

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33651 of 2018

And

W.M.P.Nos.39058 and 39061 of 2018

1.M.Sivakumar
2.A.Venkatesan
3.P.Vivekanandan

... Petitioners

vs

- 1.Government of Tamil Nadu,
Represented by its Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
 - 2.The Project Director,
Tamil Nadu State Aids Control Society,
No.471, Pantheon Salai,
Egmore,
Chennai-600 008.
 - 3.The Deputy Director of Health Service/Honorary
Secretary of District Aids Prevention and Control Unit,
Dharmapuri District.
 - 4.The Deputy Director of Health Service/Honorary,
Secretary of District Aids Prevention and Control Unit,
Thiruvannamalai District.
 - 5.The Deputy Director of Health Service/Honorary,
Secretary of District Aids Prevention and Control Unit,
Namakkal District.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to regularise the service of the petitioners as Driver from the date of initial appointment by considering the representation dated 30.11.2018 made by the petitioners with all consequential benefits.

For Petitioners : Mr.P.Ganesan
For Respondents-1,3to5 : Mr.A.N.Thambidurai,
Special Government Pleader.
For Respondent-2 : Mr.M.Loganathan

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to regularise the services of the writ petitioners as Drivers from the date of initial appointment by considering the representation dated 30.11.2018 made by the writ petitioners with all consequential benefits and in accordance with law.

2. The learned counsel for the writ petitioners states that the writ petitioners are serving as Drivers for a considerable length of time and therefore, they are entitled for regularisation and permanent absorption.

3. The writ petitioners are engaged as Drivers to drive the vehicle in Government Primary Health Centres and therefore, they are entitled to be treated as Government Servants and accordingly they are entitled for regularisation.

4. The orders of appointment issued to the writ petitioners are also enclosed in the typed set of papers filed in support of the present writ petition.

5. The orders of appointment are issued by the Honorary Secretary of Indian Red Cross Society. The second respondent-Society is constituted as per the guidelines of National AIDS Control Organization (NACO) and the Deputy Director of Health Service is the Honorary Secretary, who is the total control over the Prevention and Control Unit.

6. Thus, the writ petitioners were appointed under a Scheme and the competent authority of the State Government had not issued any appointment orders to the writ petitioners. Even the orders of appointment state that the appointments are purely temporary and the writ petitioners will be terminated from their services without any notice.

7. It is further stated that the writ petitioners should not confer any right for future appointments. This apart, the appointments were made on consolidated salary of Rs.5,000/- per month initially and now their consolidated pay is enhanced.

8. Thus, the initial appointments of the writ petitioners were not with the State and were under the Special Scheme and the Honorary Secretary of Indian Red Cross Society appointed the writ petitioners on consolidated pay and on temporary basis. Thus, the appointments of the writ petitioners cannot be construed as an appointment issued by the competent authority of the State in a sanctioned post.

9. Mere length of service would not confer any right on the writ petitioners to claim public appointments with the State. The post of Driver, in a sanctioned post of the Government, is to be filled up strictly in accordance the Recruitment Rules in force. The benefit of regularisation or permanent absorption cannot be granted in violation of the Service Rules in force.

10. As far as the present writ petition on hand is concerned, the writ petitioners were not appointed by the competent authority of the State Government and the writ petitioners were appointed under a Scheme, more specifically, under the Indian Red Cross Society.

11. This being the factum, the regularisation or permanent absorption cannot be granted in violation of the Recruitment Rules in force. If at all, the writ petitioners want to secure the public appointments, they are bound to participate in the process of selection in the manner known to law. However, the further continuance of the writ petitioners will not get affected on account of the orders passed in the present writ petition. It is for the competent authority of the Indian Red Cross Society to engage the services of the writ petitioners as per the terms and conditions of the Scheme as well as the Rules of the Red Cross Society.

12. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

Svn

To

- 1.The Secretary,
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Health and Family Welfare Department,
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- 5.The Deputy Director of Health Service/Honorary,
Secretary of District Aids Prevention and Control Unit,
Namakkal District.

+1cc to Mr.P.Ganesan, Advocate SR.No.33062

+1cc to Mr.M.Loganathan, Advocate SR.No.32823

W.P.No.33651 of 2018

RSV(CO)
GMY(03/05/2019)

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