

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.8.2017

CORAM

**THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

**W.P.Nos.8371 to 8380 of 2017, 8686 to 8690 of 2017,
W.M.P.Nos.18968, 19354, 19360, 18969, 19361,
9135, 9138, 9141, 9144, 9147, 9150, 9153, 9156,
9159, 9162, 9134, 9137, 9140, 9143, 9146, 9149,
9152, 9155, 9158, 9161, 9515, 9517,
9519, 9521 and 9523 of 2017**

N.Rajesh	Petitioner in W.P.No.8371/2017
D.Panimalar	Petitioner in W.P.No.8372/2017
L.Venkataramanan	Petitioner in W.P.No.8373/2017
L.Venkataramanan	Petitioner in W.P.No.8374/2017
J.Balamurugan	Petitioner in W.P.No.8375/2017
D.Jayalakshmi	Petitioner in W.P.No.8376/2017
S.Deepa	Petitioner in W.P.No.8377/2017
G.Kalaichezhian	Petitioner in W.P.No.8378/2017
N.Narasimhan	Petitioner in W.P.No.8379/2017
S.Saravanan	Petitioner in W.P.No.8380/2017
N.Rajesh	Petitioner in W.P.No.8686/2017
G.Kalaichezhian	Petitioner in W.P.No.8687/2017
J.Balamurugan	Petitioner in W.P.No.8688/2017
D.Jayalakshmi	Petitioner in W.P.No.8689/2017

D.Panimalar

Petitioner in W.P.No.8690/2017

vs.

1. The Central Administrative Tribunal,
Chennai Bench, rep. by its Registrar,
High Court Building,
City Civil Court Complex, Chennai.

2. The Director,
JIPMER, Pondicherry.

Respondents in all the cases

Prayer: Writ petition Nos.8371 to 8380 of 2017 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent viz. Central Administrative Tribunal in O.A.No.1666 and 1667 of 2014 dated 29.3.2017 and quash the same insofar as the petitioners are concerned and consequently direct the 2nd respondent to appoint the petitioners on regular basis as Pharmacist in the existing vacancies in the light of his experience and their having undergone selection through regular process with all attendant and consequential benefits.

Writ petition Nos.8686 to 8690 of 2017 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent viz. Central Administrative Tribunal in OA No.1685/2014 dated 29.3.2017 and quash the same in so far as the petitioners are concerned and to consequently direct the 2nd respondent to redo the selection by awarding marks with reference to correct key answers with respect to question number 1, 2, 3, 5, 10, 11, 13, 14, 15, 16, 81, 82, 83, 84 and 86 and for other questions that are found faulty and rearrange the merit list and appoint the petitioners as Pharmacist in the 2nd respondent Institution with all attendant and consequential benefits.

For petitioners : Mr.A.L.Somayaji, Senior Counsel
for Mr.V.Vijay Shankar
For R2 : Mr.M.T.Arunan

COMMON ORDER

(Order of the court was made by HULUVADI G.RAMESH,J.)

Heard the learned counsel appearing for the parties. By consent, the

writ petitions were taken up for disposal.

2. It appears that the above writ petitioners were appointed as Pharmacist in JIPMER-the second respondent herein on contractual basis for six months in the year 2011, and thereafter, their services were extended from time to time. Whiles, the JIPMER had issued a notification on 20.12.2013, calling for applications from the eligible candidates for filling up the 16 regular posts of Pharmacist. It appears that the petitioners, except two viz., petitioners in W.P.No.1667 of 2017 who had crossed the prescribed age limit at the relevant point of time, have applied for the same and attended the examinations conducted by JIPMER. Having found that they were not selected, eight candidates had filed the Original Application No.1666 of 2014 seeking appointment to the regular post without further valuation, considering their experience in JIPMER. The two candidates have filed O.A.No.1667 of 2017 seeking to consider their case despite their crossing the age limit. Out of the eight applicants in O.A.No.1666 of 2014, six candidates raising an issue that the key answers provided for 15 questions were found to be wrong and thereby they secured lesser marks and negative marks and therefore, they lost the opportunity of being selected, filed O.A.No.1685 of 2014. Since the Central Administrative Tribunal had dismissed all the three Original Applications, the present writ petitions have been filed.

