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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2021

PRONOUNCED ON : 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.28903, 28909 & 28916 OF 2019

- | | |
|-----------------|--|
| 1. T.Devi | ... Petitioner in
W.P.No.28903/2019 |
| 2. P.Esther | ... Petitioner in
W.P.No.28909/2019 |
| 3. S.Palanisamy | ... Petitioner in
W.P.No.28916/2019 |

.Vs.

- | | |
|--|-----------------------------|
| 1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009. | |
| 2. The Director of Public Health and
Preventive Medicine,
DMS Campus, Teynampet,
Chennai - 600 006. | |
| 3. The Director of Medical & Rural
Health Services,
DMS Campus, Teynampet,
Chennai - 600 006. | |
| 4. The Voluntary Health Services Leprosy Project,
Rep. by its Director,
Sakthi Nagar (Appakudal),
Erode District - 638 315. | |
| 5. The Medical & Rural Health Services
Department (Leprosy),
Rep. by its Additional Director,
DMS Campus, Teynampet,
Chennai - 600 006. | ... Respondents in all W.Ps |



COMMON PRAYER:-

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order made in Letter Nos.30099/ L1 / 2017-3, 30099/ L1 / 2017-4 & 30099/ L1 / 2017-5 respectively, dated 16.05.2019 by the first respondent, quash the same and consequently direct the first respondent to absorb the petitioner by providing suitable job in terms of G.O.(Ms) No.83 dated 22.03.2017, G.O. (Ms) No.292 dated 22.08.2017, G.O. (Ms) No.448 dated 02.12.2017 passed by the first respondent.

For Petitioners : Mr.G.Ethirajulu

For Respondent : Mr.K.V.Sajeev Kumar
Nos.1 to 4 & 5 Government Counsel

C O M M O N O R D E R

The present Writ Petitions are heard through Video Conferencing on 29.07.2021.

2. In all these three Writ Petitions, the petitioners were appointed in the Voluntary Health Services (VHS), Leprosy Project Hospital, Erode District under the Leprosy Eradication Programme. After the Leprosy Eradication Program was integrated with the Directorate of Public Health and Preventive Medicine, through G.O.(Ms)No.320, Health and Family Welfare (G-1) Department, dated 27.06.1997, many of the employees of different categories working in various Non Governmental Voluntary Organisations were absorbed and appointed in the Government Departments through various Government Orders including G.O.(Ms) No.268 dated 20.09.2010; G.O.(Ms) No.83 dated 22.03.2017; G.O. (Ms) No.292 dated 22.08.2017; G.O.(Ms) No.448 dated 02.12.2017; etc. The petitioners herein, whose services were not absorbed by the Government of Tamil Nadu, were directed by this Court in its order dated 06.12.2018 passed in W.P.Nos.17290 to 17292 of 2017 for reconsideration of their request based on the orders passed in the aforesaid Government Orders. In compliance of the orders of this Court, the Health and Family Welfare Department has passed orders on 16.05.2019 rejecting the petitioners' claim, predominantly on the ground of laches by stating that these petitioners had continued working in the NGO even after integration of the Leprosy Eradication Programme with the Directorate of Public Health and Preventive Medicine and therefore cannot claim for appointment. Aggrieved against the order dated 16.05.2019, the present Writ Petitions have been filed.



3. The main ground raised by the petitioners is that the Government cannot cite laches as a reason for rejection of their request for absorption into Government posts since identically placed employees of the Leprosy Eradication Programme have been absorbed and accommodated under various Government Orders.

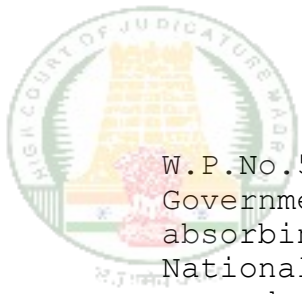
4. Such a submission is opposed by the learned Counsel appearing on behalf of the Government stating that, unlike the other employees of the Leprosy Eradication Programme, these petitioners have belatedly sought for absorption and therefore their request was rightly rejected.

5. The crucial issue that requires to be addressed in the present Writ Petitions is as to whether the delay and laches would be an impediment for denial of the appointment to the Government posts, particularly when similarly placed persons have been absorbed.

6. While the State, which is governed by the Rule of Law could adopt delay and laches as a mode of discretion to decline exercise of jurisdiction to grant relief, the Court is required to exercise judicial discretion, depending on the facts and circumstances of the case and as such, the doctrine of delay and laches cannot be considered as an absolute impediment, which proposition was held by the Hon'ble Supreme Court in the case of Tukaram Kana Joshi and Others through Power of Attorney Holder Vs. M.I.D.C. and Others reported in 2013 (2) CTC 222.

