

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.9.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.2152 of 2018
and
C.M.P.No.16649 of 2018

C.Durairaj

Appellant/Petitioner

Vs

- 1 The State of Tamil Nadu
Rep. by its Secretary to Government
Health and Family Welfare Department
Fort St. George Chennai 600 009
- 2 The Director
Indian Medicine & Homeopathy Department
Chennai 600 106
- 3 The District Sidda Medical Officer
O/o.Sidda Medical office
Government Sidda Hospital Erode
- 4 The Government Primary Health
Elumathur Modakurichi Taluk
Erode District
- 5 M.Yuvaraj
- 6 R.Kokila
- 7 P.Sivakumar
- 8 P.Sangeetha
- 9 R.Muthusamy
- 10 B.Baby
- 11 Thirumathi Maragatham
- 12 P.Balaganesh
- 13 K.Muhamathu Malik

Respondents/Respondent

Prayer: Writ Appeal filed filed under Clause 15 of the Letters
Patent against the order dated 20.6.2018 passed in W.P.No.29310
of 2017 on the file of this court.

W.P.No.29310 of 2017:

To issue a Writ in nature of Certiorarified Mandamus after calling for the records of the 3rd respondent pertaining to his proceedings in R.No.340/E/ 2017 and Na.Ka. No.66/Ni/ 2018 and quash the orders dated 10.11.2017 and 3.1.2018 respectively and consequently direct the respondents to consider the name of the petitioner on priority for appointment to the post of Hospital Worker on regular basis and pass such other order or direction as this Hon'ble Court may think deem fit and necessary under the circumstances of this case and thus render justice.

For appellant : Mr.A.Vinothraj
For RR1 to 4 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, who takes notice on behalf of respondents 1 to 4.

2. The writ appeal has been filed by the unsuccessful writ petitioner, seeking a relief of regularization, on the strength that he was engaged on daily wages, as Multipurpose Worker, Ayurveda Section, Iruvathu Primary Health Centre, under NRHM Scheme and he had been serving in the said capacity from the year 2011. The representation made by the appellant/writ petitioner appears to have been rejected on the ground that he had crossed the age limit.

3. It is the stand of the learned Special Government Pleader appearing on behalf of the official respondents that the appellant/writ petitioner was appointed only on daily wage basis and therefore, he is not entitled to claim regularization.

4. By relying on various decisions of the Apex Court on the issue, the learned Single Judge dismissed the writ petition, by holding that the claim of regularization cannot be entertained as it would be in violation of the Constitutional Scheme.

5. Now, it is the stand of the appellant/writ petitioner that though he was engaged as daily wage employee at the inception, subsequently, he was engaged for all the six days in a week and his salary was paid only on monthly basis and therefore, he is entitled to claim regularization/appointment to

the post of Multipurpose Worker.

6. Having perused the materials available on record, we find that page 6 of the typed set of papers viz., appointment order issued to the appellant/writ petitioner, depicts the nature of appointment. It shows that he was temporarily appointed on a daily wages of Rs.300/- per day and in a week, he would be provided work only for three days and no leave would be sanctioned to him and he would be paid only for the days he worked. May be, in the course of time, depending upon the exigencies or any policy decisions, while filling up the vacancies that arose then and there, permanent absorption or regularisation could have been implemented. But, the appellant/writ petitioner, as observed by the learned Single Judge, engaged not on any regular basis, cannot claim, as a matter of right, any absorption or appointment on the strength that he had been engaged continuously.

7. At this juncture, the learned counsel appearing for the appellant/writ petitioner relied upon the judgment of a Division Bench of this court in W.A.No.736 of 2013 dated 19.3.2018 to contend that there was a direction issued by a Division Bench of this court to regularize the service of the appellant therein.

8. What is being noted in the said judgment is that there is a Government Order in G.O.(Ms) No.325 Health and Family Welfare (F2) Department dated 20.11.2012 issued making it clear that the services of persons who had worked as Multipurpose Hospital Worker for five years on contract basis would be regularised. It appears that in the said scheme, there is a policy decision taken to regularise the services of the employees on completion of five years unlike the case on hand.

9. In the case on hand, it is found that the appellant was not appointed on any regular basis and he was engaged only for three days a week and he was paid only for the days he worked and he was also not sanctioned any leave. The engagement of his services of the appellant herein appears to be for some specific purpose and therefore, the policy decision taken for regularization of service cannot be made applicable to the case on hand.

10. The learned counsel appearing for the appellant sought to contend that in the case on hand, there is a Government Order vide G.O.(D) No.848 Health and Family Welfare (IM2-1) Department dated 20.8.2014 on the issue of regularisation and based on

that, he is entitled to regularisation.

11. However, the learned Special Government Pleader would submit that the appellant is concerned, his services were engaged only on a daily wage basis for three days a week and it cannot come under any such scheme.

12. Be that as it may, we make it clear that the matter could be reconsidered at the level of the authorities concerned and if the employment of the appellant/writ petitioner is on regular basis and is covered under the G.O. cited, his case shall be considered on priority to regularise his service or in the contrary, his case could be considered by giving some weightage while filling up any notified vacancies in future.

The writ appeal is disposed of accordingly, by modifying the order passed by the order passed by the learned Single Judge to the above extent. No costs. The connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ssk.

To:

- 1 The State of Tamil Nadu
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- 4 The Government Primary Health
Elumathur Modakurichi Taluk
Erode District

+1 CC to Mr.A.Vinothraj, Advocate sr 67033.

+1 CC to Govt. Pleader sr 67456

W.A.No.2152 of 2018

SP(03/12/2018)