

# K.Senthil vs Tamil Nadu Food Safety & on 7 March, 2024

W.P.Nos.2430

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.24307 & 28416 of 2021

and

W.M.P.Nos.25620, 25621, 25622, 30017 & 30019 of 2021

and

W.P.No.2938 of 2022

W.P.No.24307 of 2021

1.K.Senthil

2.P.Saravanan

3.A.John Peter

4.R.Balamurugan

5.M.Pandiarajan

...

Petitioners

versus

1.Tamil Nadu Food Safety &  
Drug Administration Department,  
Rep.by The Commissioner,  
No. 359, Anna Salai,  
Chennai - 600 006.

2.Medical Services Recruitment Board (MRB),  
Rep.by its Member Secretary,  
7th Floor, DMS Building,  
359, Anna Salai,  
Teynampet, Chennai - 600 006.

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<https://www.mhc.tn.gov.in/judis>

W.P.

3.The Commissioner of Municipal Administration,  
Municipal Administration and  
Water Supply Department,  
Chepauk, Chennai - 600 005.

4.Director of Public Health &  
Preventive Medicine,  
359, Anna Salai,  
Chennai - 600 006.

...

Respo

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorari/Mandamus, calling for the removal of the 2nd respondent Medical Services Recruitment Board (MRB) vide Notification No.02/MRB/2021 dated 13.10.2021 at the instance of 1st respondent for recruitment of 119 post of Food Safety Officer by way of Direct Recruitment without first restoring the petitioners back to the 2nd respondent Commissionerate as illegal, arbitrary, in violation of Articles 14 and 16 of the Constitution of India, vindictive and to consequently direct the 1st respondent to restore the petitioners back as the Food Safety Officers immediately by granting all service benefits including the differential monetary benefits, continuity of service etc and ensure that any direct recruits are placed below the Food Safety Officers employed in the Commissionerate of Food who were earlier working in Municipalities/Directorate of Public Health/Corporation and appointed as Food Safety Officers like petitioners.

For Petitioners

: Mr.K.Srinivasa Murthy  
for M/s.Row and Reddy

For Respondent Nos.1, 3 & 4

: Mr.P.Kumaresan  
Additional Advocate General  
Assisted by Mr.G.Krishna  
Additional Government Counsel

For Respondent No.2

: Mr.L.Murugavel

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W.P.Nos.24307 & 28416

W.P.No.28416 of 2021  
M.Mariappan

... Petitioner

versus

- 1.Greater Chennai Corporation,  
Rep.by its Commissioner,  
Rippon Building,  
Chennai - 600 003.
- 2.City Health Officer,  
Greater Chennai Corporation,  
Rippon Building,  
Chennai - 600 003.
- 3.R.Sakthivel,  
Sanitary Inspector,  
C/o.City Health Officer,  
Greater Chennai Corporation,  
Rippon Building,  
Chennai - 600 003.
- 4.K.R.Revathy,  
Sanitary Inspector,  
C/o.City Health Officer,  
Greater Chennai Corporation,  
Rippon Building,  
Chennai - 600 003.
- 5.State of Tamil Nadu,  
Rep. by its Health Secretary,  
Health and Family Welfare Department,  
Secretariat,  
Chennai - 600 006.

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<https://www.mhc.tn.gov.in/judis>

W.P.Nos.2

- 6.Food Safety and Drug Administration Department,  
Rep. by its The Commissioner,  
359, Anna Salai,  
Chennai - 600 006.

(R5 and R6 are impleaded as per order dated 21.02.2024 in W.M.P.No.4800/2024 in W.P.No.28416/2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, calling for the records from the 1st respondent relating proceedings of the 1st respondent dated 18.12.2021 bearing reference No.Po.Su.Thu.Na.Ka.No.C2/7095/2021 read with the

with proceedings dt. 17.09.2020 bearing reference No.Po.Su.Thu.na.KC2/4380/2011 insofar as it does not take into consideration the petitioner's appointment as Sanitary Inspector on 20.08.1998 for promotion procedure to the post of Sanitary Officer despite vacancy being available and to consequently direct the respondents 1 and 2 to promote the petitioner to the post of Sanitary Officer by taking into account his appointment as Sanitary Inspector on 20.08.1998 before considering/promoting Respondents 3 & 4 and others working in the 1st respondent Greater Chennai Corporation, grant all benefits including service, monetary and other consequential benefits.