3. The main contention of the petitioners is that they had put service in JIPMER continuously from the year 2011, though they had been originally

appointed on contractual basis after being subjected to written test and interview and therefore, they should not be subjected to further evaluation methods, rather they can be accommodated in the existing vacancies. The other contention of the petitioners is that based on the wrong answers furnished in the key answers, they lost marks for 15 marks and they suffered negative marks too and hence, they seek redoing the evaluation. Their further contention is that from the communication of the Head of Department of Pharmacy dated 4.9.2014 to the Director of JIPMER, it can be inferred that there is lack of candidates in the field and therefore, there is every likelihood of creation of additional posts for which they can be considered on priority basis.

4. So far as the contention of the experience gained by the petitioners, it is apt to refer to the decision of the Apex Court in SCHOOL EDUCATION DEPARTMENT CHENNAI V. R.GONDASWAMY ((2014) 4 SCC 769) wherein it has been held thus:-

"8. This Court in [State of Rajasthan & Ors. v. Daya Lal & Ors.](#), AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"(i) The High Courts, in exercising power under [Article 226](#) of the Constitution will not issue directions for

regularisation, absorption or permanent continuance, unless the employees claiming regularisation 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 regularisation of services of an employee which would be violative of the 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 regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a 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 regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation 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 regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation 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.” (Emphasis added)

8. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgment. Therefore, the appeals are allowed....

5. The above ratio has been followed in the decision in STATE OF TAMIL NADU v. A.SINGAMUTHU (2017) 4 SCC 113 wherein it has been held thus:-

"8. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularisation in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularised or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularisation is missing from the rule book and regularisation

casts huge financial implications on public exchequer.

6. Applying the ratio laid down in the above decisions, we are of the view that the petitioners, who claim consideration on the basis of their long experience in JIPMER though their employment is only a contractual one, cannot seek for appointment to the regular post, having failed in the evaluation process. The position of the two candidates, who crossed the age limit is still worse than the other candidates who had undergone the evaluation process and therefore, they cannot stand on a better footing.

7. With regard to the other contention of some of the petitioners viz., key answers contain wrong answers for 15 questions and thereby they lost some marks and suffered negative marks, from the materials available on record, it is not made clear as to whether the petitioners concerned had properly appraised of the fact to the authorities concerned and took steps to substantiate their contention with regard to correct answers by subjecting the same to an expert Body. When such being the case, at this distant point of time, it may not be relevant to direct for redoing of the evaluation work or scrutiny of the evaluation process by an expert Body.

8. This court is of the view that normally, the key answer is presumed to be correct unless there is a glaring instance of fallacy. The standard text book is the norm and the key answer as traceable to the standard text book has to be preferred and relied upon. In the cases on hand, no standard proof seems to have been projected to the authorities concerned within a reasonable time for scrutiny and now, when the successful candidates had

already joined, this court feels that it would be unfair to direct the authorities to go for a scrutiny or redo the work paralysing the administrative process and disturbing the present position that too in a profession which is parallel to life saving profession. The petitioners cannot take shelter of the interim orders passed by the Tribunal or this court to claim priority in the selection process either in the present one or in the future ones.

9. It is the further contention of the petitioners that there are some more vacancies against which, they can be regularised. There is no question of recommending the petitioners by way of regularisation against the vacancies that would have arisen in the meanwhile. The only course open to the petitioners is to compete by participating in the future selection process and they cannot claim to accommodate themselves on priority basis on par with the successful candidates even in the existing vacancies or any additional vacancies that were created. The interim order granted in these cases is vacated. However, the cost imposed by the Tribunal alone is set aside.

10. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

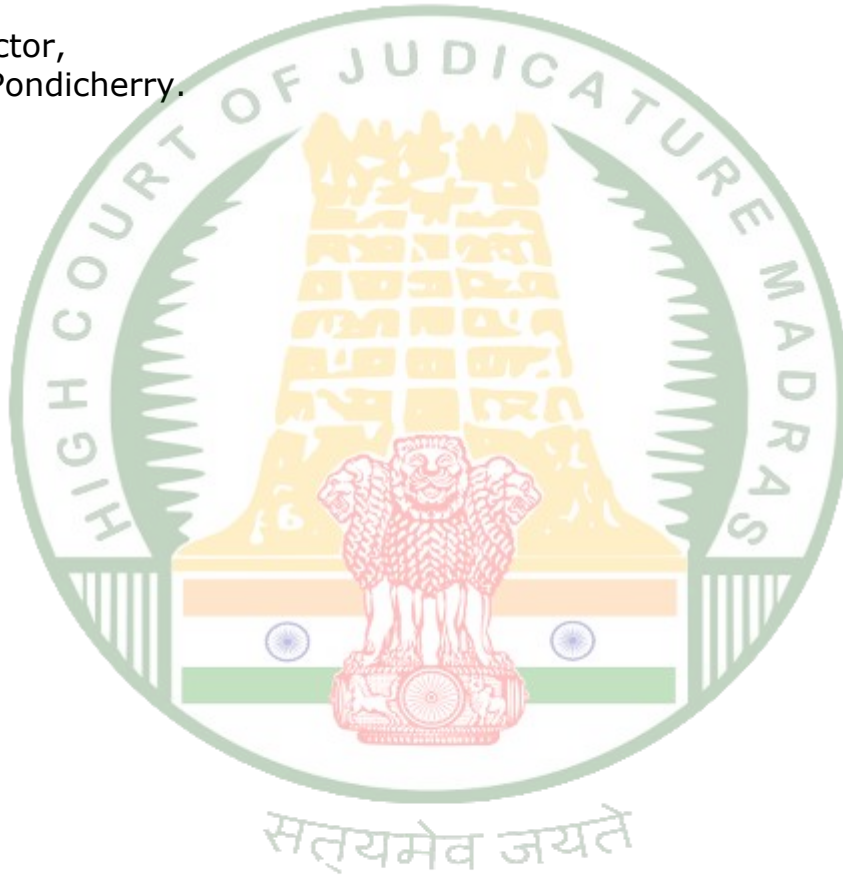
(H.G.R.,J.)(T.K.R.,J.)

21.8.2017.

Index:Yes/No
Internet:Yes/No
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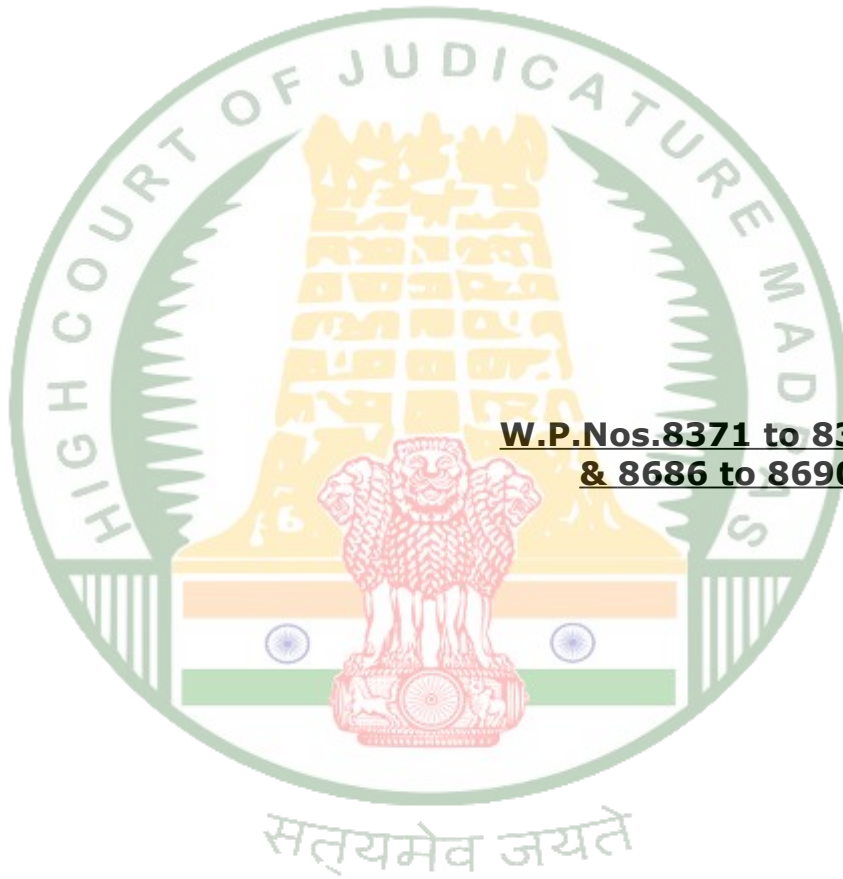
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**HULUVADI G. RAMESH, J.
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RMT.TEEKAA RAMAN, J**

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