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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2021

PRONOUNCED ON : 15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.30106, 30113,30118,
30121,30124/2019,15409,15412,15416/2020
and WMP.Nos.30089 etc batch

- | | |
|-----------------------|--------------------------------------|
| 1. Reguvaran Nair | .. Petitioner in WP No.30106 of 2019 |
| 2. L.R.Jobin | .. Petitioner in WP No.30113 of 2019 |
| 3. K.Balagopalan Nair | .. Petitioner in WP No.30118 of 2019 |
| 4. C.N.Sunil Kumar | .. Petitioner in WP No.30121 of 2019 |
| 5. T.Justin Raj | .. Petitioner in WP No.30124 of 2019 |
| 6. T.Jose | .. Petitioner in WP No.15409 of 2020 |
| 7. J.N.Shajin | .. Petitioner in WP No.15412 of 2020 |
| 8. J.Viju | .. Petitioner in WP No.15416 of 2020 |

vs.

1. The State of Tamil Nadu,
Rep.by its Secretary to Government,
Department of Public Health & Family Welfare,
Fort St.George, Chennai 600 009.
2. The Director of Public Health & Preventive Medicine,
D.M.S.Compound, Teynampet,
Chennai 600 018. ..1st & 2nd Respondents in all WPs
3. The Deputy Director,
Health Service,
Thiruvannamalai.
.. 3rd Respondent in WP No.30106 & 30113 of 2019
4. The Deputy Director,
Health Service, Thogaimalai,
Karur. .. 3rd Respondent in WP No.30118 of 2019



5. The Deputy Director,
Health Service, Kilakadu,
Kallakurichi. .. 3rd Respondent in WP No.30121 of 2019
6. The Deputy Director,
Health Service,
Sivagangai. .. 3rd Respondent in WP No.30124 of 2019
7. The Deputy Director,
Primary Health Centre,
Keezhkulam,
Nagercoil. .. 3rd Respondent in WP No.15409 of 2020
8. The Deputy Director,
Primary Health Centre,
Munjirai,
Nagarcoil. .. 3rd Respondent in WP No.15412 of 2020
9. The Deputy Director,
Primary Health Centre,
Arudesam,
Nagercoil. .. 3rd Respondent in WP No.15416 of 2020

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the respondents to appoint the petitioner on a regular basis as Health Inspector Grade II (now known as Multi Purpose Health Worker(M) w.e.f.13.01.2011 in accordance with G.O.Ms.No.305 dated 22.09.2009 read with the Judgment dated 26.03.2015 of this Court in W.P.No.16488 of 2012, WP No.34498 of 2013, WP No.4552 of 2013 and judgment dated 16.10.2015 in WP No.30077 of 2015, and judgment dated 26.03.2015 in WP No.34498 of 2013 in WP No.16488 of 2012 (For WP No.151109 - 15412, 15416 of 2020) respectively with all consequential benefits of seniority, increments, arrears of salary and promotion as Health Inspector Grade I (Now Multi Purpose as Health Inspector(M) with effect from the same date when other such appointees in 2011 were promoted pursuant to the panel dated 25.02.2016 (Prayer Amended as per order dated 24.10.2019 made in WMP.No.30424/2019) in WP No.30106 of 2019, WMP No.30438 of 2019 in WP No.30444 of 2019 in WP No.30121 of 2019, WMP No.30446 of 2019 in WP No.30124 of 2019, (in Wps 30106, 30113, 30121, 30124 of 2019)

For Petitioner : Ms.Anna Mathew for
M/s.M.N.Sumathy (in all W.Ps.)

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.(In all W.Ps.)



COMMON ORDER

Earlier W.P.Nos.30106, 30113, 30118 and 30121 and 30124 of 2019 were filed for a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in his proceedings dated 27.07.2015 r/w proceedings dated 11.10.2017 of the 2nd respondent (in W.P.Nos.30106 & 30113 of 2019) and 3rd respondent in his proceedings dated 29.07.2015, 22.02.2016 and 28.07.2015 in W.P.Nos.30118, 30121 and 30124 of 2019 and quash the same and for consequential direction.

