

Tamil Nadu Food Safety Officers ... vs / on 15 December, 2023

2024:MHC:5939

WP.No.23184 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.12.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.23184 of 2021

Tamil Nadu Food Safety Officers Association,
Represented by its Secretary,
R. Rabindranath, 506,
Melvisaram and Ranipet Urban Area,
Vellore District ...

Petition

/vs/

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner,
Food Safety and Drug Administration Department,
Anna Salai, Chennai-600 006.
3. The Member Secretary,
Tamil Nadu Medical Services Recruitment Board,
DMS Building, No.359,
Anna Salai, Teynampet,
Chennai - 600 006. ...

Respondent

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a WRIT OF CERTIORARI calling for the records relating to the impugned Notification of the 3rd Respondent i Notification No.02/MRB/2021 dated 28.09.2021 and QUASH the same and

1/16

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

WP.No.231

consequently direct the 1st and 2nd Respondents to settle the service con

the existing Food Safety Officers who are working in the Department from 20.09.2011, within a reasonable period as may be fixed by this Court.

For Petitioner : Mrs.AL.Ganthimathi, Senior Counsel
For Respondents : Mr.HajaNazirudean, AAG Assisted by
Mr.T.Arunkumar, AGP for RR1 & 2
: Mr.L.Murugavel for R3

ORDER

This Writ Petition has been filed seeking Writ of CERTIORARIFIED MANDAMUS to call for the records relating to the impugned Notification of the 3rd Respondent in Notification No.02/MRB/2021 dated 28.09.2021 and QUASH the same and consequently direct the 1st and 2nd Respondents to settle the service conditions of the existing Food Safety Officers who are working in the Department from 20.09.2011, within a reasonable period as may be fixed by this Court.

2.Heard, Mrs.AL.Ganthimathi, Senior Counsel for the petitioner and Mr.Haja Nazirudean, learned Additional Advocate General for the respondents 1 and 2 and Mr.L.Murugavel, learned counsel for the 3rd respondent and perused the materials available on record.

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

3.Mrs.AL.Ganthimathi, learned Senior Counsel for the petitioner submitted that after repealing the Prevention of Food Adulteration Act 1954, Food Safety Standards Act was brought into force from 05.08.2011. The erstwhile officers who were in Public Health Department have been absorbed as Food Safety Officers under notification dated 20.09.2011. By virtue of issuance of G.O.Ms.149, Health and Family Welfare (AB2), dated 20.04.2012 Ad-hoc rules were framed for the post of Food Safety Officer.The decision of the Government has been communicated to the Secretary to Government, Health and Family Welfare Department in Letter No.38866/L1/2019-5, Health and Family Welfare Department dated 27.11.2020. The letter of the petitioner's association has been sent to the Director by stating that the petitioners have been absorbed in the department in the year 2011 and before framing any guidelines, new recruitment for the post of Food Safety Officer should not be made. The request was not accepted and recruitment is also done. However fresh notification has been issued on 28.09.2021. Now the Writ Petition has been filed challenging the said notification and seeking direction to secure the service condition of the existing Food Safety Officers.

4. Mr.HajaNazairdeen, learned Additional Advocate General for the <https://www.mhc.tn.gov.in/judis> respondents 1 and 2 submitted that in view of FR- 9, the Food Safety Officers who have been absorbed from the erstwhile Municipal, Corporation and Panchayat have got lien in their parent department even after the appointment of Food Safety Officers.

4.1. After the New Act was brought into force, 385 posts of Food Safety Officers have been sanctioned for the rural areas and out of which 199 posts were meant for urban areas. As per G.O.Ms.No.438, Health and Family Welfare Department dated 24.09.2018, adhoc Rules were framed for Food Safety Officers and it has come into effect from 22.12.2011. The above rules do not

have any saving clause in respect of those officers who have been absorbed from the erstwhile Corporation, Municipal and Panchayat departments i.e., as Food Safety Officers, because they have already been given a lien in their parent department. Subsequently, G.O.(Ms) No. 201, Health and Family Welfare (M1) Department, dated 30.06.2022 was issued which has a saving clause as well.

