



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**W.P. (MD) No.3832 of 2013****and****M.P. (MD) No. 2 of 2013**

Tamil Nadu Medical Department,
All Workers and Sanitary Workers Association,
represented by the President,
M.Venkatachalam.

... Petitioner

Vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Department of Health and Family Welfare,
Secretariate, Chennai.

2. The Project Director,
Represented by its Health and Family Welfare,
Tamil Nadu Health System Project,
Thenampet,
Chennai-6.

... Respondents

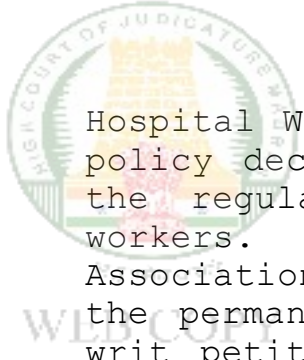
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned order in G.O.Ms.No.325 dated 20.11.2012 on the file of the respondent No.1 and quash the same as illegal.

For petitioner	: Mr.T.Lajapathi Roy
For Respondents	: Mr.R.Sethuraman Special Government Pleader

O R D E R

The Government Order issued in G.O.(Ms)325, Health and Family Welfare (f2) Department, dated 20.11.2012 is under challenge in this writ petition.

2. The writ petitioner is an association namely "Tamil Nadu Medical Department All Workers of Sanitary workers' Association". The grievances of the writ petitioner is that the Government Order affects the permanent employment of the Sanitary Workers and



Hospital Workers in the Medical department. In other words, the policy decision is having certain adverse impacts in respect of the regular appointment of the Sanitary worker and Hospital workers. First of all, the petitioner's association is a Service Association and the members of the petitioner's association are the permanent employees of the Medical department. The present writ petition is filed challenging the policy decision taken by the Government, in respect of the recruitment of Hospital workers. Recruitment and appointment and the procedures for recruitment are the policy decision to be taken by the competent authority of the Government.

3. G.O.(Ms)325, Health and Family Welfare (F2) Department, dated 20.11.2012, states that the Government have taken new initiatives to revamp the functional aspects of the Health and Family welfare Department with a view to improve the Health Services provided by the Government to the people and it was proposed to evolve a new policy for recruitment of Hospital Workers as one among the new initiatives.

4. Further states that the Project Director, Tamil Nadu Health Systems project in his letter read above has sent a proposal for formulation of new policy for recruitment of Hospital Workers/ Sanitary Workers in Government Medical institutions and he has requested the Government to approve the policy. The salient features of the policy formulated, is also enumerated in the G.O. The Government accepting the recommendation, passed the following orders. In Para 4 of the Government Order reads as under:

"4. (i)The existing system of having own staff for the services like cleaning, sanitation, house keeping and security services in hospitals with less than 200 Beds, Primary Health Centres as well as in offices, dispensaries etc. where the beds are not sanctioned be continued.

(ii)The vacant posts of Nursing Assistant Grade II be filled up by giving appropriate training to the Hospital Worker who are to be posted to officiate as Nursing Assistant Grade II by retaining the age of retirement for these persons who are in the Basic Service as 60 years.

(iii)The vacant posts of Sanitary Worker/ Hospital Worker be filled up by creating a unified category in the Government Hospitals, District Headquarters Hospitals, major Taluk Hospitals with less than 200 beds, Primary Health Centres, offices, dispensaries, etc. where beds are not sanctioned through Employment Exchange on consolidated pay on contract basis. This contract appointment shall be made initially for a period of one year which shall be extended every year based on the performance of the

to a total period of 5 years. The contract payment shall be fixed as per District Collector's rate of unskilled worker. This appointment shall be made by the

Deputy Director of Health Services of the Health Unit District/ Joint Director of Health Services of the District / Dean of the Medical College Hospital Concerned.

(iv) The unified category of Hospital Worker, Sanitary Worker and Nursing Assistant Grade-II be named as Multipurpose Hospital Worker. The job description of the post of Multipurpose Hospital Worker is indicated in the Annexure II to this order.

(v) The Services of Sanitary Worker/ Hospital Worker in all Medical College Hospitals, District Headquarters Hospitals, Major Taluk Hospitals, Accreditation Hospitals and other hospitals having more than 200 beds shall be outsourced. The outsourcing of services shall be done for that much of the area of the hospital covered by vacant staff only as and when future vacancy arises due to retirement of the above staff, those areas shall also be covered by outsourcing. No additional staff shall be sanctioned to these hospitals.

(vi) The outsourcing shall be done, subject to being done on a common template (Bid Document/ MoUs) by a single agency and the signing of MoUs and payment is entrusted to the individual hospital authorities.

(vii) The shift/ change in the policy of recruitment shall be implemented for the post of Hospital Worker, Sanitary Worker and Nursing Assistant Grade II in the sanctioned strength comprising the Directorates of Medical and Rural Health Services, Medical Education and Public Health and Preventive Medicine."

5. This apart, the first respondent filed a counter affidavit and it is stated that the merger of three posts as Multi Purpose Hospital Workers is a policy decision of the Government taking into consideration of the practical difficulties in filling up the post of Nursing Assistant, from existing Hospital Workers, since they are reluctant and not interested to take up the post of Nursing Assistant with the fear of losing 2 years of service because, the retirement age of Hospital Workers is 60 years and the retirement age in the post of Nursing Assistant is 58 years which has resulted in the deficiency of services in all hospitals. Further, in the G.O.(Ms)325, Health and Family Welfare (F2) Department dated 20.11.2012, in Paragraph - 4, column (iii) it has been clearly ordered that the vacant post of Sanitary Workers / Hospital workers will be filled up by creating a unified category in Government Hospitals, District Headquarters Hospitals, major Taluk Hospitals with less than 200 beds, Primary Health Centres, offices, dispensaries etc., where beds are not sanctioned, through Employment Exchange, on consolidated pay on contract basis. Hence there is no scope for back door entry through outsourcing as <https://hcrs.mca.gov.in/services> the petitioners and, moreover the candidates are selected through Employment Exchange. The present Government order is no way affecting the permanent staff. Hence the decision



of the Government is a policy decision and the decision was taken for improving the cleanliness and facilities for the poor and needy, who visit various Government institutions.

6. On a perusal of the entire G.O. and the reasoning given by the respondents in this regard, this Court is of an opinion that it is a policy decision taken by the Government for the purpose of improving the medical facilities in various Government institutions and Hospitals. When the existing service conditions to the serving employees are not affected, the writ petitioner cannot have any *locus standi* to move a writ petition, questioning the policy decision. It is made clear that the service conditions of the existing employees are not affected. Thus, the writ petitioner's association cannot question the policy decision taken by the Government for the purpose of improving the medical facilities in the Government hospital. Thus, the relief as such sought for in respect of the Government policy issued in G.O.(Ms) 325, Health and Family Welfare (F2) Department, dated 20.11.2012 cannot be considered. This writ petition is devoid of merits.

7. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Department of Health and Family Welfare,
Secretariate, Chennai.
2. The Project Director,
Represented by its Health and Family Welfare,
Tamil Nadu Health System Project,
Thenampet,
Chennai-6.

+ 1 cc TO Mr.T.Lajapathi Roy , Advocate in SR No. 5008
+ 1 cc TO The Special Government Pleader in SR No. 50231

pnn

AE/SV MMS/SAR2/06.03.2018/4P/5C