



W.A.No.3633 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.3633 of 2024
and C.M.P.No.28555 of 2024**

- 1.State of Tamil Nadu,
Rep by the Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.
- 2.The Director,
Directorate of Public Health and Preventive Medicine
(DPHS),
No.359, Anna Salai, DMS complex,
Teynampet, Chennai – 600 006.
- 3.The Deputy Director,
Public Health and Preventive Medicine,
The Filaria Officer (i/c) National Flaria
Control Unit, Chengalpet.

... Appellants

Vs.

P.Ramesh

... Respondent

Prayer: Appeal under Clause 15 of the Letters Patent praying to set aside the order dated 18.12.2023 made in W.P.No.12493 of 2023 and allow this Writ Appeal.



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W.A.No.3633 of 2024

For Appellants : M/s.M.Sneha,
Special Counsel
For Respondent : Mr.S.Wilson

JUDGMENT

(Judgment of the Court was delivered by C.SARAVANAN, J.)

This Intra Court appeal is preferred challenging the Impugned Order dated 18.12.2023 passed by the Writ Court in W.P. No.12493 of 2023.

2. The said Writ Petition was filed by the Respondent herein for the following relief:-

“Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified mandamus to call for the records relating to the proceedings of order in Na.Ka.No.3940714/Pa Tho3/Iru2/2023 dated 13.04.2023, passed by the 2nd Respondent and quash the same and consequently directing the respondents to issue formal order declaring the completion of probation of petitioners service and give all consequential monetary benefits from 01.03.2016.”

3. In the aforesaid writ petition, the Respondent/Writ Petitioner had challenged the Order dated 13.04.2023 bearing Na.Ka.No.3940714/Pa Tho3/Iru2/2023 passed by the 2nd Appellant, wherein, the order regularizing the service of the Respondent/Writ Petitioner was canceled.



4. Relevant portion of the Order dated 13.14.2023 impugned in the

WEB W.P.No.12493 of 2023 reads as under:

“5.மேற்படி பார்வை 3ல் காணும் காரணம் கேட்கும் குறிப்பாணை தொடர்பாக தனியர் அளித்துள்ள தன்னிலை விளக்கம் கூராய்வு செய்யப்பட்டது. தனியர் களப்பணியாளர் பணி நியமனம் செய்யப்பட்டது தொடர்பாக அன்னார் தெரிவித்துள்ளது போன்று எவ்வித அரசாணையும் வெளியிடப்படவில்லை. இது முற்றிலும் தவறான தகவலாகும். மேலும் இவ்வலுவலக 13.10.2015 நாளிட்ட கடித எண் 85401/பதொ3/இரு2/2015 ன் படி வழங்கப்பட்ட அறிவுரை தேசிய யானைக்கால் நோய் தடுப்பு திட்ட அலுவலகத்திற்கு பொருந்தாது. எனவே, பார்வை 3ல் காணும் காரணம் கேட்கும் குறிப்பாணைக்கு தாங்கள் அளித்துள்ள விளக்கத்தை விதிகளின்படி ஏற்றுக்கொள்ள வழிவகை இல்லை. தங்களது கோரிக்கை நிராகரிக்கப்படுகிறது எனத் தொரிவித்துக்கொள்ளப்படுகிறது. எனவே பார்வை 2ல் காணும் பொது சுகாதாரம் மற்றும் நோய் தடுப்பு மருந்து துறை இயக்குநரின் செயல்முறை ஆணை ஸ்ரீ.ஸ்ரீ.எண்.84412/பதொ3/இரு3/2017, நாள் 02.10.2017 ல் தங்களுக்கு வழங்கப்பட்ட பணிவரன்முறை ஆணை இதன் மூலம் இரத்து செய்யப்படுகிறது.”

5. By the Impugned Order dated 18.12.2023, the Writ Court allowed the Writ Petition filed by the Respondent/Writ Petitioner. Operative portion of the Impugned Order dated 18.12.2023 passed by the Writ Court in W.P.No.12493 of 2023 reads as under:-

“7. It is not in dispute that all the petitioners herein have been appointed in sanctioned vacancies and they were brought under regular time scale of pay. In the counter affidavit filed by the respondents, the appointments are not termed as illegal. If that be so, the mistake committed by the respondents in absorbing the petitioners in regular time scale of pay instead of contract basis on consolidated pay can be termed only to be a irregular appointment and not an illegal appointment.

