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W.P.Nos.26734 & 26738 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26734 & 26738 of 2019

W.P.No.26734 of 2019:

- 1.M.Selvam
- 2.S.Soundararajan
- 3.R.Mariyappan
- 4.R.Selva Kumar
- 5.Krishnaveni
- 6.S.Mahendran

... Petitioners

Vs.

- 1.The Principal Secretary to Government
Public Health & Family Welfare Department,
Fort St. George, Chennai – 600 009.
- 2.The Project Director,
Reproductive & Child Health Project,
D.M.S Complex, Chennai – 600 006.
- 3.The Director of Public Health & Preventive Medicine,
D.M.S Complex,
Chennai – 600 006.
- 4.The Deputy Director of Health Services
Salem, Salem District.



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5. The Principal Secretary,
Ministry of Health and Government of India,
No.348, 'A' Wing, Nirman Bhavan,
New Delhi 110001.

... Respondents

[R5 impleaded vide order dated 01.012.2022 in
WMP.No.8722/2022 in WP.No.26734 of 2019]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order G.O.(D).No.792, Health and Family Welfare (AB1) Department dated 05.04.2017 on the file of the 1st respondent and consequently quash the letter No.46973/AB1 /2016-2, dated 28.04.2017 by the 1st respondent and direct the respondents to pay the Special Scale pay of Rs.1300-3000+Rs.300 Grade pay to me and other 5 petitioners from their date of initial appointment.

W.P.No.26738 of 2019:

P.Indirani

... Petitioner

Vs.

1. The Principal Secretary to Government
Public Health & Family Welfare Department,
Fort St. George, Chennai – 600 009.
2. The Project Director,
Reproductive & Child Health Project,
D.M.S Complex, Chennai – 600 006.
3. The Director of Public Health & Preventive Medicine,
D.M.S Complex, Chennai – 600 006.



4. The Deputy Director of Health Services
Dharmapuri, Dharmapuri District.

5. The Principal Secretary,
Ministry of Health and Government of India,
No.348, 'A' Wing, Nirman Bhavan,
New Delhi 110001.

... Respondents

[R5 impleaded vide order dated 01.01.2022 in
WMP.No.8678/2022 in WP.No.26738 of 2019]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order G.O.(D).No.792, Health and Family Welfare (AB1) Department dated 05.04.2017 on the file of the 1st respondent and consequently quash the letter No.5860/E3/2011 dated 02.05.2017 by the 1st respondent and direct the respondents to pay the Special Scale pay of Rs.1300-3000+Rs.300 Grade pay to the petitioner from the date of initial appointment.

For Petitioners : Mr.D.Ramesh Kumar
(in both W.Ps)

For R1 to R4 : Mr.T.Chezhiyan
Additional Government Pleader
(in both W.Ps)



ORDER

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The rejection of the claim of the writ petitioner for grant of regularisation and permanent absorption is under challenge in the present writ petition.

2. The petitioners were engaged as daily wage employees as Sanitary Workers in the Primary Health Centres.

3. The learned counsel for the petitioner mainly contended that the petitioners are continuing as daily wage employees for several years and this Court has passed an order to grant the benefit of regularisation. In respect of the orders passed by this Court on 29.11.2016 in W.P.No.41780 of 2016, the respondents have not considered the case of the writ petitioner for grant of permanent absorption and passed an order of rejection in G.O.(D).No.792, Health and Family Welfare (AB1) Department dated 05.04.2017. The petitioners have stated that similarly placed persons were regularised in the sanctioned post of higher scale of pay. When the benefit was extended to several other similarly placed persons, the petitioners



cannot be discriminated and therefore, the order impugned is liable to be set aside.

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4. The learned Additional Government Pleader appearing on behalf of the respondents made a submission that regularisation and permanent absorption cannot be granted in violation of the Rules in force. The case of the petitioners were considered pursuant to the directions issued by this Court and the Government decided to permit the Director of Public Health and Preventive Medicine to fix minimum wages for the Sanitary Workers. However, the benefit of regularisation or permanent absorption cannot be granted.

5. The order of rejection in G.O.(D).No.792, Health and Family Welfare (AB1) Department dated 05.04.2017 states that the daily wage employees are eligible to get the wages as fixed by the District Collector applicable to the said category. However, the claim for regularisation was not considered.

