

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 01.12.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**W.P. (MD) .Nos.18101 and 18102 of 2013 and
M.P(MD)Nos.2, 2, 3 and 3 of 2013 and
M.P. (MD)Nos.1 and 1 of 2015**

A.Vaiyalilingam ..Petitioner in W.P. (MD) .Nos.18101/2013
K.Pandi ..Petitioner in W.P. (MD) .Nos.18102/2013
.Vs.

1. The State of Tamil Nadu,
Represented by it's Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai.
2. The Special Secretary cum Project Director,
Directorate of Health and Family Welfare,
Tamil Nadu Health System Project,
Teynampet,
Chennai - 6.
3. The District Collector,
Madurai District,
Madurai.
4. The Government Rajaji Hospital,
Represented by its Dean,
Madurai,
Madurai District. ... Respondents in both the WPs

COMMON PRAYER:Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in R.e.f.No.9320/OHSS/ TNHSP/MCH/2012 dated 20.10.2013, on the file of the Respondent No.2 and its consequential order in Na.Ka.No.15168/Ni3/3/13 dated 23.10.2013 on the file of Respondent No.3 and quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy
(In both the WPs)

For Respondents : Mr.K.Guru
(In both the WPs) Additional Government Pleader

COMMON ORDER


The prayer in these two Writ Petitions are one and the same for challenging the impugned order of the 2nd and 3rd respondents dated 20.10.2013 and 23.10.2013 respectively. The case of the petitioners in the both writ petitions are that they have been working in Government hospitals for more than 10 years as daily wage employees. On the basis of the recommendation of the 2nd respondent through his letter dated 22.07.2011, Government Order in G.O.Ms.No.325 dated 20.11.2012 was issued by the 1st respondent. Further, the said Government order permitted to merge the posts namely "Sanitary Workers", "Hospital Workers" and "Nursing Assistants Grade-II" by naming them "Multi Purpose Hospital Workers". The said Multi Purpose Hospital Workers, according to the aforesaid Government Order, would be recruited by way of Out Sourcing Contract appointment. The further case of the petitioner would be that the post of Multi Purpose Hospital workers would be filled up in all the Medical College Hospitals, District Head Quarters, Major Taluk Hospitals, Accreditation Hospitals, and other hospitals having more than 200 beds. The out sourcing employees would be appointed in the vacant posts also in the future vacancies would arise due to retirement. Further these employees are selected from a single agency by way of signing of memorandum of understanding and their payment would be entrusted to the individual hospital authorities.

2.The further case of the petitioners is that the order of the 1st respondent is totally illegal and it is an attempt of privatization in public sectors. On the basis of the impugned order of the 1st respondent, the respondents would recruit 4869 posts of Sanitary Workers, 5521 of posts of Hospital Workers and 4004 posts of Nursing Assistants Grade-II. It is illegal and against the constitutional right of employment of several persons who registered their name in employment exchanges and waiting for appointment. Furthermore, even as on date thousands of Sanitary Workers are working in the hospitals all over Tamil Nadu and they are waiting for promotion for the post of Hospital Workers and Nursing Assistants Grade-II. Moreover, the G.O.Ms.No.325 is contrary to G.O.Ms.No.56 dated 09.07.2012 and as such G.O.Ms.No.59 dated 15.02.2008 which would say that all Para-medical posts are to be filled up to the time scale through employment exchange by following usual procedures and rule of reservation.

3.It is also the case of the petitioners that a Writ Petition was filed by the Tamil Nadu Arasu Paniyalrgal Sangam in W.P.No.13001 of 2008 before this Court with a prayer to observe the service of the out sourced employees in regular time scale of pay with all attendant benefits, but it was dismissed on 17.08.2011 by holding that the absorption of out sourcing employees is contrary to the recruitment rules and against Article 14 and 16 of the Constitution of India.

