procured by them in different percentage for different types of general insurance business.

6.The first respondent holds regular meetings periodically and takes several administrative decisions to be followed by the respondents 2 to 5 jointly. On 04.03.2016, a meeting was held by the first respondents and the respondents 2 to 5 have attended the said meeting. Wherein a resolution was passed to appoint marketing officers and business associates from Development Officers retirees and conversion of class 3 employees (clerical cadre) to class 2 employees, namely marketing officers / Development Officers. Subsequently, an administrative instruction was issued by the general manager of the fourth respondent on



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15.10.2016 for the appointment of the said categories within certain terms and conditions. The respondents 2, 3 and 5 have also issued the said administrative instructions on various dates for the said appointments.

7. Accordingly, the respondents 2 to 5 have appointed business associates from the Development Officer retirees, but ignored the appointment of marketing officers / Development Officers from the existing eligible qualified and performing agents who have been working tirelessly with the respondents for about two decades. Claiming this as the stepmotherly attitude of respondents 2 to 5, the petitioners contend that equals have been treated as unequals. Further, the respondents 2 to 5 have made an amendment subsequently to appoint the retired Administrative Officers, Assistant Managers and Deputy Managers (development / marketing as business associates), thereby denying the agents their rightful opportunity to get regular appointment as marketing officers as per the first respondent's GIPSA resolution.

8. This is highly arbitrary and the same is against the principle of natural justice and opposed to public law and the said



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amendment is invalid in law. Further, the respondents 2 to 5 neglected the petitioners and kept on appointing retired officers who had already earned substantial amount of remuneration with perks through their earlier employment with respondents 2 to 5 respectively, apart from earning substantial amount of pension at present as business associates, thereby infringing the rights of the petitioners who survive only on the commission from the premium procured in the highly tough competitive general insurance market. Petitioners claiming basic and reasonable right to be appointed as marketing officers by virtue of the resolution passed by the first respondent on 04.03.2016 have submitted separate applications for appointment of marketing officers / Development Officer of fourth respondent, dated 06.01.2021 with resume testimonials and their performance sheets of various financial years.

9.Since there was no response from the second respondent, the petitioners filed W.P.No. 10305 of 2021, batch against the fourth respondent and obtained an order directing fourth respondent to consider their application on merit apart from directing the fourth respondent to issue notices to the petitioners and the persons interested in this regard and by affording them an



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opportunity of personal hearing or virtual hearing within a period of six weeks. On receipt of such orders of this Court, the petitioners once again submitted their applications for the said post. On receipt of the application of the petitioners, the fourth respondent called for a personal meeting and communicated that the petitioners could not be appointed by the fourth respondent as it is to be decided by the first respondent GIPSA.

10.Hence, the petitioners had sent a legal notice to the respondents 1 to 7 on 12.08.2021 to take necessary steps to appoint them as marketing officers as per the resolution passed by the first respondent on 04.03.2016. Having received the notices, the same was not responded by the respondents. Hence, this Writ Petition came to be filed by the petitioners seeking to direct the respondents 1 to 5 to take necessary steps to appoint the petitioners as marketing officers in the light of the resolution taken in the meeting of the first respondent which was held on 04.03.2016 especially on the applications received by the fourth respondent from the petitioners for the post of marketing officers as per the direction of the this court in W.P.No. 10305 of 2021 batch, dated 23.04.2021.



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11.Per contra, the fourth respondent has filed a counter and the learned counsel for the fourth respondent Mr.Prabhu Rajadurai submitted that this petition is not maintainable either in facts or on law. The petitioners cannot seek to compel the respondents to appoint them as marketing officers in the regular cadre of the respondent company. The respondent company is governed by its own service regulation which provides for the manner of appointment of its employees and no direction could be issued to appoint anyone contrary to the procedures prescribed for appointment of staff under the regulations.

12.He further submitted that the claim of the petitioners is not maintainable but unconstitutional as well. No individual can seek a public appointment affecting the chance of other similarly qualified persons. The agents / intermediaries cannot seek absorption into regular service as it will affect the Constitutional right of the other equally qualified candidates and the same would end in violation of recruitment rules.

