



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1424 of 2018

and C.M.P. (MD) No.9984 of 2018

WEB COPY

1.The State of Tamil Nadu,
Rep. by the Secretary,
Department of Health & Family Welfare,
Fort St. George, Chennai.

2.The Director,
Public Health & Preventive Medicine,
DMS Complex,
Chennai.

3.The Deputy Director,
Public Health & Preventive Medicine,
Theni.

4.The Block Medical Officer,
Government Primary Health Center,
Odaipatti,
Uthamapalayam Taluk,
Theni.

5.The Medical Officer,
Government Primary Health Center,
Erasainayakanur Post,
Uthamapalayam Taluk,
Theni.

... Appellants/Respondents

Vs.

1.P.Rajagopal

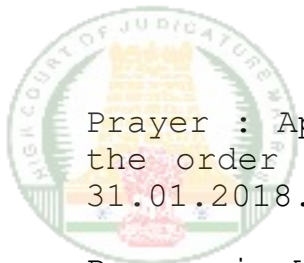
2.P.Saravan

3.The Pay Accounts Officer,
Accounts Office (South),
Chennai.

4.The Treasury Officer,
Sub-Treasury Office,
Bye Pass Road,
Uthamapalayam,
Theni.

5.The District Husur Treasury Officer,
Husur Treasury Office,
1st Floor, Collector Office,
Theni.

...Respondents6 to 8/Petitioners



Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.18049 of 2016, dated 31.01.2018.

Prayer in WP(MD). 18049/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to regularize the petitioner service for the post of male nursing assistant from the date of petitioners appointment on 25.09.2006 as a sanitary worker with all monetary and service benefits within the time stipulated by this court.

For Appellants : Mr.Sricharan Rangarajan
Additional Advocate General
Assisted by Mr.K.P.Krishnadoss
Special Government Pleader
For Respondents 1 & 2 : Mr.M.Ajmal Khan, Senior counsel
for M/s.Ajmal Associates

J U D G M E N T

(Judgment of the Court was delivered by T. S. SIVAGNANAM, J.)

This Writ Appeal by the Government is directed against the order dated 31.01.2018, made in W.P.(MD) No.18049 of 2016, which was filed by respondent Nos.1 and 2 herein. Since the relief sought by respondent Nos.1 and 2 are one and the same, they have filed a single Writ Petition, seeking a direction to the appellants to regularize their services in the post of Male Nursing Assistant from the date of appointment i.e., on 25.09.2006 as sanitary worker with all monetary and service benefits.

2.Respondent Nos.1 & 2/Writ Petitioners placed reliance upon G.O.Ms.No.103, dated 21.05.2003. The learned Writ Court has taken note of the submissions made on behalf of respondent Nos.1 and 2, which is the submissions made before us as well that as per G.O.Ms.No.340, Health and Family Welfare Department, dated 02.12.2010, the persons appointed through Employment Exchange and who have completed two years and paid daily wages shall be appointed as a hospital workers in the regular time scale of pay. The learned Writ Court has also noted that respondent Nos.1 and 2/writ petitioners were appointed through Employment Exchange and have completed two years of service and they are paid wages on consolidated basis. Therefore, having found that all the conditions set out in G.O.Ms.No.340, Health and Family Welfare Department, dated 02.12.2010 are applicable to respondent Nos.1 and 2, the learned Writ Court allowed the Writ Petition with a positive direction to the second respondent to pass appropriate orders in favour of respondent Nos.1 and 2/writ petitioners in terms of the



above said Government Order.

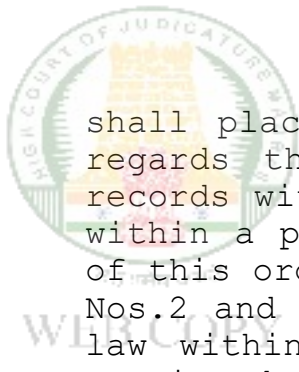
3. We have elaborately heard Mr. Sricharan Rangarajan, the learned Additional Advocate General, assisted by Mr. K. P. Krishnadoss, learned Special Government Pleader appearing for the appellants and Mr. M. Ajmal Khan, learned Senior Counsel appearing for respondent Nos. 1 and 2.

4. First, we may point out that it is seldom for the Writ Court to issue a positive direction for regularization of services of temporary employees. There are certain decisions of the Hon'ble Supreme Court as well as this Court, which have carved out certain exceptions. In the Writ Petition, the appellants/ department did not file their counter affidavit. The case of respondent Nos. 1 and 2/writ petitioners is that they have been working for several years under the control of appellant Nos. 4 and 5 herein in the Government Primary Health Center at Odaipatti and Erasainayakanur and several records have been placed before us to show that they have been continuously employed and paid on consolidated basis. Thus, the argument of respondent Nos. 1 and 2/writ petitioners is that since they have been appointed through Employment Exchange, they should be considered and appointed as Male Nursing Assistant.

5. In our considered view, such a broad principle may not be carved out. It is to be noted that recruitment through Employment Exchange is one of the proper and time tested source of recruitment. Subsequently, the Hon'ble Supreme Court has held that it is not the only source of recruitment, but wide publicity for the recruitment should be given.

6. The argument of the learned Senior Counsel appearing for respondent Nos. 1 and 2 is that respondent Nos. 1 and 2 are in a better footing than the employees, who were recruited on temporary basis for a specific scheme. This issue has to be considered by the authorities at the appropriate level and the Writ Court cannot make a roving enquiry to examine as to whether the appointment is valid, whether the appointment is continued appointment, whether the salary was paid from the Government funds or funds sanctioned for a particular scheme or project etc., Furthermore, it is submitted that respondent Nos. 1 and 2/writ petitioners are continued to be employed on consolidated basis, especially for Covid - 19 duties. However, the learned Special Government Pleader appearing for the appellants does not have instructions in that regard. Further, we cannot issue any positive direction to regularize the services of respondent Nos. 1 and 2. However, we are inclined to issue a direction, which may enable the authorities to take a decision in this regard.

7. Accordingly, the Writ Appeal is allowed and the direction issued by the Writ Court to pass an order in favour of respondent Nos. 1 and 2 is modified to the effect that respondent Nos. 4 and 5



shall place appropriate proposals before appellant Nos.2 and 3 as regards the claim made by respondent Nos.1 and 2 and place all records with them relating to the service of respondent Nos.1 and 2 within a period of three months from the date of receipt of a copy of this order and thereafter, based on such proposals, the appellant Nos.2 and 3 shall take a decision on merits and in accordance with law within a period of two months therefrom. If the petitioners continued on consolidated pay as on date with the appellants continuously, they shall not be disturbed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Secretary,
Department of Health & Family Welfare,
State of Tamil Nadu,
Fort St. George, Chennai.
- 2.The Director,
Public Health & Preventive Medicine,
DMS Complex,
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- 3.The Deputy Director,
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8.The District Husur Treasury Officer,
Husur Treasury Office,
1st Floor, Collector Office,
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+1 CC to M/s.SPL GP (SR-15458[F] dated 08/04/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-15544[F] dated
08/04/2021)

W.A. (MD)No.1424 of 2018
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