7. With the aforesaid ratio as a guiding factor, the necessary facts surrounding the present cases were analyzed. It is not in dispute that pursuant to the integration of the Leprosy Eradication Programme with the Directorate of Public Health and Preventive Medicine, the Health and Family Welfare Department of the Government of Tamil Nadu had issued G.O.(Ms) No.268, dated 20.09.2010; G.O.(Ms) No.83 dated 22.03.2017; G.O.(Ms) No.292, dated 22.08.2017; and G.O.(Ms) No.448 dated 02.12.2017, absorbing various employees of the Leprosy Eradication Programme into Government posts. It is also not in dispute that the cases of the petitioners herein are identical to the aforesaid employees. The only distinction that is now sought to be made in the impugned order is that the petitioners herein had approached them belatedly. This reasoning does not sound to be acceptable.

8. The fact remains that the grievances of the petitioners seems to have been continuously addressed to the respondents, in one way or the other. In the year 2001, some of the similarly placed employees sought relief before the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.3884 of 2001, which was subsequently transferred to the High Court and renumbered as



W.P.No.5160 of 2007. While this Writ Petition was pending, the Government had issued G.O.(Ms)No.268, dated 20.09.2010, by absorbing some of the employees, who were members of the National Leprosy Medical Employees Union. Likewise, in the order passed in W.P.No.21824 of 2013, dated 22.09.2015, the Government was directed to reconsider the claim of the employees of the Leprosy eradication programme for absorption into Government posts in the light of G.O.(Ms) No.268, dated 20.09.2010. In pursuance to the aforesaid orders passed by this Court at the instance of the Employees Union, G.O.(Ms) No.83, dated 22.03.2017 was passed absorbing 20 employees. So also the subsequent G.O.(Ms) No.292 dated 22.08.2017 and G.O.(Ms) No.448, dated 02.12.2017 were also for absorption of some more employees.

9. It is in this background that the petitioners herein had filed the Writ Petitions before this Court in W.P.Nos.17290 to 17292 of 2017, seeking for absorption and by an order dated 06.12.2018, all the aforesaid Government Orders were taken into consideration and the Government was directed to reconsider the petitioners' claim in the light of these Government Orders. When such orders were passed by this Court, the ground of delay and laches was always in existence. In spite of the same, this Court had relied upon the earlier orders passed by this Court in W.P.No.21824 of 2013 dated 22.09.2015, in which it was held that denial of consideration of the employees' grievances for absorption, when similarly placed employees were absorbed, would amount to discrimination and thereby directed the Government to consider their claim. It would be useful to refer to the earlier orders passed by this Court in W.P.No.21824 of 2013 dated 22.09.2015, which was passed at the instance of the National Leprosy Medical Employees Union, whereby the decision of the Hon'ble Supreme Court in State of Karnataka V. Umadevi [2006 (4) SCC 1] was relied upon.

"9.The first respondent in paragraph 4 of the counter affidavit has fairly admitted that the employees of some of the leprosy voluntary organisations were absorbed into Government service vide G.O.Ms.No.1310, Health Department dated 28.05.1962, G.O.Ms.No.1210, Health and Family Welfare Department dated 26.08.1975, G.O.Ms.No.436, Health and Family Welfare Department dated 06.03.1986 and G.O.Ms.No.185, Health Indian Medicine and Homoeopathy and Family Welfare Department dated 03.02.1990 respectively. It is not in serious dispute that some 51 members of the petitioner association were also absorbed into Government service in terms of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 passed by the first respondent.



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10. It is useful to refer to the judgment of the Hon'ble Supreme Court reported in (2014) 7 Supreme Court Cases 190 (Hari Nandan Prasad and another versus Employer I/R to Management of Food Corporation of India and another) where the Hon'ble Supreme Court has taken into consideration the very many decisions including the constitutional bench judgment reported in (2006) 4 SCC 1 (State of Karnataka Vs. Umadevi (3)) and it is relevant to extract paragraph no.39, which reads as follows:

"39.....

However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision." [Emphasis Supplied]

11. The petitioner association in response to the counter affidavit filed by the first respondent has filed rejoinder along with the list of employees to be absorbed in Government service, wherein, 69 persons belonging to the petitioner association are alive and their claim may be positively considered.

12. This Court in the light of the facts and circumstances and on careful consideration and appreciation of the materials placed before it is of the considered view that services of some of the members of the petitioner association have been absorbed into Government service in terms of G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 and by applying the ratio laid down in (2014) 7 Supreme Court Cases 190 (Hari Nandan Prasad and another versus Employer I/R to Management of Food Corporation of India and another), the claim of the remaining 69 persons who are members of the petitioner association have to be considered for absorption



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into Government service, subject to their eligibility criteria prescribed in G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 passed by the first respondent.

13.The reasons assigned in the impugned order are per se 9 unsustainable and therefore it is remanded for fresh consideration/adjudication in the light of the findings/observations made in this order.

