

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.Nos.27210 and 27211 of 2010
& M.P.No.1 of 2010 in W.P.No.27211 of 2010

A.Ramasamy .. Petitioner in W.P.No.27210 of 2010

A.Murugan .. Petitioner in W.P.No.27211 of 2010

Versus

- 1.The State of Tamil Nadu rep. by its
Principal Secretary to Government,
Health and Family Welfare Department,
St. George Fort, Chennai - 600 009.
2. The Director,
Public Health and Preventive Medicine,
Chennai - 600 006.
3. The District Public Health Officer,
O/o District Health and Family Welfare Department,
Thiruvannamalai, Thiruvannamalai District.

... [Respondents in both the Petitions]

Prayer in both the petition: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records pertaining to the order in Na.Ka.No.127676/Poo.Tha.1/Iru 3-2 and Na.Ka.No.127676/Poo.Tha.1/Iru 3-3, respectively dated 01.02.2010 passed by the 2nd respondent and quash the same as illegal improper, unreasonable arbitrary and against the rule of law and natural justice and thereby direct the respondents to regularize the service of the petitioner and absorb him as Malaria Mazdoor in any place of the respondents department and pay the service benefits to the petitioner on the light of G.O.Ms.No.295, Health and Family Welfare Department dated 16.09.2009 issued by the 1st respondent.

For Petitioner : Mr.A.Rajesh Kanna
(in both the Petitions)

For Respondents : Mr.V.Jaya Prakash Narayanan
(in both the Petitions) (Spl.G.P.)

C O M M O N O R D E R

The prayer in the Writ Petition is to call for records pertaining to the orders in Na.Ka.No.127676/Poo.Tha.1/Iru 3-2 and Na.Ka.No.127676/Poo.Tha.1/Iru 3-3, respectively, dated 01.02.2010, passed by the second respondent and heard the same and direct the respondents to regularise the service of the petitioners and absorbed him as Malaria Masdoor in any place of the respondent's department and pay service benefit to the petitioners on the light of the G.O.Ms.No.295, Health and Family Welfare Department, dated 16.09.2009, issued by the first respondent.

2. The case of the petitioners is that they were engaged as Seasonal Masdoor by the 3rd respondent in the Tiruvannamalai district and appointed as Seasonal Masdoor on 20.08.1981. They were allotted Malaria spraying work with a pay scale of Rs. 250 - 5 - 330 - 10 - 400 + usual allowances.

3. According to the petitioners, they had worked at the 3rd respondent office as Malaria spray worker for several days between 1981 and 1984, totally they were worked for 639 and 876 days, respectively, however the service of the petitioners were ousted on 09.11.1984 and thereafter the petitioners have not been employed by the respondents.

4. However, the case of the petitioners is that after the ousting taken place in the year 1984, some of the similarly placed persons had been agitating the issue with the respondents and in this regard Original Application was filed before the Tamil Nadu Administrative Tribunal, Chennai, in O.A.No.6388 of 1999 and order was passed on 25.06.1999, directing the respondents to consider and regularise all the Mazdoors who have been ousted. Pursuant to the said order of the Tamil Nadu Administrative Tribunal, the Government came forward with the G.O.Ms.No.295, dated 16.09.2009 and some of the Seasonal Mazdoors had been regularised at various point of time. These persons were covered under the said Original Application numbering 23 and their services were directed to be regularised and accordingly Government passed the G.O. directing the Director of Public Health and Preventive Medicine to issue necessary posting orders to the Mazdoors after observing them as Mazdoors in the Public Health Department.

5. In respect of the said Government order, services of the said Mazdoors were absorbed, who were similarly ousted as that of the petitioners. So that the petitioners had made a representation on 14.12.2009 to the respondents. The said representation had not been considered by the respondents and they passed an impugned order dated 01.02.2010, wherein the second respondent has stated that in earlier occasion those Mazdoors after having been ousted, had fought before the Court of law and only pursuant to the order passed by the Court they were regularised. Moreover, those Mazdoors were engaged only for seasonal work and there is no permanent work

available for them to be absorbed. The request of the petitioners were not accepted and accordingly, it was rejected. Only as against the said order dated 01.02.2010 of the second respondent, the petitioners have come out with the present writ petition with the aforesaid prayer.

