



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.12.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**W.P. (MD) .No.18665 of 2013 and
M.P (MD) Nos.3 and 4 of 2013 and
WMP (MD) No.380 of 2016**

- 1.K.Balamurugan
- 2.P.Arivagam
- 3.K.Sathis
- 4.P.Stalin
- 5.M.Nagarajan
- 6.R.Sagathaven
- 7.Muthumari
- 8.P.Balasubramani
- 9.S.Karthik
- 10.S.Ranjithkumar
- 11.P.Rajkumar
- 12.M.Palanivel
- 13.Ahamed Sabik
- 14.S.K.Pandian
- 15.Rabisa Bagam
- 16.Gowri Muthukrishnan
- 17.S.Chithra
- 18.P.Arun
- 19.M.Pandi
- 20.K.Dhamatharan
- 21.K.P.Malarveli
- 22.K.Arumugam
- 23.M.Samaya Sanjivi
- 24.G.Gurusamy
- 25.B.Marimuthu
- 26.K.Velmurugan
- 27.S.Velmurugan
- 28.N.Senthilkumar
- 29.S.Boss
- 30.P.Kalaiappan
- 31.V.Vengaiyan
- 32.Chandra Sekaran
- 33.P.Thirupathi Mahalingam
- 34.M.Chinnasamy
- 35.S.A.M.Naina Mohammed
- 36.S.Abdulla Lathip
- 37.K.Krishna veni
- 38.S.S. Senthil Kumar
- 39.M.Latha
- 40.M.Panchu



41.A.S.Arumugam
42.S.Nagajothi
43.V.M.Kumaran

.. Petitioners

.Vs.

WEB COPY

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

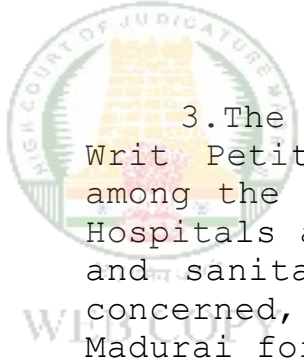
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in R.e.f.No.9320/OHSS/TNHSP/MCH/2012 dated 20.10.2013 on the file of the respondent No.2 and its consequential order in Na.Ka.No.15168/Ni3/3/13 dated 23.10.2013 on the file of the respondent No.4 and quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy.
For Respondents : Mr.K.Guru,
Additional Government Pleader.

O R D E R

This writ petition is filed 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 the respondent No.4 and quash the same as illegal.

2.The petitioners have come up with the present Writ Petition as against the impugned order passed by the respondent No.2 in R.E.F.No.9320/OHSS/TNHSP/MCH/2012 dated 20.10.2013 and also with the consequential order in Na.Ka.No. 15168/Ni3/3/13 dated 23.10.2013 on the file of the respondent No.3 and sought for their quashment.



3.The briefs fact which are essential for the disposal of the Writ Petition would be that the petitioners have been working among the hospital workers and sanitary workers in the Government Hospitals all over Tamil Nadu and their work is meant for cleaning and sanitation of the Hospitals. As a as the petitioners are concerned, they are working in the Government Rajaji Hospital, Madurai for more than ten years.

4.The challenge is made by the petitioners that the impugned order was passed based on the G.O.Ms.No. 325 of Health and Family Welfare (F2 Department) dated 20.11.2012 wherein permission was given to merge 3 posts namely Sanitary Workers, Hospital Workers and Nursing Assistant, Grade-II as Multipurpose Hospital Workers. This G.O. would recommend to recruit nearly about 14,424/- Multipurpose Hospital Workers and they would be recruited by way of Outsourcing and on Contract basis. Further, the aforesaid posts would be filled up in the Government Hospitals, District Head Quarters Hospitals and major Taluk Hospitals and other related places. At the same time, it would be purely under contract appointment for the initial period of 1 year and there is a chance to extent their service up to 5 years. Their appointment shall be made by the Deputy Director of Health Services of the health unit. Further, the outsourcing employees would be appointed in the vacant posts and in the future vacancies by way of singing of memorandum of understanding.

