



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P. (MD) No.1935 of 2021

and

W.M.P. (MD) Nos.1650 & 1651 of 2021

G.V.Vairam Santhosh

: Petitioner

Vs.

The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Fort St.George,
Chennai 600 001

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for records pertaining to the proceedings in G.O.(Ms)No.588, dated 30.12.2020 - Health and Family Welfare (N2) on the file of the respondent and quash the same and consequently, direct the respondents to make appointments by following due selection process.

For Petitioner : Mr.P.Puhazh Gandhi

For Respondent : Mr.Vijay Narayan,
Advocate General

Assisted by
Mr.Sricharan Rangarajan,
Additional Advocate General

Assisted by
Mr.K.P.Krishnadoss,
Special Government Pleader

ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

Heard Mr.P.Puhazh Gandhi, learned Counsel appearing for the petitioner and Mr.Vijay Narayan, learned Advocate General, assisted by Mr.Sricharan Rangarajan, learned Additional Advocate General

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



appearing for the respondent.

2. The petitioner has come forward to file this public interest litigation challenging the impugned Government Order passed in G.O. (Ms) No. 588, Health and Family Welfare (N2) Department, dated 30.12.2020, by which, sanction was accorded for an additional 1335 posts of Medical Officer to the Mini Clinics with the Doctors, being recruited on a contractual basis, by way of interview method.

3. The learned Counsel appearing for the petitioner submitted that the earlier Government Order governing has been given a go by. The interim order granted by this Court, when a challenge was made to the process of recruitment through outsourcing, has been put on hold. Now, the very same process is sought to be adopted. As per the earlier Government Order, there has to be redeployment. The rule of reservation has been given a go by. A recruitment has to be made through the Medical Recruitment Board alone. Thus, the order impugned requires interference.

4. The learned Advocate General and the learned Additional Advocate General appearing for the respondent / State submitted that the impugned order is very clear and specific. It only deals with the additional 1335 posts insofar as sanction is concerned. This is in addition to the earlier Government Order, which deals with 665 posts. Therefore, there is no question of making the employment through outsourcing. The appointments, being contractual, the earlier procedure as ordered by this Court would be followed. The impugned order has to be read in the light of the earlier orders passed.

5. The learned Advocate General further submitted that the proposal of the Director of Public Health and Preventive Medicine has been accepted for the creation of the posts, keeping in view of the present scenario and the scheme being likely to be continued for a longer run. There is no public interest involved in the case on hand. In any case, there is no such public interest in a service matter, which is inclusive of in-service as well. Since the appointments are being made on contractual basis, there is no need to go through the Medical Recruitment Board. Even otherwise, the appointments being made by the public authorities, the petitioner cannot have any grievance. Thus, the writ petition has to be dismissed.

6. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

7. The role of the Court in such matter is very limited. The relevancy and efficiency are the factors, which are the realm of the services. In our earlier order also, we took note of this fact on



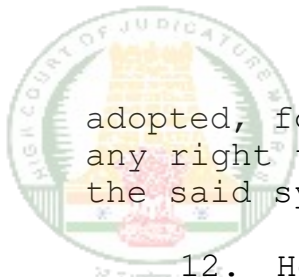
the need to have the Clinics. Therefore, we consciously do not wish to go into the said issue, once again.

8. As rightly submitted by the learned Advocate General, interference is rather limited, especially, when a public interest litigation is filed over a service matter. This includes the nature of the recruitment as well. However, we do not wish to non-suit the petitioner on this ground, as we have entertained the earlier writ petition and considered it on merits. What we are now concerned with is the impugned Government Order in G.O.(Ms)No.588, Health and Family Welfare (N2) Department, dated 30.12.2020. This Government Order reads the earlier Government Order. Therefore, there is no need to go back on the earlier order. After all, both the orders are passed by the very same authority. Therefore, until and unless, the wisdom leading to the passing of the impugned order is tainted with either *mala fide* or extreme arbitrariness, we cannot question it, that too, in a public interest litigation.

9. The learned Advocate General submitted that the recruitment would be made by following the same procedure. Therefore, the substantial grievance of the petitioner stands answered. Even otherwise, the question as to whether the redeployment should be made first and thereafter, recruitment to be made, they are in the realm of the Administrators. It is the respondent who took the decision earlier and thereafter, now. As the impugned order reads the earlier Government Order, we do not wish to say anything on this issue.

10. Coming to the question of communal rotation, this is a contractual appointment pertaining to the recruitment of Doctors. The decision has been made keeping in view of the pandemic situation. The reasoning adopted by us on the earlier occasion would hold good even in the present recruitment. It is possible that the reserved categories would be more. To make the position clear, we direct the respondent to undertake such exercise to make sure that the minimum requirement of reservation is satisfied. Therefore, if the reservation requirement exceeds, particularly with respect to vertical reservation, it is open to the respondent to proceed. They can also consider the feasibility of horizontal reservation, to the extent possible. This would satisfy the grievance, as sought to be exposed by the petitioner by way of the public interest litigation. Needless to state that guidance can be drawn for fixing the vertical reservation by having look to the 200 point roster.

11. On the third issue, namely, the recruitment to be made through the Medical Recruitment Board, we are also in agreement with the submission made by the learned Advocate General. The appointments are contractual and being made by the public authorities. In the absence of any material to hold that there are excessive considerations involved, even in the process likely to be



adopted, for recruitment on a contractual basis, which does not give any right to the recruited persons, we are not inclined to hold that the said system is bad in law.

12. However, we make it clear that the appointments, being contractual, there is no need to continue for long, though it is stated by the learned Advocate General that it might go on for a period. If the respondent is of the view that the Clinics are going to run for a longer run, they shall not wait for one year and a decision will have to be taken within a period of six months from the date of receipt of a copy of this order, as to whether the scheme is going to be for a longer run or a shorter run. If it is for a longer run, recruitment on permanent basis will have to be done, instead of continuing the contract period even during the one year period and thereafter. The appointment orders will have to make it clear that they are purely temporary and contractual in nature.

13. With the above observations and directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Fort St.George,
Chennai.

+1 CC to M/s.GP (SR-3543[F] dated 05/02/2021)

W.P. (MD) No.1935 of 2021
04.02.2021

smv (CO)

KK (05.02.2021) 4P 3C