



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.8333, 8334, 8335, 8336, 8337, 8338, 8339 and 8341 of 2021

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and
W.M.P(MD) Nos.6308, 6310, 6311, 6312, 6313, 6314, 6315 and 6317 of 2021

T.Sugumar ... Petitioner in WP(MD)No.8333/2021

Jesuraj.A S/o Andrus, No.4/323, Nellai Street,
Tahsildar Nagar, Anna Nagar,
Madurai 625 020 ... Petitioner(s) in WP(MD). 8334/ 2021

Thirumurugan.T, S/o Thirumalai, No.1/15,
Kaliyamman Kovil Street, Melakkulikudi and Post,
Nagamalaipudukkottai Via.,
Madurai District ... Petitioner(s) in WP(MD). 8335/ 2021

Roland Ramesh.T S/o V.Thangavel,
No.31, A.R.C.Kuttiyar Division,
Kodayar Lower Camp 629 102,
Kanyakumari District ... Petitioner(s) in WP(MD). 8336/ 2021

Pazhani.T S/o.Thangappan,
Poovadi Thittai, Thalakulam Post - 629802,
Kanyakumari District ... Petitioner(s) in WP(MD). 8337/ 2021

A.Jenova Pushpam D/o.M.V.Albin Durai Raj ,
No.5-C, Boomi Kavala Perumal Samy Koil Street,
Sadayappapuram, Mukkudal Post - 627601,
Tirunelveli District ... Petitioner(s) in WP(MD). 8338/ 2021

A.Joseph S/o.V.Arulappan,
No.2/97-B, Pilaangalai Puthan Veedu ,
Puravur , Manivilai Post - 629170,
Kanyakumari District ... Petitioner(s) in WP(MD). 8339/ 2021



M.Arul Selvam S/o.Murugan ,
12/79-D, Selva Bhavanam, Bharathi Nagar ,
Thuckalay and Post ,
Kanyakumari District ... Petitioner(s) in WP(MD). 8341/ 2021

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Vs.

1.The State of Tamil Needy,
Rep. by its Secretary,
Health and Family Welfare Department,
St. George Fort,
Chennai-600 009.

2.The Director of Public Health and Preventive Medicines
O/o.No.359, Anna Salai,
D.M.S.Compound,
Chennai-600 006.

... Respondents in all WPs

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Government Order in G.O(Ms) No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020 issued by the first respondent herein and the consequential proceedings of the second respondent herein in R.No.39974/VM/A3/2015-14, dated 06.03.2020 to an extent of the effect of the date of the petitioner's regular employment alone and quash the same in so far as the effect of the date of the petitioner's regular employment alone and consequently direct the respondents herein to refix the petitioner's service period retrospectively, from the date of the petitioner's initial appointment i.e., from on 17.12.2007 and accordingly the petitioner's service period may be counted from 17.12.2007 and accordingly direct the respondents to pay all arrears of amount to the petitioner, within a time stipulated by this Court.

Prayer in WP(MD). 8334/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court. To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of writ, to call for the records pertaining to the impugned Government Order in G.O.(Ms).No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, issued by the 1st respondent herein and the consequential proceedings of the 2nd respondent herein in R.No.39974/VM/A3/2015-16 dated 06.03.2020, to an extent of the effect of the date of the petitioners regular employment alone and quash the same, in so far as the effect of the date of the petitioners regular employment alone and consequently direct the respondents herein to refix the petitioners service period retrospectively, from the date of petitioner's initial appointment i.e. from on 19.03.2008.and accordingly petitioner's



service period may be counted from 19.03.2008. and accordingly direct the respondents to pay all arrears of amount to the petitioner with in a time fixed by this Hon'ble Court.

Prayer in WP(MD) . 8335/ 2021 :

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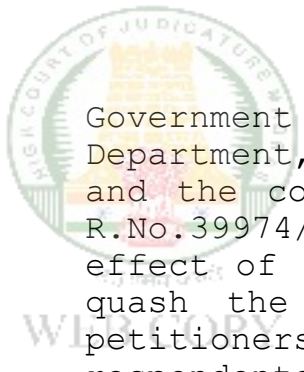
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-6. To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of writ, to call for the records pertaining to the impugned Government Order in G.O.(Ms).No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, issued by the 1st respondent herein and the consequential proceedings of the 2nd respondent herein in R.No.39974/VM/A3/2015-17 dated 06.03.2020, to an extent of the effect of the date of the petitioners regular employment alone and quash the same, in so far as the effect of the date of the petitioners regular employment alone and consequently direct the respondents herein to refix the petitioners service period retrospectively, from the date of petitioner's initial appointment ,i.e. from on 19.03.2008.and accordingly the petitioner's service period may be counted from 19.03.2008. and accordingly direct the respondents to pay all arrears of amount to the petitioner with in a time fixed by this Hon'ble Court.

