

G. Dilip vs The Commissioner Of Food Safety And Drug ... on 25 September, 2023

Author: N.Sathish Kumar

Bench: N.Sathish Kumar

W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,
W.M.P.Nos. 9720, 9722, 9723, 9772, 9
110

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,
19028 and 23768 of 2023
and
W.M.P.Nos.9720, 9722, 9723, 9772,
9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 202

W.P.No.9668 of 2023

1. G. Dilip
2. M. Thiruppathi
3. R. Kanmani Muthu

...

versus

1. The Commissioner of Food Safety and Drug Administration
DMS Campus, Old Fisheries Building II Floor,
359, Anna Salai, Chennai 600006.
2. The Member Secretary,
Medical Services Recruitment Board (MRB)
7th Floor, DMS Building, 359, Anna Salai,
Teynampet, Chennai 600006.
3. The Secretary to Government of Tamil Nadu
Health and Family Welfare Department,
The Secretariat, Chennai 600005.

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Mr.L. Murugavelu [for R2]

Mr.R. Rajesh Vivekanandha
[for R4 and R5]

COMMON ORDER

Writ Petitions in W.P.Nos.9668, 9710, 9750 and 11190 of 2023 have been filed to quash the impugned notification dated 13.03.2023 vide No.02/MRB/2021 issued by the Medical Services Recruitment Board, wherein the petitioners names are withheld for the purpose of production of equivalence certificate and consequently direct the respondents to include the petitioners names in the selection list for the post of Food Safety Officer for the Recruitment Year 2021.

2. W.P.Nos.9705 and 11187 of 2023 have been filed to declare the degree of B.Tech in Food Processing Engineering possessed by the petitioners is deemed to equal to the degree of B.Tech in Food Technology as per the proceedings reference No.E.1/AC/135/V.1/2018 dated 27.02.2018 <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 issued by the Tamilnadu Agricultural University, Coimbatore, and include the Petitioners' names in the Selection List, as the petitioners names are withheld for the purpose of production of equivalence certificate.

3. W.P.Nos.19028 and 23768 of 2023 have been filed to issue direction to the respondents to issue Formal Appointment Orders to the Petitioners who were declared as newly selected Food Safety Officers as they were already selected, sent for training and on successful completion of the same they are waiting for the Appointment Orders.

4. Since all the above petitions are filed seeking certain reliefs against the impugned order of the Medical Services Recruitment Board dated 13.03.2023, they are all disposed of by way of this Common Order.

5. The Petitioners have applied for the post of Food Safety Officer vide Notification No.02/MRB/2021 dated 13.10.2021. Education qualification for the post is as follows:

<https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 6B. EDUCATIONAL QUALIFICATION:

Candidates should possess the following or its equivalent qualification for the post of Food Safety Officer on the date of this notification (13.10.2021) i. A Bachelor's degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or veterinary Sciences or Bio- Chemistry or Microbiology or

Master's Degree in Chemistry or a Bachelor's degree in medicine from a University recognized by the University Grants Commission. (or) ii. Any other equivalent / recognized qualification notified by the Central Government.

Note: Candidate should have studied Tamil as one of the subject in HSC.

6. The petitioners though provisionally selected, the selection has been withheld for the production of Equivalence Certificate. It is relevant to note that the Government has passed G.O.(Ms) No.93 Higher Education (K2) Department dated 30.05.2019 and constituted a New Equivalence <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 Committee under the Chairmanship of the Secretary to Government, Higher Education Department with nine (9) members to examine the request of the educational institutions to issue equivalence to the courses offered by them. In the said G.O., the Government also directed the general public / students / teachers / colleges / Universities / Recruitment boards / other stakeholders who seek equivalence of the courses offered by the Colleges / Universities to address the Tamil Nadu State council for Higher Education, directly.