6. Heard both sides.

7. The learned counsel appearing for the petitioners would contend that lenient view taken for various people who have been placed as that of the petitioners, under G.O.Ms.295, Family Health and Family Welfare (AB1) Department dated 16.09.2009, should have been extended to the petitioners and therefore, the petitioners have approached the respondents by way of representation dated 14.12.2009. The same was rejected by the impugned order of the second respondent. The learned counsel for the petitioner wanted to set aside the impugned order and the relief sought for in the Writ Petition may be granted .

8. Per contra, the Special Government Pleader appearing for the respondents would contend that the said G.O. was passed for regularising 23 people only, pursuant to the order passed by the Tamil Nadu Administrative Tribunal, long back that is in the year 1999. Therefore, when the similarly placed people approached this Court with the similar relief for absorption of Masdoors by filing Writ Petition in W.P.No. 1418 of 2010 etc. batch, in the matter of K.Karupppiah vs. State of Tamil Nadu, this court after considering the said batch of cases, by an order dated 15.11.2010 has dismissed the Writ Petition and the relevant portion of the order of this Court has been reads follows:-

".....2. Pursuant to the direction of the Tribunal certain employees were appointed and therefore, the petitioners also claimed similar relief. In the present case, as per the admission of the petitioners themselves that they were in service only upto 1999 and thereafter, there is no whisper about their subsequent employment. Even the scheme of appointment shows that the appointments made only for a scheme namely National Malaria Eradication Plan (NMEP) and the appointment order itself indicated that it is temporary. The service certificate produced by them also shows that it only limited period. Under these circumstances, the petitioners seeks for a direction to the respondents to issue Government order absorbing is neither based upon legal ground nor on any service rules. The Supreme Court vide judgment in Secretary, State of Karnataka and others vs. Umadevi (3) and others reported in 2006 (4) SCC 1 has held that any recruitment must be made only in accordance with recruitment rules and no recruitment can be made through backdoor and that too by Court orders. In

the absence of the petitioners setting out any legal enforceable right, the relief claimed by the petitioners cannot be countenanced by this Court. The writ petitions are misconceived and bereft of details. Hence, the writ petitions stand dismissed. No costs. Consequently, the connected Miscellaneous Petitions stand closed"

9. Pursuant to the said order of this Court, the first respondent also passed an order in letter No.34845/AB-1/2013-1, dated 02.12.2013, whereby after quoting the relevant portion of the order by this Court as has been referred to above, has rejected the proposal submitted by the second respondent stating that hereinafter no Masdoor would be regularised, as Masdoor job is only for seasonal work and since there is no vacancy in that regard the proposal to absorb the seasonal Masdoor services had been dispensed with long back, they cannot be regularised.

10. The learned Special Government Pleader would furthermore stated that the said order dated 15.11.2010, as well as the subsequent order issued by the Government in letter dated 34845, dated 02.12.2013, are in force, as against which no further proceedings before this Court or any other forum have been filed or challenged. Therefore, one time measure taken by the respondents in respect of the Masdoors by way of the said Government order viz., G.O.M.S.No.295 dated 16.09.2009 was never extended to any further, including the petitioners. Therefore in view of the same the learned Special Government Pleader, submits that the Writ Petitions have to be dismissed.

11. This court has considered the rival submission made by the respective counsel as well as the documents placed for perusal before this Court. The fact remains that the petitioners, no doubt, had been engaged as seasonal Masdoors in the year 1981. They had been engaged for 3 and 4 occasions, respectively, between the years 1981 and 1984. Even according to the calculation given by the petitioners, they had been engaged for 639 and 876 days, respectively, and lastly their services which were temporarily undertaken by them were dispensed with from 09.11.1984. After 09.11.1984, the petitioners have never turned back and they have not approached any authority at any point of time till they made a representation to the 2nd respondent on 14.12.2009, which was at the earliest point of time. There is no proof to show that they have given any other representation other than the one given on 14.12.2009. Even the said representation has been considered and impugned order was passed, which is under challenge in this Writ Petition. As has been rightly pointed out by the learned Special Government Pleader, the Masdoors were engaged only for seasonal work, as there is no sanctioned post of Masdoor in the respondents Department and the post of seasonal worker were dispensed with, as has been quoted in the order of the learned judge of this Court, dated 15.11.2010 . The Supreme Court has come down heavily for the

move being adopted by the Governments and its authorities, by making appointment through back door entry, in the case of Secretary, State of Karnataka and others vs. Umadevi (3) and others, reported in 2006 (4) SCC 1. The back door entry in the Government Department is deprecated and whatever job is available in Government or its organisation, it shall be filled up only by way of inviting application by following Articles 14 and 16 of the Constitution.

