



WEB COPY

W.P.(MD)No.19565 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD)No.19565 of 2020

and

W.M.P. (MD)Nos.16296 & 16297 of 2020

G.V.Vairam Santhosh

... Petitioner

Vs.

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

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to proceedings in R.No.96109/UHC/S2/2020, dated 15.12.2020, on the file of the second respondent, quash the same and consequently, direct the respondents to make appointments by following due selection process.

For Petitioner : Mr.P.Puhazh Gandhi

For Respondents : Mr.Vijay Narayan
Advocate General
Assisted by
Mr.Sricharan Rengarajan
Additional Advocate General
Assisted by
Mr.K.P.Krishnadoss
Special Government Pleader

ORDER

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

As we consider the matter on merits, the question raised over maintainability is not gone into.

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

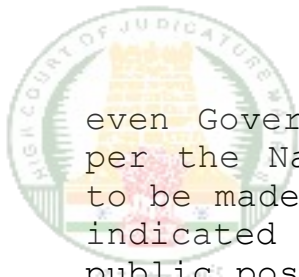


2.This Public Interest Litigation has been filed by the petitioner, seeking to challenge the order in R.No.96109/UHC/S2/2020, dated 15.12.2020, passed by the respondent No.2, providing for the engagement of staff nurses and multipurpose hospital workers on outsourcing basis for the implementation of health and wellness centers and utilising their services towards functioning of the Clinics, namely, Amma Clinics.

3.By the Government Order passed in G.O.Ms.No.27, Health and Family Welfare (EAP II 2) Department, dated 21.02.2006, constitution of District Health Mission and District Health Society were provided. For the District Health Mission, the District Collector concerned has been made as the Chairperson, with the Deputy Director of Health Services of the Revenue District as the Mission Director. The governing body consists of the Chairperson and the Convenor. It also consists of numerous other persons as members, who are obviously public servants, including the Member of Parliament and the Member of Legislative Assembly of the District. Similarly, for the District Health Society, concerned District Collector is the Chairperson and the Deputy Director of Health Services of Revenue District is the Convenor. Another Government Order was passed in G.O.Ms.No.68, Health and Family Welfare (EAP. II 2) Department, dated 29.03.2006, leading to the approval of Memorandum of Association and Bye-laws towards the formation of "District Health Mission" and "District Health Society". In G.O.Ms.No.530 Health and Family Welfare Department, dated 05.10.2020, the Government of Tamil Nadu made a decision to implement the statement made by the Hon'ble Chief Minister regarding opening of Mini Clinics in rural and urban areas to facilitate easy access of the general public to the health facilities. Under those Government Orders, staff nurses are to be deployed as per National Health Mission norms, while the hospital worker by outsourcing.

4.The petitioner has come forward to file this Writ Petition with two primary contentions, namely, the recruitment, though contractual and temporary, through outsourcing is contrary to law and the recruitment will have to be made only in accordance with the Rules governing Government Appointments. Secondly, a plea has been raised that it would be appropriate to follow the Rule of Reservation.

5.Mr.P.Puhazh Gandhi, learned counsel appearing for the petitioner vehemently contended that while the policy decision of the Government to have the Health Clinic is not opposed, in the mode of selection an attempt is being made to recruit persons through a third party agency, namely Kings' Manpower Agency in one instance. This is contrary to the Rule governing appointments and



even Government Orders do not facilitate the same. Secondly, as per the National Health Mission norms, the recruitment will have to be made through the relevant Rules of the State and not as such indicated in the Government Orders. Any attempt to fill up a public posting through the assistance of an external agency cannot be sustained in the eye of law and as a consequence unqualified persons are likely to be recruited and it would be appropriate to follow the Rule of reservation.

6.Mr.Sricharan Rengarajan, learned Additional Advocate General, assisted by Mr.K.P.Kirshnadoss, learned Special Government Pleader appearing for the respondents submitted that there is no basis in the allegations made in the affidavit filed in support of the Writ Petition and the Writ Petition as filed is not maintainable. The petitioner is not a person aggrieved and in any case, the issue being a service matter, he cannot seek the relief as sought for.

7.It is further submitted by the learned Additional Advocate General that the respondents are not going through the private agency towards recruitment and it would be done through the District Health Society itself. Reliance has been made on the statements made in the Counter Affidavit filed by respondent No.2 in this regard.

8.On a query, the learned Additional Advocate General submitted that it is proposed to recruit more persons by giving preference from those who hails from the locality, Taluk and then District. This has been done after considering the entire gamete including the difficulty that might have arisen in selecting persons from far of place than persons person hailing from the locality.

9.When this Court raised another query with regard to reservation, the learned Additional Advocate General would submit that the same would be looked into as far as possible, as the appointment is contractual and temporary, they hope that there may not be non-availability of qualified persons while recruiting them in the manner aforesaid. It is also possible that more reserved candidates would get posting than that of otherwise provided in the Rule of reservation.

10.This Court considered the submissions of Mr.P.Puhazh Gandhi, learned counsel for the petitioner and Mr.Sricharan Rengarajan, learned Additional Advocate General, assisted by Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

11. In the counter affidavit filed by the second respondent,



the apprehensions by the petitioner has been countered through the following averments:

"23. It is submitted that under the Policy of Government of India the National Health Mission was formed which recommended a State Health Mission to be set up with the Chief Secretary / Development Commissioner heading its governing body and the same is elucidated in details in G.O.Ms.No.27 Health and Family Welfare (EAP II 2) Department, Dt:21.02.2006 wherein the Government have accord sanction to form District Health Mission be constituent with the following members.