2. By the impugned Orders dated 27.07.2015, 29.07.2015, 22.02.2016 and 28.07.2015 respectively, the 3rd respondent had appointed the petitioners on a temporary basis under Section 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules pursuant to order dated 26.03.2015 in W.P.No.16488 of 2012.

3. By order dated 11.10.2017, the 2nd respondent declined to relax the age of the petitioners under Section 12 (d) of the Tamil Nadu State and Subordinate Service Rules to the petitioners.

4. Later, the prayer in these five writ petitions were amended to read as follows:-

Writ of Mandamus to direct the respondents to appoint the petitioners on a regular basis as Health Inspectors Grade II (now known as Multi Purpose Health Workers (M) with effect from 13.01.2011 in accordance with G.O.Ms.No.305 dated 22.09.2009 read with the Judgment dated 26.03.2015 of this Court in W.P.No.16488 of 2012 with all consequential benefits of seniority, increments, arrears of salary and promotion as Health Inspector Grade I [Now Multi Purpose Health Supervisor (M)]with effect from the same date when other such appointees in 2011 were promoted pursuant to the panel dated 24.10.2019".

5. The petitioners in W.P.Nos.15409,15412 & 15416 of 2020 have also prayed for the same relief. Therefore, all theses writ petitions are being disposed by this common order.

6. It is the case of the petitioners that the petitioners were eligible for being appointed as Health Inspectors Grade II in terms of G.O.Ms.No.305 issued by the Health and Family Welfare (N1) Department dated 22.09.2009. As per the above Government Order, about 55 persons were identified to be appointed as Health Inspector Grade II which included the petitioners.



7. However, the 1st respondent had failed to appoint them as Health Inspector Grade II in terms of G.O.Ms.No.305 issued by the Health and Family Welfare (N1) Department dated 22.09.2009.

8. Appearing on behalf of the petitioners, the learned counsel for the petitioners submits that the said G.O.Ms.No.305 dated 22.09.2009 specifically identified 55 persons who completed their Sanitary Inspector Course in the All India Training Institute of Local Self Government institutions functioning at Bangalore, Belgaum, Cochin and Mumbai and that the Government by way of special dispensation decided to appoint these persons which included the petitioners and therefore the petitioners were entitled to be appointed.

9. It is submitted that the petitioners were one of 55 persons identified in the annexure to G.O.Ms.No.305 dated 22.09.2009 pursuant to recommendation of the 1st respondent.

10. It is submitted that about 53 persons were appointed by the second respondent in the year 2011 and that only 37 of the 55 persons identified in Annexure to G.O.Ms.No.305 dated 22.09.2009 were appointed leaving out the petitioners and one more persons and that the other 16 persons who were appointed contrary to G.O.Ms.No.305 dated 22.09.2009. It is further submitted the appointment of these 16 persons was in deviation of the order whose services have been regularised by Court intervention.

11. Explaining the background of the present case, the learned counsel submits that earlier the petitioners had filed W.P.No.7376 of 2011 was filed by the petitioners for a mandamus to direct the respondents to appoint the petitioners to the post of Health Inspector Grade II in terms of G.O.Ms.No.305 dated 22.09.2009.

12. The said Writ Petition was disposed on 08.04.2011 by directing the second respondent to consider the representation of the petitioners and pass orders thereon on merits and in accordance with law within a period of three months.

13. Since the said order was not apparently not complied, the petitioners filed Cont.P.No.1422 of 2011. It was however dismissed on 12.04.2012 by recording the submission of the respondents that the petitioners had secured lesser marks in the interview conducted.



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14. While dismissing the contempt petition filed by the petitioners by holding that no contempt was made against the 2nd respondent, liberty was however given to the petitioners to challenge the order rejecting the candidature of the petitioners.

15. Under these circumstances, these petitioners filed W.P.No.16488 of 2012 and etc batch which came to be disposed by an order dated 26.03.2015. The petitioner had prayed for the following relief:-

" A writ of Mandamus directing the respondents to appoint the petitioner as Health Inspector Grade II with effecty from 13.01.2011 when 55 others were appointed as such as per G.O.Ms.No.305 issued 1st respondent dated 22.09.2009 with continuity of service arrears of salary appropriate seniority and all other attendant benefits".

