



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12643 of 2020
and W.M.P.No.15613 of 2020

M.Senthil Kumar

.. Petitioner

vs

1.The State of Tamil Nadu

Represented by its Secretary to the Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.

2.The Director of Public Health and Preventive Medicine,
Teynampet, Chennai 600 006.

3.The Deputy Director,
Health Service, Salem,
Salem 636 001.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records in proceedings in Na.Ka.No.2237/E2/2016 dated 22.07.2020 on the file of the 3rd respondent and quash the same as illegal, incompetent, and wholly without jurisdiction and further direct the respondents to appoint the petitioner for the post of driver similar to the proceedings dated 25.02.2016 passed by the 2nd respondent.

For Petitioner : Mr.K.Venkataramani, SC for
V.Raghavachari

For Respondents: Mr.V.P.R.Elamparithi (GA) R1 to R3

O R D E R

The petitioner was appointed as a driver with the third respondent on 29.09.2009 on daily wage basis in the Mobile Medical Unit under the National Rural Health Mission at Government Primary Health Centre, Namakkal.



2. It is the case of the petitioner that the petitioner was aged about 27 years when he started his work with the 3rd respondent. It is submitted that while the service of similarly placed persons have been regularized in service by the third respondent in terms of G.O.Ms.No.70 dated 20.02.2016, the name of the petitioner has been left out.

3. The learned counsel for the petitioner submits that the petitioner had earlier filed W.P.No.5858 of 2016 which came to be dismissed by an order dated 26.04.2018. In the aforesaid writ petition, the petitioner had challenged the Notification dated 22.01.2016 and to quash the same by directing the third respondent to issue a fresh notification in accordance with the order of this Court dated 02.08.2012 in W.P.No.26162 of 2010 as confirmed by an order dated 09.06.2014 in W.P.No.1027 of 2013 and G.O.Ms.No.44 dated 11.03.2015 and to appoint the petitioner.

4. The learned counsel for the petitioner further submits that aggrieved by an order of the Single Bench of this Court in W.P.No.5858 of 2016 dated 26.03.2013, the petitioner preferred an appeal before this Court in W.A.No.2272 of 2018 which came to be disposed by the Hon'ble Division Bench of this Court by its order dated 18.06.2019 with the following observations:-

"6. Taking into consideration the fact that the appellant has all along been working with the 3rd respondent, though not in a permanent post, we deem it fit to direct the respondent to consider his candidature if he applies in response to the fresh notification. It is further made clear that the respondents shall issue a notification giving wide publicity inviting applications from various candidates by advertisement in vernacular newspapers as well as through District Employment Exchange. The respondent shall consider the appellant's application, if he is otherwise qualified, by giving him due relaxation in age. With the above directions, the writ appeal is disposed of. No costs".

5. The learned counsel for the petitioner further submits that pursuant to the order of the Division Bench of this Court, the respondents were directed to consider the case of the petitioner. It was further made clear that the respondents should issue appropriate notification and give wide publicity by inviting applications from various candidates by advertisement in vernacular newspapers as well as through District Employment Exchange and that the



BC, he does not meet the age criteria. It is submitted that the petitioner was not a sponsored candidate of the Employment Exchange by the Tamil Nadu and therefore the third respondent cannot appoint the petitioner as a regular employee.

10. The learned Government Advocate for the respondents further relied on the decision of the Hon'ble Supreme Court held that *State of Karnataka v. Umadevi*, (2006) 4 SCC 1 wherein the Hon'ble Supreme Court held that there is no fundamental rights for an employee working on daily wage basis / temporary basis and contractual basis any rights to be absorbed permanently.

11. The learned Government Advocate also referred to the decision of the Hon'ble Supreme Court in the *State of Rajasthan vs. Dhayalan* (2011) 2 SCC 429, wherein it was observed that mere continuance in any temporary basis on daily wage basis does not entitle such an employee to claim relaxation if it is not working against a sanctioned post.

12. The learned counsel also drew attention to yet another decision of the Hon'ble Supreme Court in *Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and Others*, 2014 (4) SCC 769. The learned Government Advocate for the respondents therefore submits that the writ petition is liable to be dismissed.

13. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

14. I have perused the impugned order which came to be passed by this Court in the earlier round as well. The fact that the petitioner was aged about 27 years at the time when he was initially appointed with the 3rd respondent on 29.09.2009 with the National Rural Health Mission at Government Primary Health Centre, Namakkal District is not in dispute. Services of some of the persons who were appointed on daily wage basis at that point of time were later regularised. This Court has also passed an order giving the benefits to similarly placed persons in W.P.No.16859 of 2008 vide order dated 17.07.2017. The order of this Court has also been accepted by issuing the appropriate Government Order.

15. No doubt the decision of the Hon'ble Supreme Court referred and cited by the learned Government Advocate for the respondents prohibits back door entry into the Government service, the fact remains that the petitioner was in service since 2009, even when notifications was issued in the year 2016. The petitioner has now crossed the minimum age. Therefore, the Division Bench of this Court by an order dated 18.06.2019 in W.P.No.2272 of 2018 directed the respondent to consider the request of the petitioner to be appointed as a regular employee by relaxing the age if the petitioner was otherwise eligible to be appointed.



16. The necessity of such persons to work on daily wage basis is out of compulsion. The Government and the Government should have been taken steps to regularise their services. The Government being the largest employer ought to have been benovent by considering plight or workers employed on temporary basis. In this connection, the Hon'ble Supreme Court in Sheo Narain Nagar v. State of U.P., (2018) 13 SCC 432, is invited. In para Nos.7 & 8, it was held as under:-

"7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. This situation was not envisaged by Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India



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[D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130], from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753].

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularisation of the appellants. However, regularisation was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2-10-2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such



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there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by the learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms".

17. The above view was not considered by the respondent while passing the impugned order. Considering the above, this writ petition is to be allowed by directing the respondents to regularise the service of the petitioner on par with other permanent employee pursuant to various Government orders and pursuant to the direction of this Court in the earlier direction. The respondents are directed to pass appropriate order to regularise the service within a period of 90 days from the date of receipt of a copy of this order.

18. The writ petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To

- 1.The Secretary to the Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.
- 2.The Director of Public Health and Preventive Medicine,
Teynampet, Chennai 600 006.
- 3.The Deputy Director,
Health Service, Salem,
Salem 636 001.

+1cc to Mr.V.Raghavachari, Advocate SR.No.52206

+1cc to Special Government Pleader SR.No.52761

W.P.No.12643 of 2020

RP (CO)

<https://hcservices.courts.gov.in/hcservices/>

GM (17/11/2021)