



W.P.(MD).No.21167 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.21167 of 2016
and
W.M.P.(MD).No.15122 of 2016**

1.S.Selvi
2.R.Kala
3.S.Muniyammal
4.T.Karuppi
5.M.Meenakshi
6.N.Parvathy

... Petitioners

Vs.

1.The State of Tamilnadu,
represented by the Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 10.

3.The Dean,
Tirunelveli Medical College,
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 pertaining to the impugned order in Na.Ka.No.6145/Nil0(1)/2016 on the file of the Respondent No.3, dated 03.06.2016 and to quash the same as illegal and consequently, for a direction, to direct the respondents to regularize



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the petitioners service from the date of their joining in service as sanitary workers and fix the time scale of pay from the date of appointment of the petitioners with consequential benefits within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.V.Om Prakash
Government Advocate (Civil side)

ORDER

The Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Na.Ka.No.6145/Nil0(1)/2016 and consequently direct the respondents to regularize the petitioners service from the date of their joining in service as sanitary workers and fix the time scale of pay from the date of appointment of the petitioners with consequential benefits within the time period stipulated by this Court.

2. The brief facts of the case are that the petitioners in this petition are economically weaker section in the society. On 10.08.1993, the respondents issued an appointment order in Na.Ka.No.13084/Ni6/93, dated 10.08.1993 for petitioners 1 to 4 as Sanitary Workers on consolidated pay and on 20.04.1995, the petitioners 5 and 6 were appointed as Sanitary Workers. All the petitioners participated in the interview which was sponsored by the employment



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exchange. The 3rd and 4th petitioners have attained superannuation and the other petitioners are still working as sanitary workers. Since the petitioners were kept under consolidated pay, the petitioners submitted representations to the respondents to regularize their service. In the meantime, the Government issued G.O.Ms.No.144, dated 30.04.2007 stating that on 14.05.2007, the second respondent have sent a communication to the 3rd respondent and to the Dean of newly created medical colleges and called for some details with regard to the workers who were working in consolidated pay.

3. On 28.02.2006, the Department of Personnel and Administrative Reforms (F) passed a G.O. in G.O.Ms.No.22, wherein, it is stated that the service of the daily wages employees who are working in Government Departments who have rendered 10 years of service as on 01.01.2006 shall be regularized by appointing them in the time scale of pay. On the basis of the said order, the third respondent submitted a proposal to the government for regularization of the service of 383 substitute workers attached to various Government Hospitals who have completed 10 years of service as on 01.01.2006. Based on the aforesaid proceedings, on 08.05.2007, the first respondent also passed a government order in G.O.Ms.No.149 dated 08.05.2007 whereby 383 substitute workers who have been appointed from



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1977 to 1995 were regularized.
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4. On 23.07.2007, the third respondent passed an order stating that the petitioners' service will be brought under the time scale of pay from 05.07.2007 but the petitioners' original appointment was on 10.08.1993. The claim of the petitioners is that since the original appointment was in 1993, their past service should be included before regularizing them in the time scale of pay. The contention of the petitioners is that they sought information through Right to Information Act to the third respondent regarding the regularization of some of the co-workers and the information was provided on 10.09.2008 in Order No. 4272/Ni8/97. One Venniammal and one Parvathi who are working in the institution in the same post of Sanitary Worker in third respondent college, who were appointed on consolidated pay along with the petitioners were brought under the time scale of pay from the date of original appointment. Therefore, the claim of the petitioners is that they should also be regularized from the date of original appointment. The similarly placed persons working in the Theni Government College who were aggrieved by the same order of regularization from the date of 24.07.2009, that one Rajapandiyan and 6 others who were appointed in the Theni Government Hospital filed W.P.(MD)No.8873 of 2012. This Court, vide order, dated 17.04.2014 allowed the writ petition and directed



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the 3rd respondent to correct the date of joining of the petitioners as applicable to them. The contention of the petitioners is that the third respondent has granted regularization from the date of appointment to similarly placed persons like K.Pattuchamy and C.Raghavan, who were appointed in the post of Watchman by way of relaxing the rules which is evident from the proceedings, dated 16.03.2016. In spite of all these, the third respondent passed the impugned order, dated 03.06.2016, rejecting the claim of the petitioners to include the past service rendered by the petitioners. On 20.03.2015, the petitioners submitted representation to the third respondent seeking to regularize from 10.08.1993 instead of 05.07.2007 in case of petitioners 1 to 4 and for petitioners 5 and 6 from 20.03.1995 instead of 03.07.2007. Aggrieved over the same, the petitioners 1 to 4 filed W.P. (MD) No. 6372 of 2016 and this Court, vide order dated, 31.03.2016, directed to consider the representations and pass orders and the petitioners 5 and 6 filed W.P. (MD) No. 7020 of 2016 and this Court directed to consider and pass orders.