8. Such a preposition has already been upheld by the Hon'ble Supreme Court in several decisions and held that such irregularities committed in the appointments can be cured since there is no illegality in them. In the case of **Secretary, State of Karnataka vs Uma Devi reported in 2006 4 SCC 1**, the Hon'be Supreme Court has held that irregular appointments would not render appointment as illegal and thereby directed the Government to regularise such



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irregular appointments. In the case of **Secretary, State of Karnataka & Others Vs. Umadevi & Others** reported in 2006 (4) SCC 1 had held that, 'irregular appointments' would not render the appointments as "illegal" and thereby directed the Government to regularise such irregular appointments as a one time measure.

9. In **B.N. Nagarajan & Others Vs. State of Karnataka & Others** reported in 1979 (4) SCC 507, the Hon'ble Apex Court had categorically held that all irregularities can be regularised, but illegalities cannot be. Likewise, in the **State of Madhya Pradesh & Others Vs. Lalit Kumar Verma** reported in 2007 (1) SCC 575, the Hon'ble Apex Court had made a distinction between "irregular appointment" and "illegal appointment" in the following manner:

"12.The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of [Article 12](#) of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to."

10. In the case of **Post Master General, Kolkata & Others Vs. Tutu Das** reported in 2007 (5) SCC 317, the Constitutional Bench of the Hon'ble Apex Court had upheld the ratio that an 'irregular appointment' does not stand equated to that of an 'illegal appointment'. As such when irregular appointments can be ratified on the strength of all these decisions of the Hon'ble Supreme Court and by taking note of the fact that the respondents themselves have only claim certain alleged irregularities in the selection process and not illegalities, the cancellation of the appointment orders on account of such alleged irregular selection process, cannot be sustained. Even otherwise, these alleged infirmities may not strictly termed to be as "irregularities" also for the reasons stated in the foregoing paragraphs of this order.

11. All these present cases are similar to the findings of the Hon'ble Supreme Court, wherein, the respondents have pointed out that the appointment of the petitioners are only irregular in nature and not illegal. Hence, by applying the ratio laid down by the Hon'ble Supreme Court, the consequential action taken by the respondents in either issuing show cause notices for terminating the petitioners' services or terminating their services itself by passing of orders, cannot be legally sustainable.

12. Accordingly, the following directions are issued:-

(a) In WP Nos.4977, 4946, 4968, 4971, 4974, 4972, 4952, 4950, 4945,



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4944, 4941, 4978, 4975, 4973, 4970, 4967, 4938 of 2023, insofar as it relates to the termination of services of the petitioners from their respective posts, are quashed;

(b) In W.P.Nos.14696, 14580, 14581, 14688, 14579, 15154, 14578, 14557, 12495, 14031, 14544, 14571, 14697, 14583, 14587, 14672, 14674, 12493, 14556, 14561, 14564, 14576, 14692, 14572, 14573, 14575, 14693, 14577, 14565, 14689, 14567, 14582, 14676, 14678, 14679, 14683, 14684, 14685, 14686, 14574, 14542, 14552, 14554 and 14687 of 2023, insofar as it relates to issuance of show cause notices are quashed;

(c) In view of quashing of the termination orders as well as the show cause notices, there shall be a direction to the Director of Public Health and Preventive Medicine, No.359, Anna Salai, DMS Complex, Teynampet, Chennai-600 006 and the Deputy Director of Health Service, Office of Deputy Directorate of Health Service, Chengalpattu HUD No.17, Periyar Road, J C K Nagar, Chengalpattu-603 001, to forthwith pass appropriate orders for reinstating the petitioners back into service, together with all service and monetary benefits.

(d) The order referred to clause (c) above shall be passed within a period of four weeks from the date of receipt of a copy of this order.

13. With the above direction, all the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.”

6. Although, the Impugned Order dated 18.12.2023 is a common order passed while disposing a batch of writ petitions, the subject matter of challenge in the present Writ Appeal is only confined to the order passed in W.P.No.12493 of 2023 preferred by the Respondent/Writ Petitioner.

7. The Respondent/Writ Petitioner was temporarily appointed as 'Mazdoor' vide proceedings dated 29.02.2016 in R.No.355/A1/2015 of the 3rd Appellant under Rule 10a(1) of the Tamil Nadu State and Subordinate Service Rules pursuant to the Letter dated 13.10.2015 of the 2nd Appellant directing the 3rd Respondent to fill up the vacancy to the post of 'Mazdoor'. Thereafter, pursuant

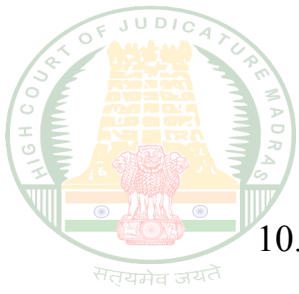


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to the appointment order dated 29.02.2016 of the 3rd Appellant, the Respondent/Writ Petitioner was appointed to the post of 'Mazdoor' at the head office of the 3rd Appellant.

