

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.33084 & 33085 of 2012
and
M.P.Nos.2 & 2 of 2012 &
M.P.Nos.3 & 3 2012

W.P.No.33084 of 2012

K. SakthivelPetitioner
vs.

1. The Government of Tamil Nadu
Rep. by the Secretary to Government
Department of Public Health Care and
Family Welfare,
Fort St. George, Chennai 600 009
2. The Director of Public Health and
Preventive Medicine,
Chennai 600 009
3. The Deputy Director of Health Services
Dharmapuri
Dharmapuri District. Respondents

W.P.No.33085 of 2012

K.P. Thirunavukarasu ...Petitioner

सत्यमेव जयते
Vs.

1. The Government of Tamil Nadu
Rep. by the Secretary to Government
Department of Public Health Care and
Family Welfare,
Fort St. George, Chennai 600 009.
2. The Director of Public Health and
Preventive Medicine,
Chennai 600 009.

3. The Deputy Director of Health Services
Dharmapuri
Dharmapuri District.

... Respondents

Prayer in W.P.No.33084 and 33085 of 2012: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other writ or order of direction in the nature of writ, to call for all relevant records relating to the impugned rejection order issued in Na.Ka.No.47611/Pu.tha2/E2/2012 dated 18.05.2012 passed by the second respondent herein and quash the same as arbitrary, un reasonable, improper, illegal against their own rules and regulations and Government Orders, violating the fundamental rights guaranteed under Constitution of India and to direct the respondents to absorb the petitioners in the regular employment as permanent mazdoor or in any other appropriate suitable post based on his qualifications and experience under respondent department, Government of Tamilnadu on regularising his services by bringing him under regular time scale of pay from the date of his initial appointment with all consequential monetary and other service benefit.

For Petitioner : Mr. K. Venkataramani, Senior Counsel
for M/s.S.Srinivasan
in both writ petitions

For Respondents : Ms. R. Janaki,
Additional Government Pleader in both
writ petitions.

O R D E R

The petitioners have filed the above Writ Petitions praying to issue a Writ of Certiorarified Mandamus or any other writ or order of direction in the nature of writ, to call for all relevant records relating to the impugned rejection order issued in Na.Ka.No.47611/Pu.tha2/E2/2012 dated 18.05.2012 passed by the second respondent herein and quash the same and to direct the respondents to absorb the petitioners in the regular employment as permanent mazdoor or in any other appropriate respondent department, Government of Tamilnadu on regularising their services by bringing them under regular time scale of pay from the date of his initial appointment with all consequential monetary and other service benefit.

2. The petitioners in W.P. No.33084 of 2012 and 33085 of 2012 were engaged as a temporary seasonal Mazdoor in the

Primary Health Centre, Pelralpatti, Dharmapuri District and Pulikarai, Dharmapuri District respectively from the year 2006 and 2007 onwards. Their primary job was to undertake the activities for preventing malaria and related diseases, particularly, when such diseases were active during monsoon period. The petitioners were continued in service year after year till 2016. Their services were utilised as temporary seasonal mazdoors all these years. It appears that by virtue of the orders of the Tamil Nadu Administrative Tribunal as well as this Court, many of the similarly placed seasonal mazdoors were taken into regular establishment and given permanent employment. These petitioners also made representation through their Association as well as individually from the year 2009. Individual representations were made in November 2011 and April 2012 and July 2012. When these petitioners filed Writ Petitions vide W.P.Nos.8973 & 8974 of 2012 for considering their request, this Court directed the second respondent to consider and pass orders on their representations. However, the direction was not complied with and hence, they filed Contempt Petitions in C.P Nos.1173 & 1174 of 2012. The Director of Public Health and Preventive Medicine, Chennai 600 006, by its letter R.No.47611/VC11/S2/2012 dated 10.08.2012, directed the Deputy Director of Health Service, Dharmapuri to send a copy of the representation of the petitioners. Thereafter, they have passed the impugned order in proceedings Na.Ka.No.47611/Pu.tha.2/E2/2012 dated 18.05.2012 rejecting the request made by the petitioners. Aggrieved over the same, the petitioners have preferred the above writ Petitions.

