

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2019

PRONOUNCED ON : 19/12/2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WRIT PETITION NO.4252 OF 2010

1. T.Ganesan
2. M.Ezhilarasu
3. K.Palani
4. K.Sampath
5. N.Dhanapal
6. K.Rajamanickam
7. A.Shanmugam

... Petitioners

Vs

1. The Secretary to Health Department
Secretariat
Chennai.
2. The Director of Public Health and
Preventive Medicine
Chennai 6.
3. The Deputy Director of Health Services
Vellore.
4. The District Filaria Officer
NFCU Veppamaram Street
Vellapadi
Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records on the file of the third respondent relating to the order passed in R.No.8191/A5/2007 dated 6/8/2009, quash the same and direct the third and fourth respondents to reappoint the petitioners as Mazdoors in Health Department.

For petitioners ... Ms.R.T.Sundari

For respondents ... Ms.K.Bhuvaneswari
Additional Government Pleader

O R D E R

Instant writ petition is to quash the order, dated 6/8/2009, passed in R.No.8191/A5/2007, of the Director of Public Health and Preventive Medicine, Chennai, third respondent, and consequently, direct the Director of Public Health and Preventive Medicine, Chennai and the Deputy Director of Health Services, Vellore, third and fourth respondents, respectively, to reappoint the petitioners, as Mazdoors, in Health Department.

2. Petitioners were appointed as Cholera Masdoor by a selection Committee of Panchayat Union and the Director of Health Department, in 1985, on being sponsored by Employment Exchange. Since the petitioners services were terminated in 1997, they moved the Tamil Nadu Administrative Tribunal, in O.A.No.2074 of 1999, challenging their dismissal from service, stating that they have worked for more than twelve years and that they are entitled, under Section 3 (1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Tribunal, by its order, dated 26/3/1999, directed the District Filaria Officer, Vellore, seventh respondent therein, to consider the representation of the petitioners, for reappointment of the petitioners herein, as per the Rules.

3. In pursuance to the order of the High Court, the District Filaria Officer, NFCU Veppamaram Street, Vellapadi, Vellore District, issued a communication that the petitioner's case for reappointment would be considered, after disposal of certain original applications which had been filed before the Tribunal.

4. By a letter, dated 24/12/2007, Deputy Director Health Services gave a recommendation to the Director of Public Health and Preventive Medicine, to reappoint the petitioners. Since the petitioners were not being reappointed, they filed W.P.No.10766 of 2008, to direct the respondents to appoint the petitioners, as Last Grade Servant (Hospital Worker, Sanitary Worker, Masadoor and Office Assistant in the Health Department) by implementing the order passed in O.A.No.2074 of 1999, dated 26/3/1999, by the Tamil Nadu State Administrative Tribunal, Chennai.

5. Vide, order, dated 30/6/2008, learned Single Judge had disposed of the writ petition, directing the Director of Public Health and Preventive Medicine, Chennai, second respondent to consider the proposal submitted by the Deputy Director of Health Services, third respondent, dated 24/12/2007, and pass appropriate orders, within a period of eight weeks, from the date of the order copy made ready. This Court, however, made it

clear that the Court is not passing any order on merits.

6. Despite the order, dated 30/6/2008, respondents had once again called for a fresh list from the Employment Exchange, which lead to filing of W.P.No.11218 of 2009, praying that appointments were kept in abeyance till the contempt petition is not decided.

7. Respondents filed a reply, dated 6/8/2005 stating that all the appointments should be made only after obtaining a list from the Employment Exchange as per seniority. Respondents relied on G.O.Ms.No.255, Health and Family Welfare (AB1) Department, dated 16/9/2009, to substantiate their contention. In the said G.O., Government has decided to accept the proposal to absorb all the formerly Seasonal Mazdoors, who had completed 280 days, as Mazdoors, for regular appointment. Petitioner has therefore, filed the instant writ petition, praying for the relief as stated supra.

8. The Deputy Director of Health Services, Vellore, third respondent has filed counter affidavit. In the counter respondents, they have stated that this Court had disposed of Contempt Petition No.571 of 2009, accepting the stand that vacancies can be filled up only after the names have been sponsored by the employment exchange.

9. Heard Ms.R.T.Sundari, learned counsel for the petitioners and Ms.K.Bhuvaneswari, learned Additional Government Pleader for the respondents 1 to 4.

10. Petitioners were appointed in the year 1985 and they have been terminated in 1997. However, claim of absorption by temporary employees has been settled by a series of decisions of the Hon'ble Supreme Court.

11. The Hon'ble Supreme Court, in State of Karnataka Vs. Uma Devi {(2006) 4 SCC - 1} has categorically stated as follows:-

"43.Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

12. Perusal of the judgment would show that appointments can be done only in accordance with Recruitment Rules and the

appointments made de hors recruitment rules are not valid in law. In the light of the above factum, the petitioners cannot claim regular appointment as a matter of right. However, the learned counsel for the petitioners has brought attention of this Court to G.O.Ms.No.295, Health and Family Welfare (AB1) Department, dated 16/9/2009, which reads as under:-

"The Government are being consideration accept the proposal of the Director of Public Health and Preventive Medicine above and decided to absorb all the 23 formerly Seasonal Mazdoors as indicated in the annexure to this order and who have filed Oas and got orders from the Tamil Nadu Administrative Tribunal, appointed temporarily for seasonal works in the existing regular vacancies in time scale of pay with effect from the date of issue of order and then to regularise their services and accordingly, pass the following orders:-

(i). Director of Public Health and Preventive Medicine is requested to issue necessary posting orders to the individual absorbing them as Mazdoors in the Public Health Department.

(ii). The persons who have completed 280 days as Mazdoors appointed temporarily for seasonal spray works can be considered for regular appointment. They may be absorbed in the existing as well as in the future vacancies arising in the National Malaria Eradication Programme.

(iii). The seniority lists will be maintained by the Director of Public Health and Preventive Medicine for filling up future vacancies."

13. The said G.O., quoted supra was involved in furtherance of the mandate of the Hon'ble Supreme Court in paragraph 53 in Uma Devi Vs. State of Karnataka {(2006) 4 SCC - 1 whereas it has been observed as under:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in the cases of S.V.Narayannappa, R.N.Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularisation of the services of such employees

may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

14. The Hon'ble Supreme Court has categorically held in the above mentioned judgment that without following the procedure established by law a claim for appointment on a regular basis cannot be made. Even though the petitioners are not entitled to be regularised but in view of paragraph 53 of the judgment, rendered in {(2006) 4 SCC - 1, and in view of G.O., 295, this Court is inclined to dispose of the writ petition, directing the respondents, to consider the case of the petitioners, in the light of paragraph No.53 of Uma Devi Vs. State of Karnataka {(2006) 4 SCC - 1 (quoted supra) and G.O.Ms.No.295, Health and Family Welfare (AB1) Department, dated 16/9/2009 and pass appropriate orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary to Health Department
Secretariat
Chennai.
2. The Director of Public Health and
Preventive Medicine
Chennai 6.
3. The Deputy Director of Health Services
Vellore.
4. The District Filaria Officer
NFCU Veppamaram Street
Vellapadi
Vellore District.

+1cc to the Government Pleader, S.R.No.106226

W.P.No.4252 of 2010

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CS/06/02/2020



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