

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20346 of 2010

and

M.P.No.1 of 2010

Tmt.IndiraDevi

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Petitioner

vs

1.The Director and the Superintendent,
The Zonal Eye Hospital
Government Eye Hospital
Chennai - 600 008.

2.The Director of Medical Education
Health Department
Chennai - 600 010.

3.The Joint Secretary,
Health Department,
Fort St.George,
Chennai - 600 009.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to regularize the service of the petitioner as "Substitute Worker" (Pathili Paniyalar) on the basis of the G.O.Ms.No.149 dated 08.05.2007.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.K.Bhuvaneswari,

Learned Government Advocate

सत्यमेव जयते
O R D E R

The relief sought for in this writ petition is seeking to issue a direction to direct the respondents to regularize the service of the petitioner as "Substitute Worker" (Pathili Paniyalar) on the basis of the G.O.Ms.No.149 dated 08.05.2007.

2. The learned counsel appearing on behalf for the petitioner states that he has given change of vakalat along with the bundle in the year 2010 itself. However, the matter is pending for the past seven years.

3. The learned Government Advocate appearing on behalf of the respondent states that the petitioner was initially

appointed as "Substitute Worker" (Pathili Paniyalar) in Government Eye Hospital, Egmore on 25.02.1993 and she remained absent from attending the duty from 20.04.2004 onwards. This apart, the petitioner has not completed 10 years of service, so as to consider her case for any regularisation as per the Government orders. Therefore, the petitioner has not fulfilled the conditions as stipulated under the Government orders for consideration.

4. Even otherwise, this Court is of the opinion that regularisation or permanent absorption cannot be granted in violation of the service rules in force. In respect of regularisation or permanent absorption, the same ought to have been done only in consonance with the rules in force. The Constitution Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka & Others vs Uma devi & Others, reported in 2006 (4) SCC, Page 1, set out the legal principles in respect of appointments, regularisation and permanent absorption. Thus, the persons appointed contrary to the recruitment rules in force cannot claim permanent absorption / regularisation. The legal proposition laid down by the Constitutional Bench was reiterated by the Apex Court in the case of Secretary, School Education Department, Chennai vs R.Govindhasamy and others reported in 2014 (4) SCC page 769 and the same is extracted as under:

"the High Courts in exercising powers of Article 226 of the Constitution of India, 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".

5. In view of the said pronouncement of the Apex Court of India, the relief sought for as such in this writ petition cannot be considered at all. Accordingly, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Director and the Superintendent,
The Zonal Eye Hospital,
Government Eye Hospital,
Chennai - 600 008.

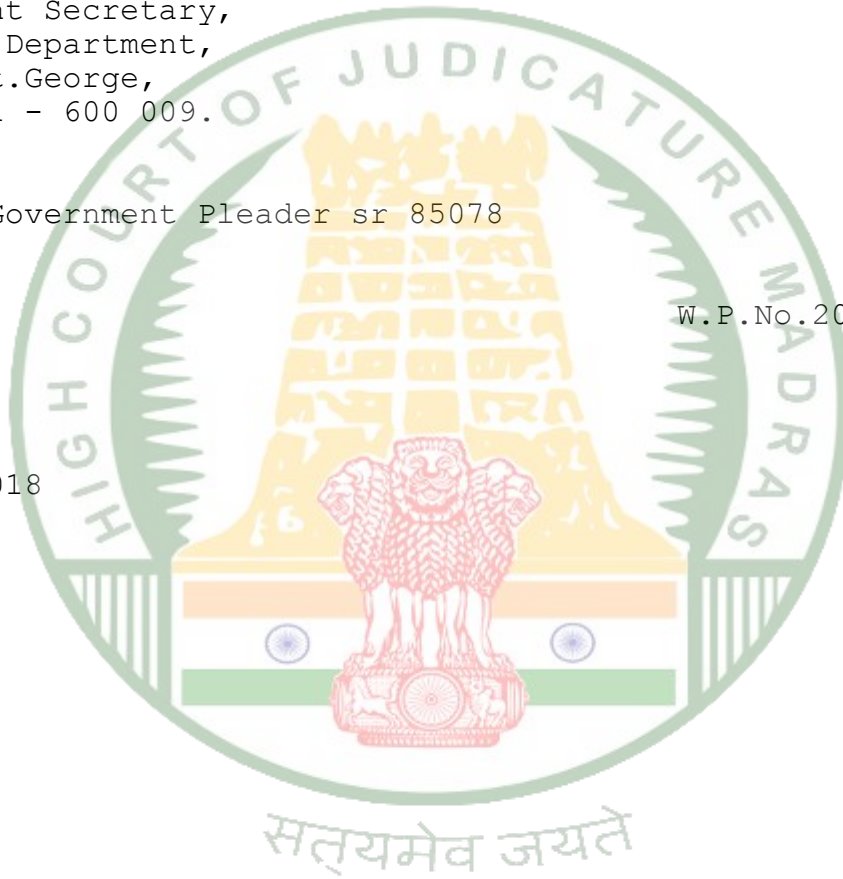
2.The Director of Medical Education,
Health Department,
Chennai - 600 010.

3.The Joint Secretary,
Health Department,
Fort St.George,
Chennai - 600 009.

+1 cc to Government Pleader sr 85078

W.P.No.20346 of 2010

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