3. The learned Additional Government Pleader appearing for the respondents would contend that the petitioners had worked for a short period of 127 days throughout their career and that their engagement was for a very short period in a year. Therefore, they cannot be construed to have continued in employment throughout the year and they are not entitled to regularization. She would also contend that the Division Bench of this Court in Writ Appeal No.1027 of 2013 dated 09.06.2004 has directed the respondents for the purpose of filling up these posts to issue wide publicity in two leading newspapers apart from getting the names of the candidates from the employment exchange. The respondent in G.O.(2D)No.97 Health and Family Welfare (AB2) Department dated 20.07.2016 granted permission to the Director of Public Health and Preventive Medicine to fill up 182 permanent posts of field workers (Mazdoors), as per the direction of the Division Bench in Writ Appeal No.1027 of 2013. Accordingly, a committee was constituted and notification was issued calling for candidates. In fact, few of them were also selected and appointed employed and therefore, at this juncture, the request of the petitioners cannot be accepted.

4. I considered the rival submissions.

5. From the records, it is seen that the Government from time to time regularized the employment of the Seasonal Mazdoors in the regular vacancies available. By G.O.(MS) No.295 dated 16.09.2009, a decision was taken to absorb all the 23 formerly seasonal mazdoors and to regularize their service pursuant to the order passed by the Administrative Tribunal. Likewise in several other cases, the seasonal mazdoors were absorbed into regular service. In other words, many of the seasonal mazdoors were brought into regular establishment by various orders for regularization issued by the Government. Recently, in W.P.No.6635 of 2012, this Court by order dated 20.03.2018, directed regularization of one seasonal mazdoor, namely, L. Chinna Thambi who already put in 10 years of continuous service, wherein it is observed as under:

"13. On the other hand, the learned counsel for the petitioner would draw the attention of this Court to the decision of the Hon'ble Supreme Court of India in the case of Amarkant Rai Vs. State of Bihar and others, reported in (2015) 8 SCC 265. He would draw the attention of this Court to paragraph Nos.11 and 13 of the order which are reproduced below:-

11. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka & Ors. v. M.L. Kesari & Ors., (2010) 9 SCC 247, this Court held as under:

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3) , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be

considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

13 In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010

14. The learned counsel for the petitioner would submit that the case of the petitioner falls within the exception to the general principle laid down by the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi, since admittedly, the petitioner has rendered 10 years of service as Seasonal Mazdoor. According to the learned counsel, the above decision of the Hon'ble Supreme Court of India would directly apply to the case on hand and therefore, the exception as laid down in the case of Umadevi in paragraph No.53 of the said Judgment has to be applied and the benefit has to enure to the petitioner herein. As regards the decision of this Court passed by the learned Judge in the aforesaid writ petitions, he would submit that the facts of those writ petitions were completely different because there the petitioners were working for few days before 1984 and their services were discharged in

1984. Therefore, they cannot come up with any grievances of being not employed in 2009 and in the absence of any proof of the petitioners therein, agitating the issue for 15 years, the writ petition filed by them was held to be not maintainable. Therefore, the decision of the said learned Judge cannot be applied to the facts of the present case.

15. As far as the present case is concerned, the petitioners had been working continuously from 2006 to 2016 and after this Court ordered for filing of the counter affidavit, the authority deliberately stopped the petitioner from work to curtail the right of the petitioner from seeking absorption. Therefore, in all, the learned counsel would submit that the petitioner having suffered no disqualification and having all the eligibility, can be considered for permanent absorption in any one of the existing vacancies, particularly, when the respondents themselves have sanctioned 182 permanent posts of Field Workers (Mazdoor).

16. This Court has considered the rival submissions of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. The fact that the petitioner had been employed from 2006 till September 2016 and the fact that the petitioner had necessary qualification for appointment of Seasonal Mazdoor, had also not been disputed by the respondents. The only point in issue which is put against the petitioner is that he was a seasonal employee and cannot therefore stake any claim for permanent absorption. This objection cannot be validly countenanced by this Court in the teeth of the fact that the Government itself has passed an order in G.O (2D). No.97, Health and Family Welfare Department, dated 20.07.2016, for recruitment of permanent Field Workers (Mazdoor) and a further notification was issued on 07.09.2016, for filling up of 182 permanent post of Field Workers (Mazdoor).