6. This Court is of the considered opinion that the petitioners were not appointed in accordance with the Recruitment Rules in force. They were



engaged as daily wage Sanitary workers and their pay alone is protected with reference to the Minimum Wages Act and wages are to be settled as per the fixation done by the district collector under the provisions of the Minimum Wages Act. The benefit of wages alone has been considered by the Government.

7. Beyond the Government orders, the principles settled for appointment, regularization and permanent absorption by the Constitution Bench of the Hon'ble Supreme Court of India in the case of *The Secretary, State of Karnataka and others vs. Umadevi and others reported in [(2006) 4 Supreme Court Cases 1]* are to be considered. All appointments are to be made strictly in accordance with the rules in force. Equal opportunity in public employment is the constitutional mandate. The equality clause enunciated in the Constitution at no circumstances be diluted, infringing the Fundamental Rights of all other citizen, who all are aspiring to secure public employment through open competitive process. The Hon'ble Supreme Court has emphatically held that irregular and illegal appointments cannot be regularized nor persons, who were appointed through backdoor cannot seek the benefit of regular appointment, regularization or permanent absorption.



In the event of regularizing the irregular and illegal appointments, or appointing persons in violation of the recruitment rules, the same would result in infringement of the Constitutional rights of lakh and lakh of youth of this great Nation and thus, the unconstitutionality in the matter of public employments must be stopped forthwith. In the context of the principles laid down by the Constitution Bench, in paragraph 53 of the judgment in '**Uma Devi's case'** (*cited supra*), the Constitution Bench granted permission to complete the process in respect of the pending proposals during the relevant point of time. However, the Hon'ble Supreme Court of India has never allowed that the irregularity in this regard must be continued in perpetuity. The one time permission granted by the Hon'ble Supreme Court is restricted only in respect of the proposals, which were pending during the relevant point of time, when the judgment was delivered and after the judgment, the principles laid down by the Constitution Bench became the Law of the land and binding on all the authorities and the Courts across the country.

8. In paragraph 54 of the judgment in '**Uma Devi's case'** (*cited supra*), the Constitution Bench in unequivocal terms held that any judgment of any Court or the Government or its orders running counter to the



principles laid down by the Constitution Bench have denuded to loose its status as precedent and those judgments or Government orders cannot be followed for the purpose of appointment, regularization or permanent absorption. Thus, any Government order in the matter of regularization, permanent absorption or appointment is to be tested with reference to the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of '*Uma Devi*' (*cited supra*)

9. In the case of *State of Rajasthan and others Vs. Daya Lal and others* reported in (2011) 2 SCC 429, the Hon'ble Supreme Court held that “the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of



compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.'

10. Even in the case of Medical Department they have approached the Hon'ble Supreme Court of India against the order passed by the High Court granting the benefit of regularisation. The Hon'ble Supreme Court set aside the order passed by the learned Single Judge as well as the Division Bench of this Court was set aside in Special Leave Petition (C) No.21285 of 2021 dated 30.09.2022.

11. The very principles laid down indicates that backdoor appointments are to be stopped forthwith. The practice of entering into public services through backdoor and thereafter, claiming appointment in a sanctioned post or regularization or permanent absorption if allowed, the repercussion would be disastrous and the equality clause enunciated is directly violated. The Courts in this regard are not expected to show any misplaced sympathy merely based on the services rendered by these employees as daily wage employees. Such misplaced sympathy would result



in violation of equality clause enunciated under Article 14 of the Constitution of India. Thus, the Government orders if at all issued, which all are running counter to the principles laid down by the Constitution Bench in *Uma devi's case (cited supra)*, such Government orders cannot be followed by the authorities competent and the law laid down by the Constitution Bench became binding on all the authorities and the Courts. Thus, the Government orders issued are also to be implemented with reference to the principles settled by the Hon'ble Supreme Court of India.

12. Mere continuance of service of a temporary or ad hoc or daily wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service as such absorption would result in violation of the recruitment rules in force and therefore, all appointments are to be made only by following the procedures as contemplated under the recruitment rules in force.

13. In view of the fact that the petitioners were engaged as daily wage employees, benefit of regularisation or permanent absorption cannot be granted.



14. Accordingly, the Writ Petitions stand dismissed. No costs.

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Jeni
Index : Yes
Speaking order

To

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- 2.The Project Director,
Reproductive & Child Health Project,
D.M.S Complex, Chennai – 600 006.
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S.M.SUBRAMANIAM, J.

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