



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 3254 of 2022

and

W.M.P. (MD) Nos. 2852, 2853 and 2855 of 2022

1. P.Chandrasekaran

2. M.Vignesh

... Petitioners

Vs.

1.The Director of Public Health and Preventive Medicine,
D.M.S. Complex,
Teynampet,
Chennai - 625 006.

2. The Deputy Director of Health Service,
Sivakasi,
Virudhunagar District.

3. The Block Medical Officer,
Jamin Kollamkondan,
Kizhavikulam,
Virudhunagar.

4. The Principal Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

... Respondents

(R4 suo moto impleaded as per order of this Court dated 21.02.2022 in WP. (MD) No. 3254 of 2022 by SMSJ)

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records on the file of the third respondent vide proceeding Na.Ka.No.261/A2/2021 dated 19.11.2021 and quash the same as illegal as devoid of merits.

For Petitioners : Mr.Raja Karthikeyan

For Respondents : Mr.D.S.Nedunchezian
Government Advocate



O R D E R

The order impugned dated 19.11.2021 relieving the writ petitioners from service on expiry of the period of contract is under challenge in the present Writ Petition.

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2. The petitioners were appointed as Multipurpose Health Workers (Male) / Sanitary Inspector Grade-II through outsourcing mode by the second respondent on 23.04.2020. They were posted at Kilavikulam Primary Health Centre.

3. Admittedly, both the petitioners were appointed on contract basis on certain terms and conditions. The appointments were made in order to meet out the emergency circumstances arose on account of COVID-19 pandemic situation. On expiry of the period of contract, now the petitioners are relieved.

4. Admittedly, the petitioners are not possessing the requisite educational qualification as per the rules attached to the post. However, the learned counsel appearing for the petitioners reiterated that in respect of educational qualification, a relaxation was given by the Government as one time measure and based on the one time measure, the petitioners were appointed in the year 2020. Therefore, the concessions must be extended and they may be permitted to continue in the said post of Health Inspector Grade - II.

5. The learned Government Advocate appearing on behalf of the respondents, based on the written instructions given by the Deputy Director of Health Services in letter dated 19.02.2022, made a submission that in the letter issued by the Director of Public Health and Preventive Medicine, the qualifications contemplated for the post of Health Inspector Grade - II as under:

"1. Must have passed plus two with Biology or Botany and Zoology.

2. Must have passed Tamil Language as a subject in SSLC level.

3. For those who are acquired Multipurpose Health Worker (Male) Course / Sanitary Inspector Course in University affiliated / Government recognized institutions prior to 13.04.2017 plus two with Biology or Botany and Zoology with one year Multipurpose Health Worker (Male) Course. The syllabus followed in such institutions should be equivalent to the syllabus prescribed by the Director of Public Health and Preventive Medicine.

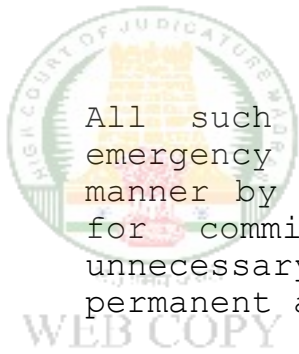
4. For those who have acquired Multipurpose Health Worker (Male) Course / Sanitary Inspector Course in University affiliated / Government recognized institutions after 13.04.2017 plus two with Biology or Botany and Zoology with two year Multipurpose Health Worker (Male) Course."



6. As far as the first petitioner one P.Chandrasekaran is concerned, he is not possessing the requisite educational qualification, as he has not studied Zoology or Botany in plus two, but he studied Computer Science. The second petitioner is also not qualified, as he completed the Health Inspector Training after the cut-off date, i.e., 13.04.2017. Therefore, both the petitioners are not qualified for the post of Health Inspector Grade-II and furthermore, the petitioners were initially appointed as contract employees in order to meet out the emergency circumstances arose on account of COVID-19 pandemic. Therefore, they have no right to continue in the post and the relieving order is in accordance with the terms and conditions of the contract.

7. The principles to be followed in the matter of public appointments are that, all appointments are to be made strictly in accordance with the rules in force. Equal opportunity in public employment is the constitutional mandate. All recruitments are to be made through open competitive process providing opportunity to all the eligible candidates who are all aspiring to secure public employment. In the event of grant of irregular continuance of an employee in the name of daily wage or contract basis, the same would result in violation of Articles 14 and 16 of the Constitution of India. In such emergency circumstances, if the contract appointments are made, soon after the exigency disappeared, all such contract appointees must be discharged from service and the regular courses are to be filled up only in accordance with the recruitment rules in force.

8. The employees, who were appointed on daily wages basis, contract basis or consolidated pay, have no right to claim permanent absorption or regularizing their services in such capacity. The legal principles are settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi and others. Thus, the persons, who are temporarily appointed, must be discharged soon after the emergency circumstances disappeared or the period of contract expired. In the event of allowing such employees, unnecessarily scope is provided to them for the purpose of claiming regularization or permanent absorption. Thus, if the Authority is not discharging the contract employees after the expiry of the contract period, appropriate disciplinary actions are to be initiated against such authority who all are allowing such temporary employees to continue for an indefinite period. They are causing not only loss to the State but also committing an act of unconstitutionality, by depriving the right of eligible persons to participate in the process of recruitment under the constitutional scheme and in accordance with the rules in force. Thus, the Authorities Competent must be fixed with responsibility and accountability at the time of appointing the candidates on temporarily, daily wages basis, consolidated pay or contract basis.



All such employments must be dispensed with, soon after the emergency disappears and their continuance if made in an irregular manner by the authorities, all such authorities must be prosecuted for committing an act of unconstitutionality and providing unnecessary scope to such employees to claim regularization and permanent absorption.

9. In the present case, admittedly, both the petitioners were appointed on contract basis. Further, the petitioners are not possessing the requisite educational qualification as contemplated under the rules. Therefore, they have no right to continue in the post and the respondents are bound to consider all such unqualified persons who are all continuing and initiate appropriate action to ensure that the regular post of Health Inspector Grade - II are filled up by following the recruitment rules and by providing equal opportunity to all the citizens, who are all longing to secure public employment through open competitive process. This being the principles to be followed, the writ petitioners have not established any right for their continuance. Thus, this Court do not find any infirmity in respect of the order impugned.

10. The Principal Secretary to Government, Health and Family Welfare Department, Government of Tamil Nadu, Fort St.George, Chennai - 600 009 has been *suo moto* impleaded as fourth respondent in this Writ Petition for the limited purpose of initiating appropriate actions in a uniform manner to deal with such contract employees across the State of Tamil Nadu.

11. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar (CS)

vji

To

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D.M.S. Complex,
Teynampet, Chennai - 625 006.



2. The Deputy Director of Health Service,
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+1 CC to M/s.SPL GP (SR-7721[F] dated 22/02/2022)

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RK(25/03/2022) 5P 6C