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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.03.2018

PRONOUNCED ON: 04.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P. (MD) Nos. 11534 & 16743 of 2014

& MP. Nos. 1 & 2 of 2014 in W.P. No. 16743 of 2014

& M.P. Nos. 1, 2 & 3 of 2014 in W.P. No. 11534 of 2014

A. Michael

..petitioner in both W.Ps.

Vs

1. The State of Tamil Nadu,

rep. by its Secretary to Government,

Municipal Administration and

Water Supply Department,

St. George Fort,

Chennai-600 009.

2. The Commissioner of Municipal Administration,

Ezhilagam,

Annex IV Floor,

Chepauk,

Chennai-600 005.

3. The Commissioner,

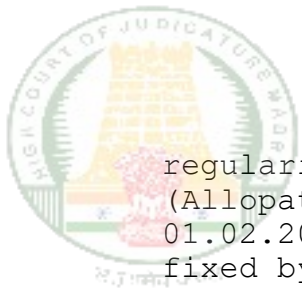
Madurai Municipal Corporation,

Madurai.

..Respondents in both W.Ps.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a

(i) Writ of Certiorari and Mandamus to call for the records relating to the impugned order passed by the first respondent in his proceedings Letter (D) No. 222/MC-4/2013 dated 05.06.2014 and consequential orders passed by the third respondent in his proceedings in Ma.Ni.10/19295/2014, dated 26.06.2014 and quash the same and direct the respondents to



regularize the service of the petitioner as Pharmacist (Allopathy) in the third respondent corporation with effect from 01.02.2006 with all consequential benefits within the time frame fixed by this Court(prayer in W.P.No.11534 of 2014).

(ii) writ of certiorari and mandamus to call for the records of the proceedings of the first respondent in Letter No.31783/MC/IV/2006/I dated 30.10.2006, Letter No.(ID) No.276/MC4 dated 24.06.2009 & Letter (D) No.222/MC-4/2013 dated 05.06.2014 and quash the same consequently direct the respondents to regularize the petitioner herein as Pharmacist in the existing vacancy from the date of initial appointment and grant all attendant benefits(prayer in W.P.No.16743 of 2014).

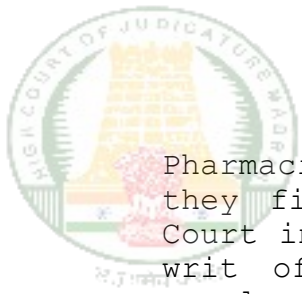
For Petitioner(in both Wps): Mr.R.Karthikeyan

For RR1&2 : M/s.Narmada Sampath,AAG
assisted by Mr.K.Ravikumar, AGP

For R3 : Mr.T.Shanmugam

COMMON ORDER

As it appears, on 15.06.2005, Madurai Municipal Corporation, called for applications through newspapers to fill up different posts in its hospital including Pharmacist in Allopathy, through written examination and interview, on contractual basis with a consolidated pay, for a period of one year. Accordingly, the petitioner applied for the post of Pharmacist and participated in the selection process and after being duly selected, he was given an order of appointment on contractual basis for one year by the third respondent and accordingly, the petitioner joined in such post on 1.02.2006. Considering the request of the different contractual employees appointed, it appears that the respondent - Madurai Municipal Corporation, passed a resolution No.26, on 29.06.2006, to move the Government to regularise the service of such contractual employees of Pharmacist, Staff Nurse and others and pursuant to such resolutions, the Respondent no.3 made a request to the respondent no.1 vide letter dated 24.07.2006, to issue necessary orders for regularisation of such contractual employees in view of such resolution and a reminder in this regard was also sent by the third respondent on 04.09.2006. However, such request for regularisation was rejected by the respondent no.1, vide the impugned order dated 30.10.2006. After such rejection, the respondent no.3 on 27.11.2006, considering the urgency of regularisation of their services, moved to the respondent no.2, to allow the extension of their service for one more year. As no order was passed on such request of the respondent no.3, the respondent no.3 contemplated to remove the petitioner and the other similarly situated