Chairperson: District Collector

Mission Director: Deputy Director of Health Services of Revenue District

(Convenor) and other Official members.

Further the Constitution / Powers / by Laws of the District Health Society is envisaged in G.O.Ms.No.27, Health and Family Welfare Department of 21.12.2006 and the Memorandum of Association of the District Health Society is envisaged in G.O.Ms.No.68, Health and Family Welfare (EAP II.2) Department dated 29.3.2009.

24. It is submitted that, Executive Sub-Committee of National Health Mission-Tamil Nadu has already permitted the Director of Public Health and Preventive Medicine to fill up posts of staff nurse (2448 health and wellness center) with General Nursing Midwives Qualification from govt. or govt. approved private nursing colleges which are recognized by Indian Nursing Council through District Health Society.

National Health Mission sanctioned vacant posts (585 multipurpose hospital worker)

through concerned District Health Society basis up to March 2021 at only Rs. 6000 per month.

Remaining 1415 multipurpose hospital workers for services towards health and wellness clinics through concerned District Health Society basis up to March 2021 at only Rs. 6000 per month.

The codal procedures must be followed by DDHS (Deputy Director of Health Services) in recruitment of Staff nurse and Multipurpose Hospital Worker in utilization of their service.

25. It is submitted that as per permission provided through Executive Sub-Committee approval, the National Health Mission - Tamil Nadu has provided the instruction to engage Staff nurse and Multipurpose Hospital Worker as per existing National Health Mission norms. Based on the approval, the same has been instructed to be followed at all the O/o Deputy Director of Health Services under the Directorate of Public Health and Preventive Medicine. As



already brought out, it is clearly mentioned that they will not be regularized or permanently absorbed.

26. It is submitted that the staff have been permitted to be engaged in consideration of COVID - 19 pandemic urgency.

It is submitted that only for regular posts which get continued year on year recruitment is done through Medical Recruitment Board (MRB). During the pandemic when an attempt was made to recruit nurses through Medical Recruitment Board, it was not successful as many did not turn up.

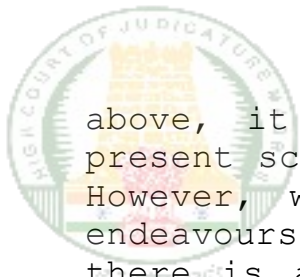
27. It is submitted that, the funds to be utilized for salaries/remuneration of mini-clinics' staff nurses and multipurpose health workers are from National Health Mission funds, the relevant rules and procedures followed for recruitment in National Health Mission Tamil Nadu will become applicable - thus, the National Health Mission - executive sub-committee specified recruitment to be made through the District Health Society.

28. It is submitted that since the recruitment in the Government order encourages proximity to the place of Mini Clinic to enable its successful functioning, the Government is willing to allow the recruitment at District level, through a committee headed by District Collector with the Deputy Director Health Services of the District and Joint Director (Health) as members to be employed by the societies purely for the purposes of payment of salaries and to distinguish it from regular recruitment for permanent vacancies.

As categorically mentioned, all permanent vacancies would continue to be recruited through Medical Recruitment Board, but these posts as outlined clearly in the earlier paragraphs in the counter are purely temporary for one year to be employed by the respective societies at District level."

Thus, the respondents have made it clear that the recruitment would be made only through the District Health Society. In such view of the matter, we make it clear that under no circumstances there shall be no role for any external agency in the recruitment process.

12. Coming to the second contention of the learned counsel for the petitioner, we are of the view that the same deserves rejection. The recruitment is made for the purpose of implementation of the policy of the Central Government. The fund is also provided by the Central Government and there is a mechanism provided under the Government orders. Therefore, it cannot be termed as a normal recruitment as it would otherwise be done by the State Government under the relevant Rules. As stated



above, it is only a temporary arrangement keeping in mind the present scenario. Therefore, the said contention is also rejected. However, we make it clear that the respondents shall make all endeavours to not to extend the initial period of recruitment. If there is any need for a longer period, they must resort to the other mode of recruitment as provided under Rules as against the one which is followed now through the District Health Society. To make it clear, the respondents are expected to make a review of the mode of appointment few months before the expiry of the period of contract with the recruited persons and if they are of the view that a longer period is required, then a different process is expected to be followed. We do not want such persons, who know their rights at the initial appointment, to continue there and make a claim for permanency, of course, they may not be disentitled to be considered on merits in such situations.

13.On the question of reservation, we record the aforesaid submission made by the learned Additional Advocate General. Accordingly, needful should be done to see that people hailing from different categories are accommodated. We are of the view that since the appointment being purely contractual and temporary and taking note of mode of the selection, at times it may not be practically possible to strictly follow the Rule of reservation. Further more, the reservation category may find favour more in the present mode of selection as it is based upon the areas specific.

14.In view of the aforesaid order, any appointment made in the interregnum would stand cancelled and the respondents shall ensure that the recruitments are accordingly made through the District Society.

15.The Writ Petition is disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

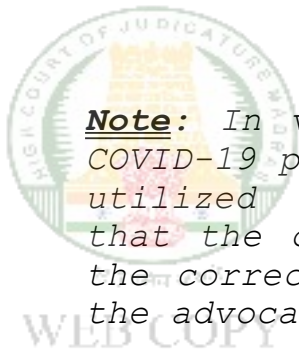
Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

sj



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 001.
 - 2.The Director of Public Health and Preventive Medicine,
Chennai - 600 006.
- +1 CC to SGP (SR-1839[F] dated 22/01/2021)

W.P. (MD)No.19565 of 2020
21.01.2021

KM (10.02.2021) 7P 4C