5.However, the grievance of the petitioners is that this outsourcing recruitment is nothing but privatization in the public sector. If the 14,424 posts are filled up through outsourcing recruitment, there would not be any chance to follow the communal rotation. Further, thousands of sanitary workers are working with several Government Hospitals are waiting for promotion for the post of hospital workers and Nursing Assistant, Grade-II, if the 1st respondent merged the said 3 posts on the basis of the G.O.Ms.No.325 dated 20.11.2012, the sanitary workers will not get any promotion to the post of Hospital worker and the post of Nursing Assistant. However, the Counsel for the petitioner has further submitted that the G.O.Ms.No 325 is illegal as the same is against the G.O.Ms.No.56 dated 09.07.2012. When some out sourced employees appointed earlier sought for the permission to absorb their services into regular time scale of pay with all attended benefits, their request was rejected by passing G.O.Ms.No.59 dated 15.02.2008. Aggrieved over the rejection order, a Writ Petition in W.P.No.13001 of 2008 was filed before this Court, but the case was dismissed on 17.08.2011 in view of the judgment of the Hon'ble Supreme in State of Karnataka -Vs- Umadevi, reported in 2006 (4) SCC 1. So, it is the case of the petitioner that the outsourcing recruitment is against Article 14 and 16 of Constitution of India. Without considering it, the impugned G.O. and orders were passed, which is nothing but against the terms of the G.O.Ms.No.59 dated 15.12.2008. Further, though all the petitioners are working as daily wage workers for

the past several years they would be placed into darkness by way of removal through the implementation of impugned G.O. and proceedings of the respondent Nos. 2 and 4.

6. The learned counsel for the petitioner would submit that all the petitioners are working for more than 10 years for minimum income of Rs.1,200/- per month though they are entitled to get more benefits. So, the Counsel for the petitioners prays this court that the writ petition is to be allowed.

7. Per contra the learned Government Advocate would submit that the G.O.Ms.No. 325 and the consequential order are issued strictly as per law, so it is not necessary for this court to accept the contention of the petitioners.

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

9. It is the case against the impugned order and circular by stating that they are liable to be set-aside since they are also against the judgment in Umadevi case. Further, when the G.O.Ms.No.325 dated 20.11.2012 is perused, it disclosed the merger of 3 posts namely Sanitary Workers, Hospital Workers and Nursing Assistant, Grade-II as Multipurpose Hospital Workers. However, the G.O. is silent about their seniority and promotional avenues of the 3 categories and also silent about the dictum of the Hon'ble Supreme Court.

10. At the same time though the Counsel for the petitioners has placed reliance upon Umadevi case which prohibits the appointment in the Government service on back-door entry in the name of outsourcing or on contract basis, the said judgment also referred even the recruitment cannot be made among the daily wages employees as it is also a kind of back-door entry. At the same time this court is conscious that all the petitioners in the writ petition, according to the instructions of the learned counsel for the writ petitioners are in their middle age and they are working as daily wage employees for more than the period of 10 years. This factor has not been disputed by the learned Government Advocate. Further, the counsel for the petitioners would also submit that they are working as daily wages employees under the fond hope that their service would be regularized in one day. At the same time, the learned Government Advocate would submit that the petitioners cannot seek regularization of their service by indicating the length of their services as daily wage employees. However, in the considered opinion of this Court and the ratio laid in Umadevi case, it is no doubt that the G.O.Ms.No.325 dated 20.11.2012 and the impugned order of the 2nd respondent and also the consequential order of the 4th respondent are totally against the dictum laid down by the Hon'ble Supreme Court in Umadevi Case.



11. In the result, this writ petition is allowed and this court has no hesitation to hold that the Impugned Order of the respondent No.2 and its consequential order of the 4th respondent are liable to be quashed and accordingly quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary, State of Tamil Nadu,
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 Dean, Government Rajaji Hospital,
Madurai,
Madurai District.

+1cc to M/S. T.LAJAPATHI ROY, Advocate, SR.No.79418.

+1cc to Special Government Pleader, SR.No.79524.

W.P. (MD) .No.18665 of 2013 and
M.P (MD) Nos.3 and 4 of 2013 and
WMP (MD) No.380 of 2015
02.12.2016

vsa/skn

SDS/SKN:RSK/SAR 2/03.07.2017/5P/7C