17. When such is the case, this Court does not find any justification for not considering the name of the petitioner herein who had rendered continuous service from 2006 till 2016. In fact, the petitioner had responded to the notification by submitting a representation

to all the respondents on 28.09.2016, but, unfortunately, the respondents have not considered the representation in the light of the recruitment notification and in the light of the fact that the petitioner had been employed for 10 years or so. The objection by the learned Additional Government Pleader that the petitioner did not respond to the notification in proper format, cannot be accepted as a valid piece of argument for the simple reason that the petitioner having chosen to submit the representation, it is incumbent to the authority to forward the representation and consider the candidature of the petitioner along with the other candidates who were considered and appointed in pursuance of the said notification.

18. The decision of the Hon'ble Supreme Court of India relied on by the learned counsel for the petitioner would also support the claim of the petitioner that the case of the petitioner has to be treated as an exception to the ruling of the Hon'ble Supreme Court of India in paragraph No.53 of Umadevi's case. The petitioner having worked for 10 years continuously from 2006 to 2016, has to be considered for permanent absorption who is otherwise fit and eligible for such consideration. The non-consideration of the petitioner for the above said reasons cannot stand the test of judicial scrutiny, particularly, in the face of the fact that there are vacancies which are still available in the post of permanent Field Workers (Mazdoor). Once the respondents have extracted the work from the petitioner for over 10 years, it is not open to them to deny the petitioner the right to be considered for permanent absorption along with other similarly placed Mazdoors. In the said circumstances, the petitioner is entitled to be considered for permanent absorption by the authority concerned.

19. During the course of the arguments, it is submitted by the learned Additional Government Pleader that the Committee which was appointed to undertake the recruitment process of 182 permanent Field Workers (Mazdoor) had been disbanded after the recruitment process was over. However, notwithstanding the fact

that the Committee had been disbanded, the issue of regularisation on permanent absorption of the petitioner has to be considered by the competent authority by applying the exception carved out by the Hon'ble Supreme Court of India in the case of Umadevi as found in paragraph No.53 of the Judgment.

20. In the light of the above findings, this Court directs the respondents / competent authorities to consider the claim of the petitioner for permanent absorption in any one of the existing vacancies on the basis of his continuous employment from 2006 till 2016 and pass orders accordingly, within a period of eight weeks from the date of receipt of a copy of this order. The authority shall take into consideration the above observations of this Court as well as the exception carved out by the Hon'ble Supreme Court of India in the case of Umadevi as found in paragraph 53 of the judgment as well as the other Supreme Court judgment relied on by the learned counsel for the petitioner."

6. This order was implemented by the third respondent in proceedings No.1843/E4/2017 dated 22.02.2016. The present writ petitioners are also similarly placed, having put in 10 years of continuous service. The information given by the Public Information Officer of the Primary Health Centre shows that the petitioner in W.P. No.33084 of 2012 was engaged from 2006 to 2016 and the petitioner in W.P. No.33085 of 2012 was engaged from 2007 to 2016 on various seasons. In that view of the matter, the judgment of this Court in W.P.No.6635 of 2012 is squarely applicable to the present petitioners also. This Court, after considering the vacancy position, by order dated 17.12.2019, directed the respondent to reserve two posts till the disposal of the petitions. The learned Additional Government Pleader informed this Court that they have reserved two posts and kept it vacant. In view of the same, I find that there will not be any difficulty in implementing the direction of this Court.

7. Therefore, considering the facts and circumstances of the case and the order of this Court in W.P. No.6635 of 2012 dated 20.03.2018, the impugned order in Na.Ka.No. 47611 / Pu.tha2 / E2/2012 dated 18.05.2012 passed by the second respondent is set aside and the respondents are directed to consider the claim of the petitioners for permanent absorption in the two vacant posts reserved for them within a period of eight(8) weeks from the

date of receipt of a copy of this order. The authorities shall take into consideration the above observation made in W.P. No.6635 of 2012 as well as the exception carved out by the Hon'ble Supreme Court in the case of the State of Karnataka vs. Uma Devi reported in 2006(4) SCC 1 as found in para-53 of the Judgment as well as the other Supreme Court Judgments.

8. With the above direction, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

Copy to

1. The Secretary to Government,
Government of Tamil Nadu
Department of Public Health Care and
Family Welfare,
Fort St. George, Chennai 600 009.
2. The Director of Public Health and
Preventive Medicine,
Chennai 600 009.
3. The Deputy Director of Health Services
Dharmapuri, Dharmapuri District.

+2cc to Mr.S.Srinivasan, Advocate sr.2650, 2651
+1cc to the Government pleader Sr.3477

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