

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

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

**W.A.Nos.666 to 668/2017 and  
CMP.Nos.9407, 9409, 9410, 9412 and 9413/2017**

1. State of Tamil Nadu  
rep. by its Secretary,  
Health and Family Welfare Department,  
Fort St. George,  
Chennai-9.
2. The Director of Public Health and Preventiv  
Medicine, D.M.S. Compound,  
Teynampet, Chennai-6.
3. The Deputy Director of Public Health,  
Race Course Road,  
Mannarpuram, Trichy-20. ... Appellants

**Vs**

S.Varadharajan ... Respondent in W.A.No.666/2017

K.Manikandan ... Respondent in W.A.No.667/2017

S.Murugesan ... Respondent in W.A.No.668/2017

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Prayer : Writ Appeals filed under Clause 15 of the Letter Patent against  
the Common Order dated 07.10.2013 made in W.P.No.27611, 27612  
and 27617/2013 respectively by a learned Single Judge.

For Appellants :: Mr.K.Venkataramani,

Additional Advocate General  
assisted by  
Mr.P.S.Sivashanmugasundaram,  
Spl. Govt. Pleader

For Respondents :: Mr.V.Ajoy Khose  
for Mr.R.Krishnaswamy

**COMMON JUDGMENT**

(Judgment of the Court was pronounced by **HULUVADI G.RAMESH, J.**)

The Writ Appeals are directed against the Common Order dated 07.10.2013 made in W.P.No.27611, 27612 and 27617/2013 respectively by a learned Single Judge.

2. The Writ Petitioners were appointed as Drivers, Lab Assistants Grade-II and Sanitary Workers respectively on consolidated pay during the year 2005 through M/s.Shiva Industrial Security Agency (Gujarat) Private Limited and M/s.Society for Education and Women Development, Thirupparankundram, Madurai respectively. The petitioners were posted in the Government Primary Health Centres. However, they were terminated from service during 2007-2008. Hence, they filed writ petitions praying for reinstatement before this Court. The said Writ Petitions were allowed by this Court by a Common Order dated 28.08.2008 made in W.P.No.20691 etc. batch with a direction to the respondents therein to give preference to these petitioners, while appointing fresh candidates.

3. As per the direction of this Court, the petitioners therein gave representations to the respondents. However, till date, no order has been passed. Subsequently, several persons, who were employed through outsourcing agency, filed writ petitions being W.P. (MD) Nos.10698/2010 etc. batch before the Madurai Bench of this Court and directions were issued to consider the claim of the petitioners therein and to give preference in the appointment. Based on the said order, the petitioners therein were given appointment. Therefore, the petitioners/respondents herein again gave representations, but, so far no order has been passed, which compelled the petitioners/respondents herein to approach this Court by way of filing the Writ Petitions.

4. In the said Writ Petitions, by a Common Order dated 07.10.2013, a direction was issued to the 3<sup>rd</sup> respondent, namely, the Deputy Director of Public Health, Race Course Road, Mannarpuram, Trichy-20, to pass appropriate orders on the representations given by those petitioners, in the light of the orders passed by this Court and in the light of the earlier orders passed in W.P.No.20699/2008 dated 7.8.2008 and the order of the Madurai Bench of this Court in W.P.No.3568/2012 dated 26.3.2012 and the consequent appointment orders issued to the petitioner therein by order dated 17.4.2012. But, according to the writ petitioners, their claims have not been considered.

Hence, they approached this Court by way of filing the present Writ

Appeals.

5. Heard the learned Counsel on either side and we have also perused the materials available on record.

6. At the outset, it appears that the petitioners and others, who were appointed through Outsourcing System on contract basis, have claimed for regular absorption. But, since they were not appointed through Employment Exchange or by following any rule of reservation, termination orders have been issued against them. Further, the Government has not renewed the agreement with the service provider i.e. the Outsourcing Agencies after 31.08.2006. But, it appears that in the writ petitions filed by some of the persons in W.P.Nos.20691 to 20174/2008, this Court by order dated 28.08.2008 has held as follows:

"In view of the stand of the Government that the petitioners will be given preference in the regular selection, these writ petitions are disposed of giving a direction to the 4<sup>th</sup> respondent to give preference to the petitioners based on their earlier engagement either as contract drivers/sanitary workers/hospital workers while appointing any fresh candidates. The 4<sup>th</sup> respondent is directed to

consider the claim of the petitioners and if they are found qualified, they should be given priority taking note of their experience. The learned Counsel for the petitioners submitted that there are vacancies available. Hence, the petitioners are directed to submit their application before the 4<sup>th</sup> respondent along with the Experience Certificate issued by the concerned Medical Officers to the 4<sup>th</sup> respondent, within a period of two weeks from the date of receipt of a copy of this Order."

