



W.P(MD)Nos.2743 of 2016 and 9921 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)Nos.2743 of 2016 and 9921 of 2014
and W.M.P(MD)No.2422 of 2016
and M.P(MD)Nos. 1 and 2 of 2014

In W.P(MD)No.2743 of 2016:

P. Jeyakumar

...Petitioner

Vs.

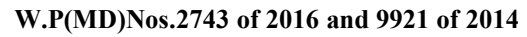
1. The Secretary
Department of Health and
Family Welfare
Fort. St. George,
Chennai.

2. The Director of Public Health,
And Preventive Medicine,
Chepauk,
Chennai.

3. The Deputy Director of Health
Service, Nagarcoil,
Kanyakumari.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus or any other writ, order or direction in the nature of Writ directing the



In W.P(MD)No.9921 of 2014:

...Petitioner

Vs.

3. The Deputy Director of Health Service, Nagarcoil, Kanyakumari.

... Respondents

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



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2nd respondent in Na.Ka.No.70869/AaKa Ni.7/A3/2013-2014 dated 18.03.2014 and quash the same, consequently direct the respondent to absorb the petitioner by giving preference in regular employment as driver in Government Health Centre, Kanyakumari District by considering the qualification, past service and experience.

In both Writ Petitions:

For Petitioner : Mr.M.Ramu
For Respondents : Mr.A.Sivanu Pandian
Government Advocate

COMMON ORDER

Since the petitioner is one and the same and the issue is also same in these two Writ Petitions, this Court dispose of the same by common order.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the records.



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3. The petitioner was appointed as Driver by the 3rd respondent through outsourcing on 16.11.2014. As the State decided to revoke the outsourcing appointment, terminated the service of the petitioner. The petitioner requested the respondents to absorb him in regular service. But, it was not considered by the respondents. The petitioner filed a Writ Petition in W.P(MD)No.11924 of 2011 praying for a direction to give preference to him in regular appointment as Driver in the respondent Department. The said Writ Petition was disposed of on 13.12.2013 permitting the petitioner to submit his application before the respondents along with the experience certificate issued by the concerned medical officer within a period of two weeks from the date of receipt of the copy of the order and the fourth respondent to consider their claim even without their names are not sponsored by the employment exchange. It is also made it clear that since the petitioner was already engaged through outsourcing agency and performed the duties as the Driver etc further seniority through employment exchange is not required



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to him insofar as the petitioner is concerned. However, the second respondent rejected the claim of the petitioner by order dated 18.03.2014. Aggrieved by the same, the Writ Petition in W.P(MD)No.9921 of 2014 is filed.

4. W.P(MD)No.2743 of 2016 has been filed by the petitioner seeking a direction to the respondents to appoint the petitioner as a Driver under the third respondent by considering the order of this Court in W.P(MD)No.11924 of 2011 dated 13.12.2013 as well as the order dated 06.05.2015 in W.P(MD)No.7852 of 2015 and W.P(MD)No.7855 of 2015.

5. In the counter affidavit filed by the respondents in W.P(MD)No.9921 of 2014, it is contended that outsourcing employees are not employed by the Government. The petitioner was engaged through outsourcing agency in which they have not followed the recruitment rules i.e through employment exchange or



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communal roaster. Their appointments are also made only by the private agencies. It is also averred that the petitioner is not entitled for the relief as per the judgment of the Hon'ble Apex Court in **Secretary State of Karnataka and other Vs. Uma Devi and others** reported in **2006 (4) SCC 1**.

6. It is further contended that in pursuance of the order in W.P(MD)No.13003 of 2008 of this Court, the Government has passed G.O.Ms.No.(2D)56, Health and Family Welfare C2 Department dated 09.07.2012 to terminate all the outsourced employees in a phased manner by a maximum spread over period of one year. The petitioner worked for a limited period which was also over in the year 2010 itself and as such, he is not entitled for regularization of service.

7. In the counter affidavit filed in W.P(MD)No.2743 of 2016, it is the contention of the respondents that the petitioner is not



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entitled for any preferential treatment for absorption in the service. It is further contended that the petitioner is over aged as per rules. As such, he is not entitled for the relief sought in this Writ Petition.

8. Heard the submissions of the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the records.

9. The undisputed facts in the cases are that the petitioner was appointed as Driver by way of outsourcing employment and he worked for 7 years continuously. Thereafter basing on the order passed by this Court in W.P(MD)No.1300 of 2008, the State Government issued G.O.Ms.No.(2D) 56 Health and Family Welfare C2 Department dated 09.07.2012 to terminate all the outsourced employees working in the State. Accordingly, the petitioner was terminated. At the time of his appointment as Driver on outsourcing basis, the petitioner was aged 27 years. Thereafter,

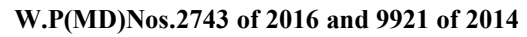


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he worked for 7 years till attaining the age of 34 years and at the age of 34 years, he was thrown out. Actually, the maximum age limit for appointment of Driver in Government service in the State is 34 years. Now it is the contention of the State Government is that in the light of the order of this Court and the Apex Court, all other recruitments which are not made by direct recruitment are back door admissions. It is also the contention of the State Government that when outsourcing appointments are made the rule of reservation and all other requirements are not being followed and as the petitioner was appointed through outsourcing agency not directly by the Government, the petitioner is not entitled for regularization or absorption or for any preferential treatment in appointment as Driver.

10. Having considered the facts and circumstances of the case and the contentions of the State Government, in the considered opinion of this Court, when there is need for day to day transactions



As and when the vacancy in sanctioned posts are available and as and when there is a need to fill those posts for day to day transactions of the concerned departments or officers, those posts shall be filled on permanent basis with the eligible and qualified persons. When the Government filled that posts on outsourcing basis, that too, through the outsourcing agencies and thereby terminating the service of those persons, who are appointed on outsourcing basis, after a long gap of period, most of the persons, who have been working for years together there, will become over aged and they would not be entitled for applying for any posts to be notified by the Government. It will cause serious and irreparable loss to the person, who worked in the outsourcing posts. It is true that the contention of the State Government that in outsourcing appointment rule of reservation is not being followed. But it is for the State Government to take appropriate steps to follow the rule of



reservation at the time of appointment on the outsourcing basis or it is for the State Government to fill all sanctioned posts on permanent basis by following the selection procedure provided under rules without filling the posts on outsourcing basis. This issue can be visualized in a different view. If one post of Driver is filled on permanent basis, the Government has to pay salary at the rate of pay scale fixed for that post. But, if that post is filled on outsourcing basis, the Government will pay only consolidated pay of Rs.10,000/- or Rs.15,000/-. Due to that reason only, the Governments are resorting to engage the outsourcing appointments at the cost of the lives of the educated youth of our country, which is to be held as “unfortunate”.

11. In the present case, admittedly, the petitioner completed 34 years during the period when he was thrown out from the post of Driver in the third respondent. This type of actions of the Government is not acceptable as it violates the constitutional obligations cast on the Governments. Though this Court has sympathy towards the petitioner, as of now he crossed 47 years. This



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Court is handicapped to direct the respondents to consider the case of the petitioner for appointment by giving preferential treatment.

12. With the above observations, these Writ Petitions are closed.

14. No costs.

15. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

NCC : Yes / No

CM

To,

1. The Secretary

Department of Health and Family Welfare

Fort. St. George, Chennai.

2. The Director of Public Health,

And Preventive Medicine,

Chepauk,

Chennai.

3. The Deputy Director of Health

Service, Nagarcoil,

Kanyakumari.



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BATTU DEVANAND, J.

CM

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and W.M.P(MD)No.2422 of 2016

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