8. Thereafter, the service of the Respondent/Writ Petitioner was regularised by the 2nd Appellant vide proceedings dated 02.10.2017 with effect from the date of joining the service as 'Mazdoor' at the office of the 3rd Appellant. It is in this background, the 2nd Appellant issued a Show Cause Notice dated 08.03.2023 to the Respondent/Writ Petitioner and few others seeking explanation as to why the Order dated 02.10.2017 of the 2nd Appellant regularising the service of the Respondent/Writ Petitioner should not be set aside stating that the appointment of the Respondent/Writ Petitioner to the post of 'Mazdoor' by the 3rd Appellant is illegal and contrary to the rules.

9. The impugned order of the Writ Court insofar as it concerns the relief granted to the Respondent/Writ Petitioner in W.P.No.12493 of 2023 is assailed primarily on the ground that the appointment of the Respondent/Writ Petitioner was contrary to G.O.Ms.No.325 dated 20.11.2012 of Health and Family Welfare (F2) Department.



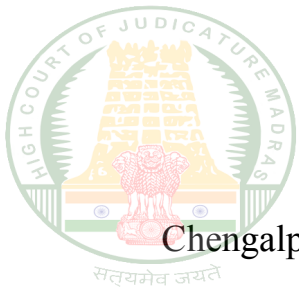
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10. It is specifically argued by the learned Special Counsel for Health Department that the Impugned Order dated 18.12.2023 of the Writ Court has not taken into consideration Paragraph No.3 of the aforesaid Government Order in G.O.Ms.No.325 dated 20.11.2012 of Health and Family Welfare (F2) Department which reads as under:-

“3.The Government have examined the new policy formulated by the Project Director, Tamil Nadu Health System Project and recommended by the Director of Medical and Rural Health Services taking into consideration the difficulty in filling up the post of Nursing Assistant Grade II due to unwillingness of the Hospital Workers to be promoted as Nursing Assistant Grade II as their retirement age would be reduced to 58 years, which has resulted in deficiency in the services in the hospitals and also taking into consideration of the points suggested by the Finance Department.”

11. It is the case of the Appellants that the appointment of the Respondent/Writ Petitioner was illegal and did not follow either the communal roaster or the dates prescribed in the paper publication dated 14.02.2016 issued by the 3rd Appellant inviting applications for appointment to the post of 'Mazdoor' and that the Respondent/Writ Petitioner was not sponsored by the Employment Exchange Board of Tamil Nadu.

12. That apart, it is submitted by the learned counsel for the Appellants that the Writ Court ought to have taken note that the 3rd Appellant, Thiru.S.Rajasekaran (now retired), Filaria Officer, National Filaria Control Unit,



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Chengalpattu sent a letter dated 29.02.2016 to the District Employment Officer,

Kanchipuram and called for the list of eligible candidates for filling up the post of 'Mazdoor'.

13. The District Employment Officer, Kanchipuram had furnished the list of the candidates eligible for appointment to the post of of 'Mazdoors' vide letter dated 03.03.2016. Thereafter, the appointment orders were issued on 29.02.2016 by the 3rd Appellant appointing 54 persons as 'Mazdoors'. The Respondent/Writ Petitioner was also appointed to the post of 'Mazdoor' vide the aforesaid appointment order dated 29.02.2016.

14. It is further submitted that though the Respondent/Writ Petitioner stated that he was sponsored through Employment Exchange, as per letter dated 03.03.2016 of the District Employment Officer, Kanchipuram, it is stated that the name of the Respondent/Writ Petitioner was not sponsored by the Employment Exchange.

15. Further, it is submitted that Show Cause Notices were issued to various persons among 54 persons appointed as 'Mazdoors' including the



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Respondent/Writ Petitioner and subsequent to which the service of 17 persons were terminated based on the instructions of the 1st Appellant.

16. In this connection, the learned Special Counsel for the Health Department had relied on the decision of the Hon'ble Supreme Court in the case of *Secretary to Government, School Education Department, Chennai Vs. Thiru R.Govindasamy & Ors.* in Civil Appeal Nos.2726-2729 of 2014.

17. On the other hand, defending the impugned order dated 18.12.2023 of the Writ Court in W.P.No.12493 of 2023, the learned counsel for the Respondent/Writ Petitioner submits that there is no scope for interfering with the impugned order of the Writ Court in so far as it allows the Writ Petition filed by the Respondent/Writ Petitioner.