For Petitioners	: Mr.K.Srinivasa Murthy for M/s.Row and Reddy
For Respondent Nos.1 & 2	: Mr.R.Gopinath Standing Counsel
For Respondent No.3 & 4	: Mr.M.Jothimanian
For Respondent Nos.5 & 6	: Mr.P.Kumaresan Additional Advocate General Assisted by Mr.G.Krishnan Additional Government Pleader

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#### COMMON ORDER

When these matters were taken up today, Mr.P.Kumaresan, learned Additional Advocate General appearing for the respondents 1, 3 & 4 submitted that similar such relief claimed by the similarly placed persons like petitioners have been dismissed by this Court in W.P.Nos.18749 & 30285 of 2022 dated 21.09.2023. But on perusal of the order, it is seen that the petitioner involved in the above Writ Petition has been appointed as a Designated Officer on deputation basis under Section 36 of Food Safety and Standards Act, 2006.

2. Mr.K.Srinivasa Murthy, learned counsel for the petitioners submitted that the petitioners have been appointed as Food Safety Officers but not on deputation basis. The only parameter for consideration is all those Sanitary Inspectors who had opted to be appointed as Food Safety Officers on deputation / transfer and who did not exercise their lien within the prescribed time limit are deemed to be the Officers of the respondents' Food Safety Department and cannot be reverted back

to the local bodies.

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3. In fact, an order has been passed by the Madurai Bench of this Court in W.P.(MD)No.15073 of 2018 dated 26.09.2022 by observing that the Food Safety Officer cannot claim to go back to the Food Safety Department once he has been reverted. But in the earlier order of this Court made in W.P.No.23184 of 2021 dated 15.12.2023 [Tamil Nadu Food Safety Officers Association Vs. The Secretary to Government, Health and Family Welfare Department], a clear distinction has been made as to the situation involved in the cases and how some important materials were not placed before the Madurai Bench of Madras High Court while dealing the Writ Petition in W.P.(MD)No.15073 of 2018. So the findings made in W.P.No.23184 of 2021 will be made applicable to the case of the petitioners as well. Once their reversion is found to be illegal then they are entitled to be absorbed only in the Food Safety Department irrespective of the direct recruitment made by the respondents.

4. The saving clause under G.O.(Ms).No.201, Health and Family Welfare (M1) Department, dated 30.06.2022 has also been analysed at <https://www.mhc.tn.gov.in/judis> W.P.Nos.24307 & 28416 of 2021 length in the earlier order of this Court made in W.P.No.23184 of 2021 stated supra wherein the following observation has been made:-

"15. The learned Additional Advocate General submitted that as per G.O.Ms. 438 of Health and Family Welfare (M1) Department dated 24.09.2018 adhoc rules have been framed which came into effect from 22.12.2011. The said adhoc rules does not state anything about the Food Safety Officers who were already recruited through various sources as detailed above and serviced/ serving now. G.O.Ms. 438 of Health and Family Welfare (M1) Department dated 24.09.2018 would only state that Food Safety Officers will be appointed through direct recruitment, their qualification and their pay details etc., The petitioners representation requesting for framing adhoc rules to safeguard their services was not looked into. Subsequent to the representation made by the petitioner's association. G.O.Ms.201, Health and Family Welfare (M1) Department dated 30.06.2022 was issued. Even in this government order, only a saving clause is included which reads as follows:

"10. Saving:- Nothing contained in these rules shall adversely affect any person holding the post of Food Safety Officer on the date of publication of these rules in the Tamil Nadu Government Gazette." <https://www.mhc.tn.gov.in/judis> W.P.Nos.24307 & 28416 of 2021

16. Having given such an assurance, there should be some rules in place to regularise their services and to protect their seniority. The 1st respondent has already accepted for the reasons explained in his letter No.38866/L1/2019-5, Health and Family Welfare Department, dated 27.11.2020 that the seniority of the present Food Safety Officers in their parent department cannot be maintained. It is also suggested to

frame rules to give promotion to all those persons on adhoc basis and then regularise their services.

17. For the sake of clarity the whole of the letter dated 27.11.2020 is extracted below:

“kf;fs; ey;thH;t;[ kw;Wk; FLk;g ey (vy;.1)j; Jiw foj vz;/38866 / vy;1 / 2019-5/ ehs; 27.11.2020 mDg;g[eh;

kU.b\$. ,uhjhfpU#;zd; / ,.M.g muR Kjd;ikr; brayhsh;

bgWeh;

,af;Feh; bghJr;Rfhjhuk; kw;Wk;

neha;j;Lg;g[ kUe;Jj; Jiw/ brd;id-600 006 bghUs;:

bghJ Rfhjhuk; kw;Wk; neha;jLg;g[ kUe;Jj;Jiw -kUj;Jky;yh nkw;ghh;itahsh;/ tl;lhU Rfhjhu nkw;ghh;itahsh;/ eyf;fy;tpahsh; kw;Wk; bjhHpy;El;g neh;Kf cjtphahsh;/ gjtp cah;t[/ eyf;fy;tpahsh; gapw;rp tH';Fjy;/ czt[ ghJfhg;g[ mYtyh;fs; gzp\g;ig epue;ujkhf;Fjy;/ Rfhjhu Ma;thsh; gzaplk; bjhLh;ghd murhidfis epWj;jp itj;jy; nghd;w nfhhp;iffs; - bjhLh;ghf.

