



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) Nos. 871 & 872 of 2019

I. Paulraj
S. Subramanian

... Petitioner in W.P. (MD) No. 871 of 2019
... Petitioner in W.P. (MD) No. 872 of 2019

vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai-600 009

2. The Director of Public Health and Preventive Medicine
D.M.S. Compound, Teynampet
Chennai

3. The Deputy Director
Public Health Services
Kovilpatti,
Thoothukudi District

... Respondents in all W.Ps.

PRAYER (in W.P. (MD) No. 871 of 2019) : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records on the file of the 2nd respondent in connection with the impugned order of rejection passed by him vide his proceedings in Na.Ka.No.12892/Vaa.Pa/A1/2013 dated 27.04.2018 served by the 3rd respondent on 07.05.2018 and quash the same as illegal and arbitrary and consequently direct the respondents to regularise/ absorb the Petitioner's service as Driver in the existing regular vacancies of the respondent department by extending the benefit of G.O. (Ms) No. 292, Health and Family Welfare (L1) Department, dated 22.08.2017, within the time limit stipulated by this Court.

PRAYER (in W.P. (MD) No. 872 of 2019) : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records on the file of the 2nd respondent in connection with the impugned order of rejection passed by him vide his proceedings in Na.Ka.No.38455/Vaa.Pa/A3/2015 dated 23.01.2016 served by the 3rd respondent on 16.02.2016 and quash the same as illegal and arbitrary and consequently direct the respondents to regularise/ absorb the Petitioner's service as Driver in the existing regular vacancies of the respondent department by extending the benefit of G.O. (Ms) No. 292, Health and Family Welfare (L1) Department, dated 22.08.2017, within the time limit stipulated by this Court.



For Petitioner : Mr.G.Thalaimutharasu, Advocate
(in both W.Ps)
For Respondents : Mr.A.K.Manikkam
(in both W.Ps) Special Government Pleader

C O M M O N O R D E R

Since the issue involved in both the writ petitions are identical, they were clubbed and heard together and are being disposed of by this common order.

2.The orders of rejection rejecting the claim of the petitioners for grant of regularization are under challenge in the present writ petitions.

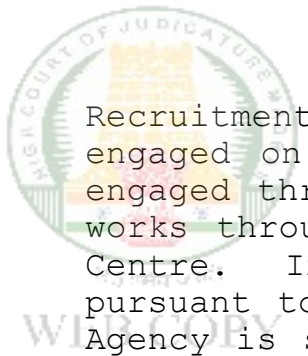
3.The impugned orders state that based on the order, dated 15.11.2010, passed by this Court in W.P.(MD) Nos.1418 of 2010 etc., batch, the claim of the petitioners was rejected. In the said order, the benefit of regularization and permanent absorption were not granted by applying the principles laid down by the Constitution Bench of this Court in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in (2006) 4 SCC 1.

4.The learned counsel for the petitioners 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.

5.The petitioners in the present case were appointed as Ambulance Drivers through an outsourcing agency in a Primary Health Centre at Nagalapuram. They are discharging their duties continuously and therefore, submitted applications seeking permanent absorption. However, the case of the petitioners was not considered on the ground that their initial appointment was not in accordance with the Service Rules. Further, the appointment itself was made through outsourcing agency.

6.The learned Special government Pleader appearing for the respondents states that the petitioners were engaged and appointed as Drivers 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.

7.Let us now consider the order of appointment issued the petitioners. In the appointment orders dated 14.11.2005 and 14.02.2011, the Deputy Director, Public Health Services, Kovilpatti, has stated that the petitioners were appointed on contract basis through outsourcing agency as Drivers. 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 petitioners were not engaged on contract basis by the Government directly. They were engaged through a private outsourcing agency and they are allotted works through the agency as drivers to work in the Primary Health Centre. In other words, the agency has recruited the drivers and pursuant to the contract between the Government and Agency and the Agency is sponsoring the drivers for performing the service in the Primary Health Centre. Therefore, the Government is not the employer and the agency has recruited the employees on contract basis.

8. 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."

9. 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.



10. In the present case, the petitioners were appointed as drivers by the outsourcing agency and deputed to work in the Primary Health Centre. They were not appointed by the competent Appointing Authority nor the Recruitment Rules were followed. Thus, the appointment of the petitioners 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 petitioners is concerned.

11. In view of the fact that the petitioners are not appointed by following the Recruitment Rules as applicable to the post of Driver in the Government Department, they are not entitled for the relief as such sought for in the present writ petitions.

12. Accordingly, the writ petitions are dismissed. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

To:

1. The Secretary to Government,
Health and Family Welfare Department,
State of Tamil Nadu,
Fort St. George, Chennai-600 009.
 2. The Director of Public Health and Preventive Medicine,
D.M.S. Compound, Teynampet,
Chennai.
 3. The Deputy Director,
Public Health Services,
Kovilpatti, Thoothukudi District.
- +2 CC to M/s. G. THALAIMUTHARASU, Advocate (SR-6919[F], SR-6920[F] dated 17/02/2022)
- +1 CC to M/s. SPL GP (SR-6831[F] dated 17/02/2022)

W.P. (MD) Nos. 871 & 872 of 2019
16.02.2022

RS (25.02.2022) 4P-7C