

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.6101 of 2014 and  
M.P.No.1 of 2014

- 1.K.Kamaraj
- 2.P.Thinakaran
- 3.A.Munusamy
- 4.R.Samayamuthu
- 5.M.Kalanjiam
- 6.P.Chellathurai
- 7.K.Chellasamy
- 8.K.Ramu
- 9.P.Panchavarnam
- 10.R.Periyaswamy

... Petitioners

Vs

- 1.Government of Tamil Nadu,  
Rep by its Secretary,  
Health and Family Welfare (AB1) Department,  
Fort St.George,  
Chennai 600 009.
- 2.The Director of Public Health and  
Preventive Medicine,  
Teynampet, Chennai 600 006.
- 3.The Deputy Director of Health Services,  
Ramanathapuram,  
Ramanathapuram District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records which culminated in issuing the order in G.O. (D).No.675, Health and Family Welfare (AB1) Department dated 27.06.2013 on the file of the first respondent and the consequential proceedings of the third respondent in R.No.4318/A3/2011 dated 03.09.2013, quash the same in so far as it denies the monetary benefits to the petitioners with retrospective effect and consequently direct the respondents to pay the monetary benefits arising out of the regularization of the service of the petitioners with effect from the year 1995

within a time to be stipulated by this Court.

For Petitioners : Mr.N.Balamuralikrishnan for  
Mr.V.Rajinikanth  
For Respondents : Mr.J.Pothiraj,  
Special Government Pleader

O R D E R

Heard Mr.N.Balamuralikrishnan, learned counsel for the petitioners and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

2. The petitioners have approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the entire records which culminated in issuing the order in G.O. (D).No.675, Health and Family Welfare (AB1) Department dated 27.06.2013 on the file of the first respondent and the consequential proceedings of the third respondent in R.No.4318/A3/2011 dated 03.09.2013, quash the same in so far as it denies the monetary benefits to the petitioners with retrospective effect and consequently direct the respondents to pay the monetary benefits arising out of the regularization of the service of the petitioners with effect from the year 1995 within a time to be stipulated by this Court."

3. The case of the petitioners is as follows:-

These petitioners have been engaged as Mazdoor on daily wage basis for a number of years and ultimately, their services came to be regularised by proceedings of the third respondent dated 03.09.2013. While they have been working in various Primary Health Centres from 1986 onwards, they were not given the benefit of regularisation from that date. It is a case of the petitioners that their services came to be terminated in 1995. Thereafter, they came to be re-appointed.

4. According to the petitioners, similarly placed persons who were working as Mazdoor, got their services regularised and regularisation was given with effect from 1995, i.e., from the date of re-appointment. However, the said benefit which is contemplated in G.O.Ms.No.257, Health and Family Welfare Department, dated 02.08.2004, has not been extended to these petitioners.

5. According to the petitioners, the third respondent had submitted a proposal for regularisation of these petitioners as

well, even as early as on 24.03.1997 to the first and second respondents. Since no order was forthcoming, the petitioners were constrained to approach this Court in W.P.No.5342 of 2006, seeking a direction to the first respondent to consider and pass appropriate orders on the basis of the proposal submitted by the third respondent dated 24.03.1997. This Court by order dated 13.03.2007, disposed of the writ petition by directing the respondents to consider the claim of the petitioners for regularisation of service taking into account their length of service in accordance with the relevant provision.

6. Ultimately, by G.O (D) No.675, Health and Family Welfare (AB1) Department, dated 27.06.2013, the service of the petitioners came to be regularised from the date of re-appointment i.e., from 1995. Thereafter, a consequential order was issued on 03.09.2013, by giving effect to the Government Order. While granting regularisation, the monetary benefits were restricted from the date of issue of Government Order i.e., from 27.06.2013 and not from the effective date of regularisation in 1995. In the said circumstances, the petitioners are once again before this Court, challenging the restriction of monetary benefits from the date of issue of Government Order and with the consequential direction to the respondents to pay monetary benefits from the year 1995.

7. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

8. The learned Special Government Pleader appearing for the respondents would submit that since the order of regularisation was issued only in 2013, these petitioners were not entitled to actual monetary benefits from the date of their initial appointment in 1995. The claim of monetary benefits from the year 1995, cannot be sustained both in law and on facts, since the Government took a conscience decision not to grant such benefit to these petitioners from the date of initial appointment and restricted monetary benefits from the date of issue of the Government Order.

9. At this, learned counsel for the petitioners would submit that he would not press for any arrears of pay from the date of initial appointment. He would further press for notional fixation of pay from the date of initial appointment i.e., from 1995 and the petitioners' pay has to be calculated on such notional basis and the monetary benefits would be paid from the date of issue of Government Order dated 27.06.2013.

