



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2017

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD).No.11066 of 2014

I.Paulraj

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary to Govt.,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
 - 2.The Director of Public Health and Preventive Medicine,
D.M.S.Compound,
Teynampet,
Chennai.
 - 3.The Deputy Director,
Public Health Services,
Kovilpatti,
Thoothukudi District.
- ...Respondents

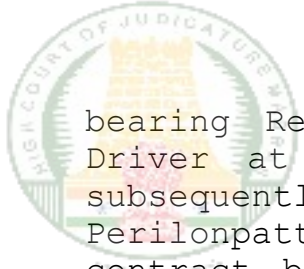
PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to consider and pass orders on the petitioner's representation dated 06.11.2013 and absorb him permanently as Driver on regular time scale of pay within the time limit that may be stipulated by this Court.

For Petitioner	: Mr.G.Thalaimutharasu
For R1 to R3	: Mr.S.Kumar
	Additional Government Pleader

ORDER

The petitioner has come up with the present writ petition praying to direct the respondents to consider and pass orders on the petitioner's representation, dated 06.11.2013 and absorb him permanently as Driver, on regular time scale of pay, within the time limit stipulated by this Court.

2. The case of the petitioner is that the petitioner has passed 10th standard and he is coming under the category of Scheduled Caste and he is having driving license to drive both light and heavy vehicles and he has registered his name in the employment exchange



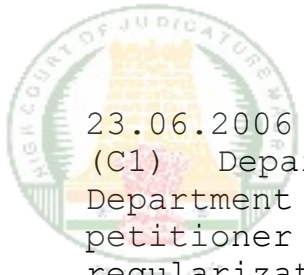
bearing Registration No.6462/97. He was appointed as Outsource Driver at Primary Health Centre, Nagalapuram on 15.11.2005 and subsequently discharging his duties in both Boothalapuram and Perilonpatti and working as Driver, driving the Ambulance on contract basis. Since he has completed more than nine years of sincere and unblemished service on daily wage basis without any break, he made representation dated 06.11.2013 to the respondents 1 and 2 seeking to absorb him in the said post, but the same was not considered so far. Hence, this petition.

3. Counter affidavit has been filed by the respondents, wherein they have stated that the petitioner had been engaged as Outsourced Driver at Nagalapuram Primary Health Centre with effect from 15.11.2005 through an authorised service provider viz., Tvl. Siva Security Industry Agency - Trichy. The petitioner and many drivers engaged on outsourcing method, had already filed a Writ Petition in W.P.No.13001 of 2008 through their Union, and the same was dismissed by this Court on 17.08.2011 and further the petitioner had filed another Writ Petition in W.P.(MD).No.12802 of 2012 to direct the respondents to provide employment to him as driver in the respondent Department and the said Writ Petition was also dismissed on 03.10.2012. It is also submitted that though the petitioner had already filed Writ Petitions one after another for the very same set of facts, they were dismissed by this Court and now, once again, he has filed the present Writ Petition to absorb him as Driver in the Department. Since the appointment made is only on contract basis, the employees appointed on contract basis have no fundamental right to claim that he must be absorbed in Government service, as regular appointment can be made only through the Employment Exchange. Therefore, they prayed to dismiss the Writ Petition.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

5. The learned counsel for the petitioner would submit that though the petitioner is working from 2005 as Driver, till date, he has not been absorbed as a permanent worker. In this regard, the petitioner made a representation dated 06.11.2013 before the respondents. However, the said representation has not been considered so far.

6. The learned counsel for the petitioner would further submit that the services of the NMRs, who have been working for three years and more, were regularized and also daily wages employees were brought into permanent absorption. In support of his contention, he relied on the judgment of this Court in W.P.No.36623 of 2004, which was confirmed by the Hon'ble Apex Court in C.C.No.14093 of 2010 and also the judgment of this Court in W.A.(MD) No.151 of 2011 dated 21.02.2011, and also certain Government Orders in G.O.No.125, M.A. & W.S. Department dated 27.05.1999, G.O.No.55, R.D & P.R (E5) Department dated 15.06.2006, G.O.No.60, R.D & P.R Department dated



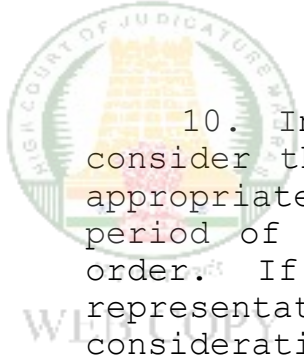
23.06.2006 and G.O.Ms.No.220, dated 29.11.2001, G.O.Ms.No.288, PW (C1) Department dated 14.12.2009 and G.O.Ms.No.134, PW (C2) Department dated 07.05.2010. Therefore, learned counsel for the petitioner would submit that the petitioner is also entitled for regularization.

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7. The learned Additional Government Pleader appearing for the respondents would submit that the Hon'ble Supreme Court in the case of *Union of India & others vs. A.S.Pillai and Others* reported in (2010) 13 SCC 448 held that being the part-time employees, they are not subject to service rules or other regulations, which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularization would not arise. Likewise, in the case on hand also, the petitioner was engaged on daily wages basis, which is not authorized one or with any sanction of the Government. Therefore, the petitioner is not entitled for regularization or permanent absorption.

8. Today (15.12.2017), the learned counsel for the petitioner placed before this Court the order of this Court dated 30.06.2011 made in *W.P.(MD) No.10698 of 2010 (A.Paulraj ..vs.. State of Tamil Nadu represented by Secretary, Health and Family Welfare Department and two others)*. The facts of the said case are that that there was a ban on the recruitment for appointment in all Departments from the year 2001. As the Hospital service under the first respondent is an essential service, the first respondent was permitted to make appointment through out sourcing ie., on contract basis, as there was a ban on recruitment. One M/s.Siva Industrial Security Agencies was appointed as a Contractor to supply man power to the Government Hospital situated all over Tamil Nadu. The said Contractor issued an advertisement in daily News paper calling for applications from eligible persons to serve in the hospital situated all over Tamil Nadu as Sanitary Workers, Lab Assistants, Drivers etc. The petitioner applied for the same and he was given appointment on 16.10.2004, as Driver. He was posted at Pandalkudi Primary Health Centre. In the year 2006, the then Government took a policy decision to do away with the contract system (out sourcing) in Government service. In the said case, this Court has passed an order, dated 30.06.2011, issuing direction to the respondents to provide employment to the petitioner and also directed the respondents to consider the petitioner's case and pass suitable orders, within a period of ten weeks.

9. The facts of the above said case are similar to that of this case. In this case also, the petitioner is working as Driver driving the Ambulance on contract basis and hence, he has given representation on 06.11.2013 to the respondents seeking to absorb him permanently as driver on regular time scale of pay, which was acknowledged by the respondents, but the same was not considered so



10. In view of the above, this Court directs the respondents to consider the petitioner's representation dated 06.11.2013 and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. If the petitioner seeks permission to give a fresh representation to the authorities concerned to relax his age for consideration, it is for the respondents to consider the same and pass necessary orders in accordance with law, within the stipulated time.

11. The Writ Petition is disposed of, with the above directions. No costs.

Sd/
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1. Secretary to Govt.,
The State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.

2. The Director of Public Health and Preventive Medicine,
D.M.S. Compound,
Teynampet,
Chennai.

3. The Deputy Director,
Public Health Services,
Kovilpatti,
Thoothukudi District.

+1cc to M/s. Special Government Pleader, SR.No. 93353
+1cc to Mr. G. Thalaimutharasu, Advocate, SR.No. 93450

W.P. (MD) .No.11066 of 2014
15.12.2017

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