



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.03.2018
CORAM
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

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W.P.(MD) Nos.24975 & 24976 of 2016,
882 to 887, 6077 to 6081 of 2017
and

W.M.P(MD)Nos.18066 & 18067 of 2016, 4787 to 4791,
734 to 739 and 17665 to 17668 of 2017

The Tirunelveli Medical College,
Tirunelveli,
rep. by its Dean ... Petitioner in
W.P.(MD) Nos.24975 & 24976 of 2016

The Joint Director,
Rural Development and Family Welfare,
Tirunelveli at Tenkasi,
Tirunelveli District. ... Petitioner in
W.P.(MD) Nos.882 to 887 of 2017

The Deputy Director,
Health Services,
Tirunelveli. ... Petitioner in
W.P.(MD) Nos.6077 to 6081 of 2017
Vs.

The Presiding Officer,
Labour Court,
Tirunelveli. ... 1st Respondent in
W.P.(MD) Nos.24975 & 24976 of 2016 and
W.P.(MD) Nos.882 to 887 of 2017 &
R2 in W.P.(MD) Nos.6077 to 6081 of 2017

P.Mariselvam	... 2 nd Respondent in WP(MD)24975 of 2016
P.K.Janarthanan	... 2 nd Respondent in WP(MD)24976 of 2016
M.Subbaiah	... 2 nd Respondent in WP(MD)882 of 2017
K.Selvakumar	... 2 nd Respondent in WP(MD)883 of 2017
A.Gopimuthukrishnan	... 2 nd Respondent in WP(MD)884 of 2017
C.Somu	... 2 nd Respondent in WP(MD)885 of 2017
S.Shanmugam	... 2 nd Respondent in WP(MD)886 of 2017
S.Sekar	... 2 nd Respondent in WP(MD)887 of 2017
P.Petchiappan	... 1 st Respondent in WP(MD)No.6077 of 2017
G.Kannan	... 1 st Respondent in WP(MD)No.6078 of 2017
A.Sivanupandian	... 1 st Respondent in WP(MD)No.6079 of 2017
S.Sudalaiyandi	... 1 st Respondent in WP(MD)No.6080 of 2017
S.Selvakumar	... 1 st Respondent in WP(MD)No.6081 of 2017



PRAYER: Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned award dated

i) 11.04.2016 passed by the first respondent in I.D.No.63 of 2015 (Prayer in W.P.(MD) No.24975 of 2016)

ii) 11.04.2016 passed by the first respondent in I.D.No.66 of 2015 (Prayer in W.P.(MD) No.24976 of 2016)

iii) 11.04.2016(received on 14.07.2016) passed by the first respondent in I.D.No.60 of 2015(Prayer in W.P.(MD) No.882 of 2017)

iv) 11.04.2016(received on 14.07.2016) passed by the first respondent in I.D.No.68 of 2015 (Prayer in W.P.(MD)No.883 of 2017)

v) 11.04.2016(received on 14.07.2016) passed by the first respondent in I.D.No.59 of 2015 (Prayer in W.P.(MD)No.884 of 2017)

vi) 05.10.2016(received on 28.11.2016) passed by the first respondent in I.D.No.27 of 2016 (Prayer in W.P.(MD)No.885 of 2017)

vii) 11.04.2016(received on 14.07.2016) passed by the first respondent in I.D.No.58 of 2015 (Prayer in W.P.(MD)No.886 of 2017)

viii)05.10.2016(received on 28.11.2016) passed by the first respondent in I.D.No.26 of 2016 (Prayer in W.P.(MD)No.887 of 2017)

ix) 11.04.2016 Made in I.D.No.61 of 2015 on the file of the Principal Labour Court, Tirunelveli passed by the second respondent herein (Prayer in W.P.(MD) No.6077 of 2017)

x) 11.04.2016 Made in I.D.No.62 of 2015 on the file of the Principal Labour Court, Tirunelveli passed by the second respondent herein (Prayer in W.P.(MD) No.6078 of 2017)

xi) 11.04.2016 Made in I.D.No.64 of 2015 on the file of the Principal Labour Court, Tirunelveli passed by the second respondent herein (Prayer in W.P.(MD) No.6079 of 2017)

xii)11.04.2016 Made in I.D.No.65 of 2015 on the file of the Principal Labour Court, Tirunelveli passed by the second respondent herein (Prayer in W.P.(MD) No.6080 of 2017)

xiii)11.04.2016 Made in I.D.No.67 of 2015 on the file of the Principal Labour Court, Tirunelveli passed by the second respondent herein (Prayer in W.P.(MD) No.6081 of 2017)



For Petitioner : Mrs.S.Srimathy,
Spl. Govt. Pleader (in all WPs)