7. Though this Government Order has been passed in the year 2018 much prior to the notification referred above, it is relevant to note that as far as the equivalence degree in respect of appointment of Food Safety Officers, the notification clearly stipulates that equivalence should be recognised or notified by the Central Government. Therefore, in view of the above specific direction contained in the notification that equivalence should be recognised/notified by the Central Government, the State Government now cannot contend that as per G.O.(Ms) No.93 No.93 Higher Education (K2) Department dated 30.05.2019, the candidates ought to have applied to the <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 Tamil Nadu State Council for Higher Education directly with regard to equivalence. Even any application received by the Government, the Government could not have been in a position to notify the equivalence or recognised qualification as mandated in the notification since it is only by the Central Government such notification is required as per the above notification.

8. It is not disputed that the petitioners are provisionally selected. The results are withheld only due to non-production of equivalence certificate. It is relevant to note that equivalence certificate cannot be produced by the candidates as required by the notification then and there. It is for the concerned Government to constitute the committee every year to assess the equivalent degree. The notification also does not specify that the equivalence certificate should have been issued prior to the notification. Whereas it stipulates only the degree or any other equivalent /recognised qualification notified by the Central Government. <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023

9. Taking note of the above, this Court, on the submissions of the learned Additional Advocate General appearing for the MSRB, passed an order on 03.04.2023 wherein it is the stand of MSRB

that the Central Government has to determine the equivalence of the educational qualification of the Petitioners and other similarly placed persons in respect of which the Commissioner, Tamil Nadu Food Safety and Drug Administration Department, Chennai has sent a letter R.No.4884/2019/S10/FSD dated 28.03.2023 to the Chief Executive Officer, Food Safety and Standards Authority of India, New Delhi in that regard and its outcome is awaited for further course of action in the matter.

10. Having regard to the stand taken by the Respondents particularly, MSRB and the State Government this Court has suo motu impleaded the Union of India, Ministry of Health and Family Welfare to determine the equivalence of the educational qualification of the candidates as per the letter of the Tamilnadu Food Safety and Drug Administration Department dated 28.03.2023 and this Court is also made it clear that MSRB shall not take <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 any decision entailing adverse civil consequences to the petitioners without prior permission of this Court until further orders.

11. Pursuant to the above order this Court also passed subsequent directions on 26.07.2023 and 29.08.2023 which are as follows:

Order dated 26.07.2023:

“This Court, in W.P.Nos.9668, 9705, 9710 and 9750 of 2023 has passed the following Order :

“The Director [Regulations], Food Safety and Standards Authority of India, New Delhi in consultation of Health and Family Welfare, New Delhi shall take necessary action for determining the equivalence of the educational qualifications of the candidates [including the petitioners in these cases] as soung in letter R.No.4884/2019/S10/FSD dated 28.03.2023 sent by the Commissioner, Food Safety and Drug Administration Department, Chennai and submit report in that regard before the next hearing.” <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 As per the above Order, no report has been filed.

Hence, the respondents are directed to file a report before this Court on or before 29.08.2023.” Order dated :29.08.2023:

“Pursuant to the earlier order passed by this Court on 26.07.2023, it is now stated that the Expert Committee has submitted its report and the same has been produced before this Court.

2. On a perusal of the Expert Committee's report, it is seen that the Committee has decided that BDS, BSMS, BHMS and other medicine degrees fall in the ambit of the words "degree in medicine". It is also decided that these degrees fall under the eligible criteria. Similarly, it is decided that the degrees with previous nomenclature like Food Process Engineering, etc., which now have been changed to B.Tech. (Food Technology) may also be considered equivalent to Bachelor degree in Food Technology.

3. The learned Deputy Solicitor General submitted that the report of the Expert committee has been accepted by the Health Ministry and now, the draft notification has been forwarded to the Law Ministry for issuing formal notification.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190, 19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023

4. In such view of the matter, the respondents shall expedite the formalities with regard to issuance of notification. Once the Equivalence Notification comes on record, the Medical Services Recruitment Board shall revisit the provisional list based on the merit of each candidate who come under the zone of consideration and fall within the categories as found by the Expert Committee.