Prayer in WP(MD) . 8336/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-6. To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of writ, to call for the records pertaining to the impugned Government Order in G.O.(Ms).No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, issued by the 1st respondent herein and the consequential proceedings of the 2nd respondent herein in R.No.39974/VM/A3/2015-24 dated 06.03.2020, to an extent of the effect of the date of the petitioners regular employment alone and quash the same, in so far as the effect of the date of the petitioners regular employment alone and consequently direct the respondents herein to refix the petitioners service period retrospectively, from the date of petitioner's initial appointment ,i.e. from on 06.08.2009.and accordingly the petitioner's service period may be counted from 06.08.2009. and accordingly direct the respondents to pay all arrears of amount to the petitioner with in a time fixed by this Hon'ble Court.

Prayer in WP(MD) . 8337/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-6. To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of writ, to call for the records pertaining to the impugned



Government Order in G.O.(Ms).No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, issued by the 1st respondent herein and the consequential proceedings of the 2nd respondent herein in R.No.39974/VM/A3/2015-22 dated 06.03.2020, to an extent of the effect of the date of the petitioners regular employment alone and quash the same, in so far as the effect of the date of the petitioners regular employment alone and consequently direct the respondents herein to refix the petitioners service period retrospectively, from the date of petitioner's initial appointment ,i.e. from on 06.08.2009.and accordingly the petitioner's service period may be counted from 06.08.2009. and accordingly direct the respondents to pay all arrears of amount to the petitioner with in a time fixed by this Hon'ble Court.

Prayer in WP(MD) . 8338/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-6. To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of writ, to call for the records pertaining to the impugned Government Order in G.O.(Ms).No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, issued by the 1st respondent herein and the consequential proceedings of the 2nd respondent herein in R.No.39974/VM/A3/2015-32 dated 06.03.2020, to an extent of the effect of the date of the petitioners regular employment alone and quash the same, in so far as the effect of the date of the petitioners regular employment alone and consequently direct the respondents herein to refix the petitioners service period retrospectively, from the date of petitioner's initial appointment ,i.e. from on 25.10.2008.and accordingly the petitioner's service period may be counted from 25.10.2008. and accordingly direct the respondents to pay all arrears of amount to the petitioner with in a time fixed by this Hon'ble Court.

Prayer in WP(MD) . 8339/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-6. To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of writ, to call for the records pertaining to the impugned Government Order in G.O.(Ms).No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, issued by the 1st respondent herein and the consequential proceedings of the 2nd respondent herein in R.No.39974/VM/A3/2015-26 dated 06.03.2020, to an extent of the effect of the date of the petitioners regular employment alone and quash the same, in so far as the effect of the date of the petitioners regular employment alone and consequently direct the respondents herein to refix the petitioners service period retrospectively, from the date of petitioner's initial appointment ,i.e. from on 11.03.2008.and accordingly the



petitioner's service period may be counted from 11.03.2008. and accordingly direct the respondents to pay all arrears of amount to the petitioner with in a time fixed by this Hon'ble Court.

Prayer in WP(MD) . 8341/ 2021 :

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Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-6. To issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of writ, to call for the records pertaining to the impugned Government Order in G.O.(Ms).No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, issued by the 1st respondent herein and the consequential proceedings of the 2nd respondent herein in R.No.39974/VM/A3/2015-21 dated 06.03.2020, to an extent of the effect of the date of the petitioners regular employment alone and quash the same, in so far as the effect of the date of the petitioners regular employment alone and consequently direct the respondents herein to refix the petitioners service period retrospectively, from the date of petitioner's initial appointment ,i.e. from on 08.08.2009.and accordingly the petitioner's service period may be counted from 08.08.2009. and accordingly direct the respondents to pay all arrears of amount to the petitioner with in a time fixed by this Hon'ble Court.

In all Wps.

