



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.03.2022
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.3566 of 2022
and
W.M.P. (MD) No.3122 of 2022

N.Karpagavalli

... Petitioner

vs.

1. The State of Tamil Nadu
represented by its Principal Secretary
Health and Family Welfare Department
Fort St.George, Chennai-600 009
2. The Director of Public Health and
Preventive Medicine
DMS Campus
Teynampet, Chennai-600 006
3. The Deputy Director of Health Services
Sivakasi HUD
Viruthunagar District
4. The Block Medical Officer
Government Primary Health Centre
Kunnur, Viruthunagar District
5. The Medical Officer
Government Primary Health Centre
Kottaiyur, Virudhunagar District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the permanent termination order of the 3rd respondent in Na.Ka.No.1084/A8/2007, dated 17.02.2022 and relieving order of the 4th respondent in Na.Ka.No.161/A1/2022, dated 17.02.2022, and quash the same consequently direct the respondents to reinstate me in the 5th respondent Primary Health Centre and pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.



For Petitioner : Mr. Sheik Abdullah.M., Advocate
For Respondents : Mr. A.K. Manikkam
Special Government Pleader

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ORDER

The order of termination terminating the services of the petitioner and the consequential relieving order are under challenge in this writ petition.

2. The petitioner was engaged as Sanitary Worker in the fifth respondent Primary Health Centre through Outsourcing Agency for a consolidated pay.

3. The learned counsel for the petitioner made a submission that the petitioner was allowed to work continuously for more than sixteen years and therefore, she is entitled to regularization of service in the permanent post of Sanitary Worker. The petitioner earlier filed W.P.(MD) No.3568 of 2012 and this Court directed the Authorities concerned to consider her representation. However, the third respondent appointed the petitioner under Rule 10(a)(i) of the Tamil Nadu Subordinate Service Rules on temporary basis. A special time scale of pay was granted to the petitioner based on the Government Orders. However, the benefit of regularization and permanent absorption have not been granted to her.

4. The learned Special Government Pleader appearing for the respondents objected the above contentions by stating that the petitioner was not recruited in accordance with the Rules in force. She was engaged through an Outsourcing Agency and the special time scale of pay was granted as per the Government Orders. However, the appointment of the petitioner was illegal and therefore, the services of the petitioner cannot be regularized. The petitioner filed W.P.(MD) No.3568 of 2012 and by considering her representation, the Authorities have granted special time scale of pay as per the Government Orders, which are applicable to the temporary employees. However, the fact remains that the initial appointment of the petitioner was through an Outsourcing Agency and not in accordance with the Recruitment Rules in force. The proceedings dated 17.04.2012 issued by the Deputy Director of Health Services, Sivakasi, reveals that in pursuance of the Court directions, dated 26.03.2012 in W.P.(MD) No.3568 of 2012, the petitioner was appointed temporarily as Sanitary Worker in Replacement of Outsourcing post to regular time scale at same place under 10(a)(i) of Tamil Nadu Subordinate Service Rule / Basic Service. However, the said order in clear terms state that "the appointment is made purely on temporarily



basis and her service is liable for termination at any time without any prior notice or without assigning any reason thereof".

5. The order passed by this Court, dated 26.03.2012, relied on by the petitioner for issuing 10(a)(i) appointment is a direction to consider the petitioner's representation. However, the Deputy Director of Health Services has erroneously considered the petitioner's representation in violation of the settled principles laid down by the Constitutional Bench of the Honourable Supreme Court in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in (2006) 4 SCC 1. All appointments are to be made strictly in accordance with the Recruitment Rules in force. Illegal and irregular appointments cannot be regularized in violation of the Recruitment Rules. The petitioner was engaged by the Outsourcing Agency. Therefore, she cannot be directly appointed in a regular post by the Competent Authority. By considering the representation submitted by the petitioner, the Deputy Director of Health Services appointed her on temporary basis and such temporary appointment would not confer any right to seek regularization or permanent absorption. A mere direction to the Authorities Competent to consider the representation cannot be misconstrued as if the Court has issued a positive direction to appoint the petitioner. Consider the representation means it is to be considered in accordance with law and not in violation of the settled principles in the matter of regularization and permanent absorption, so also appointment. Equal opportunity in public employment is the constitutional mandate. Thus, all appointments are to be made only under the constitutional schemes through open competitive process.

6. The Honourable Supreme Court in the case of **State of Rajasthan vs. Daya Lal**, reported in (2011) 2 SCC 429, in clear terms, has held that 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 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.



7. The Apex Court has further held that mere continuation of service by an 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 service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

8. Therefore, this Court is of the considered opinion that any misplaced sympathy will result in unconstitutionality in the matter of public employment.

9. The petitioner was admittedly engaged through the Outsourcing Agency and by virtue of the order passed by this Court to consider the representation, the Deputy Director of Health Services has appointed the petitioner on temporary basis subject to the condition that her services are liable to be terminated at any time. Such order itself is not in consonance with the the settled principles of law. However, the Authorities having found that such appointment is not in accordance with law terminated the petitioner from service as her initial appointment was not in accordance with the Recruitment Rules and she was engaged by the Outsourcing Agency.

10. This being the factum, the petitioner has not established any acceptable ground for the purpose of interfering with impugned order of termination and the consequential relieving order, which are in consonance with the settled principles of law.

11. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar(CS)

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To:

1. The Principal Secretary,
Health and Family Welfare Department,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.
 2. The Director of Public Health and
Preventive Medicine,
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Teynampet, Chennai-600 006.
 3. The Deputy Director of Health Services,
Sivakasi HUD,
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 4. The Block Medical Officer,
Government Primary Health Centre,
Kunnur, Viruthunagar District.
 5. The Medical Officer,
Government Primary Health Centre,
Kottaiyur, Virudhunagar District.
- +1 CC to M/s.M.SHEIK ABDULLAH, Advocate
(SR-13159[F] dated 21/03/2022)
- +1 CC to M/s.SPL Government Pleader
(SR-13891[F] dated 23/03/2022)

W.P.(MD) No.3566 of 2022
and
W.M.P.(MD) No.3122 of 2022
21.03.2022

SP/28/03/2022/5P/8C