12. The petitioner as a matter of right, can not claim absorption. As admittedly they were dismissed from service in 1984, without even making any representation by approaching the respondents for several years, the petitioners have come up with these present Writ Petitions, only pursuant to the order passed by the second respondent, based on their representation made on 14.12.2009. There is no evidence to show that between 1984 and 2009, what the petitioners had been doing to get back their job, either temporarily or permanently. In the absence of any such proof to show that the petitioners have been agitating the issue all along, this Court has no hesitation to hold that the petitioners have dispensed with their service in 1984 and have led their life as it is without thinking about their job. That being so, no gesture or sympathy could be shown to the petitioners after this long time. The order of this Court as well as the subsequent order passed by the Government are still in force and in that view of the matter, no interference can be shown in the impugned order in these Writ Petitions. Hence, this Court is of the view that the Writ Petitions are lacking merit and deserve to be dismissed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

pvs

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To

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

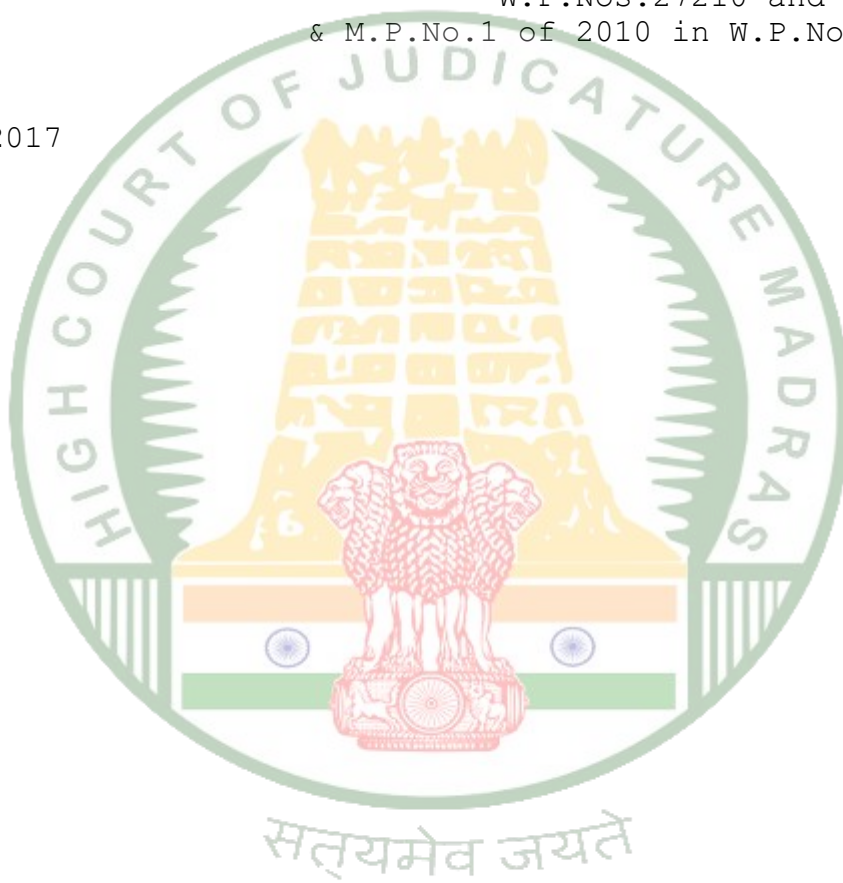
2. The Director,
Public Health and Preventive Medicine,
Chennai - 600 006.

3. The District Public Health Officer,
O/o District Health and Family Welfare Department,
Thiruvannamalai, Thiruvannamalai District.

1 cc to Mr.A.Rajeshkanna, Advocate in SR.No.64215
1 cc to Government Pleader, Sr.No.64636

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