For Petitioner	: Mr.C.Kishore
For Respondents	: Mr.Veera Kathiravan
	Senior Standing Counsel
	Assisted by
	Mr.K.S.Selvaganesan
	Government Advocate

COMMON ORDER

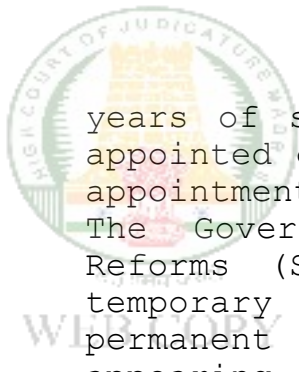
Since the issues involved in these writ petitions are one and the same, they are heard together and disposed of by way of this common order.

2. According to the petitioners, their names were sponsored by the Employment Exchange and they were appointed as Drivers in Mobile Medical Units on consolidated basis after following the procedure on 07.12.2007, 18.03.2008, 18.03.2008, 04.08.2009, 04.08.2009, 24.10.2008, 29.02.2008 and 04.08.2009 respectively. The petitioners were appointed in the regular vacancy and they are working continuously from the date of appointment and therefore, they are entitled for regularisation. The petitioners and similarly placed persons made several representations for regularisation from the date of their initial appointment. On 03.10.2012, the second respondent sent communication to the first respondent to absorb the



Drivers, like the petitioners into regular vacancies, who were appointed through Employment Exchange and the second respondent called for particulars of those Drivers from the concerned Health Units for the purpose of regularization. The Health Units sent the particulars of those Drivers, including the petitioners to the second respondent. The second respondent, by the proceedings, dated 19.12.2013 sent the details of Drivers, including the petitioners to the first respondent for regularization of their service. Subsequently, there was no progress made on the said issue. In the meanwhile, one M.Subramani, who was appointed in the year 2010 as a Driver on consolidated pay through Employment Exchange, was absorbed in the existing vacancy and his service was regularized, vide G.O (Ms)No.74, Health and Family Welfare (EAP II-2) Department, dated 27.02.2014, by the first respondent. In G.O(Ms) No.91, Personnel and Administrative Reforms (S) Department, dated 14.08.2015, the Government decided to treat the temporary posts, which are in existence for more than 5 years, as permanent posts. According to the petitioners, they are also similarly placed persons, like M.Subramani and hence, the Association sent representation to the first respondent on 21.05.2018, for regularization of its members reiterating the contents of G.O.(Ms)No.91, Personnel and Administrative Reforms (S) Department, dated 14.08.2015. While so, the petitioners and others filed writ petition in W.P(MD)No.4162 of 2019, for regularizing their service. This Court, by order dated 22.03.2019, disposed of the said writ petition recording the submission of the learned Special Government Pleader that the proposal to absorb the petitioners, who are working as Drivers in the existing vacancy is under favourable consideration and appropriate decision would be taken within a period of twelve weeks. The respondents did not pass orders within the time limit granted by this Court. Hence, the petitioners filed contempt petition in Cont.P.(MD)No.207 of 2020. When the contempt petition was taken up for hearing, the first respondent produced the Government Order in G.O(Ms)No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, and submitted that the Government decided to absorb 58 Mobile Medical Unit Drivers, including the petitioners, by relaxing Rule 4 for category 15 of Branch-V Miscellaneous of the Special Rules for the Tamil Nadu Medical Subordinate Services. Recording the same, the said contempt petition was closed. Consequent to the said Government Order, the second respondent issued proceedings, dated 06.03.2020, appointing the petitioners and others in the post of Drivers in the existing vacancy in the various Primary Health Centres with effect from the date of joining their duty. The petitioners have come out with the present writ petitions challenging the portion of the Government Order regularising their service from the date of joining in the year 2020 and not from the date of their initial appointment.

3. The learned counsel appearing for the petitioners submitted that the petitioners are entitled to be regularised from the date of appointment and in any event, on completion of three



years of service. One of the Drivers viz., M.Subramani, who was appointed on consolidated pay in the year 2010, much later than the appointment of petitioners, was regularised in the year 2014 itself. The Government in G.O.(Ms)No.91, Personnel and Administrative Reforms (S) Department, dated 14.08.2015, decided to treat the temporary posts, which are in existence for more than 5 years, as permanent posts. In view of the above, the learned counsel appearing for the petitioners prayed for allowing these writ petitions.

