



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.14161 of 2017
and WMP Nos.11073 and 11074 of 2017

T.Raj

... Petitioner

-VS-

1. The State of Tamilnadu
Rep. by its Secretary
Health and Family Welfare Department
Fort St. George, Chennai.
2. The Director of Public Health and Preventive Medicine,
DMS Compound, Teynampet, Chennai.
3. The Deputy Director,
Medical and Rural Health Services and Family Welfare,
Tirunelveli.
4. The Medical Officer,
Government Primary Health Centre,
Ukkirankottai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.333/A2/2012 dated 28.12.2012 and in Moo.Mu.No.41069/Va.Pa/A3/2015 dated 22.06.2017 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all monetary benefits and pay the equal scale of pay to the post of Driver from 18.11.2004 to 28.12.2012 with 18% interest per annum which is the post hold by the petitioner.

For Petitioner : Mr.D.Selvanayagam

For Respondents : Mr.R.Karthikeyan
Addl. Government Pleader

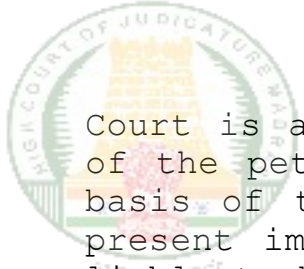
**ORDER**

By consent of both sides, the writ petition itself is taken up for final disposal at the time of admission itself.

2. The petitioner has come to this Court questioning the correctness of the impugned order, dated 22.06.2017, in and by which, the request of the petitioner for his regular appointment has been turned down.

3. The learned counsel for the petitioner would submit that the first respondent being permitted health authorities to make appointment to look after the hospital service through outsourcing recruited employees, one Siva Industrial Security Agency (Gujarat) Private Limited was selected as a Contractor to supply hospital workers to the Tamil Nadu Government Hospitals. Thereupon, an agreement was also entered into between the Contractor and the 2nd respondent. In the said agreement, the 2nd respondent imposed several conditions that the persons to be supplied by the Contractor must have the educational, technical and other qualifications, experience and possession of valid driving license etc. On this basis, the Contractor called for the eligible candidates for appointment to the post of Drivers. The petitioner was also one among the candidates, through outsourcing process, considering his eligibility to the post of Driver, he was appointed as a Driver, on outsourcing mode, from 18.11.2004 in the 4th respondent office in the Government Primary Health Centre, Ukkirankottai. The petitioner was also working from 18.11.2004 to 28.12.2012 with a consolidated pay of Rs.3,500/-. Since the said post was a sanctioned post, it is pleaded that the petitioner was permitted to continue his duty, even after the period of contract is over. But the 4th respondent, by order dated 28.12.2012, relieved the petitioner from service by passing a termination order.

5. The petitioner was unable to challenge the termination order immediately. Subsequently, he came to understand that in a writ petition filed by his co-employees, an order has been passed in W.P.No.7497/2007 on 11.11.2009. Since the similarly placed persons, like that of the petitioner, approached this Court and this Court also passed an order to consider their cases, even though their names were not sponsored to the Employment Exchange. The petitioner also filed a writ petition before this Court in W.P.No.5508/2015 with a prayer for issuance of a writ of mandamus to direct the respondents to consider the name of the petitioner to appoint him for the post of Driver on regular basis in the respondent Department. This Court, by order dated 15.04.2015 passed an order holding that it is open to the petitioner to make necessary application to the respondents and in case, the respondent authorities find that the decision rendered by this



Court is applicable to the petitioner, they will decide the case of the petitioner on merits and in accordance with law. On the basis of the order, without considering the said direction, the present impugned order has been passed. Therefore, the same is liable to be set aside, it is contended.

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6. The learned counsel for the petitioner would hence submit that when the Apex Court in recent judgment reported in **2016(4) LLJ 513 (SC)** in **State of Punjab and others v. Jagjit Singh and others** held that all the employees, whether temporary or regular employees holding substantive post or employees appointed on contract basis are found discharging similar nature of work, they are entitled to draw wages at the minimum of pay scale at the lowest grade, in the regular pay scale, which are extended to the regular employees holding the same post. Therefore, when the Apex Court has held that the nature of duty is discharged either by the regular employees or temporary employees or employees appointed on outsourcing mode, they should be treated alike. In the present case also, when the petitioner was appointed as Driver through outsourcing in the office of the 4th respondent, from 18.11.2004 and allowed to continue in service still 28.02.2012, they cannot discriminate the petitioner and he further stated that similarly placed employees, who were also employed as Drivers through outsourcing on his non employment was reinstated on the basis of the order passed by this Court, the respondents herein cannot take a different stand.

7. But this Court hardly finds any merit for the following reasons:-

First of all, when the petitioner has admitted that his employment was made on contract basis as Driver on 18.11.2004 in the office of the 4th respondent, while he was working on 28.12.2012, with consolidated pay of Rs.3,500/- he was relieved from service by an order dated 28.12.2012 by the 4th respondent.

(ii) Secondly, it is in admission that the said order till date has not been questioned ;

(iii). Thirdly, he should be considered on par with other employees in the light of the ratio laid down by the Apex Court in the case of State of Punjab, cited supra, is wholly far from acceptance.

8. The principle of equal pay for equal work should be followed among similarly placed employees, whether they are temporary employees, regular employees, employees appointed or discharge the same nature of duties on contract basis or outsourcing. But in the present case, the petitioner was relieved from service with effect from 28.12.2012. Therefore, the petitioner cannot, as a matter of right, question the said order for his reinstatement, more particularly, when he has not questioned the relieving order dated 28.12.2012.



9. For these reasons, the writ petition fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary
Health and Family Welfare Department
Fort St. George, Chennai.
2. The Director of Public Health and Preventive Medicine,
DMS Compound, Teynampet, Chennai.
3. The Deputy Director,
Medical and Rural Health Services and Family Welfare,
Tirunelveli.
4. The Medical Officer,
Government Primary Health Centre,
Ukkirankottai.

+1 cc to MR.D.Selvanayagam , Advocate in SR.No. 69058

RR

AE/SV MMS/SAR3/11.09.2017/4P/6C

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