

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2017

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4004 of 2013 &
M.P.No.1 of 2013

Jayalakshmi
W/o.Late. Selvaraj

..Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by Secretary to Government,
Health Department,
Fort St. George,
Chennai-600 009.

2.The Director of Medical and Rural
Health Services,
O/o. The Director of Medical Services,
DMS Compound,
Teynampet,
Chennai-600 018.

3.The Joint Director of Medical Services,
Government Hospital Compound,
Namakkal,
Namakkal District.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents to provide continuous work to the petitioner in service and confirm her in service as the petitioner had completed more than five years of continuous service.

(prayer amended as per order dated : 19.03.2014 in M.P.No.2 of 2013 in W.P.No.4004 of 2013)

For Petitioner : Mr.S.Ayyathurai

For Respondents : Mr.A.Raja Perumal,
Addl. Government Pleader

O R D E R

The writ petition has been filed seeking for issuance of writ of Mandamus directing the respondents to provide continuous work to the petitioner and confirm her service as she had completed more than five years of continuous service.

2.Learned counsel for the petitioner would submit that the petitioner was appointed as sweeper on contract basis in the Government hospital, Namakkal, which is under the control of the third respondent, with effect from 18.11.2005. Thereafter, the contract system was abolished and she was retained in service on daily wage basis under the control of the respondent in the year 2006 as hospital worker. He would further submit that she has been working as Sweeper with a fond hope that her service will be regularised. The petitioner had put in seven years of service as Sweeper and she has been engaged on contract basis without any break, continuously for more than seven years. Therefore, she made a representation to the respondents requesting for regularisation of her service and fixing her pay in time scale of pay. However, there was no response from the respondents. The petitioner was entitled to be made permanent on the basis of the Conferment of Permanent Status Act. Hence, the petitioner along with other workers were constrained to file a writ petition No.13689 of 2010, for issuance of writ of Mandamus directing the respondents therein to regularize her services. In the aforesaid writ petition, on 22.06.2011, this Court directed the respondents to consider the petitioner's representation, dated 09.01.2009, by considering the order be passed in W.P.No.13001 of 2008. But till now, no orders have been passed in the petitioner's representation dated 09.01.2009. In the light of the Government Order in G.O.Ms.No.22, P & AR Department dated 28.02.2006, the petitioner has filed the present writ petition before this Court for the aforesaid prayer.

3.According to the learned Additional Government Pleader, the petitioner has been appointed as a Sweeper only on contract basis. Para-5 of the counter, it is stated that the petitioner was recruited and was rendering service through outsourcing agency from 25.11.2005 at Government District Headquarters Hospital, Namakkal and has availed only reasonable leave with the permission of outsourcing agency and not from the Government. In such circumstances, the petitioner is not entitled to relief as prayed for in the writ petition.

4.Heard the submissions of both sides.

5.The petitioner has filed the present writ petition on the basis of G.O.Ms.No.22, P & AR Department dated 28.02.2006. Following the decision of the Hon'ble Supreme Court in SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI

V. THIRU R. GOVINDASAMY & OTHERS, this Court by order dated 10.07.2014 has considered the W.A.Nos.2911 of 2012 etc., batch of cases, wherein paragraphs 9, 10 and 11 are extracted here under:

"9. In the light of the categorical pronouncements of the Supreme Court of India governing the very same issue as dealt with extenso by the Division Bench of Madurai Bench of Madras High Court, we are of the view that the writ petitions are liable to be dismissed.

10. It has been informed that a subsequent Government Order has been passed in G.O.Ms.No.74, Personnel and Administrative Department dated 27.06.2013, by which, the Government has decided not to disturb those cases, where orders have already been passed by the competent authority in pursuant to the Government Order passed in G.O.Ms.No.22 P&AR(F) Department, dated 28.02.2006 as well as the orders issued in pursuant to the Court direction "where the verdict reached finality". The learned counsel appearing for the writ petitioners submitted that the civil appeals filed by the Government before the Supreme Court in Civil Appeals Nos.2726-29 of 2014 with Nos.2730-31 of 2014 will have to be made applicable to the case where orders have been implemented. Per contra, the learned Advocate General appearing for the State submitted that the Government has already passed appropriate orders in G.O.Ms.No.74 Personnel and Administrative Department dated 27.06.2013. It is further submitted that inasmuch as the said issue is not for consideration, the same need not be gone into.

11. We do not propose of go into the applicability of the Government Order passed in G.O.Ms.No.74 Personnel and Administrative Department dated 27.06.2013, in the light of the observations made by the Supreme Court in Civil Appeal Nos.2726-29 of 2014 with Nos.2730-31 of 2014. Based upon the statement made by the learned Advocate General appearing for the State, it is well open to the parties concerned to make representations before the authorities concerned contending that the decision rendered in their favour by the learned single Judge has already been complied with and therefore, their services shall not be disturbed in the light of the Government Order passed in G.O.Ms.No.74 Personnel and Administrative Department, dated 27.06.2013 as well as the order passed by the Supreme Court in Civil Appeals

Nos.2726-29 of 2014 with Nos.2730-31 of 2014. As and when such representations are made before the appropriate authority, the authority concerned is directed to consider and pass orders within a period of eight weeks from the date of receipt of a copy of this order."

6.In the light of the aforesaid decision, the writ petition is disposed of with a direction to the petitioner to make a fresh representation to the third respondent within a period of four weeks from the date of receipt of a copy of this order and on receipt of such representation, the third respondent shall consider the same and pass orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order thereafter. Connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Health Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Medical and Rural
Health Services,
O/o. The Director of Medical Services,
DMS Compound, Teynampet,
Chennai-600 018.
- 3.The Joint Director of Medical Services,
Government Hospital Compound,
Namakkal, Namakkal District.

+1 cc to Mr.S.Ayyadurai,advocate,sr.6747

+1 cc to govt.Pleader,sr.6412.

lrs(co)
krd 20/4

W.P.No.4004 of 2013 &
M.P.No.1 of 2013