16. It is submitted that the Court has given a positive direction to appoint the petitioners. It is further submitted that the learned single judge also found fault in the manner in which the appointment orders were made by the second respondent to the persons whose names were not included in the Annexure to G.O.Ms.No.305 dated 22.09.2009.

17. It is submitted that after the said writ petition which came to be disposed by this Court on 26.03.2015 by separate appointments orders, the petitioners were appointed on various dates under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules.

18. It is submitted that to compound the injury inflicted on the petitioners, the the 2nd respondent declined to relax the age of the petitioners under Section 12(d) of the Tamil Nadu State and Subordinate Service Rules vide order dated 11.10.2017, for no fault of the petitioners.

19. The learned counsel for the petitioners submits that there was no justification in appointing the petitioners on temporary basis under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, as the order dated 26.03.2015 of this Court in W.P.Nos.16488 of 2012 etc. batch was in categorical.

20. It is submitted that these appointments were contrary to the order and made in utter disregard to the order dated 26.03.2015 of this Court in W.P.Nos.16488 of 2012 & etc batch



21. The learned counsel for the petitioners further submits that even otherwise G.O.Ms.No.305 dated 22.09.2009 also did not give any scope for any deviation and therefore this exercise carried out by the respondents while issuing appointment orders to the petitioners belatedly under Rule 10 (a)(i) of Tamil Nadu State and Subordinate Service Rules was arbitrary and improper.

22. It is submitted that the petitioners ought to have treated on par with rest of the 37 persons who were appointed in terms of G.O.Ms.No.305 dated 22.09.2009. It is submitted that if the petitioners were appointed in the year 2011 along with others whose names were there in the Annexure to G.O.Ms.No.305, the petitioners would have been promoted to the next higher post of Health Inspector Grade I [now Multi Purpose Health Supervisor(M)] on par with their batchmates.

23. The learned counsel for the petitioners also submits that some of the persons whose names were not there in G.O.Ms.No.305 dated 22.09.2009 had also approached this Court and filed writ petitions before this Court and obtained favorable order in the following cases:-

W.P.No.	Name of persons	Order dated
3492 of 2016	Binu Kumar	02.02.2016
3493 of 2016	Santhosskumar	
7616 of 2016	K.S.Krishnakumar	02.03.2016
7617 of 2016	Gireeshkumar NithiyanathaSundari	
7647 of 2016	Byju George	02.03.2016

24. It is further submitted that these orders were also challenged before the Division Bench in W.A.Nos.561, 562, 570, 579, 580 of 2017 and W.P.nos.1512 to 1514 of 2016 which came to be disposed on 06.06.2017 with the following observations:-

"6. When the similarly placed persons were directed to be considered for the post of Grade-II Health Inspector, the legitimate right of the writ petitioners to claim appointment on par with similarly placed persons cannot be denied on some factual discrimination and we cannot, at this stage, take a different view in respect of the present writ petitioners. Further, this court is appraised of the fact that when the amendment with regard to qualification and nomenclature was introduced in the year 2013, it was further amended on 5.2.2016. Therefore, in our view, the order of the learned Single Judge needs no interference.



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However, it is made clear that persons, who apply, in future, for the said post, the amendment introduced would be binding with regard to qualification as well as nomenclature of the post. Therefore, it is needless to say that for future appointments, the candidates must possess qualification as indicated in the G.O. which introduces the amendment.

7. The writ appeals are disposed of accordingly. No costs. The connected miscellaneous petitions are closed”.

25. The learned counsel for the petitioners further submits that some of the persons whose name were not in the Annexure to G.O.Ms.No.305 were also appointed and show cause notices were issued to them to show cause as to why their appointment should not be cancelled or terminated.

26. It is submitted that these persons also approached this Court succeeded in W.P.No.24453 of 2012 vide order dated 30.04.2019 and W.P.Nos.12781 to 12786 of 2013 vide order dated 08.04.2019 and W.P.No.(MD)Nos.7092 and 7093 of 2013 vide its order dated 23.10.2019.

27. It is submitted that if these persons apart from 37 whose names were in the Annexure to G.O.Ms.No.305 dated 22.09.2009 along with the petitioners could be appointed as regular employees, there is no valid reason for appointing the petitioners belatedly in the year 2015 under Rule 10(a)(i) of the Tamil nadu State and Subordinate Service Rules as temporary employees and continue to still remain as temporary employees even as on date.

