

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.Nos. 1958 & 1959 of 2018  
&  
C.M.P.Nos.17581 & 17585 of 2018

W.A.No. 1958 of 2018

1.R.Tharabai

2.L.Kusalakumari

3.R.Gandhiammal

4.K.Radha

5.B.Varalakshmi

..... Appellants

-vs-

1.State of Tamil nadu, rep. by its  
Secretary to Government,  
Health & Family Welfare  
Department, Secretariat,  
Chennai - 9.

2.Director of Medical Education,  
Kilpauk, Chennai - 600 010.

3.Dean,  
Government Stanley Hospital,  
Chennai - 600001.

4.A.Ramakrishna

5.M.Sundaravelu

6.K.Chinniah

7.N.Nageswaran

8.M.Kanniappan

9.S.Yuvaraj

..... Respondents

W.A.No. 1959 of 2018

1.R.Tharabai

2.L.Kusalakumari

3.R.Gandhiammal

4.K.Radha

5.B.Varalakshmi

..... Appellants

-vs-

1.State of Tamil nadu, rep. by its  
Secretary to Government,  
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4.A.Ramakrishna

5.M.Sundaravelu

6.M.Kanniappan

7.S.Yuvaraj

..... Respondents

Write Appeal W.A.No.1958 of 2018 filed under Clause 15 of Letter Patent against the order in W.P.No.17309 of 2012 dated 20.04.2017 on the file of the High Court of Judicature at Madras.

WP.No.17309/2012 : Writ Petition filed under Article 226 of the Constitution of India praying for issue a Writ of

Certiorarified Mandamus calling for the records pertaining to the order passed by the 1<sup>st</sup> Respondent in G.O.Ms.No.9 Health & Family Welfare Department, dated 5.1.2007, in so far as it gives effect from the dated of issue of the order is concerned, and the Government Letter No.2630/F-2/2011-6, Health & Family Welfare Department, dated:02.01.2012 and the consequential order passed by the 3<sup>rd</sup> respondent in his Proceedings Pa.Mu.No.2685/N1.2/2/2009, dated:07.02.2012 and QUASH the same, and direct the Respondents to regularize the services of the petitioners retrospectively on completion of 10 years of service as per the orders passed by the Government and confer all the consequential benefits to the petitioners.

Write Appeal W.A.No.1959 of 2018 filed under Clause 15 of Letter Patent against the order in Review Application No.126 of 2017 in W.P.No.17309 of 2012 dated 23.08.2017 on the file of the High Court of Judicature at Madras.

Rev.Application No.126/2017 : Review Application filed under order 47 Rule 1 read with section 114 CPC against the order of this Court dated 20/04/2017 made in WP.No.17309/2012 insofar as it denies the regularisation from the date of completion of ten years of service.

For Appellants : Mr.P.Ganesan  
For Respondents 1 to 3 : Mrs.A.Sri Jayanthi  
Special Government Pleader

#### JUDGEMENT

[Judgment of the Court was delivered by P.T.ASHA,J.]

The Intra-Court appeals emanate from the order of the learned Single Judge in W.P.No.17309 of 2012. As against the order in W.P.No.17309 of 2012, the appellants have filed W.A.No.1958 of 2018. It is also seen that the appellants herein had filed a review application against the order in W.P.No.17309 of 2013. The said review application was also dismissed. Challenging the same the appellants have filed W.A.No.1959 of 2018.

The facts in brief necessary for disposing of the above appeals are as follows:

2.The appellants had filed the above Writ Petition in W.P.No.17309 of 2012 for the issue of Writ of Certiorarified Mandamus calling for the records of the 1<sup>st</sup> respondent dated 02.01.2012 and the consequential order passed by the 3<sup>rd</sup> respondent dated 07.02.2012 and quash the same in so far as the denial of retrospective regularization of the appellants and direct the respondent to regularize service of the appellants

retrospectively on completion of 10 years of service as per G.O.Ms.No.300, Health and Family Welfare Department dated 21.08.2000 and confer all consequential benefits to the appellants.

3.The case of the appellants was that they had been inducted as Substitute workers in the year 1988 in the 3<sup>rd</sup> respondent hospital namely the Government Stanley Hospital. The appellants had put in continuous service of over 10 years. Taking into consideration the long service of all the appellants and similarly placed persons, the association had placed a demand before the Government. The Government had sympathetically considered the representation and the Chief Minister of Tamil Nadu had announced that all the substitute workers would be brought into the regular time scale of pay. Sequel to this announcement the Government issued orders in G.O.Ms.No.300, Health and Family Welfare department dated 21.08.2000, giving a direction to regularize all Substitute workers who had completed 10 years of service. In fact in the Government Order itself as against the demand placed by 700 workers, the service of 615 workers were regularized relaxing the necessary rules.

4.Since some of the names were left out those persons had moved the Tamil Nadu Administrative Tribunal seeking direction to extend the benefit of G.O.Ms.No.300 to all workers. The Tribunal was pleased to issue the direction to the respondents by order dated 27.06.2003. Although this Order was passed as early as in the year 2003, the same was given effect only in the year 2007 by issuance of orders in G.O.Ms.No.9, Health and Family Welfare Department dated 05.01.2007.

5.Since the appellants were not given the benefit of the order they had made a representation to the Government to regularise their service. However, the 1<sup>st</sup> respondent turned down the request for regularization by order dated 02.01.2012. This was followed by a letter dated 07.02.2012 from the 3<sup>rd</sup> respondent informing them that their request for regularisation is rejected and could not be considered. Challenging the said letters the Writ Petition in question was filed.

