



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.A. (MD) No. 947 of 2015
and
M.P. (MD) No. 2 of 2015**

1. The State of Tamil Nadu,
represented by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine,
DMS Compound,
Teynampet,
Chennai - 600 006.
3. The Deputy Director of Health Services,
Virudhunagar Collector Office,
Virudhunagar. : Appellants/Respondents

Vs.

A.Paulraj : Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to this Court to set aside the order made in W.P(MD) No.14257 of 2014, dated 10.3.2015, on the file of this Court and allow the Writ Appeal.

Prayer in WP(MD). 14257/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings Na.ka. No. 3904/A3/2014, dated Nil. 08.2014 issued by the third respondent and quash the same as illegal and direct the respondents to reinstate the petitioner as driver with all monitory benefits .

For Appellants : Mr.M.Murugan
Govt.Advocate

<https://hcservices.ecourts.gov.in/hcservices/> For Respondent : M/s.R.Govindaraj

**JUDGMENT**

[Judgment of the Court was made by **M.M.SUNDRESH, J.**]

This Writ Appeal is directed against the order of the learned Single Judge, who after setting aside the order passed by the third respondent, consequently directed them to re-instate the respondent/Writ Petitioner back in service.

2.The basic facts are not in dispute. The respondent/Writ Petitioner was originally working in a private concern, as his services were out-sourced. Thereafter, pursuant to the direction of the third appellant, dated 17.08.2008, he was appointed in pursuant to the direction of this Court in W.P.No.10698 of 2010, dated 30.6.2011. The following paragraph of the order passed by the learned Single Judge, reads as follows:

8.While considering his submission, I am of the considered view that the Petitioner has to be preferred over the others. The said view was taken by this Court in a batch of Writ Petitions in W.P.Nos.30105 to 30111 of 2008, dated 23.10.2009, the operative portion of the order viz., at paragraph 4 is usefully extracted hereunder:-

"In view of the earlier orders, there will be similar order in these cases also. These Writ Petitions are disposed of giving direction to the fourth respondent to give preference to the Petitioners based on their earlier engagement either as contract Drivers/Sanitary workers/ Hospital Workers/ Lab Assistant while appointing any fresh candidate. The fourth 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 now available. Hence, Petitioners are directed to submit their application before the fourth respondent along with the experience certificate issued by the concerned medical officers to the fourth respondent, within a period of two weeks from the date of receipt of a copy of this order. The claims even if their names are not sponsored by the Petitioners are already engaged through outsourcing and performed the duties either as Drivers/Sanitary workers/Hospital Workers/ Lab Assistants, further sponsorship through employment exchange



is not required to be made insofar as the Petitioners are concerned.

Writ Petitions are disposed of on above terms.''

3. In pursuant to the aforesaid order, an order was made in favour of the respondent/Writ Petitioner on 4.8.2011. However, by impugned order, his services were terminated on the ground that he was appointed through outsourcing. Therefore, as per the Government Order, he cannot be continued.

4. The learned Single Judge by taking note of the earlier order made in W.P.No.10698 of 2010, dated 30.6.2011, referred to supra was pleased to set aside the order impugned by placing reliance on the appointment order, dated 04.08.2011.

5. The learned Government Advocate would submit that the appointment of the Writ Petitioner was temporary. Originally, his services were outsourced. Therefore, the order of the learned Single Judge requires interference.

6. As rightly submitted by the learned counsel for the respondent/Writ Petitioner, his status got changed into one of 10(A)(1) appointee, in pursuance of the order passed by this Court. As the said order become final, appointment order has been issued to the respondent/Writ Petitioner on 04.08.2011. Therefore, it is not open to the appellants to contend that the respondent/Writ Petitioner continues to be under out-sourcing. In such view of the matter, the order impugned, passed directing the respondent as a one of out-sourcing, cannot at all be sustained and as in that case, the Government order will have no application. We find no error in the order impugned herein, which was passed not on the ground that the respondent was working as a temporary worker under Section 10(A)(1), but on the ground that he was outsourcing. Thus the Writ Appeal fails.

7. Accordingly, the Writ Appeal stands dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-

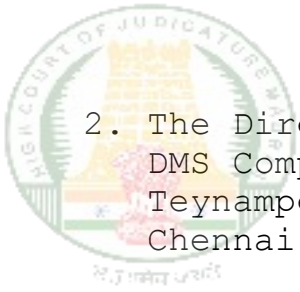
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.



2. The Director of Public Health and Preventive Medicine,
DMS Compound,
Teynampet,
Chennai - 600 006.

3. The Deputy Director of Health Services,
Virudhunagar Collector Office,
Virudhunagar.

+1 cc to Mr.R.Govindaraj , Advocate in SR.No. 74360

+1 cc to The Special Government Pleader in SR.No.74694

vsn

AE/MR KKR/SAR1/08.09.2017/4P/6C

JUDGMENT MADE IN
W.A. (MD) No. 947 of 2015
and
M.P. (MD) No. 2 of 2015
23.08.2017