ghh;it

1) jpU.b\$.byl;Rkp ehuhazd;/ khepy bghJr;brayhsh;/ bghJ Rfhjhuj;Jiw mYtyh;fs; r';fk;/ tpUJefh; khtl;lk; mth;fspd; 14.10.2019 ehspl;l kD.

2) m u R f o j v z ; . 3 8 8 6 6 \_ v y ; 1 \_ 2 0 1 9 - 1 / e h s ; 0 5 . 1 1 . 2 0 1 9  
<https://www.mhc.tn.gov.in/judis W.P.Nos.24307 & 28416 of 2021>

3)j';fs; foj vz;.e.f.vz;.3232\_gneh4\_,U1\_2019 / ehs;

28.11.2019 kw;Wk; 20.12.2020.

ghh;itapy; \d;wp; fhZk; fojj;jpy; czt[ ghJfhg;g[j; Jiwapy; Ie;J Mz;LfSf;F nky; gzpghpa[k; czt[ ghJfhg;g[ mYtyh;fs; bgah;fis gjtp cah;t[ gl;oaypy; nrh;f;f chpa mDkjp tH';FkhW murplk; mDkjp nfhug;gl;Ls;SJ.

2.,e;neh;tpy; czt[ ghJfhg;g[ kw;Wk; ju eph;zak; rl;lk; btspapl;lnghJ czt[ ghJfhg;g[ mYtyu;fshf gzpaku;jjk; bra;ag;gl;lth;fs 6 khj fhy;jpw;F gpd; jha;j;Jiwf;F jpUk;g ,ayhJ vd tpjp cUghf;fgl;lJ. bghJ Rfhjhu Jiwapy; gzpghu;e;j czt[ ghJfhg;g[ gapw;rp Koj;j Rfhjhu Ma;thsh;fs; czt[ ghJfhg;g[ kw;Wk; kUe;J eph;thfj; Jiwapy; czt[ ghJfhg;g[ mYtyh;fshf gzpakh;j;k; bra;ag;gl;ldh;. VdpDk;/ czt[ ghJfhg;g[ kw;Wk; kUe;J eph;thfj; Jiwapy; czt[ ghJfhg;g[ kw;Wk; eph;thfj;Jiwapy; gjtp cah;t[ eph;zak; bra;ag; glhjJ ve;j cah; gjtpf;fhd Cl;L gzptif (feeder Category) vd eph;zak; bra;ag;glhjJ kw;Wk; ,j;Jiwapy;

cUthf;fg;gl;l bgUkghyhd gzpapl';fSf;F chpa tpjpfs; cUthf;fg;glhjJ Mfpa fhuz';fspd; mog;gilapy; 2013 KJy; 2017 tiu tpUg;gKs;sth;fSf;F tl;lu Rfhjhu nkw;ghh;isahsh;/ kUj;Jtky;yh nkw;ghh;itahsh; gjtp cah;t[ tH';fg;gl;Ls;sJ. bjhlh;g[ila czt[ ghJfhg;g[ mYtyh;fs; fle;j rpy Mz;Lfshf czt[ ghJfhg;g[ kw;Wk; kUe;J ghJfhg;g[ Jiwap; gZpg[hpa[k; epiyapy;/ jha;j;Jiwap; (bghJ Rfhjhuj; JiW) KjePiya guhkhpg;gJ vd;gJ Vw;g[ilaJ my;y. nkw;fhz; NH;epiyapy;/ czt[ ghJfhg;g[ kw;Wk; kUe;J eph;thfj;Jiwap; gZpg[hpa[k; czt[ ghJfhg;g[ mYtyh;fSf;F mj;Jiwap; jw;fhypf mog;gilapy; (ad hoc basis) chpa gjtp cah;it mspj;J/ chpa tpjpfs; cUthf;fpa gpd;g[/ nkw;fz;l jw;fhypf gZpapid tud; KiwLj;jyhk; vd mwptWj;jg;gLfpwJ.

3.,f;fojk; gZpahsh; kw;Wk; epUthfr; rPh;j;jpUj;jj; Jiwapd; ,irt[lld; (m.rh.vz; 29579/rp1/2020-1/ ehs; 12.11.2020) btspapl;g;gLfpwJ.”