4. The second respondent filed counter affidavit. The learned Senior Standing Counsel appearing for the respondents submitted that the request of the petitioners were considered on merits and they were regularised by G.O(Ms)No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020, by relaxing Rule 4 for category 15 of Branch-V Miscellaneous of the Special Rules for the Tamil Nadu Medical Subordinate Services, relating to age qualification, subject to the condition that the Director of Public Health and Preventive Medicine should ensure that 58 Drivers have been recruited through employment exchange. The petitioners were regularised by relaxing age and qualification and as per the Government Order, the second respondent issued appointment orders to the petitioners, which is valid and legal. The petitioners, who were appointed temporarily on consolidated pay are not entitled for regularisation from the date of their initial appointment. The benefits are given from the date of regularisation i.e., from the year 2020. The petitioners are not entitled for retrospective regularisation. As per the Judgment of the Full Bench of this Court in **S.Dhanasekaran & 24 others vs. Government of Tamil Nadu** reported in **2013(6) CTC 593**, the petitioners are not entitled for retrospective regularization from the initial date of joining. In support of his contention, the learned Senior Standing Counsel relied on paragraph 28(iii) of the said judgment, which reads as under: -

"28(iii). Those Sanitary Workers, who were appointed as per G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997 or absorbed as per G.O.Ms.No.71, Municipal Administration and Water Supply Department, dated 05.05.1998, are all governed by G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006, in respect of their regularisation in service and such regularisation shall take effect only from 23.02.2006 and not from the date on which they had completed three years of service from the date of their initial entry into service."

The service of the Drivers mentioned by the petitioners were regularised only from the date of Government Order and not from the date of their initial appointment. In view of the same, the petitioners are not entitled for regularisation from the date of their initial appointment and prayed for dismissal of the writ



petitions.

5. Heard the learned counsel appearing for the petitioners and the learned Senior Standing Counsel appearing for the respondents and perused the entire materials available on record.

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6. From the materials on record and the submissions of the learned counsel appearing for the petitioners and the learned Senior Standing Counsel appearing for the respondents, it is seen that the petitioners were appointed after their names being sponsored by the Employment Exchange on consolidated pay on various dates from the year 2007. All the petitioners were appointed directly on contractual basis in the regular vacancy. They worked continuously from the date of their appointment without any break. The petitioners and their Association made various representations for regularisation of petitioners and members of their Association. The second respondent, by the communication, dated 03.10.2012, requested the first respondent to absorb the petitioners and others into regular vacancy. After the filing of the writ petitions and contempt petition, the petitioners and others were regularised by impugned G.O.(Ms)No.69, Health and Family Welfare (AB1) Department, dated 25.02.2020. Consequent to the said Government order, the second respondent issued appointment orders to the petitioners, dated 06.03.2020. It is seen that by G.O.(Ms)No.74, Health and Family Welfare (EAP II-2) Department, dated 27.02.2014, one M.Subramani, who was appointed on 03.11.2010, was regularised in the year 2014 itself. The respondents have not given any reason for not regularising the petitioners and others, who were appointed earlier to the said M.Subramani. Further, in G.O.(Ms).No.91, Personnel and Administrative Reforms (S) Department, dated 14.08.2015, the Government decided to treat the temporary posts, which are in existence for more than 5 years as permanent posts. The Government has not considered the above facts, when the impugned Government Order was passed.

7. Considering the above facts, the portion of the Government Order insofar as effecting the date of the petitioners' regular employment alone is set aside. The petitioners have given various representations to the first respondent. Therefore, the first respondent is directed to consider the representations of the petitioners taking into consideration the letter of the second respondent, dated 03.10.2012 by proceedings in R.No.67598/PHC7/A3/2007, seeking earlier order for absorption, regularisation of service of M.Subramani in the year 2014 by G.O. (Ms)No.74, Health and Family Welfare (EAP II-2) Department, dated 27.02.2014 and G.O.(Ms).No.91, Personnel and Administrative Reforms (S) Department, dated 14.08.2015 and pass orders on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

<https://hcservices.courts.gov.in/hcservices/> In the above directions, all the writ petitions are



disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Secretary,
Health and Family Welfare Department,
St. George Fort,
Chennai-600 009.
- 2.The Director of Public Health and Preventive Medicines
O/o.No.359, Anna Salai,
D.M.S.Compound,
Chennai-600 006.

+8 CC to M/s.C.KISHORE, Advocate (SR-22804[F] dated 16/07/2021)

+1 CC to M/s.SPL GP (SR-23193[F] dated 19/07/2021)

W.P.(MD)Nos.8333, 8334, 8335, 8336,
8337, 8338, 8339 and 8341 of 2021
16.07.2021

Ps (CO)

KB(02.09.2021) 9P 12C