

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.909 of 2022

A.Pandiammal

... Appellant

Vs.

1.The Secretary to Government,
Health and Family Department Welfare,
Fort.St.George,
Chennai.

2.The Director of Public Health and
Preventive Medicine,
Chennai-6.

3.The Assistant Director Health Services,
Palayamkottai, Tirunelveli-2.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.26079 of 2020, dated 28.04.2022.

For Appellant :Mr.S.Kumar

For Respondents :Mr.N.Satheesh Kumar

Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.26079 of 2020, dated 28.04.2022.

2. The prayer in the writ petition W.P.(MD)No.26079 of 2020 is for issuance of a Writ of Certiorarified Mandamus to quash the impugned order dated 20.11.2019 in Na.Ka.No. 02839/A3/2019 on the file of the 3rd respondent and consequently, to direct the respondents to fix the time scale of pay to the petitioner in terms of G.O.Ms.No.385, Finance (Pay Cell) Department, dated 01.10.2010, from the date of completion of 3 years.

3. The brief facts as stated in the affidavit of the writ petition is that the petitioner belongs to Schedule Caste

Category and has studied up to 5th standard. During the year 2008, the Medical Officer of Paththamada Primary Health Centre engaged the petitioner as Sanitary worker in her office on consolidate pay of Rs.500/-. Later, it was enhanced to Rs. 1500/- per month. The Government issued G.O. Ms. No.385, Finance (Pay Cell) Department, dated 01.10.2010, whereby the Government directed to fix special scale of pay to the sanitary workers who are working in the Government office and Local bodies on daily wages and consolidated pay basis. In the said G.O., a condition was imposed stating that a sanitary worker who was engaged on daily wages and consolidated basis should have worked minimum 3 years either in the Government office or the local body. The Government directed the Head of the Department to send suitable proposal for sanction of the special scale of pay. Since the respondents have not send any proposal, the petitioner submitted a representation, dated 06.02.2017 and again on 20.04.2019.

Hence, the petitioner filed W.P(MD)No.21192 of 2019 and this Court by an order, dated 03.10.2019, directed the respondent to consider representation on merits and pass orders. The 3rd respondent issued the impugned order, dated 20.11.2019 and rejected the request of the petitioner. Aggrieved over the same, the writ petition in W.P.(MD)No.26079 of 2020 is filed.

4. The contention of the appellant is that the 3rd respondent has rejected the request by stating that the petitioner was working as Sanitary Worker in Reproductive Child Health, which is an unsanctioned post and her appointment is purely temporary in nature. But this reasons are not stated in the said G.O. and the G.O has only imposed two conditions, wherein it says the candidate should have completed 3 years on the daily wages basis and the Head of the Department should be satisfied that the worker is employed for the entire working period. The G.O. is not

stipulating that there should be a sanctioned post. Therefore, the petitioner is aggrieved over the said order and has filed the writ petition.

5. The third respondent has filed a counter affidavit in the writ petition stating that petitioner was engaged as a Reproductive Child Health (RCH) Sanitary Worker at Pathamadaai Primary Health Centre on a temporary basis and the said post is expected to work at the delivery of babies at the hospital. The wages of RCH Helper, RCH Sanitary worker is at monthly consolidated wage as per prescribed norms. The norms are fixed as Rs. 1,000/- per month in case of less than 10 deliveries and Rs.1500/- per month in case of more than 10 deliveries. The amount is disbursed from the Untied Fund. The said post is formulated and comes under the control of National Health Mission. The appointment of the petitioner is purely on temporary basis and the salary was paid as

honorarium only upon the work incurred by the petitioner. The petitioner submitted a representation and filed a writ petition in W.P.(MD) No.21192 of 2019. This Court, by an order, dated 03.10.2019, has passed an order to consider the representation of the petitioner and pass an order.

6. After considering the petitioner's representation, vide impugned order, the petitioner's claim was rejected stating that the petitioner's appointment is purely on temporary basis and the work of the petitioner is only a temporary work and was used in emergency circumstances. Moreover, the post of RCH Sanitary Worker is not a sanctioned post and it was created only for the welfare of the patients under the National Health Mission, which is a scheme. The regularization of the petitioner cannot be entertained as the appointment of the petitioner is not under any recruitment through employment exchange or paper advertisement. The

petitioner was initially appointed on consolidated pay of Rs. 500/- on temporary basis and therefore, the above said G.O.Ms.No.385, Finance (pay cell) Department, dated 01.10.2010, is not applicable to the petitioner's case. The Government issued G.O.(D) No.792, dated 05.04.2017, wherein it has been specifically stated that those who were regularized in the special time scale of pay to the post of sanitary worker without obtaining permission from the Government may be cancelled. Hence, as per this G.O. also the petitioner is not entitled to and the persons who were regularized in the post of Sanitary Worker is also cancelled. Therefore, the petitioner is not entitled to and the respondents prayed to dismiss the writ petition.