6.The learned single Judge considering the submissions made on behalf of parties disposed of the Writ Petition with a direction to the respondents 1 to 3 to consider the request for regularisation of their service from the date of expiry of the time limit fixed by the Tamil Nadu Administrative Tribunal in O.A.Nos.1733 and 2163 of 2003 and pass orders within a period of three months from the date of receipt of a copy of the order.

7.The said order came to be passed on account of the submissions that the Government had issued orders for regularisation of service to Widows and Destitute Widows. Since the appellants also came within the category of Widows or destitute Widow they pleaded equal opportunity and consideration and therefore filed review application in Rev.Appln.No.126 of 2017. Since the appellants 1, 2, 3 and 4 were Destitute Widows and the 5<sup>th</sup> appellant was a Widow and all of them having completed 10 years of service they had contended that they are entitled for regularization.

8.When the appeal came up on 26.06.2016 the appellants had filed an additional Affidavit stating that they have completed over 10 years of continuous service without a break and they were entitled for regularization as per G.O.Ms.No.9, Health and Family Welfare Department, dated 05.01.2007.

9.The learned Government Pleader also conceded to the fact that the appellants have put in service for over 10 years without any break.

10.The following table produced by the Dean indicates the date on which the appellants have completed 10 years as Substitute workers:

| Sl. No | Name of the Substitute Worker | Community | Date of Birth | Date of Retirement | Date of Appt. as Substitute Workers | Date of Completion of 10 years as Substitute Worker | Break in Service if any (Details should be furnished) |
|--------|-------------------------------|-----------|---------------|--------------------|-------------------------------------|-----------------------------------------------------|-------------------------------------------------------|
| 1      | Tmt.R.Tharabai                | BC        | 26.03.1958    | 31.03.2016         | 18.10.1990                          | 17.10.2000                                          | Nil                                                   |
| 2      | Tmt.B.Varalakshmi             | BC        | 20.05.1952    | 30.05.2012         | 18.10.1990                          | 17.10.2000                                          | Nil                                                   |
| 3      | Tmt.Kusala Kumari             | MBC       | 15.01.1953    | 31.01.2013         | 20.10.1990                          | 19.10.2000                                          | Nil                                                   |
| 4      | Tmt.R.Gandhiammal             | BC        | 17.06.1951    | 30.06.2011         | 29.10.1990                          | 28.10.2000                                          | Nil                                                   |
| 5      | Tmt.K.Radha                   | BC        | 27.12.1956    | 31.12.2016         | 05.11.1990                          | 04.11.2000                                          | Nil                                                   |

Considering the above, the Intra-Court appeals are allowed. The respondents are directed to consider the continuous service of more than 10 years put in by the appellants and regularise their service with effect from the respective dates shown above with all consequential benefits. There shall be no order as to costs. Consequently connected Civil Miscellaneous Petitions are also closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

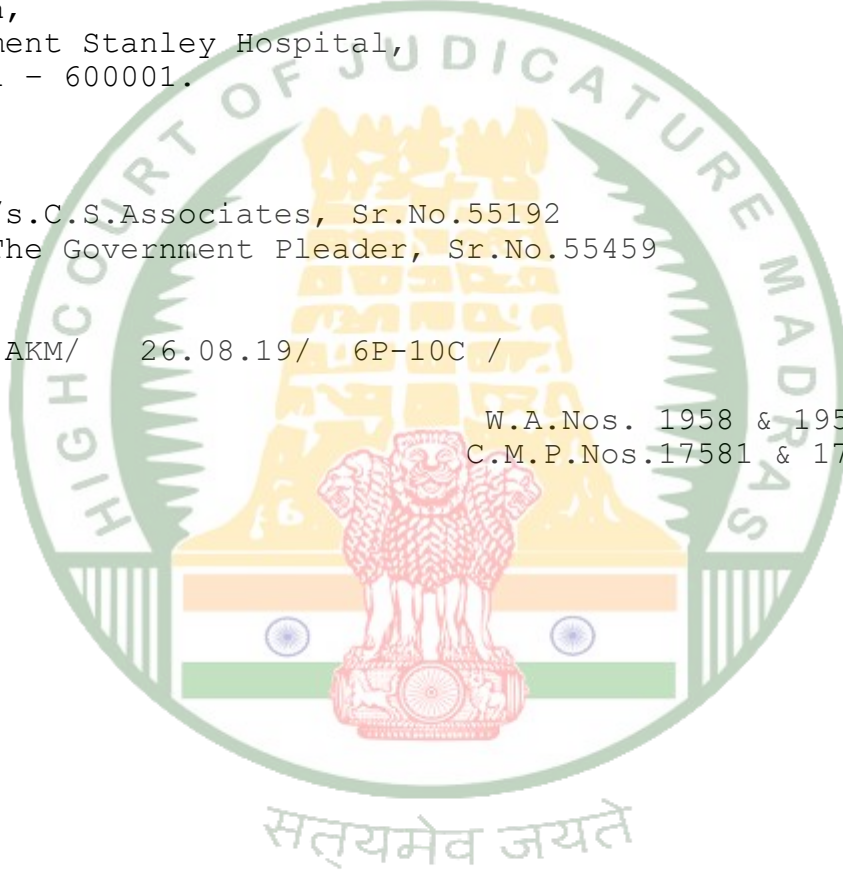
To

1. The Secretary to Government,  
State of Tamil nadu,  
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Chennai - 9.
- 2.The Director of Medical Education,  
Kilpauk, Chennai - 600 010.
- 3.The Dean,  
Government Stanley Hospital,  
Chennai - 600001.

+5cc to M/s.C.S.Associates, Sr.No.55192  
+1 cc to The Government Pleader, Sr.No.55459

GP(C.O.)/ AKM/ 26.08.19/ 6P-10C /

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