



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 04.01.2017

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.126 of 2015

and

M.P.(MD).No.2 of 2015

P.SIVAKUMAR

..Petitioner

Vs

1 THE STATE OF TAMILNADU
REP BYI TS PRINCIPAL SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
FORT ST. GEORGE, CHENNAI- 600 009.

2 THE DIRECTOR OF MEDICAL EDUCATION,
KILPAUK, CHENNAI-10.

3 THE DEAN,
KANYAKUMARI GOVERNMENT MEDICAL COLLEGE,
ASARIPALLAM,
KANYAKUMARI DISTRICT.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 3rd Respondent in Proceedings Na.Ka. No. 4891/Ni6/2008 dated 21.09.2012 and quash the same so far as the petitioner is concerned and consequently direct the Respondents to absorb the petitioner in regular time scale either as Lab Attendant or any other equivalent cadre in Basic Service as per the orders issued by the Government in G.O. Ms. No. 151, Social Welfare and Noon Meal Scheme Department dated 16.10.2008 with all attendant and monetary benefits.

For Petitioner :Mr.M.Saravana Kumar

For Respondents :Mr.S.Sathish Kumar

ORDER

The writ petitioner has come forward with the aforesaid prayer to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd Respondent in Proceedings Na.Ka. No. 4891/Ni6/2008 dated 21.09.2012 and quash the same so far as the petitioner is concerned and consequently direct the respondents to absorb the petitioner in regular time scale either as Lab Attendant or any other equivalent cadre in Basic Service as per the orders issued by the Government in G.O. Ms. No. 151, Social Welfare and Noon Meal Scheme Department dated 16.10.2008 with all attendant and monetary benefits.

2. The case of the petitioner is that the petitioner and some other persons were employed through outsourcing in various hospitals all over the Tamil Nadu to look after the hospital services. The petitioner herein was appointed as a Lab Attendant by way of a proceedings dated, 02.11.2005 and he was posted in the Asaripallam Government Medical College Hospital, Kanyakumari District. Subsequently, the Government took a policy decision to ban the contractual appointment through outsourcing. Thereafter also, the persons like the petitioner were permitted to work. Subsequently, they approached this Court by way of filing writ petitions in W.P.(MD).Nos.11780 to 11784 of 2011 seeking a mandamus directing the respondents to regularize their services. During the pendency of the writ petitions, without issuing any show-cause notice, their services were terminated. They brought the said fact to the attention of this Court and this Court passed an order on 26.04.2013, directing the third respondent to consider the representation of the petitioners therein and submit appropriate proposal on the petitioners' claim to the second respondent for examining the matter on merits and in accordance with law and for passing appropriate orders thereon as expeditiously as possible. It was also observed by this Court that even though this Court directed the representation of the petitioners to be considered, it does not mean that it would give some preference to them and their case would purely be considered on merits.

3. It is the further case of the petitioner that thereafter, similarly placed persons have approached this Court and this Court, vide order dated 02.07.2014, passed an order in W.P.(MD). Nos.15229 to 15531 of 2012, which was based on the earlier orders of this Court, dated 23.10.2009, passed in W.P.(MD).Nos.30105 to 30111 of 2008 and directed the respondents to consider the case of the petitioners for employment and allow them to discharge their services as Hospital workers (Outsourcing Staff).

<https://hccourts.madras.gov.in/>

4. For better appreciation, the relevant paragraphs of the



order dated 23.10.2009, are hereby extracted below:

"3. Mr.Ajay Ghosh, learned counsel for the petitioner brought to the notice of this Court in respect of other identically placed writ petitions disposed of granting certain directions. The learned counsel for the petitioner relied upon the judgment of this Court in (P.Sithan and others Vs. State of Tamil Nadu and others made in W.P.No.28761 in batch cases dated 04.12.2008), in disposing of those cases, this Court followed the earlier order obtained by similarly placed workman. In Para-4 of the order, this Court observed as follows:

"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 Assistants 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 fourth respondent is directed to consider their claims 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/Lab Assistants, further sponsorship through employment exchange is not required. The same is made in so far as the petitioners are concerned.

Writ Petitions are disposed of on the above



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terms."

2. In the light of the above, a similar direction is issued in the Writ petition also. Accordingly, the Writ Petition is disposed of on the above terms. No costs."

5. In the counter affidavit, it is stated that there is no agreement between the petitioner and the Government, that there is no employer and employee relationship with the third respondent and the petitioner, that the service certificate was issued to the petitioner only for the purpose of registering in Employment Exchange, as directed by the Government, and that the agreements between the Heads of Departments and the outsourcing agencies were not renewed after 2005.

6. The learned Special Government Pleader appearing for the respondents also submitted that the recruitment is being conducted only by the Medical Recruitment Board and that, at present, there are no vacancies.

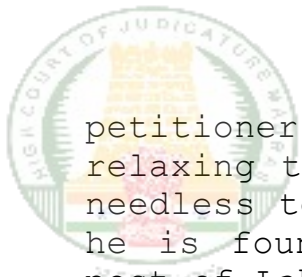
7. In reply, the learned counsel for the petitioner submitted that the case of the petitioner may be considered in the light of both the guidelines and the earlier order of this Court (extracted supra) by giving a go-by to the sponsorship by Employment Exchange and the Relaxation of Rules if need be, with regard to age may also be considered.

8. At this stage, the learned Additional Government Pleader appearing for the respondents also fairly submitted that as per the letter, of the 3rd respondent dated 10.10.2013, the petitioner and other 14 persons like the petitioner would be given preference, for the post of Lab Attendants, as and when vacancy arises in the department, if they found eligible.

9. Per contra, the petitioner produced a copy of the communication dated 18.01.2016, obtained under the Right to Information Act, 2005, wherein, also it has been stated that the respondents are the competent authorities for the purpose of recruiting Drivers, Lab Attendants etc.,

10. In view of the contra submissions made herein above, it is not clear as to who is mainly responsible to recruit the persons like the petitioner. However, this Court do not want to go into this question at present.

11. A perusal of the impugned order of termination would reveal <https://hcs.ecourts.gov.in/hcservice> come in the way of the petitioner in considering his appointment against future vacancies. Therefore, a direction is issued to the respondents to consider the case of the



petitioner for recruitment to the appropriate post on merits by relaxing the age, sponsorship through Employment Exchange. It is needless to state that the petitioner must be given preference, if he is found eligible, he may be given appointment order to the post of Lab Attendant.

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12. With the above observation and direction, this writ petition is disposed of. There is no order as to costs. Consequently, connected M.P. (MD). No. 2 of 2015 is closed.

Sd/

Assistant Registrar (AE)

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Sub Assistant Registrar.

To

- 1 THE PRINCIPAL SECRETARY TO GOVERNMENT
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KANYAKUMARI DISTRICT.

+1CC to M/S.M.Saravanakumar, Advocate, SR.No. 852

W.P (MD) No. 126 of 2015
04.01.2017

vs

AM/EM MPA/SAR-1/19.01.2017/5P/5C