Pharmacists and Staff Nurses from service on 31.01.2007, hence they filed a writ petition before the Madurai Bench of this Court in W.P.(MD)Nos.1676, 1677 of 2007 & 154 of 2007, seeking writ of mandamus, directing the respondent no.2, therein to regularise their service based on the recommendations of the third respondent/Madurai Municipal Corporation, wherein, the learned Single Judge of Madurai Bench of this Court, had passed an interim order not to disturb their service. But in the meanwhile, as it came to the knowledge of this Court that the request for regularisation has been rejected vide order dated 30.10.2006, the writ petition was disposed of, by directing the respondents to furnish a copy thereof to the writ petitioners giving liberty to them to challenge such order and in the meanwhile, not to terminate the service of the petitioners therein for a period of four weeks. The petitioner and the other similarly placed employees however on 21.11.2007 made a representation, to the Minister of Municipal Administration and the first respondent on the same, had directed the second respondent to place the papers before him for necessary action. A similar request was also made to the first respondent on 12.02.2009, but such proposal forwarded by the third respondent to the second respondent was never forwarded to the first respondent. Since no order was passed on the representation, the petitioner and the similarly situated employees filed a writ petition vide W.P.(MD) No.3089 of 2009, seeking a mandamus, forbearing the respondents disturbing the service of the petitioner and Staff Nurses under the third respondent Corporation in any manner, wherein, an interim order was passed. But in the counter affidavit, it was pleaded that by order dated 30.10.2006 of the first respondent such request for regularisation has already been rejected, so also the prayer made by the individuals though the Mayor was also rejected by the 1st respondent on 24.06.2009. Despite that third respondent forwarded a proposal on 01.12.2009, to regularise the service of the Staff Nurses and Pharmacist to the second respondent. In the meanwhile, the second respondent sought for details about the staff working in Maternity Homes and Dispensaries and the said report was furnished by the third respondent to the second respondent vide letters dated 25.11.2011 & 03.01.2012. So also the third respondent sought for permission of the Government to fill up the 1473 vacancies including 16 posts of Pharmacist. In the meanwhile, another writ petition was also filed vide W.P.(MD) No.2313 of 2012, challenging the order of the first respondent dated 30.10.2006 and 24.06.2009, since the respondents were relying on the said order while being approached for regularization. This Court vide order dated 25.06.2012 took up the aforesaid writ petition along with connected WP.(MD) No.2628 of 2012 and disposed of the same with a direction to the first respondent to consider such claim of regularization of the petitioners in the light of



recommendation of the respondent dated 01.12.2009 in accordance with law within a period of three months and also with the same the earlier writ petition in W.P.(MD)No.3089 of 2009 was closed, but protected their service till then. In pursuance to the said order, the third respondent Corporation appointed committee vide its resolution dated 17.10.2013, to regularise the service of 13 Pharmacists, basing on which, 13 Pharmacists were appointed temporarily, with a condition the regular time scale of pay will be given to them after receipt of the confirmation from the Government. The said decision of the Corporation was also forwarded to the Commissioner on 06.02.2014. However, the first respondent vide its order dated 05.06.2014, rejected the claim of the Pharmacist and Corporation, hence, the same petitioner has filed W.P No.15437 of 2012, with a prayer to quash the letter No.31783/MC/IV/2006-I dated 30.10.2006 rejecting the letter ID.No.276 MC 4 dated 24.06.2009 and letter No.222/MC-4/2013 dated 05.06.2014 and consequently, direct the respondents to regularise the service of the petitioner as Pharmacist in the existing vacancy from the date of initial appointment with all attendant benefits and pass such orders as the Court deem fit proper in the facts and circumstances of the case and to render justice. After filing of the aforesaid writ petition, it appears that the petitioner has also filed the writ petition in W.P. (MD) No.11534 of 2014, challenging the order of termination dated 14.07.2014 of the third respondent passed pursuant to the order dated 26.06.2014 of the first respondent, with a prayer to quash the same and also to regularise the service of the petitioner.

2. Counter affidavit has been filed by the respondent no.1, indicating the fact that the appointment of the petitioner having been made purely on the contractual basis with a consolidated pay for one year and also contrary to the Rules of recruitment and oblivious to the rule of reservation, when there was a ban in the recruitment, as such the proposals for regularization have been repeatedly rejected and the petitioner in the meanwhile having also been terminated as such, the writ petition filed is devoid of merit. The Committee report for regularization was also been refused to be accepted by the Corporation. The third respondent has also filed the counter affidavit indicating the fact that the petitioner being not in service and already terminated, his prayer for regularisation with time scale of pay is devoid of merit.

3. The learned counsel appearing for the petitioner has submitted that since the petitioner is recruited through a regular process of selection, and continuously serving for a considerable period, his service is deserved to be regularized, more particularly, when the appointment of the petitioner cannot be said to be illegal but irregular one and the Municipal



Corporation, which is the appointing authority, considering the exigency of service repeatedly requested the first respondent to regularise the service of the petitioner.

