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W.P.No. 1901 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 30.11.2022**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P. No. 1901 of 2018**

Dr. N. Karthikeyan

... Petitioner

Vs

1. The State of Tamil Nadu,  
Represented by its Principal Secretary  
to Government,  
Health & Family Welfare Department,  
Secretariat, Fort St. George,  
Chennai -600 009.

2. The Director of Public Health &  
Preventive Medicine,  
DMS Compound, Teynampet,  
Chennai -600 006.

... Respondents

**Prayer** : Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the second respondent to place the petition on probation period from 10.02.2011 instead of 06.04.2013 for the purpose of regularization of services as Assistant Surgeon and to further direct to provide all tenure related benefits on and from 10.02.2011 itself.

For Petitioner : Mr. Karthik Ranganathan

For Respondents : Mr. T. Chezhiyan  
Additional Government Pleader



**ORDER**

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This writ petition has been filed to direct the second respondent to place the petitioner on probation period from 10.02.2011 instead of 06.04.2013, for the purpose of regularisation of his services as Assistant Surgeon and further direct the respondents to provide all tenure related benefits on and from 10.02.2011 itself.

2. The petitioner has completed his M.B.B.S. from the Tamil Nadu Dr.M.G.R. University in the year 2008. The petitioner appeared in the selection process for appointment to the post of an Assistant Surgeon (General) through the Tamil Nadu Public Service Commission for the years 2005- 2009. The petitioner participated in the written examination held on 15.02.2009. He was successful in the examination and his name was included in the reserve list prepared by the Tamil Nadu Public Service Commission.

3. When the reserve list was kept for consideration, the petitioner, in the meanwhile, was appointed as temporary Assistant Surgeon under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services Rules. The order of temporary appointment dated 03.02.2011 stipulates that the petitioner was temporarily appointed as an Assistant



Surgeon under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services under Category 2 of Class 1 of Tamil Nadu of Medical Service.

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4. Thus, it is not in dispute that it is a temporary appointment to meet out certain administrative exigencies. The very purpose and object of Rule 10(a)(i) of the Rules is to ensure that the public services are extended to the people in general by the State without any lapses.

5. Rule 10(a)(i) of the Rules unambiguously stipulates that recruitment to the post is outside the purview of the Tamil Nadu Public Service Commission. It was a temporary appointment to be made on certain emergency circumstances by the authorities competent, and temporary employees are not vested with any right to claim permanent status or absorption.

6. In the present case, admittedly, the petitioner was initially appointed as temporary Assistant Surgeon under Rule 10 (a) (i) of the Rules, vide proceedings dated 03.02.2011.

7. The fact remains that the petitioner participated in the process of selection for appointment to the post of an Assistant Surgeon through the Tamil Nadu Public Service Commission in the years 2005-



09. However, the reserved list was not released and before releasing the reserve list, the petitioner was engaged as a candidate appointed under Section 10 (a) (i) of the Rules.

8. Subsequently, the reserved list was released by the competent authorities and accordingly, the petitioner was regularly appointed as an Assistant Surgeon vide proceedings dated 13.03.2013. The order of appointment clearly stipulates that the name of the petitioner was released from reserve list and accordingly, he was appointed with reference to the selection conducted by the Tamil Nadu Public Service Commission for the years 2005 -2009.

9. The question arises whether the petitioner is entitled for regularisation from the date of his appointment made under Section 10 (a) (i) of the Rules, vide proceedings dated 03.02.2011.

10. The learned counsel for the petitioner mainly contended that the petitioner was continuously working as an Assistant Surgeon and his appointment made under Section 10 (a) (i) of the Rules was followed with regular appointment in the year 2013 and therefore, he is entitled for all the benefits, including regularisation from the date of his initial appointment dated 03.02.2011.



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11. In support of the said contention, learned counsel for the petitioner relied on the orders passed by this Court in **W.P.No. 49601 of 2006 (A. Kaliselvai vs Government of Tamil Nadu) dated 30.11.2011; and in W.P.No.3491 of 2007 (Shiek Mohammad Ali vs Secretary to Government) dated 20.10.2011**. This Court has granted the benefit of regularisation and permanent absorption from the initial date of appointment made under Section 10 (a) (i) of the Rules. Relying on the said orders, learned counsel for the petitioner contended that similar benefits are to be extended to the writ petitioner also, as those candidates were granted the benefit of retrospective regularisation from the date on which they were initially appointed under Section 10 (a) (i) of the Rules.

