



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos. 920, 921, 922, 923, 924, 925 of 2019

G.Balasubramanian	... Appellant in W.A. (MD) No. 920 of 2019
R.S.Ravi	... Appellant in W.A. (MD) No. 921 of 2019
P.Selvakumar	... Appellant in W.A. (MD) No. 922 of 2019
G.Balasubramanian	... Appellant in W.A. (MD) No. 923 of 2019
R.S.Ravi	... Appellant in W.A. (MD) No. 924 of 2019
P.Selvakumar	... Appellant in W.A. (MD) No. 925 of 2019

Vs.

1.The Government of Tamil Nadu,
Rep., by its Secretary,
Department of Health and Family Welfare
Fort St.George,
Chennai-600 009.

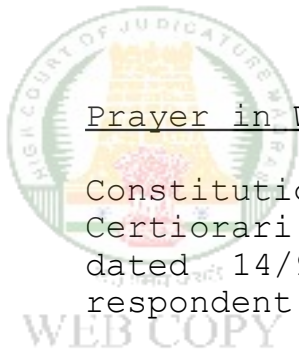
2.The Secretary,
Department of Finance,
Fort St.George,
Chennai.

3.The Director of Medical Education,
Kilpauk, Chennai.

4.The Dean,
Thoothukudi Government Medical College,
Thoothukudi.

... Respondents
in all appeals

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent against the common order passed by this Court in W.P(MD). Nos.17297, 17298, 17299 of 2015 and in W.P(MD).Nos.17981, 17982, and 17983 of 2017 dated 07.08.2019.



Prayer in WP(MD). 17297/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 14/9/2015 in Na.Ka.No. 5142/Ni4/2012 passed by the 4th respondent and quash the same as illegal.

Prayer in WP(MD). 17298/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 14/9/2015 in Na.Ka.No. 5142/Ni4/2012 passed by the 4th respondent and quash the same as illegal.

Prayer in WP(MD). 17299/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 14/9/2015 in Na.Ka.No. 5142/Ni4/2012 passed by the 4th respondent and quash the same as illegal.

Prayer in WP(MD). 17981/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to absorb the petitioner to the post of Driver as requested by the petitioner in his representation dated 30.08.2017.

Prayer in WP(MD). 17982/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to absorb the petitioner to the post of Driver as requested by the petitioner in his representation dated 30.08.2017.

Prayer in WP(MD). 17983/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to absorb the petitioner to the post of Driver as requested by the petitioner in his representation dated 30.8.2017.

In all appeals

For Appellants : Mr.C.Jeganathan

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader



COMMON JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

We have heard Mr.C.Jeganathan, learned counsel appearing for the appellants and Mr.A.K.Baskarapandian, learned Special Government Pleader for the respondents.

2.These appeals have been filed by the writ petitioners challenging the common order in W.P(MD).Nos.17297, 17298 and 17299 of 2015 and in W.P(MD).Nos.17981, 17982 and 17983 of 2017, dated 07.08.2019.

3.The said writ petitions were filed by the appellants seeking for issuance of writ of mandamus to direct the respondents to absorb them as drivers, based on the representation, dated 30.08.2017. The learned Single Bench dismissed the writ petitions on the ground that the appellants have not been recruited by following a recruitment process and they have to be treated as back door entrance and cannot be regularise their service. This order has been put to challenge in these appeals.

4.The fact that the appellants were engaged in the Thoothukudi Medical College Hospital as drivers and Hospital worker through an out sourcing agency and there was no order of appointment issued by the respondents. This was the case. Then, absolutely no ground to seek for regularisation. But, the Government had taken a decision. However, the appellants are pitched their case based upon a Government Order in G.O.Ms.No.325, Health and Family Welfare(C1) Department, dated 11.09.2017. This order was passed pursuant to the direction issued in W.P(MD).No.15909 of 2012 filed by one M.Vincent and 27 others. Based on the direction issued in the writ petition, the Government in exercise of its power conferred under Section 58 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 relax relevant Rules in favour of the individuals and ordered to regularise their service in the post mentioned against their name.

5.The said Government Order was passed subject to the outcome of the writ appeal filed against the said order. Thus, it appears that under the threat of being the order for contempt, the order has been implemented. The question would be whether is the benefit of Government Order can be straight away apply to the case of the appellants.

6.In our considered view, to apply the said Government Order, at this juncture, would be pre-matured, because the respondents are yet to take a decision on the request made by the appellants and the prayer sought for by them was only to consider the representation and absorb them as drivers. We cannot be called upon to regularise



the service of person, who have not undergone a process of recruitment, especially, when the posts occupied by them are all post for Government servant.

7. However, the Government has taken a decision in respect of Hospital workers and regularise their service, though it may be true that it is based upon a direction issued in a writ petition. Nevertheless when a decision is taken to regularise the hospital workers, who according to the appellants are also recruited through outsourcing agency, a question would be as to why such benefit should not be extended to the appellants. It is the submission of the learned counsel for the appellants that as of now there are five vacancies and because of the interim orders, it is the appellants who are continuing to work in those posts.

8. Considering these facts, we are inclined to direct the respondents to consider the case of the appellants by taking note of G.O.Ms.No.325, Health and Family Welfare(C1) Department, dated 11.09.2017. In the alternative, if the respondents are proposed to conduct a recruitment, then the appellants should be permitted to participate in the recruitment by relaxing the qualification with regard to age and a preferential consideration can be given, because they have been working in the same post in the same Medical College ever since 2005 onwards.

9. At the first instance, the first respondent is directed to consider the representation of the appellants by taking note of the G.O.Ms.No.325, Health and Family Welfare(C1) Department, dated 11.09.2017 and only if same is not visible of consideration, the second option given by this Court shall be complied with.

10. The above exercise shall be complied with, within a period of four months from the date of receipt of a copy of this order. Accordingly, these Writ Appeals are disposed of.

11. Since the appellants are continuing to serve as Drivers of consolidated pay, the said position shall not be disturbed. They shall be permitted to function on consolidated pay, till the decision is taken by the Government. No costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Secretary,
Department of Health and Family Welfare
Fort St. George,
Chennai-600 009.

2. The Secretary,
Department of Finance,
Fort St. George,
Chennai.

3. The Director of Medical Education,
Kilpauk, Chennai.

4. The Dean,
Thoothukudi Government Medical College,
Thoothukudi.

+6 CC to M/s. VEERA ASSOCIATES, Advocate
(SR-102249, 102250, 102317 to 102320[F] dated 28/11/2019)

+1 CC to M/s. SPL GP (SR-102425[F] dated 28/11/2019)

W.A. (MD) No. 920, 921, 922,
923, 924, 925 of 2019
27.11.2019

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