4. Though in this connection on 17.02.2013 a representation was made to the respondents with a request to cancel the G.O.Ms.No.325 dated 20.11.2012, but it was not taken up for consideration. However, the Impugned Order passed by the 2nd and 3rd respondents are against the judgment rendered by the Hon'ble Supreme Court of India reported in 2006 (4) SCC Page 1 (State of Karnataka v. Umadevi) and also the judgment of this Court in W.P.No.13001 of 2008. So it is prayed that the Impugned Order of 2nd and 3rd respondents are to be quashed.

5. Per contra, the Deputy Secretary to Government and Under Secretary to Government of Health and Family Welfare Department have filed Counter affidavit, contending that the post of Multi Purpose Hospital Workers shall be filled through the employment office on consolidated pay on contract basis. The appointment would be made initially for one year and shall be extended every year based on performance of individuals. Further, it is contended that the post of Multi Purpose Hospital Workers has been created based on the policy decision of the Government and the same cannot be questioned. Moreover, the petitioners cannot have any locus standi to question the Government order and recruitment would be made through and on the basis of the Government orders. Further, the petitioner association cannot claim perpetual rights for their continuance. Though it is admitted that the Hon'ble Supreme Court in State of Karnataka and others v. Umadevi and others has clearly laid down that the appointment of all the Government Employments will have to be made in terms of recruitment rules found and any other mode of recruitment will be against Articles 14 and 16 of the Constitution of India. At the same time in Harinder Kaur and others v. Union of India and others reported in 2009 (13) SCC Page 19, it is held by the Hon'ble Supreme Court that the long service rendered by the adhoc employees cannot be a ground for regularization and therefore the Writ Petitions are liable to be dismissed.

6. I heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioners and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents in both the writ petitions and all the materials available on record are perused.

7. It is admitted that all the petitioners are daily wage employees who have extended their service for more than 10 years as hospital and sanitary workers. Their specific case is that the order of 2nd and 3rd respondents and also the G.O.Ms.No.325 dated 20.11.2012 passed by 1st respondent to create the posts namely Multi Purpose Hospital Workers is illegal and the mode of recruitment suggested for their appointment is also illegal. Apart from that the merger of 3 posts namely sanitary workers, Hospital Workers, Nursing Assistants Grade-II is also against recruitment rules and illegal. The learned counsel for the petitioner would submit that the impugned order of the 2nd and 3rd



respondents is not only illegal, but against the judgment of Hon'ble Supreme Court as reported in 2006 (4) SCC Page No.1 and the order passed by this Court in W.P.No.13001 of 2008 dated 17.08.2011. So, the learned counsel for the petitioner would submit that the impugned order of the 2nd and 3rd respondent is liable to be quashed.

8.Though it is contended by the learned Government Advocate that the Writ Petitions are dismissed, he also relied on the ratio laid down by the Hon'ble Supreme Court in State of Karnataka v. Umadevi and Harmindar Kaur reported in 2009 (13) SCC Page No.19 and other judgments in the similar ratio.

9.So, there cannot be any dispute that all the appointments in the government service can be made only as per recruitment rules and not by adopting any back door entries. Though it is unfortunate to record here the petitioners are working more than 10 years as daily wagers, their service cannot be regularized in view of the law laid down by the Hon'ble Supreme Court. At the same time it is for the government to weed out all sorts of infirmities in filling up each and every post in the government service. Further, it is also for the government to ensure strictly that all the appointments are made only in accordance with the recruitment rules.

10.It is also for the Government that even hereafter that all the posts to be filled up in the Government service strictly with the requirement rules, because the petitioners and several other daily wage employees are accustomed to the works presently they are working for years together and they shall not be thrown out from the employment, which according to them, meant for their livelihood and not only for them to their entire families and it is also taken into account that most of the employees are in their middle ages. At the same time, as the order of the 2nd and 3rd respondents are against the law laid down by the Hon'ble Supreme Court, this cannot approve the order of the 2nd and 3rd respondents in any manner.

11.Therefore, for the aforesaid discussions, both the writ petitions are allowed by setting aside the impugned order of the respondents 1 and 2. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

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Department of Health and Family Welfare,
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SDS/SV/SAR 1/25.05.2017/5P/5C