



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) No.15828 of 2015

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K.Subramanian

... Petitioner

Vs.

- 1.The Secretary to Government,
Health and Family Welfare Department,
Fort. St. George,
Chennai-600 009.
- 2.The Project Director,
Tamil Nadu State AIDs Control Society,
417, Pantheon Road,
Egmore,
Chennai.600 008.
- 3.The Chairman,
Medical Service Recruitment Board,
Teynampet,
Chennai.
- 4.The District Collector,
Thanjavur District,
Thanjavur.
- 5.The Deputy Director,
Family and Health Department,
Thanjavur Disrict.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 4th and 5th respondents herein to regularise the petitioner's service in the post of Lab Technician Grade II with all monetary and other benefits in the light of G.O.Ms.No.151 dated 16.10.2008 within the time stipulated by this Court.

For Petitioner	: Mr.A.Anbalagan
For R1,R4 & R5	: Mr.D.Muruganantham Additional Government Pleader
For R2	: Mr.B.Prahalad Ravi
For R3	: Mr.T.S.Mohammed Mohideen

**ORDER**

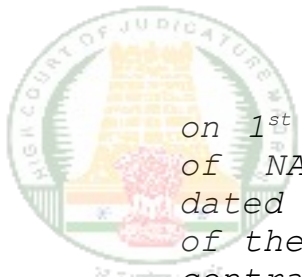
The relief sought for in the present writ petition is to direct the 4th and 5th respondents to regularize the petitioner's service in the post of Lab Technician Grade II with all monetary and other benefits.

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2.The petitioner was appointed on 11.03.2008 as Lab Technician in the Municipality Hospital on consolidated payment basis. The petitioner states that he has fully qualified for regular appointment to the post of Lab Technician Grade-II. He was working for more than 9 years and in spite of that, his services are not regularized. The Government issued G.O.Ms.No.151, dated 16.10.2008 stating that the differently abled persons, who have completed more than two years of service, entitled to get regular times scale of pay for the post in which they are working. The benefit of Government Order has not been extended to the writ petitioner. The similarly placed persons filed a writ petition in W.P.No.18905 of 2015, which was allowed by this Court on 30.06.2015. Citing all these factors, the petitioner sent a representation to the respondents and the said representation is not considered. Thus, the petitioner is constrained to move the present writ petition.

3.The learned counsel appearing for the second respondent states that the petitioner was appointed on consolidated pay and he was not appointed in accordance with the recruitment rules in force. Thus, the initial appointment of the writ petitioner was irregular and therefore, the benefit of regularization cannot be granted. Narrating the grounds on which, the case of the writ petitioner cannot be granted for regularization. The second respondent has filed a counter affidavit and the relevant Paragraphs 8 and 9 are extracted hereunder:

"8.The petitioner has stated that he is working for the last 9 years and his service have not been so far regularized in the post of Lab Technician Grade-II by the respondents. Also, the State Government (Tamil Nadu) has issued a G.O.No.151, dated 16.10.2008, wherein it is stated that, any disabled physically person who has competed more than two years in entitled for getting regular time scale of pay in the post which he was holding. In this regard, I respectfully submit that the petitioner had engaged as Lab Technician through the District Collector, Thanjavur District, temporarily on contract basis. I also respectfully submit that the petitioner is a contractual employee, as per the guidelines of National AIDS Control Organization(NACO), New Delhi, all the contractual employee working under their programme have to be enter into contractual service agreement and it has to be renewed after conducting of annual performance appraisal, and hence, all the contractual staff are being given one day break in service



on 1st April every year. Besides, as per the instructions of NACO vide their Lr.No.F.No.A11011/90/2007-NACO(HR), dated 18.12.2013 it is stated that, the reservation policy of the Government of India is not applicable in respect of contractual appointment as these appointments are made for specific purpose and for specific period on consolidated remuneration. The reservation in recruitment is applicable only for regular appointment in the Government of India, hence, the petitioner is a contractual basis, does not fall under reservation policy.

9.The Government, Health & Family Welfare Department vide Lr.No.373/EAPI/2/2015-1, dated 10.09.2015 has already been intimated to the representatives that, the method of appointment of Lab Technician Grade II is by 'Direct Recruitment'. All the posts other than under the preview of Tamil Nadu Public Service Commission are filled up through Medical Service, Recruitment Board only. Since the petitioner was appointed on contractual basis under AIDS Control Project for implementation of the AIDS Control programme only, the rule of reservation, age limit and other service criteria have not been followed at the time of appointment, hence, these appointments have not been made against the sanctioned post. In this regard, the Hon'ble High Court of Madras in similar case, dated 17.08.2011 in W.P.Nos.13001 of 2000 and 3742 to 3748 of 2009 have referred the following Supreme Court orders:-

(a)The appointment for all Govt. employees will have to be made in terms of the recruitment rule and any other recruitment will be against Articles 14 and 16 of the Constitution of India.

(b)If adhoc appointees, who are appointed directly, work for more than ten years under interim order of the Court, the Court cannot show any misplaced sympathy of protection such adhoc employees only because they have worked for long time. Also such candidate has no right to be absorbed or made permanent.

(c)In any event, the contention raised by the petitioner/association cannot be considered in a writ petition of this nature."

4.This Court is of the considered opinion that regularization of permanent absorption cannot be granted in violation of the rules in force. A person appointed through back door, cannot get the benefit for regularization and the principles in this regard are settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of **the Secretary, State of Karnataka and others . vs. Umadevi(3) and others reported in (2006) 4 Supreme Court Cases 1**. In this view of the matter, this Court is of the considered opinion that the benefit of regularization cannot be granted, as the



appointment of the writ petitioner initially was not in accordance with the rules in force.

5. In this view of the matter, this Writ Petition stands dismissed. No costs.

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Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
Health and Family Welfare Department,
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2. The District Collector,
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3. The Deputy Director,
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5. The Chairman,
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Teynampet,
Chennai.

+1 CC to M/s.T.S. MOHAMED MOHIDEEN, Advocate (SR-24809[F] dated 10/12/2020)

+1 CC to M/s.M.LOGANATHAN, Advocate (SR-24786[F] dated 10/12/2020)

+1 CC to M/s.GP (SR-25119[F] dated 11/12/2020)

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