12. Learned counsel for the petitioner furnished a copy of the list prepared by the department wherein the date of joining of the respective candidates are mentioned, and relying on the said date of joining, the petitioner has stated that the benefit of regularisation was granted to some of the doctors. However, the date of joining is one aspect of the matter and date of regularisation alone is to be considered with reference to the issue raised in the present writ petition. Date of joining is relevant to an appointment made under Section 10 (a) (i) of the Rules, or a regular appointment as the case



may be. However, the order of regularization alone is to be considered for the purpose of extending the benefit of regularisation in the case of the writ petitioner.

13. The learned Additional Government Pleader appearing on behalf the respondent objected to the said contention by stating that the services of the candidates who have been appointed under Section 10 (a) (i) of the Rules, and then qualified and selected by passing the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission, cannot be regularised with effect from the date of joining as 10(a)(i) candidate. The services of the candidates who were initially appointed on 10(a)(i) basis and subsequently selected by the Tamil Nadu Public Service Commission after appearing the Tamil Nadu Public Service Commission regular examination can be regularised only with effect from the date of joining as regular Tamil Nadu Public Service Commission candidate and not from the initial date of joining as 10(a)(i). As such, the services of the petitioner herein have been regularised from the date of joining as the Tamil Nadu Public Service Commission candidate and moreover, he has not appeared in Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission then.



14. The selection of the writ petitioner and inclusion of his name in the reserve list are not disputed. However, the reserve list was not released immediately after the completion of the selection process. As per the regulations of the Tamil Nadu Public Service Commission, persons who are selected in the main list are to be appointed immediately as per their merit ranking and only in the event of candidates not joining and the vacancy is available, then alone the reserved list is to be released. Thus, the reserved list is to be operated only after providing an opportunity to the selected candidates as per their merit ranking at the first instance. Thus, the petitioner did not get an opportunity to join immediately after the selection and he was waiting. Meanwhile, on account of certain administrative exigencies in the medical department, the petitioner, whose name was found in the reserved list, was appointed as temporary Assistant Surgeon under Rule 10 (a) (i) of the Rules. Therefore, such temporary appointment would not confer any right on the writ petitioner to claim regularisation or permanent absorption. It is a stop gap arrangement made by the medical department in order to mitigate certain circumstances that arose on account of administrative exigencies.



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15. Right of the writ petitioner is from the date on which the reserved list was released, which is the basis for his selection through the Tamil Nadu Public Service Commission. He was selected and included only in the reserved list which was operated in the year 2013 and accordingly, he was regularly appointed as an Assistant Surgeon in proceedings dated 13.03.2013.

16. Regularisation or permanent absorption cannot be granted in violation of the existing Rules. Irregular or illegal appointments cannot be made as a ground for claiming regularisation. In the case of the writ petitioner, the initial appointment was not a regular one. It was a temporary appointment made under Rule 10 (a) (i) of the Rules, which cannot be construed as a regular appointment made through the Tamil Nadu Public Service Commission.

17. The post of an Assistant Surgeon is falling under the purview of the Tamil Nadu Public Service Commission. The petitioner was selected through the Tamil Nadu Public Service Commission and his name was included in the reserve list. This being the regular mode of selection for appointment to the post of Assistant Surgeon the in-between arrangement made to meet out certain emergency circumstances in the medical department cannot confer any right on



the writ petitioner to claim regularisation or permanent absorption.

The petitioner's appointment under Rule 10 (a)(i) of the Rules cannot be construed as a regular appointment. However, it is temporarily made in order to meet out certain circumstances and therefore his regularisation has been rightly granted from the date of his regular appointment pursuant to the release of reserve list maintained by the Tamil Nadu Public Service Commission.

