



W.P.No.25705 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25705 of 2019

and

W.M.P.No.25179 of 2019

and

W.M.P.No.26726 of 2021

M.Velusamy

...Petitioner

Vs.

1.Government of Tamil Nadu,
Represented by Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai – 600 009.

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

3.The Deputy Director,
Deputy Director of Health Services,
Thindal, Erode.

4.Block Medical Officer,
Government Primary Health Centre,
Modakurichi,
Erode District.

..Respondents



W.P.No.25705 of 2019

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to regularize the service of petitioner as driver from the date of his initial appointment on 03.12.2004 and absorb the petitioner as such in regular establishment within a limited time frame and in any event well prior to making any appointment to post of driver and to grant all consequential service and monetary benefits to the petitioner herein.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

ORDER

The relief sought for in the present writ petition is for a direction to direct the respondents 1 to 3 to regularize the service of petitioner as Driver from the date of his initial appointment on 03.12.2004 and absorb the petitioner as such in regular establishment within a limited time frame and in any event well prior to making any appointment to post of Driver and to grant all consequential service and monetary benefits to the petitioner herein.

2. The petitioner admittedly appointed as a Driver through outsourcing



W.P.No.25705 of 2019

agency and he is serving in a Government Primary Health Centre. The petitioner was not appointed in a sanctioned post in accordance with the recruitment rules in force. His engagement was through Private Agency and he was performing the duties of a Driver in a Government Primary Health Centres.

3. When the petitioner was not appointed in accordance with the recruitment rules in force, the benefit of regularisation or permanent absorption cannot be granted. Regularisation is to be granted strictly in accordance with the rules. Contractual appointments or any back door appointments cannot be a ground to claim regularisation or permanent absorption.

4. Equal opportunity in public employment is the constitutional mandate. All appointments are to be made strictly under the Constitutional scheme and by following the Recruitment rules in force. An eligible candidate must be provided with an opportunity to participate in the process of selection through open competitive process. The Courts have repeatedly held that back



W.P.No.25705 of 2019

door appointments cannot be regularized, depriving the rights of all other candidates to secure public employment through open competitive process.

5. In the present case, the writ petitioner was appointed on contractual basis through outsourcing agency and therefore, he is not entitled to seek the benefit of regularisation and permanent absorption.

6. In respect of the very same Department, challenging the order passed by the learned Single Judge and Hon'ble Division Bench of the High Court of Madras, the Government of Tamil Nadu preferred SLP.(C).No.21285/2021 and the Hon'ble Supreme Court of India set aside the orders of the High Court and declined to grant the relief of regularisation on the ground that the petitioners were appointed on contractual basis. The Hon'ble Supreme Court of India has absorbed that there cannot be any negative discrimination.

7. The learned counsel for the petitioner brought to the notice of this Court that the similar cases were considered by this Court and an order to



W.P.No.25705 of 2019

consider their claim for regularisation was granted on 22.11.2017 in

W.P.Nos.29993 to 29997 of 2017.

8. In respect of orders, which all are passed running counter to the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India, the same need not be followed as a precedent.

9. The Constitution Bench of the Hon'ble Supreme Court of India in the case of *Secretary, State of Karnataka Vs. Uma Devi* and others reported in *(2006) 4 SCC 1*, in unequivocal terms held that judgments and Government orders running counter to the principles settled by the Constitution Bench have denuded to loose its status as precedent and therefore, any order passed, granting regularisation in violation of the Rules cannot be followed as a precedent or to be adopted.



W.P.No.25705 of 2019

10. Regarding such orders, the Hon'ble Division Bench of this Court in the case of ***Director of Sericulture Department Vs. K.Kumar*** reported in ***[2015 (4) CTC 241]***, considered the binding nature of the orders, relying on the judgment of Honourable Supreme Court, which reads as under:

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

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



W.P.No.25705 of 2019

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."

11. The Hon'ble Supreme Court of India in the case of ***Basawaraj & Anr. Vs. Special Land Acquisition Officer*** reported in ***2013 14 SCC 81*** held in unambiguous terms that *"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*



W.P.No.25705 of 2019

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.”

12. In view of the fact that the petitioner was appointed on contract basis through outsourcing agency, he is not entitled for the benefit of regularisation or permanent absorption.

13. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

30.11.2022

Index : Yes
Speaking order : Yes
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To

1.The Secretary to Government,
Government of Tamil Nadu,

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W.P.No.25705 of 2019

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Health and Family Welfare Department,
Secretariat,
Chennai – 600 009.

- 2.The Director of Public Health and
Preventive Medicine,
Chennai – 600 006.
- 3.The Deputy Director,
Deputy Director of Health Services,
Thindal, Erode.
- 4.Block Medical Officer,
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W.P.No.25705 of 2019

S.M.SUBRAMANIAM, J.

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W.P.No.25705 of 2019

30.11.2022