

P.Saravanan vs The Commissioner Of Food Safety on 26 September, 2022

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

1 W.P.(MD)NO.15073 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15073 of 2018 and
W.M.P.(MD)Nos.13651 & 13652 of 2018

P.Saravanan,
S/o.Paramasivam,
Food Safety Officer,
Chinnamanur Municipality,
Uthamapalayam Taluk,
Theni District.

... Petitioner

Vs.

1. The Commissioner of Food Safety,
Food Safety and Drugs Administration Department,
Chennai – 6.
2. The Designated Officer,
Tamilnadu Food Safety and Drugs Administration
(Food Safety Wing),
Theni District, Theni.
3. The Commissioner,
Cumbum Municipality,
Theni District.
4. The Commissioner,
Municipal Administration and
Water Supply (M.A.W.S.) Department,
Chepauk, Chennai.

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5. The Commissioner,
Municipal Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.

(R-4 is suo motu impleaded vide Order dated 17.07.2018.)

R-5 is impleaded vide Order

dated 12.09.2022 in W.M.P. (MD)No.14522 of 2018)

... Respon

Prayer: Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent in R.No.4049/2018/ SI/FSSA/41- 17 dated 03.07 relieving the petitioner from the post of Food Safety Officer Chinnamannur Municipality, Uthamapalayam Taluk, Theni District to his parent department before the Director of Municipal Administration and Water Supplies Department and the consequential relieving order passed respondent in his order in Na.Ka.No.75/A1/201 04.07.2018 and quash the same as illegal and further direct the first respondent to pass appropriate orders to continue as Food Safety Officer at Chinnamannur Uthamapalayam Taluk, Theni District.

For Petitioner : Mr.D.Selvaraj

For Respondents: Mr.R.Suresh Kumar,
Additional Government Pleader.

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ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as sanitary inspector in the Department of Municipal Administration and Water Supplies on 18.03.2007. He was working as sanitary inspector in Cumbum Municipality. The petitioner acquired necessary qualifications to be a Food Inspector in the department. Following the implementation of the Food Safety and Standards Act 2006, the Government of Tamil Nadu formed a separate department to implement the said statute. The petitioner was appointed as Food Safety Officer in the new department vide G.O.Ms.No.151 Health and Family Welfare (AB2) Department dated 20.04.2012. Under the said Government Order, as many as 544 persons were appointed. The petitioner is figuring at serial No.498. According to the petitioner, he had been discharging the duties ever since without giving room for complaint. While so, the first respondent passed the impugned order dated 03.07.2018 repatriating the petitioner to the parent department of the <https://www.mhc.tn.gov.in/judis> Municipal Administration and Water Supplies. Challenging the same, this writ petition came to be filed.

3. The respondents have a detailed counter affidavit controverting the averments set out in the affidavit filed in support of the writ petition.

4. The learned counsel appearing for the petitioner pointed out that the petitioner was duly appointed as a Food Safety Officer in the Department of Food Safety and Drug Administration. According to him, he is very much eligible to work in the new department. He cannot therefore be sent back to the parent department. In the alternative, he contended that the first respondent did not have the jurisdiction to pass the impugned order. When the petitioner is working on deputation basis, the first respondent could not have unilaterally passed the impugned order. He would also state that the new department is coming under the control of the Secretary to Government, Health and Family Welfare Department. The petitioner was appointed in the new department by virtue of the Government Order. The first <https://www.mhc.tn.gov.in/judis> respondent who is only in the rank of Commissioner of Food Safety could not have passed the impugned order. He added that the impugned order casts stigma on him and that without holding any enquiry, it could not have been issued.

5. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the impugned order does not call for any interference.