For Respondents : No appearance for R2 in

W.P(MD) Nos.24975 & 24976 of 2016

R1 Court(in WP(MD)Nos.24975&24976 of 2016

and WP(MD) Nos.882 to 887 of 2017

R2 Court in WP(MD)Nos.6077 to 6081 of 2017

: Mr.P.Pethu Rajesh
for R2 in WP(MD)No.882 of 2017

: Mr.K.Gokul
for R2 in Wp(MD)No.886,887 and 884 of 2017 &
for R1 in WP(MD)Nos.6077 to 6081 of 2017

: No Appearance
for R2 in WP(MD)Nos.883,885 of 2017

COMMON ORDER

In all these writ petitions, the issue raised is one and the same. In the year 2004, the Director of Public Health and Preventive Medicine entered into an agreement with a private registered society for supplying man power in the category of hospital worker. The private respondents in each of these of writ petitions were recruited by the society and they have been working in the capacity of hospital workers in various primary health centres in Tirunelveli District. The department had to resort to such an outsourcing arrangement since there was a ban on regular recruitment during the relevant period. After the agreement with the said society came to an end, the private respondents herein continued to work. In this regard, the writ petitions were also filed before this Court. This Court by an order dated 17.08.2011, in W.P(MD)No.3742 to 3748 of 2009 and W.P (MD)No.13001 of 2008 relegated the parties to move the Labour Court. Availing the said liberty given by this Court, the present set of I.D came to be filed. The Labour Court, by the impugned award dated 11.04.2016 allowed the I.D filed by the individual hospital workers. They were directed to be reinstated with continuity of service and attendant benefits. It was further



ordered that they should be paid back-wages at the rate of Rs.990 per month. The said awards are under challenge in these writ petitions.

2. Heard the parties and perused the records.

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3. It is not in dispute that the posts to which the private respondents herein claim for appointment, are public posts, such as Driver, Sweeper, Scavenger, Cleaner and Gardener. For all these posts, there are recruitment rules framed under Article 309 of the Constitution of India. They have to be filled up in the manner laid down in the recruitment rules. Communal reservation will have to be followed. The appointees ought to possess the educational and other qualifications laid down in those rules. In these cases, all the private respondents herein were originally appointed by the private society, with which, an agreement was entered into by the Director of Public Health and Preventive Medicine, Chepauk, Chennai in the year 2004. A Full Bench of this Court, in the decision reported in **(2007)5 CTC 369 (R.Radhakrishnan vs. The Deputy Registrar of Co-operative Societies)** held that in such circumstances, the Permanency Act of 1981 or Industrial Dispute Act, 1947 cannot be pressed into service. All that the private respondents herein seek sincerely the relief of regularization. Their contention is that even though they were originally recruited under the aegis of the private body, since they have been serving in a public department for a number of years, they have to be regularized. The Hon'ble Supreme Court of India in the decision reported in **(2017)4 SCC 113 (State of Tamil Nadu Vs. A.Singamuthu)** held that only if the case of the claimant falls within the four corners of the scheme or Government Order, they are entitled to be considered.

4. In the present case, the Labour Court had approached the issue from a wrong perspective. Merely because, the petitioners in the I.D had served for almost seven years and the work is perennial in nature, the relief of reinstatement could not have been granted. The said approach runs clearly counter to the decisions rendered by the Hon'ble Supreme Court in **(2017)4 SCC 113** (cited supra) and Full Bench's decision reported **(2007) 5 CTC 369** (cited supra).

5. Therefore, the awards impugned in the writ petitions are set aside. The writ petitions stand allowed. At this stage, the learned counsel for the employee concerned submitted that the employees are still working as on date. The prayer in the I.D is for reinstatement. There is a reference to termination made in the year 2012. Therefore, this Court is not in a position to accept straightaway the claim made by the learned counsel appearing for the employees. But then if the employees are still working as on date, they need not be ousted from service till the



regular recruitment is conducted. It is made clear that as and when the regular recruitment process takes place, the private respondents herein would also be entitled to be participated in the said selection process. Since they have already been working that too since 2004, the necessary age relaxation would have to be given. The exhibits marked in this proceeding clearly indicates that the Government wanted service certificate to be issued in their favour. Therefore, additional weightage will have to be given to the claims of the private respondents herein.

6. With these observations and directions, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+9cc to Mr.K.Gokul, Advocate Sr.No.56358 to 56363 and
56354 to 56356

+1cc to Spl.Government Pleader Sr.No.56923, 56924, 56918,
56917, 56916, 56915,
56877, 56876, 56865 and 56864

SKN

VB/SKN/RSK/SAR1/07/06/2018/5P/12C

W.P.(MD) Nos.24975 & 24976 of 2016,
882 to 887, 6077 to 6081 of 2017
19.03.2018