

P.Sattanathan vs The Principal Secretary on 18 April, 2022

Author: S.M.Subramaniam

Bench: S.M.Subramaniam

W.P. (MD) No. 47

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 4796 of 2020
and WMP (MD) Nos. 4166 & 4167 of 2020

P.Sattanathan

... Petitioner

Vs.

1. The Principal Secretary
Health and Family Welfare Department
Secretariat, Chennai.

2. The Director of Public Health and
Preventive Medicine,
O/o. No. 359 Anna Salai
Chennai 6

3. The Commissioner
Tamil Nadu Food and Safety and Drug
Administration Department
No. 359 Anna Salai
Chennai 6

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondent Nos. 1 and 2 to consider the name of the petitioner for promotion to the post of Non Medical Supervisor/Block Health Supervisor in Tamil Nadu Public Health Subordinate Service by including his name in the temporary promotion list.

1/10

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

W.P. (MD) No. 47

of Health Inspector fit for promotion to the post of Non Medical Supervisor/Block Health Supervisor in Tamil Nadu Public Health Subordinate Service by including his name in the temporary promotion list.

Supervisor/Block Health Supervisor for the year 2019-2020 issued by 2nd respondent herein vide his proceedings R.No.3232/MP.IV/S1/2019 dated 14.02.2020 within the time that may be stipulated by this Court.

For Petitioner	: Mr.H.Mohammed Imran f
	M/s.Ajmal Associates
For Respondents	: Mr.A.K.Manikkam
	Special Government Plea

ORDER

The relief sought for in the present writ petition is to direct the respondents 1 and 2 to consider the name of the petitioner for promotion to the post of Non Medical Supervisor/Block Health Supervisor in Tamil Nadu Public Health Subordinate Service by including his name in the temporary panel of Health Inspector fit for promotion to the post of Non Medical Supervisor/Block Health Supervisor for the year 2019-2020 issued by the 2nd respondent herein vide his proceedings R.No. 3232/MP.IV/S1/2019 dated 14.02.2020 within the time that may be stipulated by this Court.

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

2.The petitioner is now working as Food Safety Officer under the control of the Commissioner, Tamil Nadu Food and Safety and Drug Administrative Department.

3.The petitioner was initially appointed as Leprosy Inspector in the department of Public Health and Preventive Medicine and promoted to the post of Health Inspector. Pursuant to the notification, the petitioner exercised his option to serve in the Food Safety Department and underwent training to get appointment as Food Safety Officer in the Food Safety Department. Accordingly, he was appointed as Food Safety Officer under the Food Safety Department, which is entirely a new department constituted pursuant to the Food Safety and Standards Act, 2006. The department is functioning separately under the control of the Commissioner, Food Safety Department. The petitioner was relieved from the department of Public Health and Preventive Medicine. The order of appointment appointing the petitioner under the Food Safety and Standards Act, 2006 dated 29.06.2011 categorically states that the pay and allowance to the individual should be protected. However, the <https://www.mhc.tn.gov.in/judis> appointment under the Food Safety Act is independent.

4. Let us look into the mode of appointment of Food Safety Officer under the Food Safety and Standards Act, 2006. Section 37(1) of the Act enumerates that, “Commissioner of Food Safety shall by notification appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government as Food Safety Officer 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.”

5. Powers of the Food Safety Officer was enumerated under Section 38 of the Act.

6. Therefore, the appointment of Food Safety Officer made by the Commissioner of Food Safety Department, is an independent procedure. Issuing notification and identifying the eligible persons

were done by the Commissioner, Food Safety Department. Pursuant to the notification issued by the Commissioner, Food Safety Department, eligible persons <https://www.mhc.tn.gov.in/judis> applied/exercised their willingness and thereafter they were considered with reference to the eligibility and accordingly appointed as Food Safety Officer by the Commissioner, Food Safety department under Section 37 of the Food Safety and Standards Act, 2006.