6. I carefully considered the rival contentions and went through the materials on record.

7. The Food Safety and Standards Act 2006 (Central Act No.34 of 2006) received presidential assent on 23.08.2006 and 24.08.2006. The provisions of the Act came into force in 2007 – 10. In order to comply with the statutory requirements, the Government of Tamil Nadu formed a new department, namely, Food Safety and Drug Administration. In order to make the new department fully functional, appointments had to be made for various posts. Such appointments could not be made since service rules ought to be framed and to be in <https://www.mhc.tn.gov.in/judis> place. The authorities, therefore, deployed the qualified persons working in other departments. But it was meant only as a temporary measure. A mere look at the communication dated 01.10.2012 bearing R.No.2413/2012/S2/FSSA sent by the Commissioner, Food Safety and Drug Administration Department, Chennai, would make the position clear. Paragraph Nos.7 and 8 of the said

communication reads as follows:-

“ 7. Only after all the posts are filled up and the Department's functions are stabilised, service rules for the various posts, cadres etc., with educational qualification, mode of recruitment, communal reservation, promotional hierarchy etc., will have to be drawn up and decision by the Government on various criteria for absorbing the staff drawn from various departments like Public Health Department, Municipal Corporations, Municipalities etc., will have to be taken by the Government and appropriate Government Orders are issued.

8. Till then, the lien and seniority of these <https://www.mhc.tn.gov.in/judis> Food Safety Officers drawn from the cadre of former Health Inspectors / Sanitary Inspectors etc., with training as Food Inspectors under the repealed Preventive of Food Adulteration have to be preserved and maintained with resultant benefits to them in their parent department. Same procedure may be adopted in respect of Medical Officers drawn from the public health department and posted as Designated Officers under this new department. Therefore, their names should be retained in the seniority list of the respective cadres of your department without affecting their right of promotion etc., till the Government pass suitable orders in this regard.”

8. Section 37 of the Food Safety and Standards Act 2006 is as follows:-

Food Safety Officer -

(1) The Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the <https://www.mhc.tn.gov.in/judis> Central Government, as Food Safety Officers for such local areas as he may assign to them for the purpose of performing functions under this Act and the rules and regulations made thereunder.

(2) The State Government may authorise any officer of the State Government having the qualifications prescribed under sub-section (1) to perform the functions of a Food Safety Officer within a specified jurisdiction.

9. The impugned G.O.Ms.No.151 Health and Family Welfare (AB2) Department dated 20.04.2012 was issued by the Government only in exercise of powers conferred by Sub Section 1 of Section 37 of the Act. In this case, the writ petitioner was not appointed as Food Safety Officer in terms of any service rules but only by way of temporary arrangement till regular recruitment is made to the post of Food Safety Officer. As many as 544 persons working from other departments were posted as Food Safety Officer. Of course it would be open to the Government to even absorb them as employees of the new department.

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10. Now the question that arises for consideration is whether the writ petitioner has any statutory right to insist that he will continue to be in Food Safety and Drug Administration Department. My attention has not been drawn to any specific provision, Government Order and circular that confers such a right on the writ petitioner. As rightly pointed out by the learned Additional Government Pleader appearing for the respondents, even the new post sanctioned in the new department were to exist only for a period of one year and sanction for their continuance will have to be obtained. The Commissioner of Food Safety has been characterised as the controlling authority for the new department and G.O. (Ms).No.347 Health and Family Welfare (AB2) Department dated 22.12.2011 was issued. The first respondent cannot be said to be the person lacking any jurisdiction. The first respondent after review has taken a conscious decision that the petitioner can be relieved so that he can go back to the parent department. The impugned order does not cast any stigma on the petitioner. As a result of the petitioner going back to the parent department, the rank or pay of the petitioner is not affected in any manner. I do not find any <https://www.mhc.tn.gov.in/judis> ground to interfere. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2022

Index : Yes / No

Internet : Yes/ No

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To:

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Food Safety and Drugs Administration Department, Chennai – 6.

2. The Designated Officer, Tamilnadu Food Safety and Drugs Administration (Food Safety Wing),
Theni District, Theni.

3. The Commissioner, Cumbum Municipality, Theni District.

4. The Commissioner, Municipal Administration and Water Supply (M.A.W.S.) Department,
Chepauk, Chennai.

5. The Commissioner, Municipal Administration, Ezhilagam, Chepauk, Chennai – 600 005.

<https://www.mhc.tn.gov.in/judis> G.R.SWAMINATHAN,J.

PMU 26.09.2022 <https://www.mhc.tn.gov.in/judis>