

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.17290, 17291 & 17292 of 2017
and
W.M.P.Nos.18790, 18791 & 18792 of 2017

T.Devi ... Petitioner in
W.P.No.17290 of 2017

P.Esther ... Petitioner in
W.P.No.17291 of 2017

S.Palanisamy ... Petitioner in
W.P.No.17292 of 2017

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 Public Health and
Preventive Medicine,
DMS Campus , Teynampet,
Chennai - 600 006.
- 3.The Director of Medical and
Rural Health Services,
DMS Campus, Teynampet,
Chennai - 600 006.
- 4.Voluntary Health Services Leprosy Project
Rep. by its Director,
Sakthi Nagar (Appakudal),
Erode District - 638 315.
- 5.Medical and Rural Health Services
Department (Leprosy),
Rep. by its Additional Director,
DMS Campus, Teynampet,
Chennai - 600 006.

... Respondents
in all W.Ps.

Prayer in W.P.No.17290 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to order made in O.Mu.No.5772/Leprosy/2016 dated 18.03.2016 by 5th respondent consequent to the order dated 01.10.2004 passed by the 4th respondent and quash the same and consequently direct the 1st respondent to absorb the petitioner by providing suitable job in terms of G.O.(Ms) No.268 Health and Family Welfare (L1) Department dated 20.09.2010 and G.O.(Ms) No.83 dated 22.03.2017 Health and Family Welfare (L1) Department passed by the 1st respondent.

Prayer in W.P.No.17291 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to order dated 01.10.1999 passed by the 4th respondent and quash the same and consequently direct the 1st respondent to absorb the petitioner by providing suitable job in terms of G.O.(Ms) No.268 Health and Family Welfare (N1) Department dated 20.09.2010 and G.O.(Ms) No.83 dated 22.03.2017 Health and Family Welfare (L1) Department passed by the 1st respondent.

Prayer in W.P.No.17292 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to order dated 31.07.2004 passed by the 4th respondent and quash the same and consequently direct the 1st respondent to absorb the petitioner by providing suitable job in terms of G.O.(Ms) No.268 Health and Family Welfare (N1) Department dated 20.09.2010 and G.O.(Ms) No.83 dated 22.03.2017 Health and Family Welfare (L1) Department passed by the 1st respondent.

For Petitioners : Mr.G.Ethirajulu
in all W.Ps.

For Respondents : Mr.D.Suriyanarayanan,
Additional Government Pleader
for RR 1 to 5
in all W.Ps.

COMMON ORDER

These writ petitioners are aggrieved against the order of the 5th respondent in rejecting their request to absorb in the Government service. The petitioner in W.P.No.17290 of 2017 was appointed as Dresser (Basic Servant) in Voluntary Health Services Leprosy Project Hospital, Erode District on 30.09.1995. The petitioner in W.P.No.17291 of 2017 was appointed as Auxiliary Nurse and Midwife in VHS Leprosy Project Hospital,

Erode District on 09.02.1995. The petitioner in W.P.No.17292 of 2017 was appointed as Office boy in VHS Leprosy Project Hospital, Erode District on 03.05.1991.

2. These voluntary organizations come under the control of the Director of Public Health and Preventive Medicine, Chennai and they are permitted to employ and appoint persons to various categories. After eradication of the leprosy, services of these petitioners were terminated as per G.O.Ms.No.320, dated 27.06.1997 on 01.10.2004. However, based on the subsequent Government Orders passed in G.O.Ms.No.268 dated 20.09.2010 and G.O.Ms.No.83 dated 06.04.2017 and G.O.Ms.No.292 dated 22.08.2017 and G.O.Ms.No.448 dated 02.12.2017, all from the Health and Family Welfare Department of the Government of Tamil Nadu, these petitioners seek for absorption in the Government posts, which has been rejected by the impugned communication.