14.In the result, the writ petition is partly allowed and the impugned letter dated 29.07.2013 is set aside and the matter is once again remanded to the first respondent, who shall take into consideration the four Government Orders referred to in paragraph 4 of the counter affidavit as well as G.O.Ms.No.268, Health and Family Welfare Department dated 20.09.2010 and also the findings/observations made in this order. The first respondent shall also afford opportunity of personal hearing to the Secretary of petitioner association namely, Mr.T.K.Murugesan and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs"

10. The judgment of the Hon'ble Supreme Court in Umadevi's case (supra) is a "judgment in rem" which was adopted by this Court in the aforesaid manner. By laying emphasis on the aforesaid extract, this Court in W.P.Nos.17290 to 17292 of 2017, in the case of the petitioners herein, had directed the Government to consider the petitioners' claim in the following manner:-

"6. Perusal of the impugned order would show that the claim of the petitioners was rejected without there being any consideration to the above Government Orders passed in respect of similarly situated persons. On the other hand, the impugned order appears to be a nonspeaking order without application of mind to the facts and circumstances as well as the Government Orders passed as stated supra. Therefore, these Writ Petitions are allowed and the impugned orders are set aside, by remitting the matter back to the first respondent for considering the claim of the petitioners in the light of the G.O.Ms.No.268 of Health and Family Welfare Department dated 20.09.2010 and



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other Government Orders referred to supra, after verification of the records. The whole exercise shall be done by the first respondent within the period of twelve weeks from the date of receipt of a copy of this order. The petitioners are permitted to give one more representation to the Government/first respondent along with a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

11. A co-joint reading of the Hon'ble Supreme Court's decision together with the aforesaid orders of this Court, it could be said that denial of consideration of the petitioners' case herein, particularly when similarly placed persons were given the benefits, the same would amount to discrimination. Moreover, when this Court had passed orders in the petitioners' case on 06.12.2018, it had suggestively condoned the delay and laches on the facts of the case by calling upon the Government to reconsider the petitioners' case. It is needless to point out that the ground of laches and delay, was available even at that point of time. Thus, when this Court has condoned such laches and directed the Government to reconsider their cases, it is not now open to them to reject their claims on the ground of laches and delay. Even otherwise, the absorption of some of the similarly placed employees in G.O.(Ms) No.83 dated 22.03.2017 and G.O.(Ms) No.292 dated 22.08.2017, was pursuant to the orders passed by this Court, which orders were based on the decision rendered by the Hon'ble Supreme Court in Umadevi's case (supra), which is a "judgment in rem".

12. In the State of U.P. and Others Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347, it was held that when similarly situated persons were given certain benefits, the resultant cannot be treated differently. It was also held therein that if there is any delay and laches in making such a claim, the same would not apply to cases where benefit was given to similarly situated persons through judgment of the Court which is considered to be a judgment in rem. The relevant portion of the order reads as follows:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would



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be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."



13. The aforesaid ratio is squarely applicable to the present case in hand on two ratios held therein. Firstly, as a normal rule, the Government cannot refuse to absorb the petitioners herein since similarly placed persons have already been absorbed. Secondly, the Government had chosen to pass orders for absorption to similarly placed persons based on the decision of this Court in W.P.No.21824 of 2013, which was in turn based on Umadevi's case (supra), which is a judgment in rem, intended to grant relief to all persons seeking employment on the ground of discrimination. When such a ratio laid is pursuant to a judgment in rem, the decision in Arvind Kumar Sri Vastava extracted above, would squarely apply and therefore rejection of the petitioners' claim on the ground of delay and laches, cannot be sustained.

14. Thus, the cases of the petitioners could be concluded by holding that, denial of their requests, inspite of similarly placed persons being absorbed, would amount to discrimination. Likewise, when the Government had chosen to absorb similarly placed persons on the basis of the orders of this Court, which in turn is based on the decision of the Hon'ble Supreme Court in Umadevi's case (supra), such a denial is against the well laid principles, as substantiated in the decisions referred to in the above paragraphs.

15. For all the foregoing reasons, the impugned orders passed by the first respondent herein dated 16.05.2019, are quashed. Consequently, there shall be a direction to the first respondent to forthwith absorb the petitioners herein namely, Mrs.T.Devi (W.P.No.28903 of 2019); Mrs.P.Esther (W.P.No.28909 of 2019) and Mr.S.Palanisamy (W.P.No.28916 of 2019), by providing suitable Government jobs. The first respondent herein shall endeavor to issue such appointment and posting orders, atleast within a period of 12 weeks from the date of receipt of a copy of this order. All these Writ Petitions stand allowed accordingly. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP



To

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Public Health and
Preventive Medicine,
DMS Campus, Teynampet,
Chennai - 600 006.
3. The Director of Medical & Rural
Health Services,
DMS Campus, Teynampet,
Chennai - 600 006.
4. The Additional Director,
Medical & Rural Health Services
Department (Leprosy),
DMS Campus, Teynampet,
Chennai - 600 006.

+3ccs to Mr.G.Ethirajulu, Advocate, S.R.Nos.52237 & 52552

W.P.NOS.28903, 28909 &
28916 OF 2019

VBM(CO)
PBS/26/10/2021