7. The learned counsel for the petitioner made a submission that the petitioner was deployed to the Food Safety Department. However, there is no order to establish the said contention. The appointment order dated 23.09.2011 issued to the petitioner clearly states that the appointment is under Food Safety and Standards Act 2006 and pursuant to the notification issued by the Commissioner, Food Safety and Drug Administration Department, the petitioner was selected and appointed. The petitioner was relieved from the department of Public Health and Preventive Medicine and joined in the Food Safety Department and continuing service for more than eight years. While so, when an opportunity of promotion came in the department of public health, the petitioner has made an attempt to claim that he is eligible for promotion to the post of block Health Supervisor/Non Medical Supervisor in the <https://www.mhc.tn.gov.in/judis> department of Public Health and Preventive Medicine. Thus, the employees, who are all continuing in the department of Public Health and Preventive Medicine, are considered for promotion to the post of Block Health Supervisor/Non Medical supervisor. When the panel is prepared for promotion, the petitioner filed the writ petition stating that he is deputed to food safety department and therefore, his parent department is Public Health and Preventive Medicine Department and his case is to be considered for promotion to the post of Block Health Supervisor/Non Medical Supervisor.

8. The learned Special Government Pleader relying on the counter affidavit filed by the Public Health and Preventive Medicine Department contended that the Government in letter No. 38866/L1/2019-5, Health dated 27.11.2020 has stated that, as per rules coming under Food Safety and Standards Act, 2006, Food Safety Officer's, who have worked in Food Safety and Drug Administration Department for more than 6 months, are not eligible to return back to the parent department. The petitioner herein has been working as Food Safety Officer in Food Safety <https://www.mhc.tn.gov.in/judis> and Drug Administration Department for more than 8 years. Hence, his name was not included in the panel for the year 2019-2020 for promotion to the post of Block Health Supervisor/Non Medical Supervisor issued vide the proceedings R.No.3232/MP-IV/S1/2019 dated 14.02.2020. Moreover, their lien for a period of five years is also over. Hence, they cannot be considered for inclusion in the panel for promotion to the post of Non Medical Supervisor/Block Health Supervisor.

9. With reference to the above position, the Public Health Department clarified that the case of the writ petitioner cannot be considered for promotion to the post of Non Medical Supervisor/Block Health Supervisor, as they were appointed and working in the Food Safety Department for about eight years.

10. It is made clear that the petitioner is continuously working as Food Safety Officer in the Food Safety Department. The appointment was made by the Commissioner, Food Safety in accordance with Section 37 of the Food Safety and Standards Act, 2006. The petitioner was

<https://www.mhc.tn.gov.in/judis> relieved from the department of Public Health and Preventive Medicine. Therefore, his promotional opportunities are to be provided in the Food Safety Department and certainly not in the department of Public Health and Preventive Medicine, as it is not a case of deputation or deployment or otherwise and it is an appointment made under the Statute by following the procedure contemplated and more specifically by the Commissioner, Food Safety Department, which is an independent department and not connected with the department of Public Health and Preventive Medicine. Considering the experience of the Health Inspectors in the Public Health and Preventive Medicine, opportunity was provided to those existing employees for promotion to the post of Food Safety Officer under Section 37 of the Food Safety and Standards Act, 2006.

11. The petitioner expressed his willingness to get appointment as Food Safety Officer and once he is continuously working in the Food Safety Department for eight years, he cannot now turn around and claim promotion to the post of Block Health Supervisor/Non Medical Supervisor in the department of Public Health Department, as he is not eligible to claim such promotion in the Public Health department.

12. With these clarifications, the writ petition stands disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

18.04.2022 Index:Yes/No Internet:Yes RR To

1.The Principal Secretary Health and Family Welfare Department Secretariat, Chennai.

2.The Director of Public Health and Preventive Medicine,

3.The Commissioner Tamil Nadu Food and Safety and Drug Administration Department
<https://www.mhc.tn.gov.in/judis> S.M.SUBRAMANIAM,J.

RR 18.04.2022 <https://www.mhc.tn.gov.in/judis>