

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.29702 of 2012 and
M.P.No.1 of 2012

- 1.K.Abraham
- 2.A.Sagayasarlet
- 3.R.Kanagapushpam
- 4.K.Selvi
- 5.Paulinemary
- 6.E.Meenakshi
- 7.A.Mary
- 8.R.Jasinthamary
- 9.Kavithamalar
- 10.P.Selastine Mary
- 11.K.L.Shobakumari
- 12.T.Jayanthi
- 13.S.Ajanthakumari
- 14.G.Vijayasudha
- 15.G.Shylaja
- 16.S.Sheela
- 17.M.J.Gopakumar
- 18.P.Usha
- 19.S.Edwin Jose

.... Petitioners

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 of Medical Education,
Chennai 600 010.
- 3.The Director of Public Health and
Preventive Medicine, Chennai 600 006.
- 4.The Director of Medical and
Rural Health Services,
Chennai 600 006.

5.The Managing Director,
Tamil Nadu Medical Services Corporation,
Chennai 600 006.

6.The Special Commissioner and
Commissioner for Employment and Training,
Guindy, Chennai 600 032.

7.The Dean,
Kanniyakumari Medical College and Hospital,
Asaripallam Kanniyakumari District.

8.The District Employment Officer,
Kanniyakumari District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the action of the 6th respondent in refusing to register the service certificates of the petitioners in employment exchanges for giving preference in appointment as illegal and consequently, to direct the respondent Nos.1 to 7 to call for qualified persons from open market by making adequate advertisement so as to enable the petitioners to apply for the concerned posts of Lab attenders, Hospital Workers and Lab Technicians etc as the case may be in addition to requisitioning of the names from employment exchange and to consider the case of all the candidates who have applied in accordance with law and consequently, absorb the petitioners as Lab attenders, Hospital Workers and Lab Technicians etc. as the case may be, by giving preference to the petitioners.

For Petitioners : Mr.S.Selvathirumurugan

For Respondents : Mr.C.Munusamy,
Spl. Govt. Pleader for RR1 to 4
and R8

: No appearance for RR5 to 7

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O R D E R

Heard Mr.S.Selvathirumurugan, learned counsel for the petitioners and Mr.C.Munusamy, learned Special Government Pleader appearing for the respondent Nos.1 to 4 and 8.

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

"To issue a Writ of Declaration, declaring that the action of the 6th respondent in refusing to register the service certificates of the petitioners in employment exchanges for giving preference in appointment as illegal and consequently, to direct the respondent Nos.1 to 7 to call for qualified persons from open market by making adequate advertisement so as to enable the petitioners to apply for the concerned posts of Lab attenders, Hospital Workers and Lab Technicians etc. as the case may be in addition to requisitioning of the names from employment exchange and to consider the case of all the candidates who have applied in accordance with law and consequently, absorb the petitioners as Lab attenders, Hospital Workers and Lab Technicians etc. as the case may be, by giving preference to the petitioners."

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

These petitioners were working in various positions like Lab Attenders, Lab Technicians etc., in the seventh respondent Hospital. They were employed earlier by the Hospital for a short duration during 2005-06 on outsource basis. The service particulars were also given in the counter affidavit filed on behalf of the respondents in paragraph No.3. It appears that the claim of the petitioners is that the number of similarly placed employees who were working in such Hospital, had approached this Court time and again to seek direction to give them preference in case their employment is required by the Hospital run by Government.

4. In the earlier time, a batch of writ petitions in W.P.Nos.25092 to 25099 of 2008, was filed and the learned Judge of this Court rendered a decision on 20.10.2008, in the case of V.Parameswaran Vs. The State of Tamil Nadu and others. A direction was issued to the respondents as under in paragraph No.7, which is extracted below:-

"7. In view of the stand of the Government that the petitioners will be given preference in the regular selection, 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 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, further sponsorship through employment exchange is not required to be made in so far as the petitioners are concerned. No costs."

5. Following the said order, another learned Judge of this Court in a batch of writ petitions in W.P.Nos.28761 of 2008 etc., in the case of P.Sithan and others Vs. The State of Tamil Nadu and others, passed a similar direction vide order dated 04.12.2008, incorporating the same direction as extracted above in paragraph No.4, is extracted hereunder:-

"4. 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 to be made in so far as the petitioners are concerned.

Writ Petitions are disposed of on the above terms."

6. Yet another learned Judge of this Court in a batch of writ petitions in W.P.Nos.30105 to 30111 of 2008 etc., in the case of R.Parimala Vs. The State of Tamil Nadu and others, incorporated the same direction as extracted above, in his order dated 23.10.2009, which is extracted below:-

"3.....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 paragraph No.4 of the order, this Court observed as follows:-

"4. 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 to be made in so far as the petitioners are concerned.

Writ Petitions are disposed of on the above terms."

4. 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."

7. The learned counsel for the petitioners would submit that though larger relief has been prayed in this writ petition, he would be satisfied, if similar direction may be issued, since the similarly placed persons who are working in other hospitals run by the Government, obtained direction to give them preference in appointments.

8. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and made his submissions and a detailed counter affidavit has been filed.

9. Since the Court has taken a particular view in giving the above referred directions in respect of the similarly placed employees of the Hospital, this Court does not think that the learned Special Government Pleader appearing for the respondents have any valid objection to give such direction.

10. In view of the above, this Court gives the following direction as given in other cases,

"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 to be made in so far as the petitioners are concerned."

11. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai 600 009.
- 2.The Director of Medical Education,
Chennai 600 010.
- 3.The Director of Public Health and
Preventive Medicine,
Chennai 600 006.
- 4.The Director of Medical and
Rural Health Services,
Chennai 600 006.
- 5.The Managing Director,
Tamil Nadu Medical Services Corporation,
Chennai 600 006.
- 6.The Special Commissioner and
Commissioner for Employment and Training,
Guindy, Chennai 600 032.
- 7.The Dean,
Kanniyakumari Medical College and Hospital,
Asaripallam Kanniyakumari District.
- 8.The District Employment Officer,
Kanniyakumari District.

+1cc to Mr.S.Selvathirumurugan, Advocate SR.No.52155

+1cc to Government Pleader SR.No.53255

GMV (12/09/2018)

W.P.No.29702 of 2012