5. According to the submission of the learned Additional Advocate General, since the notification for recruiting Food Safety Officer will not in any way affect the interest of the petitioners in view of the saving clause provided in G.O.(Ms) <https://www.mhc.tn.gov.in/judis> No. 201, Health and Family Welfare (M1) Department, dated 30.06.2022. By the said Government Order, Tamil Nadu Food Safety and Drug Administrative Department sanction was accorded for creating 385 Food Safety Officers for rural areas and 199 posts of Food Safety Officers for urban areas.

7. The one and only concern of the petitioners is that their post or posting (seniority) should not get affected in view of the notification given for the Direct Recruitment of Food Safety Officers. As already pointed out by the learned counsel for the petitioners in the subsequent G.O.(Ms) No. 201, Health and Family Welfare (M1) Department, dated 30.06.2022, a saving clause is included.

8. Since the petitioner's grievance was addressed in view of the above saving clause adopted in G.O.(Ms) No. 201, Health and Family Welfare (M1) Department, dated 30.06.2022, the petitioner's association members need not worry in respect of their job security and to some extent about their seniority. Because the persons who are yet to be recruited / recruited as per the impugned notification dated 28.09.2021 will be brought into the department only in future and the members of the petitioner's association are already in service. <https://www.mhc.tn.gov.in/judis>

9. By issuance of G.O.Ms.No.347, Health and Family Welfare Department dated 22.12.2011, 385 posts of Food Safety Officers for rural areas and 199 Food Safety Officers for urban areas have been sanctioned. It is stated that in the above Government Order that the sanction is only for one year and further continuation can be obtained from time to time. This is consequent to the Food Safety and Standards Act-2006 which came into force from 05.08.2011. 544 persons, who were working as Food Inspectors under the Public Health and Preventive Medicine Department and Local Bodies as Food Safety Officers in R.No.2413/FSSA/2012/S2 dated 10.09.2012, i.e., the newly formed Food Safety and Drug Administration Department. After they have been appointed to the post, there is a lien in their parent department. So, they had the right to return to their parent department if they so wished.

10. However, it is clarified by the special rules framed immediately after the promulgation of Food Safety and Standards Act-2006 that those persons who have been appointed as Food Safety Officers, cannot go back to their parent department after a period of six months. Even though the posts were sanctioned for one year, the Food Safety Officer so appointed from the Public Health and Preventive Medicine Department and the Local Bodies were continued to be in <https://www.mhc.tn.gov.in/judis> the said posts for more than five years. Having appointed them by placing a rule that they cannot go back to their parent department after the expiry of six months, now the first respondent cannot say that the petitioners have got lien in their parent department.

11. Mr.Haja Nazirudean, learned Additional Advocate General for the respondents 1 and 2 attracted the attention of this Court to the judgement rendered in WP. (MD) No.15073 of 2018 of the Madurai Bench of this Court dated 26.09.2022 in order to substantiate the submission of the petitioner that the Food Safety Officers appointed in the above manner can be sent back to the department. In the said judgement it has been held as under:

“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 ground to interfere. This writ petition stands dismissed. No costs. Consequently, <https://www.mhc.tn.gov.in/judis> connected miscellaneous petitions are closed. ”

12. In the said judgement itself, the learned single Judge has observed that no specific provision, government order or circular that would confer the right upon the petitioner to retain as Food Safety Officers was brought to the attention of this Court. Only in view of the above reason, the learned single Judge had arrived at a conclusion that the petitioner in that case can be reverted to his parent department.

13. In the case in hand, the petitioner had brought to the notice of the Court about the 1st respondents letter written to second respondent vide letter No.38865/L1/2019-5, Health and Family Welfare Department dated 27.11.2020. In the said letter the government has made it categorically clear that Food Safety Officers are working for more than six months and hence they cannot be sent back to their parent department and further, it is impossible to maintain their seniority in the parent department as they continued to work as Food Safety Officers for a few years. Hence, it is proposed that promotion can be given on adhoc basis to all those Food Safety Officers.