5. Post the matter for placing the Notification before this Court finally on 11.09.2023 at 02.15 p.m. Registry is directed to tag W.P.Nos.23768, 19028, 9725, 9331, 9332 and 11551 of 2023 along with these matters."

12. Pursuant to the said direction now a notification has been issued by the Central Government which is as follows:

"MINISTRY OF HEALTH AND FAMILY WELFARE (Food Safety and Standards Authority of India) NOTIFICATION New Delhi, the 21st September, 2023 F. No. P. 15014/8/2023-FR.—In exercise of the powers conferred under clause (ii) of sub-rule 1 of rule 2.1.3 of the Food Safety and Standards Rules, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide notification number G.S.R.362 (E), dated the 5th May, 2011, the Food Safety and Standards Authority of India with the approval of the Central Government hereby makes the following courses recognized for the post of Food Safety Officer under the provisions of the Food Safety and Standards Act, 2006 (34 of 2006) and the rules <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190, 19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 made thereunder, namely:-

2. A Bachelor's degree or Master's degree or Doctorate degree from a recognized University or institution in the following disciplines:-

Disciplines “Food Technology” Disciplines deemed to be covered under “Agricultural Science”

- (i) Food Engineering (i) Agriculture
- (ii) Food Engineering and Technology (ii) Agriculture Engineering
- (iii) Food Processing and Preservation (iii) Biotechnology
- (iv) Food Processing Technology (iv) Dairy Technology
- (v) Food Technology and Management (v) Fisheries
- (vi) Food Biotechnology (vi) Food Technology
- (vii) Food Plant Operations Management (vii) Food Nutrition and Dietetic
- (viii) Food Process Engineering and Management (viii) Horticulture
- (ix) Food Processing
- (x) Food Safety and Quality Management
- (xi) Process and Food Engineering G. KAMALA VARDHANA RAO, Chief Executive Officer”

13. In the light of the above notification there is no doubt that any of the degree as notified in the above said notification, the candidates who acquired such decree will be eligible for consideration. The same has been taken note by the MSRB. Admittedly, the petitioners have been provisionally selected and their results have been withheld only awaiting of the equivalence certificate. Now the notification is issued. Therefore, the Respondents shall consider the writ petitioners appointment, who are withheld for want of equivalence certificate, if they are otherwise suitable as <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190,19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 per their original rank. The Respondents shall also consider the Writ Petitioners who were already selected, sent for training and awaiting for the Appointment Orders. Such exercise shall be made within a period of two months from the date of receipt of copy of this Order.

14. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

25.09.2023 Index : Yes/No Neutral citation: Yes/No ggs Copy to:

1. The Commissioner of Food Safety and Drug Administration, DMS Campus, Old Fisheries Building II Floor, 359, Anna Salai, Chennai-6.
2. The Member Secretary, Medical Services Recruitment Board (MRB), 7th Floor, DMS Bldg, 359, Anna Salai, Teynampet, Chennai 600006.
3. The Secretary to Government of Tamil Nadu, Health and Family Welfare Department, The Secretariat, Chennai 600005.
4. The Secretary to Government, Govt. of India, Ministry of Health and Family Welfare, Room No.156-A, Nirman Bhavan, New Delhi – 110011
5. The Director (Regulations), Food Safety and Standards Authority of India, <https://www.mhc.tn.gov.in/judis> W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190, 19028 and 23768 of 2023 and W.M.P.Nos. 9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11061, 11062 and 23285 of 2023 India, FDA Bhawan, Kolt Road, New Delhi 110002.

N.SATHISH KUMAR, J., ggs W.P.Nos.9668, 9705, 9710, 9750, 11187, 11190, 19028 and 23768 of 2023 and W.M.P.Nos.9720, 9722, 9723, 9772, 9773, 9834, 9836, 9837, 9840, 11062 and 23285 of 2023 25.09.2023 <https://www.mhc.tn.gov.in/judis>