28. It is submitted that the respondents being “State” cannot unfairly discriminate between the persons who were covered by G.O.Ms.No.305 and with those who were subsequently and independently appointed pursuant to the orders of this Court. It is submitted that temporary appointments of the petitioners were arbitrary and therefore the petitioners are entitled for the relief as prayed in these writ petitions.

29. Appearing on behalf of the respondents, the learned Government Advocate submits that the petitioners had earlier filed contempt petition No.1422 of 2011 and it was dismissed specifically after it was observed they secured lesser mark in the interview and therefore they were not eligible to be selected for appointment.



30. The learned Government Advocate for the respondents further submits that G.O.Ms.No.305 was issued in the year 2009 pursuant to the recommendation of one man commission appointed for the aforesaid purpose and pursuant to the recommendation of the Department of Public Health and Preventive Medicine, 55 names were short listed.

31. It is submitted that pursuant to the aforesaid G.O., a decision was taken to fill up 55 posts of Health Inspector Grade II from among the candidates who had completed Sanitary Inspector Training Course at the All India Training Institute of Local Self Government outside the State of Tamil Nadu.

32. It is submitted that the Annexure to the said Government Order was issued only for purpose of appointing 55 Health Inspector Grade II from among eligible persons from Employment Exchange apart from 55 persons in the ratio of 1:5 and that no relaxation of rules was given to any one of the candidates. Therefore, the petitioners cannot ask for any relaxation.

33. The learned Government Advocate further submits that these petitioners whose names were in the Annexure to G.O.Ms.No.305 were not selected as they failed to secure the required cut off marks and thus did not fit into the communal roster.

34. It is further submitted that aggrieved person filed writ petitions before this Court in W.P.No.7376 of 2011 which came to be disposed by an order dated 08.04.2011 to consider the representation of the petitioners on merits and pass appropriate orders on merits on the representation of the petitioners and thus the impugned orders have been passed.

35. It is further submitted that as per G.O.Ms.No.305 dated 22.09.2009 , the Government had issued instructions to the 2nd respondent, Director of Public Health and Preventive Medicine, to fill up the 55 posts of Health Inspector Grade II by getting the list of qualified candidates from the employment exchange along with the enlisted persons in the aforesaid Government Order.

36. The learned Government Advocate further submits that every appointment in the Government service is only on temporary basis under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules and thereafter made permanent subject to such temporary appointees satisfying the other criteria and on completion of probation.



37. By way of re-joinder, the learned counsel for the petitioners submitted that the respondents have not given any reply as to how and why those 53 (37 +16) persons who appointed in 2011 were not appointed under Rule 10(a)(i) of the Tamil nadu State and Subordinate Service Rules.

38. The learned counsel for petitioners further submitted that even those persons who were appointed pursuant to orders dated 02.02.2016 in W.P.Nos.3492 & 3493 of 2016, by order dated 02.03.2016 in W.P.Nos.7616 to & 7618 of 2016 and by order dated 02.03.2016 in W.P.No.7647 of 2016 were not appointed under Rule 10(a)(i) of the Tamil nadu State and Subordinate Service Rules and therefore there is legal basis for discriminating the petitioners alone.

39. Heard the learned counsel for the petitioners and the learned Government Advocate for the respondents. I have also perused the Government orders in G.O.Ms.No.305 issued by the Health and Family Welfare (N1) Department and orders passed by this Court particularly in W.P.Nos.16488 of 2012 and etc. batch dated 26.03.2015 and the other orders which came be passed for appointing few other persons as Health Inspector Grade II.

40. G.O.Ms.No.305 dated 22.09.2009 it has been stated that there were about 1376 vacant posts of Health Inspector Grade II and that no qualified persons were available to fill up the posts and that earlier G.O.Ms.No.2789, Health and Family Welfare Department, dated 31.10.2006 was issued as a one time measure to appoint candidates who had completed their course from the Pondicherry Community College.

41. G.O.Ms.No.305 dated 22.09.2009 has also recognised that Certificate from the All India Local Self Government Institutions was to be treated on par with the certificate issued by the Director of Public Health and Preventive Medicine. It further states that a request was made to the Government to appoint of 55 candidates from Tamil Nadu as Health Inspector Grade II who completed their course from the All India Local Self Government Institutions.