18. After giving promotions to the existing Food Safety Officers, new vacancies for the post of Food Safety Officers would be created. Once the existing Food Safety Officers move to the next level, there cannot be any confusion in respect of their seniority and the Food Safety Officers will be directly <https://www.mhc.tn.gov.in/judis> W.P.Nos.24307 & 28416 of 2021 recruited based on the Notification No.02/MRB/2021 dated 28.09.2021 issued by the Medical Service Recruitment Board.

19. It is right on the part of the petitioner to claim the above promotion/ regularization for the existing Food Safety Officers before the Direct recruitment is done. Once the directly recruited Food Safety Officers enter, the existing Food Safety Officers will feel that they are placed on par with their juniors, though they have rendered their services as Food Safety Officers for more than five years. It appears from the submission and records that they are not even given any selection grade or promotion and their services in the cadre of Food Safety Officers were not also regularised. Since the recruitment process is said to have started already, it is too late to quash the notification. However the appointment orders to the newly recruited cannot be issued, unless the government acts upon its assurance given vide G.O.Ms.201, Health and Family Welfare (M1) Department dated 30.06.2022. The saving clause issued in the above G.O. cannot be of any consequence if the past service of the existing Food Safety Officers were not regularised and they were not given with any promotion.

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20. Admittedly the existing Food Safety Officers serving beyond one year, their services were continued from year to year for nearly 10 years. They expected from the rules of appointment stipulates that they cannot go back to their parent department after six months and continue to remain as Food Safety Officers. So the Government cannot now say that the Food Safety Officers have got a lien even after several years and they have got to go back to their parent department. Such a stand taken by the employer is impractical besides being unfair.

21. Immediately when the Act came into force, the services of the Food Safety Officers were utilized and they have been given training. All those officers who worked in the said capacity have raised up to the occasion and rendered their services to the expectation of the Government for the quick and effect implementation of objects of the new Act. Hence in all fairness the Government is duty bound

to safeguard their service in the cadre of Food Safety Officers before issuing appointment order to the newly recruited candidates for the post of Food Safety Officers consequent to the Notification dated 28.09.2021.

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22. In view of the above stated reasons, this Writ Petition is disposed with a direction to the respondents 1 and 2 to devise a mechanism as contemplated in the letter of the 1st respondent dated 27.11.2020 in letter No.38866/L1/2019-5, Health and Family Welfare Department or any other means which, in the opinion of the Government is deemed to be fair and proper to safeguard the interest of the existing Food Safety Officers. No costs."

5. If the petitioners were reverted back to their Parent Department, it will create disturbance in the minds of the Sanitary Inspectors who are already in the Food Corporation Department by pushing aside the petitioners stating that they cannot claim their original seniority after having gone to the Parent Department. In view of the uncertain stand taken by the Government in respect of the Food Safety Officers whose services have been utilized for long, they are pushed between the Government on one side and the existing employees of Sanitary Department similar to the respondents 3 and 4 in W.P.No.28416 of 2021. The respondents 1 and 2 cannot prolong this confusion and allow their own employees to suffer with uncertainty.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.24307 & 28416 of 2021 Hence these Writ Petitions are disposed, in the light of the observations made by this Court in W.P.No.23184 of 2021 dated 15.12.2023 and the respondents 1 and 2 are directed to take back the petitioners as Food Safety Officers by assigning due seniority in the Food Safety Department by keeping them above the direct recruits in whose favour posting orders are yet to be issued. No costs. Consequently connected Miscellaneous Petitions are closed.

07.03.2024

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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W.P.Nos.24307



To  
1.The Commissioner,

Tamil Nadu Food Safety & Drug Administration Department, No. 359, Anna Salai, Chennai - 600 006.

2.The Member Secretary, Medical Services Recruitment Board (MRB), 7th Floor, DMS Building, 359, Anna Salai, Teynampet, Chennai - 600 006.

3.The Commissioner of Municipal Administration, Municipal Administration and Water Supply Department, Chepauk, Chennai - 600 005.

4.The Director of Public Health & Preventive Medicine, 359, Anna Salai, Chennai - 600 006.

5.The Commissioner, Greater Chennai Corporation, Rippon Building, Chennai - 600 003.

6.The City Health Officer, Greater Chennai Corporation, Rippon Building, Chennai - 600 003.

7.Health Secretary, State of Tamil Nadu, Health and Family Welfare Department, Secretariat, Chennai - 600 006.

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sri W.P.Nos.24307 & 28416 of 2021 and W.M.P.Nos.25620, 25621, 25622, 30017 & 30019 of 2021 07.03.2024 <https://www.mhc.tn.gov.in/judis>