



W.P(MD)No.21955 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21955 of 2022

M.Kesavan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai - 9.

2.The Director,
Public Health and Preventive Medicine,
Teynampet, Chennai – 6.

3.The Director,
Rural Health Services,
Teynampet,
Chennai – 06.

4.The Assistant Director,
Public Health and Preventive Medicine,
Meenakshinayakkan Patti,
Dindigul.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to bring the petitioner's services under time scale of pay with effect from 27.03.2015 in the light of the G.O.Ms.No.151, Social Welfare (Ma) Nutrition (Sa.Na.4) Department dated 16.10.2008 and G.O.Ms.No. 325 dated 20.11.2012



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on the file of the respondent no.1 by completing the proposal of the 2nd respondent dated 23.03.2018 and regularize his service along with the all consequences benefits by considering the petitioner's representation dated 02.10.2021 within a time stipulated by this Court.

For Petitioner : Mr.T.Thirumurugan

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Multipurpose Hospital Worker vide order bearing Moo.Mu.No.5700/A2/2012-2, dated 25.03.2013. She has been posted to work at Primary Health Centre, Iyampalayam. The petitioner was appointed on contract basis for a period of one year. The appointment order reads that contract will be renewed every year for a period of five years. The petitioner is continuing to work in the same capacity even as on date. The petitioner sought regularization of his services. She filed W.P.(MD)No.10887 of 2019. The said writ petition was disposed of on 29.04.2019 with a direction to the Government to consider the petitioner's claim as per the proposal



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forwarded to the Government by the Director, Public Health and Preventive Medicine, Teynampet, Chennai – 06. The petitioner was informed by the fourth respondent that the petitioner's request for regularization under G.O.(Ms)No.151, Social Welfare and Nutrition Department, dated 16.10.2008 and that his case for regularization is under consideration of the Government in terms of G.O.(Ms)No.325, Health and Family Welfare Department, dated 20.11.2012. Questioning the same, the petitioner filed W.P.(MD)No.14266 of 2021. Vide order dated 12.08.2021, this Court directed the Government to pass order on the report submitted by the Director, Public Health and Preventive Medicine, Teynampet, Chennai – 6. Since nothing happened even thereafter, the present writ petition has been filed seeking the relief of regularization.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4.The respondents have filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents. The learned Special Government Pleader took the stand that what is applicable to the writ petitioner is only G.O.(Ms)No.325 dated 20.11.2012 and not G.O.(Ms) No.151 dated



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16.10.2008. Two reasons are putforth by the respondents in support of the said contention. The first reason is that G.O.(Ms)No.151 dated 16.10.2008 issued by the Social Welfare and Nutrition Department will be applicable only for those who were appointed on consolidated basis. The petitioner was appointed as a contractual worker. Secondly, the order of appointment of the writ petitioner as contract worker specifically quotes G.O.(Ms) No.325 dated 20.11.2012. According to the learned Special Government Pleader, these two reasons are good enough to exclude the applicability of G.O.(Ms)No.151 dated 16.10.2008. He would add that in view of G.O.(Ms) No.563, Health and Family Welfare Department, dated 16.12.2021, a new policy decision has been taken and the post of Hospital Worker/Sanitary Worker is being filled up through outsourcing. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. G.O.(Ms)No.325, Health and Family Welfare Department, dated 20.11.2012 expressly sanctions one time revival of all the lapsed posts of Hospital Workers, Sanitary Worker and Nursing Assistant Grade-II working in hospitals, which are having less than 200 beds. The said Government Order envisages appointing the Hospital Worker / Sanitary Worker initially on contract basis for a period of one year but it was meant to be renewed for a



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period of five years. The underlying policy is that they would be absorbed at the end of the fifth year. Though the communication dated 18.10.2019 issued by the fourth respondent gives an assurance that his case will be considered under G.O.(Ms)No.325, dated 20.11.2012, in view of issuance of G.O.(Ms)No.563 dated 16.12.2021, the consideration will not yield any fruitful result for the petitioner. That leaves me with a question whether the petitioner can claim benefit under G.O.(Ms)No.151 dated 16.10.2008.

6.Though the learned Special Government Pleader would attempt to make a distinction between some one appointed on consolidated basis and some one appointed on contractual basis, in the facts and circumstances of the case, it is a distinction without difference. I went through the order whereby the writ petitioner was appointed. The petitioner was sponsored by the District Employment Exchange, Dindigul. The appointment order was issued by the fourth respondent herein. The salary is paid by the District Administration through the Treasury. It is not as if the petitioner's pay master is some private agency.

7.I must take note of the circumstances leading to issuance of G.O.(Ms)No.151, dated 16.10.2008. The association representing the welfare



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of physically disabled had met the Hon'ble Chief Minister on 19.08.2008 and submitted their charter of demand. The Tamilnadu Government took a policy decision that the physically disabled who are working in various departments for two years and more would be regularized. I entertained a doubt if the said Government Order was meant to apply only to those physically challenged individuals who had already put in two years of service as on 16.10.2008. My doubt was dispelled by the learned counsel for the petitioner by producing proceedings bearing Na.Ka.No.80920/AaKaNee7/A3/2010, dated 10.12.2012 in favour of one Ramasamy. The said Ramasamy was appointed only on 05.09.2007. He would have completed two years of service only by 04.09.2009. If G.O.(Ms)No.151 dated 16.10.2008 were to apply only those who had completed two years as on the date of issuance of date of Government Order, then obviously, Ramasamy could not have been given the benefit of the said Government Order. But by applying the said Government Order, Ramasamy was regularized on 10.12.2012. This clearly indicates that this Government Order would apply both for the incumbent employees but also disabled employees who would join in future.

8.Interestingly, in the aforesaid proceedings dated 10.12.2012, Thiru.Ramasamy has been described as a contractual employee. Since



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G.O.(Ms)No.151, dated 16.10.2008 is a beneficial measure, it has to be interpreted in a broad manner. Such Government Orders cannot be restrictively and narrowly construed. In a case of this nature, I will not distinguish between a contractual employee and an employee appointed on consolidated pay basis. I, therefore, hold that G.O.(Ms)No.151, dated 16.10.2008 is very much applicable to the case of the writ petitioner also.

9.The writ petitioner was appointed on 25.03.2013. She completed two years of service on 24.03.2015. The respondents are directed to regularize the petitioner's service with effect from the said date. However, the petitioner will get monetary benefits only from the date of this order. Such proceedings will be issued within a period of twelve weeks from the date of receipt of a copy of this order.

10.The writ petition is allowed accordingly. No costs.

28.11.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To:-

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Department of Health and Family Welfare,
Secretariat, Chennai - 9.
- 2.The Director,
Public Health and Preventive Medicine,
Teynampet, Chennai – 6.
- 3.The Director,
Rural Health Services,
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