42. After examining the proposal the Government decided to relax Rule 5(h) (iii) of the Public Health Subordinate Service Adhoc Rules as an one time measure and accorded special permission to the Director of Public Health and Preventive Medicine to fill up 55 posts of Health Inspector Grade II.

43. The said Government Order also enjoined the Director of Public Health and Preventive Medicine to also



consider in the ratio of 1:5. similarly placed persons from the said institutes who had registered their names with the Employment Exchange Board.

44. However, the petitioners were not appointed. Under these circumstances, petitioner approached this Court for the 2nd time in W.P.No.16488 of 2012 which came to be ordered on 26.03.2015. It will be useful to refer to the following passages from the said order:-

13.The original file produced by the learned Additional Government Pleader shows that the second respondent, instead of appointing 55 candidates, including the petitioners, as per the order in G.O.Ms.No.305, dated 22 September 2009, constituted a committee to interview the candidates. The second respondent requested the employment exchange to forward a list of candidates. Those candidates were also interviewed along with the petitioners. The second respondent, in addition to the candidates sponsored by the employment exchange, interviewed 16 other candidates who were neither the beneficiaries of the Government Order in G.O.Ms.No.305 nor sponsored by the employment exchange.

14.The selection file shows that the second respondent fixed cut off marks in the following manner :-

S.No.	Category	Total number of candidates	Minimum of cut off marks
1	GT	17	19
2	BC	14	20
3	BC (M)	1	21
4	MBC	11	20
5	SC	9	20
6	SC (A)	1	19
7	ST	-	-
Total		53	-8-

15. The file does not contain any material to show that marks were awarded by the Selection Committee, taking into account different aspects like personality, qualification, experience etc. Candidates were given marks out of 30. Criteria adopted by the Selection Committee to assess the merit is not clear from the file. Even the minutes of the Selection committee is not found in the file. Though it was recorded in the file notes that 250 questions would be prepared, there is nothing on record to show that questions were prepared and marks were given on the basis of answers given by the candidates. The second respondent arbitrarily fixed the cut off marks and arbitrarily awarded marks also. There was no direction from the Government to conduct interview for selecting candidates. The



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Government have issued the order very specifically to accommodate 55 Sanitary Inspectors who have undergone Diploma Course outside the State. Such being the position, the second respondent was not justified in conducting interview for the purpose of elimination of candidates named in the Government Order in G.O.Ms.No.305, dated 22 September 2009.

15.The selection file shows that the second respondent fixed cut off marks in the following manner:-

S.No .	Category	Total number of candidates	Minimum of cut off marks
1	GT	17	19
2	BC	14	20
3	BC (M)	1	21
4	MBC	11	20
5	SC	19	20
6	SC (A)	1	19
7	ST	-	-
	Total	5	
		3	

16.The second respondent adopted back door method to accommodate 16 candidates who were earlier employed on daily wages. Those 16 persons were appointed after rejecting the candidature of the petitioners. The Government subsequently noted this illegality and fraud and issued a show cause notice to the second respondent. The second respondent in its explanation admitted that those 16 candidates were not sponsored by the employment exchange. According to the second respondent, 16 candidates were appointed temporarily in 2011 and they have been working for the past 5 months. The second respondent requested the Government to ratify the selection taking into account the fact that there are -9- more number of vacancies existing in the post of Health Inspector. The Government, not convinced with the explanation, by order dated 28 September 2011, directed the second respondent to cancel the appointment of 16 candidates whose names were not sponsored by the employment exchange. The second respondent issued a consequential order



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cancelling all the 16 appointments. Therefore, it is very clear that the second respondent adopted a dubious method to eliminate the named Sanitary Inspectors for whose benefit the order in G.O.Ms.No.305, dated 22 September 2009 was issued. The second respondent also tried to appoint 16 candidates through back door, to the exclusion of eligible candidates like the petitioner.

17.The Courts have, time and again, deprecated the practice of conducting selection only by the method of interview. In the subject case, there was no written test. It was 100% interview. Cut off marks were fixed without any rationale. Marks were also awarded in a highly arbitrary manner".

