

Madras High Court

Tamil Nadu State Municipal And ... vs The Chief Executive Officer on 9 March, 2011

DATED : 09.03.2011

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THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.4024 of 2011

and

M.P.NO.1 OF 2011

Tamil Nadu State Municipal and Corporation

Sanitary Inspectors and Sanitary Officers

Association,

rep by its State President,

K.Vasudevan

No.7/4,Ganapathy Colony 1st Street,

Royapettah,

Chennai-600 014. .. Petitioner

Vs.

1.The Chief Executive Officer,

Food Safety and Standard Authority of India,

FDA Bhavan, Kotla Road,

New Delhi-110 002.

2.The Principal Secretary to Government,

Health and Family Welfare Department,

Fort St. George,

Chennai-600 009.

3.The Principal Secretary to Government,

Municipal Administration and Water Supply

Department,

Fort St. George,

Chennai-600 009. .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the first respondent to include and to treat the diploma holders also those who are completed their training in Food Inspection and Sampling at the approved institutions approved by the Government of India for the purpose for the post of Food Safety Officer as per the draft Rules issued in GSR.No.39(E) in Section 2.1.3.(IV) of Food Safety officer and dispense with the condition specified in Col(iv) of 2.1.3 of Food Safety Officer "a person who has already been appointed as a Food Inspector under the provision of PFA Act 1954".

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.R.Murali, GA for RR2 and 3

ORDER

The petitioner is an Association of State Municipal and Corporation Sanitary Inspectors and Sanitary Officers represented by its President. In this writ petition, the petitioner has come forward to seek for a direction to the respondents to include and treat the Diploma holders and those who have completed training in Food Inspection and Sampling at the institutions approved by the Government of India for appointing them for the posts of Food Safety Officers as per the draft rule issued in GSR No.39(E) in Section 2.1.3(IV) of Food Safety Officers.

2.According to the petitioner, under the Prevention of Food Adulteration Act, 1954, the Food Safety Officer is defined as a person who had already been appointed as a Food Inspector under the provision. It is the case of the petitioner that they have got diploma in Food Technology from the Vinayaga Mission Research Foundation which is a deemed University. When those diploma holders who are working in the department, were selected and sent for Food Inspector Training, the same was challenged by the Graduate Food Inspectors Association. The matter was finally dealt with by a division bench in W.A.(MD)No.236 and 237 of 2007, dated 11.10.2007. The Division Bench presided by P.K.Misra, J. (as he then was) held that since the diploma given by the Vinayaga Mission Research Foundation had not been approved by the AICTE and since the diploma course offered by the said institution was under the Distance Education Programme and not approved by the UGC, they are not eligible to be considered as being educationally qualified for holding the said post.

3.Accepting the said judgment, the State Government had issued G.O.Ms.No.215, Health and Family Welfare Department, dated 3.7.2008. By the said order, the Government had cancelled the earlier order in G.O.(D).No.452, Health and Family Welfare Department, dated 5.4.2007. It was also held that persons who are in possession of diploma in Food Technology offered by Vinayaga Mission Research Foundation, a deemed University, are numbering about 111 and the other 32 candidates having B.Sc. Degree course in Applied Chemistry offered by the Annamalai University under the distance mode are not eligible for the post of Food Inspectors. The said order of the Government issued pursuant to the order passed by the Division Bench was challenged before this Court as well as before the Madurai Bench of this Court. Even without challenge to that order, when certain persons moved this court represented by the petitioner association seeking for a direction to import the Food Inspection and Sampling Training so as to become a Food Inspector, a learned Judge of this court in W.P.No.13114 and 13300 of 2010 by a common order, dated 30.7.2010 dismissed the writ petitions by stating that unless G.O.Ms.No.215 is challenged, their request

cannot be entertained.

4. In the meanwhile, the Government of India, Ministry of Health and Family Welfare had issued a notification, dated 19.1.2011 notifying Draft Food Safety and Standards Rules, 2011. In paragraph 2.1.3, qualifications for the post of Food Safety Officer has been stipulated. In paragraph 1.4, it was stated as follows: 2.1.3: Food Safety Officer. 1. Qualification: Food Safety Officer shall be a whole time officer and shall, on the date on which he is so appointed possess the following: (i) to (iii) omitted

(iv) has successfully completed training, for a specified period in food safety, food inspection and sampling under an Institute or Institution approved for the purpose by the Food Authority. "

5. It is on the basis of the rules, the present writ petition came to be filed by the members of the petitioner association claiming that they have already undergone training in Food Inspection and Sampling and that they have held the office of Food Inspectors under the provisions of the Prevention of Food Adulteration Act.

6. It is not clear as to why the petitioners have been successively filing petitions when the issues have already been concluded by this court in more than one writ petitions. In the proceedings, dated 15.2.2011, the Director of Public Health and Preventive Medicines had sent the names of Sanitary Inspectors/Health Inspectors for training in Food Analysis Laboratory at Coimbatore for a period of three months. The petitioners on the spacious plea that they had already worked as Food Inspectors and also having diploma are seeking for the said post on the ground that they have completed the training before the issuance of G.O.Ms.No.215, Health and Family Welfare Department, dated 3.7.2008.

7. It must be noted that the earlier writ petitions filed by some of them were dismissed by this court by a common order, dated 30.7.2010 referred to above. It was indicated that unless G.O.Ms.No.215, Health and Family Welfare Department, dated 3.7.2008 is not removed, the petitioners cannot get any such relief on the basis of the earlier G.O.(D)No.452, Health and Family Welfare Department, dated 5.4.2007 which was set aside by the division bench. Though the petitioner has claimed that number of writ petitions are pending with reference to challenge, it must be noted that G.O.Ms.No.215, Health and Family Welfare Department, dated 3.7.2008 came to be upheld by this court in W.P.(MD)No.12742 of 2009, dated 13.9.2010 in H.Ramachandran Vs. The Secretary to Government, Health and Family Welfare Department, Fort St. George, Chennai-600 009 and others. This Court held that the G.O was valid and the writ petition was dismissed.

8. Therefore, in the present writ petition seeking for a direction to include their names and treat the diploma held by them as valid and their completion of training in Food Inspection and Sampling on the basis of the earlier order, no direction can be issued. If any such direction is issued, it will be in conflict with the order of the division bench passed earlier striking down the G.O. and recognizing the diploma obtained by them from the Vinayaga Mission Research Foundation. The petitioner cannot keep on filing case after case to achieve certain things which was negated by this court already.

9. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed.

vvk

To

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