7. In this Order, it is further held as follows:

"The 4<sup>th</sup> respondent is directed to consider the claim even if their names are not sponsored by the employment exchange. It is made clear that since the petitioners are already engaged through outsourcing and performed the duties either as drivers/sanitary workers/hospital workers, further sponsorship through employment exchange is not required to be made in so far as the petitioners are concerned."

8. Further it appears that in the subsequent writ petitions filed by the petitioners and others in W.P.Nos.27610 to 27622/2013, in response to the order passed by this Court on 07.10.2013, the 1<sup>st</sup> respondent Government in Letter No.46573/AB1/2013-1, Health, dated 20.01.2014 issued clarifications citing the Supreme Court decision in **Secretary, State of Karnataka and others. Vs. Umadevi and others reported in 2006(4) SCC 1** in which it has been held that any recruitment must be made only in accordance with recruitment rules and no recruitment can be made through back door and that too, through court orders. In the absence of the petitioners setting out any enforceable right, the relief claimed by the petitioners cannot be countenanced by this Court. Subsequently, the representations of the respondents herein were rejected and thus the Common order of this Court made in W.P.Nos.27610 to 27622 of 2013 has been complied with. Against the same, the present Appeals have been preferred.

9. Admittedly, when the petitioners were all appointed through Outsourcing Method and discharging their duty on consolidated basis as temporary workers, there is no relationship exists between them as employer and employee and the Government has got no role to play on the same. While so, filing writ petitions to absorb them in the regular service is totally strange to the system because the Government has entrusted certain works to the contractors like that of the Industries.

10. In this context, it is found that on the one hand, some of the exigencies apportionments were made either by back door entry or without following the regular selection process by Notification or by making a publication and selecting the candidates on merits. The said fact has been taken note of by the Supreme Court in a case in **State of Karnataka vs. Umadevi reported in (2006) 4 SCC 1** in which it has been held that such appointments are in violation of Articles 14 and 16 of the Constitution of India. After the judgment of *Umadevi's case* some other judgments have been rendered distinguishing the very judgment and so far as the State of Tamil Nadu is concerned, there was a decision in **School Education Department, State of Tamil Nadu v. R.Govindaswamy reported in (2014) 4 SCC 769** rendered which has deprecated the practice of such regularisation of service on regular basis.

11. At this stage, the learned Counsel for the respondents submitted that some of the respondents herein are over aged and if they are removed from service now, they do not have any opportunity in participating in the future selection process. He further submitted that in a similar circumstance in W.P.(MD) No.5484/2014, the Madurai Bench of this Court has passed some favourable interim order of status

quo in respect of the petitioner therein and the same benefit has been extended to some other petitioners also and applying the same to these respondents also, their services should be regularised.

12. In reply to the same, the learned Additional Advocate General appearing for the appellants submitted that there were no such sanctioned posts for which their services have to be utilised. He further submitted that if any future vacancies arise in regular selection, there will be a Notification published in the Newspaper and if the respondents herein apply for the same, preference will be given to them in the selection process based on their earlier engagement either as contract drivers/sanitary workers/hospital workers and further sponsorship through Employment Exchange is not required to be made in so far as these respondents are concerned and age is no bar for these candidates. He further submitted that action has been initiated by the Director of Public Health and Preventive Medicine against the concerned Deputy Director of Health Services for irregular appointment made by them and some of the individuals so continued are not in service as on today.

13. In view of all the above and also recording the statement of the learned Additional Advocate General appearing for the appellants, the Writ Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

(H.G.R.J.)

(T.K.R.J.)

05.12.2017

**Index : YES**

**Internet : Yes**

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