13.The appointment of the petitioners as general insurance



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agent is not an appointment into the regular cadre of the fourth respondent company. On the other hand, it was an appointment as an intermediary and that it is only for the business promotion of the respondent company. It entails no salary but only commission on the policies procured in accordance with the regulations governing the agents.

14.Hence,in any case the appointment of a person as an agent will not entail him to seek employment outside the regulation of the company. But that apart he insisted that the petitioners have no right or locus standi to question the cadre structure of the respondent company, its regulations or its business promotion activities. He contended that the GIPSA resolution, dated 04.03.2016 is not related to appointment or recruitment of marketing officers.

15.Further, he submitted that on receipt of the representation made by the petitioners a reply was duly given on 10.06.2021 stating that it was a policy decision to appoint a business associate or marketing officer and that the respondents have implemented the business associate scheme on 15.12.2016. However, no such



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scheme has been introduced for recruitment of marketing officers.

He further submitted that the administrative instructions issued, vide circular, dated 15.12.2016 do not provide anything related to the appointment or recruitment of marketing officers and further the company does not have any such cadre or designation. Hence, he concluded that the question of considering the appointment of marketing officers will not arise as no such scheme or cadre exists in the company and on that basis pressed for dismissal of the writ petitions.

16.The fulcrum of the case in hand has emanated from the petitioners who have been serving under the fourth respondent as general insurance agents for the past more than two decades to appoint them as marketing officers from the existing eligible qualified and performing agents. Contending that the first respondent in the meeting which was held on 04.03.2016 which was attended by the second to fifth respondents had resolved to appoint marketing officers and business associates from the Development Officers retirees and conversion of class 3 employees to class 2 employees namely marketing officers / Development Officers.



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17.Following which, the respondents 2 to 5 have appointed business associates from the Development Officer retirees, but ignored the appointment of marketing officers from the existing performing agents. For which, they have already filed a Writ Petition before this court in W.P.No.10305 of 2021, batch and this Court was pleased to direct the fourth respondent to consider the petitioners representation dated 06.01.2021 and pass appropriate orders on merits and in accordance with law after issuing notice to the petitioners and persons interested in this regard. Pursuant to the same, the fourth respondent has called for a personal meeting with the petitioners and others interested in this regard and communicated that the question of appointing the petitioners as marketing officers could not be decided by the fourth respondent and the same has to be decided by the first respondent GIPSA.

18.In view of the same, the petitioners have filed this Writ Petition in a second round of litigation. The second to fifth respondents are public limited companies which are bound by the mandate of articles 14 and 16 of the constitution. As a public employer the recruitment process of the second, third, fourth and



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fifth respondents must meet the constitutional standard of a fair and open process.

19. Entertaining the petitioners claim would amount to allowing backdoor entries into service, which is certainly an anathema to public service. The petitioners cry is to appoint them as marketing officers of the second to fifth respondents in the regular cadre of the said public limited companies. No doubt, the respondent companies 2 to 5 are governed by their own service regulation which provides for the manner of appointment of its employees.

20. A public employer such as the respondents 2 to 5 cannot be directed to carry out appointment of the petitioners as marketing officers in the regular cadre flouting their respective service regulation. Such a direction by this court would compel the respondents to appoint the petitioners without following a recruitment process which is consistent with the principles of equality of opportunity governed by articles 14 and 16 of the constitution. Such an absorption / appointment would certainly provide the very backdoor entry for the petitioners negating the



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principle of equal opportunity and fairness in public employment.

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21.With such observation, I find no merit in these Writ Petitions. Accordingly, the Writ Petitions are dismissed. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

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The Oriental Insurance Company Ltd.,
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- 2.The Chairman cum Managing Director,
The New India Assurance Company Ltd.,
Head Office No.85, M.G.Road Fort,
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- 3.The Chairman cum Managing Director,
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L.VICTORIA GOWRI, J.

Mrn

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