

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.21824 of 2013

National Leprosy Medical Employees
Union (Regd. No.2706/CNI)
Rep. by its Secretary, Chennai-30,
T.K.Murugesan

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Public Health and
Preventive Medicine,
DMS Campus, Teynampet,
Chennai - 600 006.

3.The Director of Medical and
Rural Health Services,
DMS Campus, Teynampet,
Chennai - 600 006.

.... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to order made in Letter (Ms) No.177/L-1/2011 dated 29.07.2013 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to absorb the members of the petitioner union and provide suitable job particularly to the members list annexed with the writ petition in terms of G.O.Ms.No.268 dated 20.09.2010 passed by the 1st respondent.

For Petitioner : Mr.G.Ethirajulu
For Respondents : Mr.S.Gunasekaran
Government Advocate

O R D E R

A perusal of the materials placed before this Court would indicate that the National Leprosy Eradication Programme came to be introduced in India from 1955 and to eradicate the disease of

leprosy, the Government of India has prescribed certain guidelines to sanction SET Grant (Survey Education and Treatment) to private voluntary organisations and one of the guidelines is that the private leprosy voluntary organisation should first apply to the Government of Tamil Nadu for allocation of areas to do the leprosy control work and the voluntary leprosy organisations were identified and were carrying out leprosy control work as per the above said programme. The agencies were running the leprosy work from their own funds and foreign aid and as well as grant from the Government of India and they were also submitting periodical reports to the District Leprosy Officers of the concerned district who consolidated the reports and submitted to the concerned authorities.

2.The Government of Tamil Nadu had also considered the issue of integration of leprosy services in Public Health Department and in this regard, has constituted a committee to look into the various aspects on integration and submit a report and accordingly, a report was submitted to the Government and the Government after examination of the report has accepted its recommendations and issued G.O.Ms.No.320, Health and Family Welfare Department, dated 27.06.1997 integrating leprosy services with the public health service in the department of public health and preventive medicine with effect from 01.08.1997.

3.It is also known that the personnel working in the leprosy voluntary organisations were absorbed namely, Belgium Leprosy Centre, Polambakkam, S.M.Hospital Leprosy Relief Control Scheme, Wallajah Taluk, Damien Foundation and Dharmapuri, Christian Mission Hospital, Madharbakkam were absorbed vide G.O.Ms.No.1310, Health Department dated 28.05.1962, G.O.Ms.No.1210, Health and Family Welfare Department dated 26.08.1975, G.O.Ms.No.436, Health and Family Welfare Department dated 06.03.1986 and G.O.Ms.No.185, Health Indian Medicine and Homoeopathy and Family Welfare Department dated 03.02.1990 respectively. In terms of G.O.Ms.No.347, Health and Family Welfare Department dated 29.09.2000, 99 MDT staff who are working in the national leprosy eradication programme were absorbed into Government service in suitable post according to their educational and technical qualification.

4.The petitioner aggrieved by the fact that, though some of their members have been permanently absorbed in the Government service, some amongst them did not get the said benefits, filed O.A.No.3884 of 2001 before the Tamil Nadu Administrative Tribunal and on abolition of the Tribunal, it was transferred to the file of this Court and numbered as W.P.No.5160 of 2007. The said writ petition was finally disposed of along with W.P.No.49556 of 2006 on 02.02.2011 by directing the first respondent to consider the representation submitted by the petitioner in the light of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010.

5.The petitioner association alleging non compliance of the above said order also initiated contempt proceedings and in the interregnum, the impugned order dated 29.07.2013 came to be passed, wherein, the request made by the petitioner association came to be rejected on the ground that the proposal of absorption involve additional expenditure to the Government and absorption of non-Government staff into Government service is also policy decision of the Government and challenging the legality of the said order, the present writ petition is filed.

6.Mr.G.Ethirajulu, the learned counsel appearing for the petitioner would submit that infact some of the members of the petitioner association were absorbed and they were appointed as Health Inspector Grade II in terms of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 and by applying the principle of parity, the other members of the association are also entitled to be absorbed into Government service subject to their fulfilling the eligibility criteria in terms of paragraph 4 of the said order and without considering the scope and purport of the said Government Order by citing un-tenable reasons, their claim came to be rejected un-justifiably and prays for interference.

7.Per contra, Mr.S.Gunasekaran, learned Government Advocate has invited the attention of this Court to the counter affidavit and would contend that the petitioner as per their own admission, they were employed by private voluntary organisations and as a matter of right, they cannot claim absorption into Government service and taking into consideration the fact that their absorption involve additional financial expenditure and it also involve policy decision and the first respondent rightly dismissed the claim of the petitioner and prayed for dismissal of the writ petition.

8.This Court has carefully considered the rival submissions and also perused the materials placed before it.

9.The first respondent in paragraph 4 of the counter affidavit has fairly admitted that the employees of some of the leprosy voluntary organisations were absorbed into Government service vide G.O.Ms.No.1310, Health Department dated 28.05.1962, G.O.Ms.No.1210, Health and Family Welfare Department dated 26.08.1975, G.O.Ms.No.436, Health and Family Welfare Department dated 06.03.1986 and G.O.Ms.No.185, Health Indian Medicine and Homoeopathy and Family Welfare Department dated 03.02.1990 respectively. It is not in serious dispute that some 51 members of the petitioner association were also absorbed into Government service in terms of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 passed by the first respondent.

10.It is useful to refer to the judgment of the Hon'ble Supreme Court reported in (2014) 7 Supreme Court Cases 190 (Hari Nandan Prasad and another versus Employer I/R to Management of Food Corporation of India and another) where the Hon'ble Supreme Court has

taken into consideration the very many decisions including the constitutional bench judgment reported in (2006) 4 SCC 1 (State of Karnataka Vs. Umadevi (3)) and it is relevant to extract paragraph no.39, which reads as follows:

"39.....

However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

[Emphasis Supplied]

11.The petitioner association in response to the counter affidavit filed by the first respondent has filed rejoinder along with the list of employees to be absorbed in Government service, wherein, 69 persons belonging to the petitioner association are alive and their claim may be positively considered.

12.This Court in the light of the facts and circumstances and on careful consideration and appreciation of the materials placed before it is of the considered view that services of some of the members of the petitioner association have been absorbed into Government service in terms of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 and by applying the ratio laid down in (2014) 7 Supreme Court Cases 190 (Hari Nandan Prasad and another versus Employer I/R to Management of Food Corporation of India and another), the claim of the remaining 69 persons who are members of the petitioner association have to be considered for absorption into Government service, subject to their eligibility criteria prescribed in G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 passed by the first respondent.

13.The reasons assigned in the impugned order are per se unsustainable and therefore it is remanded for fresh consideration/ adjudication in the light of the findings/ observations made in this order.

14.In the result, the writ petition is partly allowed and the impugned letter dated 29.07.2013 is set aside and the matter is once again remanded to the first respondent, who shall take into consideration the four Government Orders referred to in paragraph 4 of the counter affidavit as well as G.O.Ms.No.268, Health and Family

Welfare Department dated 20.09.2010 and also the findings/ observations made in this order. The first respondent shall also afford opportunity of personal hearing to the Secretary of petitioner association namely, Mr.T.K.Murugesan and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Public Health and
Preventive Medicine,
DMS Campus, Tyenampet,
Chennai - 600 006.

3.The Director of Medical and
Rural Health Services,
DMS Campus, Tyenampet,
Chennai - 600 006.

+ 1 cc to the Government Pleader Sr.51892
+ 1 cc to Mr.G. Ethirajulu, Advocate SR.51814

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PA(CO)
Eu 1.10.15

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