18. In respect of arguments as advanced by the learned counsel for the petitioner that some orders were passed by this Court in the years 2011 and 2012 regarding grant of retrospective regularisation, this Court is of the considered opinion that the principles are settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Secretary, State of Karnataka vs Umadevi and Others***, reported in **(2006) 4 SCC 1**.

19. In paragraph 54 of the said judgment, the Constitutional Bench in an unequivocal terms held that government orders or judgments running counter to the principles laid down by the Constitution would stand denuded of their status as precedent. Rules, orders or judgments cannot be followed as a precedent and even in cases where certain reliefs are granted, that is to be confined with



reference to the facts and circumstances of that case but cannot be adopted as a precedent for the purpose of granting the relief of retrospective regularisation.

20. In respect of the contention that the petitioner is entitled for the benefit of retrospective regularisation on the ground of equality under Article 14 of the Constitution, certain judgments if running counter to the Hon'ble Supreme Court judgment, then the Courts cannot follow the same in a mechanical manner. In the context of certain erroneous judgments, even if passed by the higher courts, and the courts subsequently find that the rules in right perspective were not applied, then the said judgments need not be followed in a mechanical manner.

21. Independent application of mind with reference to the spirit of the rules are to be considered in the context of the facts and circumstances established by the parties. In this regard, the Hon'ble Division Bench of this Court in the case of **Director of Sericulture Department Department and Ors vs K. Kumar and Ors**, reported in **2015 (4) CTC 241**, has held as follows:

*“34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court*



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*that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.*

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in [A.R.Antulay vs. R.S.Nayak](#) [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale



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of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

**CONTENTION 3:**

41. In *Union of India v. Kartick Chandra Mondal* [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in *State of Bihar v. Upendra Narayan Singh* [(2009) 5 SCC 69], held that *Article 14* is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in *Kartick Chandra Mondal* was subsequent to the decision in *Maharaj Krishan Bhatt* and the decision in *Maharaj Krishan Bhatt* is also referred to in *Kartick Chandra Mondal*.”

22. The Hon'ble Supreme Court in the case of ***Basawaraj and another vs Special Land Acquisition Officer*** reported in **(2013) 14 SCC 81**, held as follows:



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*“It is a settled legal proposition that [Article 14](#) of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other*



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*party to claim benefits on the basis of the wrong decision. Even otherwise, [Article 14](#) cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: [Chandigarh Administration & Anr. v. Jagjit Singh & Anr.](#), AIR 1995 SC 705, [M/s. Anand Button Ltd. v. State of Haryana & Ors.](#), AIR 2005 SC 565; [K.K. Bhalla v. State of M.P. & Ors.](#), AIR 2006 SC 898; and [Fuljit Kaur v. State of Punjab](#), AIR 2010 SC 1937)."*

23. Therefore, it is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality by extending a wrong decision made in other cases. The spirit of the service rule which is applicable to the facts would be considered.

24. In the present case, this court is of the considered opinion that the petitioner was no doubt selected through the Tamil Nadu Public Service Commission and his name was included in the reserved list and reserved list was released by the competent authorities in the year 2013 and he was regularly appointed to the post of Assistant Surgeon vide proceedings dated 13.03.2013. During the intervening period, he was engaged as a temporary appointee under Rule 10(a)(i)



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vide proceedings dated 03.02.2011 and such a temporary appointment made on certain administrative reasons would not confer any right to claim retrospective regularisation or permanent absorption. In the event of extending such benefit, the same would affect the prospects of other candidates who were regularly appointed pursuant to the selection made by the Tamil Nadu Public Service Commission and this court does not find any infirmity in not considering the case of the writ petitioner for grant of retrospective regularisation. Accordingly, the writ petition stands dismissed. No costs. Consequently, WMP No.2384 of 2018 is closed.

**30.11.2022**

Index : Yes / No  
Speaking order / Non-Speaking order  
mrn

To

1. The Principal Secretary to Government,  
Health & Family Welfare Department,  
Secretariat, Fort St. George,  
Chennai -600 009.
2. The Director of Public Health & Preventive Medicine,  
DMS Compound, Teynampet,  
Chennai -600 006.



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**S.M.SUBRAMANIAM, J.**

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