



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.03.2022**

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD)No.6786 of 2019

and

WMP (MD)No.5426 of 2019

T.Raj

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai.
- 2.The Director of Public Health and Preventive Medicine,
DMS Compound,
Theynampet, Chennai.
- 3.The Deputy Director,
Medical and Rural Health Services and Public Health,
Tirunelveli - 3
- 4.The Medical Officer,
Government Primary Health Centre,
Ukkirankottai,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in relating to the 2nd respondent's communication in Na.Ka.No.92741/Va.Pa/A1/2018, dated 16.11.2018 and the consequent impugned order of the 2nd respondent dated 22.06.2017 vide proceedings in Mu.Mu.No.41609/Va.Pa/A3/15 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner as driver in the light of the order made in W.P(MD) No.7497 of 2009, dated 11.11.2009 within a time frame as fixed by this Court.

For Petitioner
For Respondents

:Mr.S.Sukumar
:Mr.A.K.Manikkam
Spl. Govt.Pleader



O R D E R

The order of rejection rejecting the claim of the petitioner for grant of regularization is under challenge in the present writ petition.

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2. The impugned order states that based on the order, dated 15.04.2015, passed by this Court in W.P.(MD)No.5508 of 2015, the claim of the petitioner was rejected. In the said order, the benefit of regularization and permanent absorption were not granted by applying the principles laid down by the Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in **(2006) 4 SCC 1**.

3. The learned counsel for the petitioner states that the case of the similarly placed persons were considered and their services were regularized vide G.O.(Ms) No.325, dated 11.09.2017.

4. The petitioner in the present case was appointed as Ambulance Driver through an outsourcing agency in a Primary Health Centre at Ukkirankottai, Tirunelveli. He is discharging his duties continuously and therefore, submitted an application seeking permanent absorption. However, the case of the petitioner was not considered on the ground that his initial appointment was not in accordance with the Service Rules. Further, the appointment itself was made through outsourcing agency.

5. The learned Special government Pleader appearing for the respondents states that the petitioner was engaged and appointed as Driver through an outsourcing agency, without following the communal roster nor sponsored through Employment Exchange. The appointment was made on temporary basis and therefore, the services of the petitioner cannot be regularized.

6. Let us now consider the order of appointment issued to the petitioner. In the appointment order dated 18.11.2004, the Deputy Director, Medical and Rural Health Services and Public Health, Tirunelveli, has stated that the petitioner was appointed on contract basis through outsourcing agency as Driver. When a person is appointed through a private outsourcing agency on contract basis, for all purposes, the agency became the employer and no appointment order was passed by the competent Appointing Authority by following the Recruitment Rules in force. Therefore, the petitioner was not engaged on contract basis by the Government directly. He was engaged through a private outsourcing agency and they are allotted works through the agency as driver to work in the Primary Health Centre. In other words, the agency has recruited the driver and pursuant to the contract between the Government and Agency and the Agency is sponsoring the driver for performing the service in the Primary Health Centre. Therefore, the Government is not the



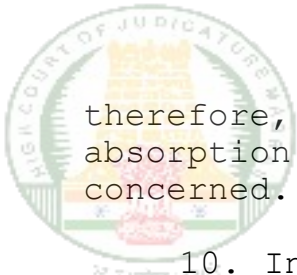
employer and the agency has recruited the employee on contract basis.

7. Even in case the Government Authorities appointed contract employees on temporary basis, without following the Recruitment Rules in force, such employees are not entitled for regularization or permanent absorption, in view of the decision of the Constitution Bench of the Honourable Supreme Court in ***Umadevi-s case*** (supra). The benefit of paragraph-53 of the said decision has been clarified by the Supreme Court in several cases and categorically held that such one time measure cannot be permitted to continue for indefinite period. It was confined with reference to the cut-off date of the year 2006 and in respect of the employees, who are all otherwise appointed in accordance with the Recruitment Rules and not covered under the illegal appointments. If the one-time measure is permitted to continue perpetually, then the very principles laid down by the Constitution Bench will be defeated and the Constitution Bench never intended for such continuation in Paragraph No.53. That exactly is the reason why the Constitution Bench in Paragraph No.54 unequivocally reiterated as follows:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

8. Therefore, any subsequent decisions of the two Judges Bench of the Supreme Court or the High Courts are to be construed only as applicable to the relevant facts and circumstances and cannot be applied counter to the principles laid down by the Constitution Bench in ***Umadevi-s case*** (supra). Therefore, the subsequent cases decided by the High Courts and the two Judges Bench of the Supreme Court, with reference to the particular facts and circumstances, cannot be relied on for the purpose of granting regularization or permanent absorption. The principles laid down by the Constitution Bench became the law and are to be followed as a precedent. All subsequent decisions granting the relief of regularization of service considering the special circumstances involved in the present case, cannot be followed as a precedent in all cases. This being the dictum in Paragraph-54 of the decision in ***Umadevi-s case*** (supra), the subsequent decisions rendered in other cases with reference to those cases cannot be relied upon nor be considered as a binding precedent.

9. In the present case, the petitioner was appointed as driver by the outsourcing agency and deputed to work in the Primary Health Centre. He was not appointed by the competent Appointing Authority nor the Recruitment Rules were followed. Thus, the appointment of the petitioner is unconnected with the Government Department and



therefore, the benefits of regularization of service or permanent absorption cannot be granted as far as the case of the petitioner is concerned.

10. In view of the fact that the petitioner is not appointed by following the Recruitment Rules, as applicable to the post of Driver in the Government Department, he is not entitled for the relief as such sought for in the present writ petition.

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

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MPK

To

- 1.The Secretary,
The State of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai.
- 2.The Director of Public Health and Preventive Medicine,
DMS Compound,
Theynapet, Chennai.
- 3.The Deputy Director,
Medical and Rural Health Services and Public Health,
Tirunelveli - 3
- 4.The Medical Officer,
Government Primary Health Centre,
Ukkirankottai,
Tirunelveli.

+1 CC to M/s.SPL GP (SR-9691[F] dated 03/03/2022)

W.P (MD)No.6786 of 2019

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