18. It is submitted that the Respondent/Writ Petitioner was appointed by an order dated 29.02.2016 of the 3rd Appellant under Rule 10(a)(i) of the Tamil Nadu General Subordinate Services as 'Mazdoor' and was posted at the Adambakkam Sub Unit of National Filaria Control Unit on a temporary basis and that the service of the Respondent/Writ Petitioner was confirmed by the 3rd Appellant in his proceedings dated 02.10.2017 bearing reference



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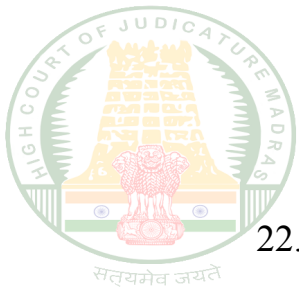
K.DIS.No.84412/E3/S3/2017 along with two others.

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19. The Respondent/Writ Petitioner and two others who were appointed by way of the aforesaid proceedings were instructed to complete their probation period of one year from the date of joining of service and that the declaration period was to be calculated after deducting the leave taken during the probation period.

20. It is submitted that the Order dated 13.04.2023 bearing reference R.No.3940714/E3/S2/2023 terminating the service of the Respondent/Writ Petitioner pursuant to Show Cause Notice dated 08.03.2023 was illegal and has been rightly interfered with by the Writ Court vide Order dated 18.12.2023 in W.P.No.12493 of 2023.

21. Having considered the submissions made by the learned Special Counsel for the Health Department and the learned counsel for the Respondent/Writ Petitioner, we are of the view that the impugned order of the Writ Court in so far as the respondent/writ petitioner in W.P.No.12493 of 2023 is concerned, does not merit any interference.



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22. The appointment of the respondent/writ petitioner was made pursuant to G.O.(Ms).No.44, Labour and Employment (T2) Department, dated 11.03.2015 and G.O.(Ms).No.243, Health and Family Welfare (C2) Department, dated 13.08.2015. This has also been referred to letter dated 13.10.2015 bearing reference No.85401/E3/S2/2015 of the 2nd Appellant.

23. In the letter dated 13.10.2015 issued by the 2nd Appellant, the details of the aforesaid Government Orders have been stated as under:-

“In the Government Order 1st cited Government had decided to implement the Judgment of this Court in W.A.No.1027 of 2013 and M.P.No.1 of 2013 dated 09.06.2013 in which it has been ordered that the State Government should take immediate steps to fill up the posts by inviting applications from all eligible persons by advertising in atleast 2 newspapers to enable all the eligible persons and from the names sponsored by Employment Exchange to compete for the posts.

In the Government in the Government Orders 2nd cited among others have issued orders exempting the posts which are classified under the Tamil nadu Basic Services from the purview of Medical Services Recruitment Board (MRB).”

24. Thus, it is evident that the appointment of the Respondent/Writ Petitioner to the post of 'Mazdoor' was made pursuant to the directions of the Division Bench of this Court in W.A.No.1027 of 2013 and M.P.No.1 of 2013 vide Order dated 09.06.2013.

25. Based on the aforesaid decision of the Division Bench of this Court in W.A.No.1027 of 2013 vide Order dated 09.06.2013, the Government issued



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orders with a direction to fill up the vacancy to the post of Office Assistant, Watchman, packer, Cook, Gardener, Cleaner, Mazdoor, Ayah, Sweeper, Sanitary Worker and Table Attendant coming under the basic services by adhering to the conditions in the aforesaid order of the Division Bench of this Court in W.A.No.1027 of 2013.

26. Relevant portion of the aforesaid order of the 1st Appellant issued pursuant to the Order dated 09.06.2013 of the Division Bench of this Court in W.A.No.1027 of 2013 is extracted hereunder:

“(i) By issuing advertisement in the newspapers apart from calling for the list from the Employment Exchange, as per rules in force.

(ii) By following the Communal Roster & Rule of Reservation as per rules.

(iii) By constituting a selection committee, who shall adopt the criteria of selection before commencement of selection process having down marks for qualification experience, interview etc., depending on the post to be filled up.

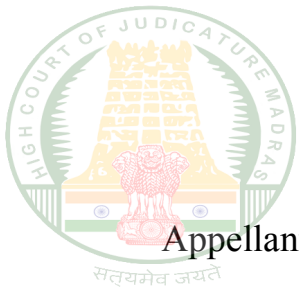
(iv)(a) A three member committee chaired by the Joint Director/Deputy Director of Health Services was to be constituted as below to fill up the vacant posts in the o/o the Joint Director/Deputy Director of Health Services.