18.The Government have taken a conscious decision to accommodate 55 Sanitary Inspectors from Tamil Nadu who have undergone their studies outside the State. The Government have made it very clear that the Order was issued for appointing the unemployed persons belonging to Tamil Nadu who have completed diploma course for the post of Sanitary Inspector. Their names were shown in the annexure to the Government Order. The second respondent was expected only to verify the certificates of named candidates and appoint them as Health Inspector Grade II. The second respondent, by giving a go-by to the Government Order, adopted his own procedure and appointed individuals of his -10- choice, who were neither recommended by employment exchange nor covered by Government Order in G.O.Ms.No.305 dated 22 September 2009. The petitioners are therefore correct in their contention that the selection is liable to be set aside.

19. The further question is as to whether this Court should set aside the selection made in the year 2011. The selected candidates are not before this Court.

20.The learned Additional Government Pleader on instructions, submitted that there are several vacancies in the post of Health Inspector Grade II. Such being the factual position, I am of the view that interest of justice would be subserved by



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directing the respondents to appoint the petitioners as Health Inspectors Grade II, pursuant to the Government Order in G.O.Ms.No.305 dated 22 September 2009, without setting aside the selection already made.

21.The Government have already granted age relaxation to the petitioners and similarly placed Sanitary Inspectors who have undergone Diploma Course outside the State. Age limit is therefore not a problem for appointing the petitioners as Health Inspector Grade II. It is also not necessary to disturb the appointment of others in view of large number of vacancies in the post of Health Inspector Grade II. I am therefore of the view that immediate steps should be taken by the respondents to appoint the petitioners as Health Inspectors Grade-II.

Disposition :-

22.In the result, a writ in the nature of a Writ of Mandamus is issued, directing the respondents to appoint the petitioners as Health Inspector Grade II, in the light of Government Order in G.O.Ms.No.305 Public Health and Family Welfare Department, dated 22 September 2009 and more particularly, paragraph 8 of the said order. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

23.In the upshot, I allow the Writ Petitions. No costs. Consequently, connected miscellaneous petitions are closed.

45. The above order of the Court is clear. There is hardly any scope for any doubt. If 37 of the 55 persons who short listed were appointed in the year 2011 on regular basis, appointment of the petitioners belatedly on temporary basis under the Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules cannot be justified.

46. 16 of 53 persons were also appointed on regular basis though their appointment was through a backdoor method as has been observed in the above order. It is thus clear that the rights of the petitioners were compromised to accommodate those 16 persons even though their appointments were not contemplated under G.O.Ms.No.305, Health and Family Welfare (NF) Department dated 22.09.2009.



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47. Thus, there was no justification in appointing the petitioners on temporary basis under the Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules after the above order was passed.

48. Further, in para 8 of G.O.Ms.No.305, Health and Family Welfare (N1) Department dated 22.09.2009, the Director of Public Health and Preventive Medicine was merely asked to verify the genuineness of the certificate of educational qualification of 55 persons and to appoint them as Health Inspector Grade II. It will be helpful to refer to Para 8 which reads as under :-

Tamil	English
கல்வித் தகுதி சான்றிதழ்களின் மெய்த் தன்மையை சரிபார்த்து அவர்களை சுகாதார ஆய்வாளர் நிலை II ஆக பணியமர்த்த தக்க நடவடிக்கை எடுக்குமாறு, பொது சுகாதாரம் மற்றும் நோய் தடுப்பு, மருந்து துறை இயக்குநர் கேட்டுக்கொள்ளப்படுகிறார்.	The Director of Public Health and Preventive Medicine is requested to verify the genuineness of the certificate of educational qualification and to appoint them as Health Inspector Grade II.

49. Further, order dated 26.03.2015 in W.P.No.16488 of 2012 also does not state that the appointment of the petitioners should be on temporary basis. G.O.Ms.No.305 dated 22.09.2009 also did not contemplate appointment on temporary basis. Had it been so, it would have been specifically provided in the said Government order itself.

50. Further, under the 1st proviso Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, no appointment by direct recruitment shall be made of any person other than the one sponsored by Tamil Nadu Public Service commission from its regular or reserve list of successful candidates to any of the post within the purview of the Tamil Nadu Public Service Commission. None of the 53 candidates appointed earlier were either sponsored by the Employment Exchange Office or by the Tamil Nadu Public Service Commission.