7. The Learned Single Judge has considered the case of the petitioner and has extracted the contents of the G.O.(D) No.792, dated 05.04.2017 and has held based on this G.O., the

petitioner is not entitled to regularization and also not entitled to the special time scale of pay. The Learned Judge had relied on the judgment of the Honourable Supreme Court rendered in ***Secretary, State of Karnataka and others vs. Umadevi and others***, reported in ***(2006) 4 SCC 1***, wherein it is held that the persons, who were appointed irregular or illegal, cannot claim the benefit of regularization or permanent absorption in violation of service rules in force. Appointments are to be made strictly in accordance to the rules by affording opportunity to all the eligible persons, who all are aspiring to secure public employment. Equal opportunity in public employment is the constitutional mandate. Since the petitioner was appointed under the National Health Mission as a temporary daily wage employee without any sanctioned post, the petitioner is not entitled to any benefits under G.O.Ms.No. 385, Finance (Pay Cell) Department, dated 01.10.2010. Aggrieved over the same, the present writ appeal is filed.

8. Heard Mr.S.Kumar, the Learned Counsel appearing for the appellant and Mr.N.Satheesh Kumar, the Learned Additional Government Pleader for the respondents and perused the records.

9. After considering the rival submissions this Court is of the considered opinion that the appellant was appointed as Reproductive Child Health Sanitary Worker on temporary basis during the year 2008 and the work of the RCH Sanitary Worker is only a temporary work and was used in emergency circumstances. The said post is expected to work at the time of delivery of babies at the hospital. The wages of RCH Helper, RCH Sanitary worker is at monthly consolidated wage as per prescribed norms. The norms are fixed as Rs. 1,000/- per month in case of less than 10 deliveries and Rs.1500/- per month in case of more than 10 deliveries. The amount is disbursed from the Untied Fund. The said post is formulated

and comes under the control of National Health Mission, which is a scheme. The appointment of the petitioner is purely on temporary basis and the salary was paid as honorarium only upon the work incurred by the petitioner. Moreover, the post of RCH Sanitary Worker is not a sanctioned post and it was created only for the welfare of the patients under the National Health Mission Scheme. The employee would assist whenever occasion arises. Therefore, the Government has not sanctioned any post to the Primary Health Center. But the Primary Health Centre would utilize their service as and when required.

10. The G.O.Ms.No.385, Finance (Pay Cell) Department, dated 01.10.2010, was passed to regularize the Sanitary Workers working in Government office and local bodies who were engaged under daily wages basis or under the consolidated pay and the Sanitary Workers were brought

under special time scale of pay. The appellant is not coming under the category of sanitary workers. Therefore, the said G.O. is not applicable to the appellant. In this regard, the Government has clarified the claim of the appellant through G.O.(D) No.792, dated 05.04.2017, wherein it has been clarified that G.O.Ms.No.385, Finance (Pay Cell) Department, dated 01.10.2010, is not applicable to any employee who is coming under any scheme related to the employment. The relevant paragraphs are extracted here under:

“3. The Government examined the case in the light of the orders issued in the Government order ninth read above and the orders of the Hon'ble High Court of Madras and its Madurai Bench and the Government finds that the employees whose requests are under examination are paid from the State Health Society and hence, they could be treated as sub-staff of National Health Mission. Therefore, the orders issued in the Government Order ninth read above is not applicable to them.

4. The Government, however, considering the welfare of the Sanitary Workers sanctioned in the

Government Orders first to eighth and tenth read above and the Minimum Wages Act amended in G.0(2D) No.47, Labour and Employment Department, dated 25.05.2009, have decided to permit the Director of Public Health and Preventive Medicine to fix the wages of the 3140 Sanitary Workers sanctioned in the Government orders first to eighth and tenth read above and working in the Primary Health Centres/other Medical Institutions under his control, on daily wages as fixed by the District Collectors, applicable to this category, from time to time, and claim and pay the wages to the said workers from the National Health Mission Funds and order accordingly. He is directed to ensure that 3140 posts mentioned above should not be exceeded at any costs.

5. The Director of Public Health and Preventive Medicine is also directed to take action to cancel the orders issued, if any, fixing the special time scale of pay to the Sanitary Workers, concurrence of the Government. without obtaining the 6. This order shall take effect from the date of issue of this order."

11. In paragraph No.3, it has been categorically clarified that the special staff who are working in the National

Health Mission will not come under G.O.Ms.No.385, Finance (Pay Cell) Department, dated 01.10.2010 and therefore the appellant is not entitled to the benefits granted under G.O.Ms.No.385. Hence, the writ appeal fails. The learned Single Judge has rightly held that as per G.O.(D) No.792, dated 05.04.2017, the writ petitioner is not entitled to. Hence, writ appeal is dismissed. No costs.

[S.S.S.R., J.] [S.S.Y., J.]
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Index : Yes / No
Tmg

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