5. The third respondent has filed a counter stating that the petitioners have filed W.P.(MD)Nos.6372 of 2016 and 7020 of 2016 and this court has passed an order to consider and pass orders. After that, legal opinion was sought and it has been stated that the petitioners are not eligible for



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regularization, since they have been appointed as Sanitary Workers on temporary basis in leave vacancies. In the office order R.No.13084/E6/93, dated 10.08.1993 and R.No.1936/E6/ 1995 had called for the candidates from employment exchange and following which the candidates have been sponsored by the District Employment Officer. The Sanitary Workers are appointed on temporary basis in leave vacancies in regular scale of pay of Rs. 750-12-870-15-945 and joined the duty as stated below:

S. No.	Name	Date of Joining
1.	S.Selvi	26.08.1993
2.	R.Kala	01.09.1993
3.	S.Muniammal	01.09.1993
4.	T.Karuppe	01.09.1993
5.	M.Meenatchi	01.05.1995
6.	N.Parvathy	01.05.1995

S. No.	Name	Appointment Order No and date	Date of Joining
1.	S.Veniammal	R.No.1936/E5/95 dt. 20.04.1995	01.05.1995
2.	S.Parvathy	R.No.1936/E5/95 dt. 20.04.1995	01.05.1995

6. In the said list, Muniammal and Karuppe attained superannuation on 30.06.2015 and 30.11.2014 respectively. The G.O.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2016, has stated that the

<https://www.mhc.tn.gov.in/judis>



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daily wage workers who have been employed and has completed 10 years of service as on 01.01.2016 will be regularized. Based on the G.O., the Government has taken a policy decision but regularized them, as per the conditions stated in the said G.O. Considering the past orders, the Government in G.O.Ms.No.149, Health and Family Welfare (F2) Department, dated 08.05.2007, have been issued, thereby, regularized the service on of 383 substitute workers attached to various Government Hospitals who have completed 10 years of service on 01.01.2000, thereby, relaxing the relevant rules wherever necessary. The petitioners will come under Serial No.299 to 304 and they have been appointed in regular vacancies with effect from 08.05.2007 and their service have been regularized on the same date, i.e., 08.05.2007, vide proceedings, dated 03.07.2007. For the said 383 persons, including the six petitioners, the services were regularized by granting age relaxation under Rule 5 (1) of the Special Rule for Tamil Nadu Basic Service Rules.

7. The said Venniyammal and S.Parvathy were initially appointed as Sanitary Workers in leave vacancy in the time scale of pay, vide proceedings, dated 10.08.1993. Thereafter, they were appointed as Sanitary Workers in the regular vacancy on 01.05.1995 and the said 2 persons have been regularized with effect from 01.05.1995 as per G.O.Ms.No.4(D) 8 Health and Family



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Welfare Department, dated 31.07.2008. But the 6 petitioners were kept as substitute workers till 31.12.2005. In W.P.(MD)No.8873 of 2012 filed by one Rajapandiyan and 6 others, the counter affidavit has not been filed by the 3rd respondent and there was no specific denial by the respondent by way of counter as specifically mentioned in the judgment. Therefore, the said judgment cannot be relied on. The first respondent received the representation, dated 20.03.2015, from the petitioners and they have been informed orally that the regularization orders were issued in accordance to the Government Order in G.O.Ms.No.149, Health and Family Welfare (F2) Department, dated 08.05.2007.

8. As far as W.P.(MD)No.6372 of 2016 is concerned, the copies of the affidavit and writ petition was not received by the respondents. As far as the W.P.(MD)No.7020 of 2016 filed by Meenatchi and Parvathy is concerned the copies were received by the office of the respondents on 21.04.2016 and the said writ petition was allowed even before the counter affidavit was filed. The petitioners' service could not be equated with the Venniyammal and Parvathy, since originally the said Venniyammal and Parvathy were appointed in leave vacancy and subsequently they were appointed in the regular vacancy in 1995 itself. Thereafter, their service was regularized with effect from 01.05.1995 as



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per G.O.4(D) No.8, Health and Family Welfare Department, dated 31.07.2008.

The petitioners were appointed in leave vacancy and they were kept as substitute workers till 31.12.2005. Since the facts of the present case is entirely differs, the petitioners cannot claim the same benefit applicable to Venniyammal and Parvathy. The petitioner referred to one C.Raghavan and K.Pattuchamy who have been appointed as Watchman in regular vacancy on 07.04.1993 and 10.07.1993 respectively. The said appointment was made without obtaining prior permission, while the ban orders for the appointment of the Hospital workers was in force. Therefore, they were ousted from service from 22.11.1995, vide order, dated 14.11.1995 of the Director of Medical Education and the orders of the Dean, Tirunelveli Medical College, dated 22.11.1995. Against the above orders the individuals filed a case in O.A.No. 7520/95 and 7690/95. As per the interim stay of Tamil Nadu Administrative Tribunal, they were reinstated in service. In para 4 (i) of G.O.4(D)No.8 Health and Family Welfare Department, dated 31.07.2008, the appointment of Pattuchamy and Raghavan in regular vacancies has been granted and further direction to regularize the service of 50 others has been given. Since the above two and other six persons have approached the Court, the Government issued directions to look into their regularization. Subsequently, on 17.04.2008 and 02.04.2008, the Court has issued directions to regularize their service.