4. Reliance in this regard has been placed on the Division Bench of this Court passed in W.A.(MD) No.743 of 2015, wherein, this Court placing reliance in the case of Secretary, State of Karnataka and others vrs. Uma Devi (3) and others, reported in (2006) 4 SCC 1, State of Rajasthan and others vrs. Daya Lal and others, reported in (2011) 2 SCC 429 and also Secretary to Government, School Education Department, Chennai Vs. Govindswamy and Others reported in 2014(4) SCC 769 had dismissed the writ appeal filed against the order of the learned Single Judge passed in W.P.No.15909 of 2012 directing the respondent to regularize the services of the petitioner who were working in regular time scale of pay against sanctioned post for a substantial period. It appears that in the said Writ Appeal, this Court in paragraph Nos.13 & 22, have held as follows:

''13. As far as the present case is concerned, the mode of recruitment through employment exchange was relaxed and the posts were directed to be filled up on contract basis on consolidated pay. As such, the case of the petitioners has to be considered under clause 12.1 of the decision in State of Rajasthan Vs. Daya Lal case, which is also applied in the latest judgment of the Apex Court reported in 2014 (4) SCC 769 (Secretary to Government, school Education Department, Chennai Vs.R. Govindaswamy and others) (cited supra). The Hon'ble Supreme Court in para 53 of the judgment reported in 2006 (4) SCC 1 (State of Karnataka Vs. Uma Devi and Others) has clearly held that if the persons appointed on adhoc, casual or contract basis were duly qualified and were working against the sanctioned posts and continued to work for several years without any intervention of the order of the Court, in such an eventuality, the process of regularization could be made.

22. From the above proposals sent by the Dean of the Institution in which the respondents are working, it is clear that the services rendered by them are appreciable and their expertise, experience and hard work rendered by them were very much useful in the running of the college smoothly. Thus the services of the respondents are very much essential and there is necessity for continuing their services. All along the appellants 4 and 5, taking into account the services rendered by the respondents, as recorded by various Deans of the institution, through various communications addressed to the Government, have requested for regularization of the services of the



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regularization, is the submission of the learned counsel for the respondents.

5. To appreciate the contentions of the parties, it would be apposite to have a look on the law laid down in the case of Uma Devi (supra), wherein the Constitution Bench of the Apex Court dealing with the case of regularization of service have held as follows :-

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in



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issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words,



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even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

So also, in the case of Daya Lal (supra), as appears, the Apex Court placing reliance on the aforesaid decision of Umadevi have held as follows :-

"(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.



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(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

This Court in the case of D. Prabhu (supra) placing reliance on the aforesaid two decisions, have refused to interfere with the order of the learned Single Judge in W.P. Nos.33377 of 2005 and 33782 of 2007 refusing to regularize the service of a part time employee retrospectively with all service benefits.

6. Keeping in mind the aforesaid law laid down, when the case of the petitioner is addressed, this Court finds that the petitioner was appointed for a period of one year on contractual basis on a consolidated scale of pay. Knowing well the same, the petitioner joined against the said post. Besides the same, while appointing the petitioner, there was a ban in the recruitment, and also the Rule of reservation was also not been followed in such recruitment is not in dispute. In the aforesaid premises, when the proposal for regularization was submitted by the Municipal Corporation to the State Government, the same was refused. However, before his such contractual period of employment came into an end, the petitioner continued to serve for extended period by different interim orders/final orders passed by this Court in different litigations filed by the petitioners and similarly situated employees as stated earlier, even if their prayer for regularization was refused by the first respondent repeatedly. As such, the extended period of service of the petitioners though for considerable period but litigious. Therefore, the



appointment of the petitioner though against the sanctioned posts, being a contractual and tenure one which is for a period of one year only, and that too an illegal one inasmuch as the rule of reservation was not followed in such recruitment, so also the same was made when there was ban on the recruitment and the extended period is litigious one, the petitioner has no case for regularization, in view of the law laid down by the Constitution Bench of the Apex Court in the case of Uma Devi (cited supra) which is being relied by the Apex Court as well as different High Courts including our High Court, in almost all the cases for regularization.

7. Hence, both the writ petitions filed by the petitioners seeking the relief as stated earlier are devoid of merit and hence stand dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
St.George Fort,
Chennai-600 009.

2.The Commissioner of Municipal Administration,
Ezhilagam, Annex IV Floor,
Chepauk,
Chennai-600 005.

+lcc to Mr.R.Karthikeyan, Advocate SR.No.34494
+lcc to Mr.T.Shanmugam, Advocate SR.No.34493

W.P.Nos.11534 & 16743 of 2014

KAN(CO)
GN(14/06/2018)