1.The Joint Director/Deputy Director of Health Services – Chairperson.

2.Administrative Officer/Superintendent, Establishment Section – Member.

3.2nd level officer in the o/o the Joint Director Deputy Director of Health Services – Member.”

27. The above communication was issued by the 1st Appellant to implement the order dated 09.06.2013 of the Division Bench of the Court in the Writ Appeal in W.A.No.1027 of 2013. The aforesaid communication of the 1st



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Appellant does not refer to G.O.Ms.No.325 dated 20.11.2012 of the Health and Family Welfare F.2 Department.

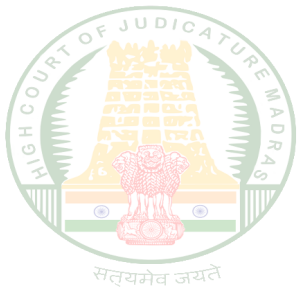
28. A reading of the documents filed before this Court indicates that the Respondent/Writ Petitioner has been in continuous service and was absorbed as a permanent employee to the post of 'Mazdoor' at the Appellant Department pursuant to the Order dated 02.10.2017 of the 3rd Appellant bearing reference No.K.DIS.No.84412/E3/S3/2017 along with two others namely R.Bharath Kumar and P. Sathish Kumar.

29. It may also be useful to refer to a recent decision rendered by the Hon'ble Supreme Court in the case of ***Jaggo Vs. Union of India & Ors.*** (***SLP(C)No.5580 of 2024 dated 20.12.2024***), wherein, particularly, in Paragraph No.24, it has been observed as under:

"25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

(i) Misuse of "Temporary" Labels:

Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.



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(ii) **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

(iii) **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

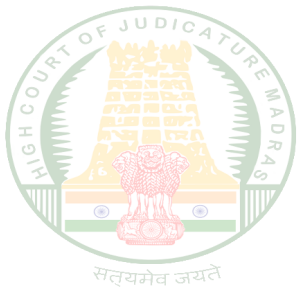
(iv) **Using Outsourcing as a Shield:**

Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

(v) **Denial of Basic Rights and Benefits:**

Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in **Uma Devi** (supra) sought to curtail the practice of backdoor entries and appointments adhered ensure to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in **Uma Devi** (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgement of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.



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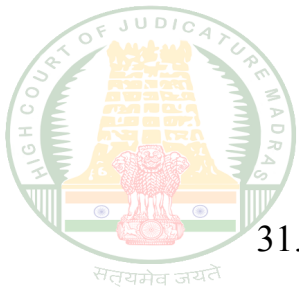
27. *In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.*

28. *In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:*

- i. The termination orders dated 27.10.2018 are quashed;*
- ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits.*

29. *There shall be no order as to costs."*

30. It is not open for the Appellants to state that the appointment of Respondent/Writ Petitioner to the post of 'Mazdoor' was illegal, as the appointment was made pursuant to the directions of the Division Bench of this Court in W.A.No.1027 of 2013 and M.P.No.1 of 2013 vide Order dated 09.06.2013. Pursuant to which, G.O.Ms.No.44 dated 11.03.2015 of the Labour and Employment (T2) Department and G.O.(Ms).No.243 dated 13.08.2015 of the Health and Family Welfare (C2) Department referred to *supra* were issued.



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31. Further, the Appellants have extracted work from the

Respondent/Writ Petitioner and have therefore regularised the service of the Respondent/Writ Petitioner vide proceedings dated 02.10.2017 of the 2nd Appellant.

32. The present Writ Appeal filed by the Appellants seeking to assail the impugned order dated 18.12.2023 of the Writ Court insofar as relief granted to the Respondent/Writ Petitioner, lacks merits. Therefore, this Writ Appeal is liable to be dismissed and is accordingly dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.K., J.]

[C.S.N., J.]

28.01.2025

jas/mrr

Index : Yes/No

Speaking Order/Non-Speaking Order

To

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

2.The Director,
Directorate of Public Health
and Preventive Medicine (DPHS),
No.359, Anna Salai, DMS complex,



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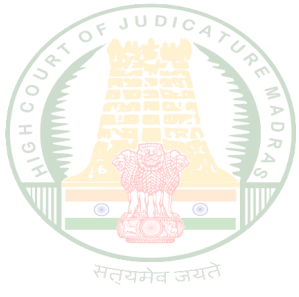
Teynampet, Chennai – 600 006.

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3. The Deputy Director,
Public Health and Preventive Medicine,
The Filaria Officer (i/c)
National Filaria Control Unit,
Chengalpet.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

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