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Thereafter, they were regularized as per G.O.4(D)No.1/H&FW Department, dated 10.02.2016. Therefore, the petitioners cannot compare with the said Pattuchamy and Raghavan. Hence the respondents prayed to dismiss the writ petition.

9. Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for the respondents and perused the records placed before this Court.

10. It is seen from the records that the petitioners were originally appointed on 10.08.1993 and 20.04.1995 and they were regularized on 08.05.2007. The impugned order states as under:

“அதே வேளையில் பதிலிப் பணியாளர்களாகப் பணியாற்றிய மனுதாரர்கள் 6 பேரின் பணிவரன்முறையானது பார்வை 3 முதல் 5 வரை காணும் அரசு ஆணைகளின்படி 01.01.2006ல் 10 ஆண்டுகள் நிறைவு செய்த பதிலிப் பணியாளர்களை அரசு ஆணை வெளியிட்ட அதாவது 08.05.2007 முதல் முறையான பணியிடத்தில் பணியமர்த்தப்பட்டு பணிவரன்முறை செய்யப்பட்டுள்ளது.”

It has been clearly stated in the impugned order that the petitioners were appointed in the பதிலி vacancy. The petitioners have completed 10 years as on



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01.01.2016. Therefore, the Government has considered the petitioners' service for the past 10 years and has granted regularization from 08.05.2007 onwards.

11. The contention of the petitioner is that they should be regularized from the date of their original appointment, i.e., that is 10.08.1993 and 20.04.1995. The concept of regularization is to regularize from the date of issue of the Government order. Infact all regularization were granted only from the date of issuance of the government order. The qualification to be regularized is that they should have served in the said post for more than 10 years as on 01.01.2006. If they have not completed 10 years as on 01.01.2006, then they will not be considered for regularization at all. In other words, they would not have come under the zone of consideration at all. Therefore, seeking regularization from the date of original appointment will be violating the concept of regularization.

12. The issue of regularization from the date of G.O. was considered by the Full Bench of Madras High Court in ***State of Tamil Nadu Vs. C. Srinivasan case reported in 2022 (1) CTC 833***, wherein it has held that the regularization will come into effect from the date of order of government order passing regularization and not retrospectively. The relevant portion is extracted



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hereunder:

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“42. In view of the above discussion, we proceed to answer the second question that has been referred to this Full Bench hereunder:

“We hold that the Division Bench in V. Samy case did not lay down the law correctly and we uphold the law laid in V. Ramachandran case to the extent that there is no deemed upgradation or deemed promotion contemplated in the relevant government orders and the benefit of upgradation / promotion to the next level can be granted / claimed only on completion of the qualifying service in each level / rank as prescribed in the relevant Government Orders. At the risk of repetition, in so far as understanding the expression “retrospective operation” is concerned we hold that the Government Orders operate prospectively but it imposes / grants new results in respect of a past event. In other words, the Government Order operates forward but it looks backward and in that it attaches new consequences for the future to an event that took place before the Government Order was issued. If the Government Orders are understood in this perspective, there is no need to get into the issue of “retrospective operation”. Thus we are of the view that the Division Bench while rendering the Judgment in V. Ramachandran case has dealt with the Government orders in its proper perspective and the Judgment in V. Samy case is hereby overruled.”

The Hon’ble Full Bench has held that regularization will come into effect from the date of issuance of the order. The Government has regularized the daily worker / NMRs in all the Departments including Municipal service from the date of issuance of Government order. Therefore, if the claim of the petitioner is accepted, then, it will have a serious consequence in all Departments in entire Tamil Nadu.



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13. The same issue is considered by this Court in W.P. (MD) No. 3467 of 2016 wherein it has been held following the Hon'ble Full Bench Judgment that the regularization would be granted from the date of issuance of the Government Order and not from the date of appointment. Therefore, this Court is of the considered opinion that the petitioner cannot claim regularization from the date of original appointment, i.e., 10.08.1993 and 20.04.1995.

14. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.04.2022

Index : Yes / No
Internet : Yes/ No

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S.SRIMATHY, J.

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To

- 1.The Secretary to the Government,
State of Tamil Nadu,
Department of Health and Family Welfare,
Fort St.George, Chennai.
- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 10.
- 3.The Dean,
Tirunelveli Medical College,
Tirunelveli.

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