



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.306 of 2013

and

M.P.(MD)No.1 of 2013

K.Jothi

... Petitioner

Vs.

1.The State of Tamilnadu,
represented by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.

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

3.The Deputy Director of Health Service,
Collector office complex,
Sivagangai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the third respondent to regularise the petitioner's service with effect from 03.11.2004 with all attendant benefits with continuity of service and all other benefits.

For petitioner : No appearance
For Respondents : Mr. M.Muthu
Additional Government Pleader

O R D E R

None appeared for the writ petitioner. The learned Additional Government Pleader appeared on behalf of the respondent.

2. The relief sought for in this writ petition is for a direction to direct the third respondent to regularise the services of the writ petitioner with effect from 03.11.2004.

3. The writ petitioner was initially appointed as part time Sweeper in Primary Health Centre, Poovanthi village, Sivagangai District. The petitioner was appointed for the monthly honorarium of Rs.999/-. The writ petitioner states that the writ petitioner was appointed by the third respondent vide proceeding dated



08.10.2004 and the initial appointment was in the cadre of Hospital worker on temporary basis. The petitioner was continuing her service continuously without any break in service. The Service Register was also created and therefore the writ petitioner is eligible to be regularised. Further the petitioner states that she was continuously working as contract employee under the third respondent department and therefore she is entitled to be regularised in the permanent post. The benefit of regularisation was given in respect of the similarly placed employees and the petitioner is referring some of his colleagues whose services were regularised.

4. The learned Additional Government Pleader appearing on behalf of the respondent states that the Government has taken a policy decision and outsource the hospital workers employed on contract basis. Accordingly, the services of the writ petitioner was discharged with effect from 15.02.2008 based on the G.O.No.59, Health and Family Welfare (C2) Department, dated 15.02.2008.

5. Even the said position is explained in Para-4 of the counter statement filed by the third respondent which reads as under.

"4.I submit that now the first respondent has issued G.O.(2D)No.56, dated 09.07.2012, wherein it has stated that - "the absorption of outsourced employees on regular basis will run contrary to recruitment rules. The Government have, therefore, decided to instruct all the Head of the Departments under the control of Health and Family Welfare Department to implement the orders issued in G.O.Ms.No.59, Health and Family Welfare (C2) Department, dated 15.02.2008 and to terminate all the outsourced employees and also to fill up the posts now occupied by the outsourced employees through Medical Service Recruitment Board and all paramedical posts are to be filled up in time scale of pay through Employment Exchange by following usual procedure and rule of reservation vide G.O.Ms.No.59, Health and Family Welfare (C2) Department, dated 15.02.2008."

6. This apart, the writ petitioner was initially appointed as contract basis and not appointed in accordance with the recruitment Rules in force. However, the writ petitioner was discharged from service in the year 2008 itself. This being the factum, the benefit of regularisation or permanent absorption cannot be granted now, after a lapse of many years from the date of discharge of the petitioner. This apart, the legal principles has to be followed in this regard are well stated by the Two Judges Bench of the Honourable Supreme Court of India in the case of *Secretary to Government, School Education Department, Chennai .vs. R.Govindaswamy and others* reported in (2014) 4 Supreme Court Cases 769, held that:

<https://hcservices.ecourts.gov.in/hcservices> *1.8. This Court in State of Rajasthan .vs. Daya lal has considered the scope of regularization of irregular or part time appointments in all possible eventualities*



and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of issues involved therein. The same are as under: (SCC P.435, Para 12)

“(i) The High Courts in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme.

7. Accordingly, this writ petition stands dismissed, however no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamilnadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
2. The Director of Public Health and Preventive Medicine,
DMS Compound,
Teynampet,
Chennai-600 006.
3. The Deputy Director of Health Service,
Collector office complex,
Sivagangai.

+1cc to M/S. Special Government Pleader, SR. 49830

W.P. (MD) No.306 of 2013
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