3.The learned counsel for the petitioner submitted that under similar circumstances in respect of similarly situated persons, this Court, by an order dated 22.09.2015, made in W.P.No.21824 of 2013 directed the Government of Tamil Nadu to consider the claim of the petitioner therein afresh, in the light of the findings/observations made in the said order, also by taking note of the Government Orders made in G.O.Ms.No.268 of Health and Family Welfare Department dated 20.09.2010 and other Government Orders referred to in Paragraph No.4 of the counter affidavit therein. The relevant paragraph Nos.9 to 14 of the said order dated 22.09.2015 reads as follows:

"9.The first respondent in paragraph 4 of the counter affidavit has fairly admitted that the employees of some of the leprosy voluntary organizations were absorbed into Government service vide G.O.Ms.No.1310, Health Department dated 28.05.1962, G.O.Ms.No.1210, Health and Family Welfare Department dated 26.08.1975, GO.Ms.No.436, Health and Family Welfare Department dated 06.03.1986 and G.O.Ms.No.185, Health Indian Medicine and Homeopathy and Family Welfare Department dated 03.02.1990 respectively. It is not in serious dispute that some 51 members of the petitioner association were also absorbed into Government service in terms of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 passed by the first respondent.

10.It is useful to refer to the judgment of the Hon'ble Supreme Court reported in

(2014) 7 Supreme Court Cases 190 (Hari Nanadan Prasad and another versus Employer I/R to Management of Food Corporation of India and another) where the Hon'ble Supreme Court has taken into consideration the very many decisions including the constitutional bench judgment reported in (2006) 4 SSC 1 (State of Karnataka Vs. Umadevi (3)) and it is relevant to extract paragraph No.39, which read as follows:

"39.....

.....
However, whenever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/ Labour Court are on a par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

[Emphasis Supplied]

11.The petitioner association in response to the counter affidavit filed by the first respondent has filed rejoinder along with the list of employees to be absorbed in Government service, wherein, 69 persons belonging to the petitioner association are alive and their claim may be positively considered.

12.This Court in the light of the facts and circumstances and on careful consideration and appreciation of the materials placed before it is of the considered view that services of some of the members of the petitioner association have been absorbed into Government service in terms of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 and by applying the ratio laid down

in (2014) 7 Supreme Court Cases 190 (Hari Nandan Prasad and another versus Employer I/R to Management of Food Corporation of India and another), the claim of the remaining 69 persons who are members of the petitioner association have to be considered for absorption into Government service, subject to their eligibility criteria prescribed in G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 passed by the first respondent.

13.The reasons assigned in the impugned order are per se unsustainable and therefore it is remanded for fresh consideration/adjudication in the light of the findings/observations made in this order.

14.In the result, the writ petition is partly allowed and the impugned letter dated 29.07.2013 is set aside and the matter is once again remanded to the first respondent, who shall take into consideration the four Government Orders referred to in Paragraph 4 of the counter affidavit as well as G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 and also the findings/ observations made in this order. The first respondent shall also afford opportunity of person hearing to the Secretary of petitioner association namely, Mr.T.K.Murugesan and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs."

6.Perusal of the impugned order would show that the claim of the petitioners was rejected without there being any consideration to the above Government Orders passed in respect of similarly situated persons. On the other hand, the impugned order appears to be a non-speaking order without application of mind to the facts and circumstances as well as the Government Orders passed as stated supra. Therefore, these Writ Petitions are allowed and the impugned orders are set aside, by remitting the matter back to the first respondent for considering the claim of the petitioners in the light of the G.O.Ms.No.268 of Health and Family Welfare Department dated 20.09.2010 and other

Government Orders referred to supra, after verification of the records. The whole exercise shall be done by the first respondent within the period of twelve weeks from the date of receipt of a copy of this order. The petitioners are permitted to give one more representation to the Government/first respondent along with a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gsi/vsi
To

- 1.The Secretary to Government,
Health and Family Welfare Department,
Fort St., George,
Chennai - 600 009.
- 2.The Director of Public Health and Preventive Medicine,
DMS Campus, Teynampet, Chennai - 600 006.
- 3.The Director of Medical and Rural Health Services,
DMS Campus, Teynampet, Chennai - 600 006.
- 4.The Director,
Voluntary Health Services Leprosy Project,
Sakthi Nagar (Appakudal),
Erode District - 638 315.
- 5.The Additional Director,
Medical and Rural Health Services Department (Leprosy),
DMS Campus, Teynampet,
Chennai - 600 006.

+3cc to Mr.G.Ethirajulu, Advocate Sr.83967

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srg 10/12/2018