14. Had this fact been brought to the notice of the Madurai Bench of this <https://www.mhc.tn.gov.in/judis> Court during the proceedings of WP. (MD) No.15073 of 2018, the result of the said writ petition would have been different. Even though many of the Food Safety Officers have been appointed from the Public Health and Preventive Medicine Department and local bodies, lot of vacancies has arisen due to various reasons. As the government was under a compelling situation to fill up the vacant posts, the first Notification No.02/MRB/2021 was issued

on 28.09.2021 by the Medical Service Recruitment Board and subsequently, Notification No.02/MRB/2021 dated 13.10.2021 was issued by the Medical Service Recruitment Board. Consequently, the petitioner's association has sent a representation stating that the existing Food Safety Officers should be absorbed in their parent department where the rules and guidelines have been framed. It is demanded that before framing all those guidelines and rules, new direct recruitment for the post of Food Safety Officers should not be made. However the recruitment was made. But no appointment orders have not been issued.

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 <https://www.mhc.tn.gov.in/judis> 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.”

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 <https://www.mhc.tn.gov.in/judis> 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;jjLg;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;llu Rfhjhu nkw;ghh;itahsh;/ eyf;fy;tpahsh; kw;Wk; bjhHpy;El;g neh;Kf cjtpahsh;/ 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)muR foj vz;.38866_ vy;1_2019-1/ ehs; 05.11.2019

3)j';fs; foj vz;.e.f.vz;.3232_gneh4_,U1_2019 / ehs;

28.11.2019 kw;Wk; 20.12.2020.

ghh;itapy; \d;wpy; fhZk; fojj;jpy; czt[ghJfhg;g[j; Jiwap; 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 fhj;jpw;F gpd; jha;j;Jiwf;F jpUk;g ,ayhJ vd tpjp cUghf;fg;lJ. bghJ Rfhjhu Jiwap; gzpghpa[k; czt[ghJfhg;g[<https://www.mhc.tn.gov.in/judis> gapw;rp Koj;j Rfhjhu Ma;thsh;fs; czt[ghJfhg;g[kw;Wk; kUe;J eph;thfj; Jiwap; czt[ghJfhg;g[mYtyh;fshf gzpakh;j;jk; bra;ag;gl;ldh;. VdpDk;/ czt[ghJfhg;g[kw;Wk; kUe;J eph;thfj; Jiwap; czt[ghJfhg;g[kw;Wk; eph;thfj;Jiwap; 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;Jiwap; cUthf;fg;gl;l bgUkghyhd gzapal';fSf;F chpa tpjpf; cUthf;fg;glhjJ Mfpa fhuz';fspd; mog;gilapy; 2013 Kjy; 2017 tiu tpUg;gKs;sth;fSf;F tl;llu 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; gzpghpa[k; epiyapy;/ jha;j;Jiwap; (bghJ Rfhjhuj; JiW) Kjeipiya gukhpg;gJ vd;gJ Vw;g[ilaJ my;y. nkw;fhz; NH;epiyapy;/ czt[ghJfhg;g[kw;Wk; kUe;J eph;thfj;Jiwap; gzpghpa[k; czt[ghJfhg;g[mYtyh;fSf;F mj;Jiwap; jw;fhypf mog;gilapy; (adhoc basis) chpa gjtp cah;it mspj;J/ chpa tpjpf; cUthf;fpa gpd;g[/ nkw;fz;l jw;fhypf gzapad tud; KiwLj;jyhk; vd mwptWj;jg;gLfpwJ.

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

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

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

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.

15.12.2023 Index : Yes Internet : Yes/No Speaking: Non-speaking jrs
<https://www.mhc.tn.gov.in/judis> To

1. The Secretary to Government, Health and Family Welfare Department, Secretariat, Chennai - 600 009.

2.The Commissioner, Food Safety and Drug Administration Department, Anna Salai, Chennai-600 006.

3. The Member Secretary, Tamil Nadu Medical Services Recruitment Board, DMS Building, No.359, Anna Salai, Teynampet, Chennai - 600 006.

<https://www.mhc.tn.gov.in/judis> R.N.MANJULA,J jrs 15.12.2023 <https://www.mhc.tn.gov.in/judis>