10. The learned Special Government Pleader appearing for the respondents though objected to this, this Court is of the

considered view that since the concern of the Government is only regarding the financial implications in such arrears to be given to several petitioners and that concern now stands removed by the submissions made on behalf of the petitioners that they were giving up the claim for arrears of pay.

11. In the said circumstances, this Court is of the considered view that once the Government has confirmed the benefit of regularisation from the date of appointment in 1995, such benefit of regularisation has to be extended for all purposes, of course of the inclusion of actual monetary benefits, if not atleast notional benefits. The petitioners who stood regularised from 1995, were entitled to have pay their notionally fixed from the date they were regularised with arrears of differential pay as admissible, atleast from the date of issue of Government Order dated 27.06.2013. In fact, even otherwise, the Government Order has stipulated that on the basis of regularisation, the employees were entitled to monetary benefits with effect from the date of issue of Government Order. Such being the case, this Court does not see any justification for the respondents to deny the consequential benefits of regularisation with retrospective effect, ofcourse with the exclusion of actual monetary benefits, retrospectively.

12. For the above said reasons, this Court has no hesitation in allowing the writ petition. The impugned order in R.No.4318/A3/2011 dated 03.09.2013, is hereby set aside insofar as it fixes the pay of the petitioners only from the date of issue of the Government Order dated 27.06.2013. Consequently, there shall be a direction to the respondents to notionally fix the pay of the petitioner on being regularised with effect from the date when they were initially appointed from the year 1995. The respondents are also directed to calculate the differential pay and allowance on such basis and pay the petitioners the arrears from the date of issue of Government Order in G.O. (D). No.675, Health and Family Welfare (AB1) Department dated 27.06.2013. The consequential direction passed by this Court shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,  
Government of Tamil Nadu,  
Health and Family Welfare (AB1) Department,  
Fort St.George,  
Chennai 600 009.

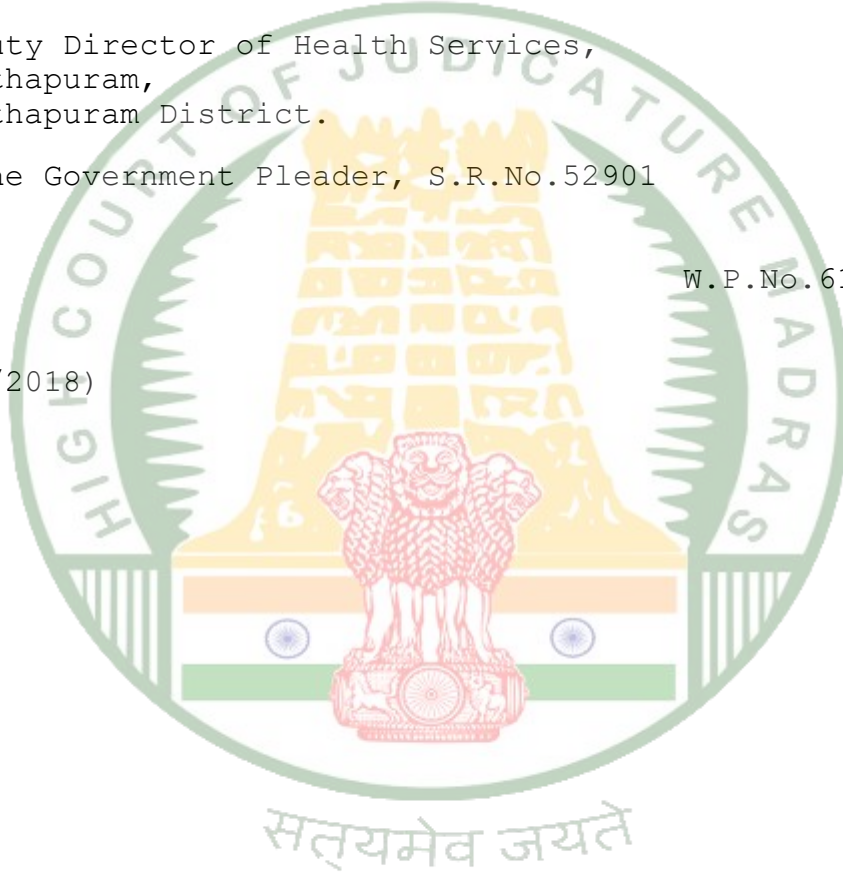
2.The Director of Public Health and  
Preventive Medicine,  
Teynampet, Chennai 600 006.

3.The Deputy Director of Health Services,  
Ramanathapuram,  
Ramanathapuram District.

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+1cc to the Government Pleader, S.R.No.52901

W.P.No.6101 of 2014

GSP(18/09/2018)



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