51. The 2nd Proviso to Rule 10(a)(i) further states that appointment by Direct recruitment under this clause in respect of posts by the said Commission shall be made only where new post with new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular reserve list of successful candidates for being sponsored. Admittedly, Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules was not under contemplation when the initial appointments were made in 2011.



52. Thus, the appointment of the petitioners under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules on temporary basis cannot be justified. The petitioners deserve parity and equal treatment on par with others who were earlier appointed during 2011 in terms of G.O.Ms.No.305 issued by the Health and Family Welfare (N1) Department dated 22.09.2009. Respondents as a State also cannot discriminate its citizen in the matter of public employment.

53. It is further noticed that total number of vacancies as per G.O.Ms.No.305 dated 22.09.2009 was 55 only. The number of vacancies have slowly and steadily increased on account of subsequent orders of this Court which have been referred in this order. Such regularization and increase overlooking the rights of the petitioners cannot be allowed to continue to the prejudice of the petitioners.

54. If 53 persons appointed earlier were on permanent basis in terms of G.O.Ms.No.305 dated 22.09/2009, the appointment of the petitioners under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules cannot be justified.

55. It is also noticed that pursuant to an order of this Court in S.Sumathi vs. The Government of Tamil Nadu, rep.by its Secretary to Government, Secretary to Government Department, Secretariat, Chennai 600 009 and 3 others , W.P.No.24453 of 2012 dated 30.04.2019, the 3rd respondent has regularized the services of the said petitioner though belatedly vide letter bearing Reference .(D)No.1887 dated 20.12.2019 of the Health and Family Welfare (L2) Department while the petitioners still continue to remain as temporary employees under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules.

56. Therefore, temporary appointments of the petitioners under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules is liable to be declared as arbitrary and results in unfair discrimination of the petitioners as not by 37 other batchmates numbering but 16 others were not appointed on temporary basis.

57. The appointment of the petitioners under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules is therefore liable to be held arbitrary in violation of Articles 14 and 16 of the Constitution of India. That apart subsequent appointment of few candidates who secured favorable orders of this Court were also not temporary basis.

58. Therefore, this Court is inclined to pass the following orders:-



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- i) The appointment of the petitioners shall be treated as a regular appointment with effect from the date of the initial appointment of 53 appointees/batchmates of the petitioners who were appointed in 2011;
- ii) The Respondents are therefore directed to regularize the services of the petitioners and make appropriate entry in the Service Register of the respective petitioners as permanent employees on par with 53 appointees/batchmates of the petitioners who were appointed in 2011;
- iii) Consequently respective petitioners are entitled for notional promotion on par with their appointees/batchmates of the petitioners who were appointed in 2011;
- iv) The respondents shall pay arrears of salaries and other allowances to the respective petitioners;
- v) The 1st respondent shall implement this order by issuing appropriate G.O.
- vi) The above exercise shall be carried out within a period of 18 weeks from the date of receipt of this order.

58. These writ petitions stand allowed with the above observations/directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

Kkd

To

1. The Secretary to Government,
Department of Public Health & Family Welfare,
Fort St. George, Chennai 600 009.

2. The Director of Public Health &
Preventive Medicine,
D.M.S.Compound, Teynampet,
Chennai 600 018.



3. The Deputy Director,
Health Service,
Thiruvannamalai.
4. The Deputy Director,
Health Service, Thogaimalai,
Karur.
5. The Deputy Director,
Health Service, Kilakadu,
Kallakurichi.
6. The Deputy Director,
Health Service,
Sivagangai.
7. The Deputy Director,
Primary Health Centre,
Keezhkulam,
Nagercoil.
8. The Deputy Director,
Primary Health Centre,
Munjirai,
Nagarcoil.
9. The Deputy Director,
Primary Health Centre,
Arudesam,
Nagercoil.

+9ccs to M/s.M.N.Sumathy, Advocate SR.No.57009, 58603

+1cc to Government Pleader SR.No.58884

W.P.Nos.30106, 30113, 30118,30121,
30124/2019,15409,15412 &15416/2020

BP(CO)
GMY(10/12/2021)