



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.26079 of 2019

A.Pandiammal

... Petitioner

vs.

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

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

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified mandamus, to call for the record in Na.Ka.No.02839/A3/2019 dated 20.11.2019 on the file of the 3rd respondent and quash the same, consequently, direct the respondents to fix the time scale of pay to the petitioner in terms of G.O.Ms.No.385 Finance (pay cell) Dpt., dated 01.10.2010 from the date of completion of three years.

For Petitioner : Mr.S.Kumar

For Respondents : Mr.N.Satheesh Kumar

Additional Government Pleader

ORDER

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

2.The petitioner states that she was engaged as Sanitary Worker on consolidated pay of Rs.500/-. The consolidated pay was enhanced subsequently. The petitioner states that the Government issued G.O.Ms.No.385 Finance (pay cell)Department, granting special time scale of pay to the temporary Sanitary Worker, who all are working in the Government Department. The petitioner was engaged as daily wage employee on consolidated basis and she has



served more than 10 years and therefore, submitted an application for grant of regularization. The writ petitioner filed a writ petition in W.P(MD)No.21192 of 2019 and this Court directed the authorities to consider the representation. Accordingly, the authorities considered and found that the petitioner was appointed under the scheme, viz., National Health Mission and she was not appointed in accordance with the recruitment rules applicable to the post. In view of the fact that the petitioner was appointed under the special scheme, she is not eligible for regularization or permanent absorption and also for special time scale of pay. With reference to the G.O.Ms.No.385 challenging the said order, the present writ petition is filed.

3.Regularization or permanent absorption cannot be claimed in violation of service rules in force. Regularization is to be granted only if the initial appointments are made in consonance with the procedures. The respondents have stated that the appointments of the writ petitioner was on temporary daily wage basis and she was engaged for certain emergency circumstances. Moreover, the post of RCH Sanitary Worker is not a sanctioned post and the post was created only for the welfare of the patient under the National Health Mission and it is the scheme related post and not a regular sanctioned post. Thus, the petitioner is not entitled for regularization or permanent absorption in the regular sanctioned post of the department.

4.This apart, it is contended that the petitioner is not entitled for the benefit of G.O.Ms.No.385, Finance (pay cell) Department, dated 01.10.2010. In this regard, the Government passed G.O.Ms.No.792, dated 05.04.2017 holding that under the special time scale of pay, the G.O is not applicable to the said scheme related employee. In the Government Order, in para Nos.3,4,5 and 6 are extracted hereunder:

"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.O(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, without obtaining the concurrence of the Government.

6.This order shall take effect from the date of issue of this order."

5.The Constitution Bench of the Hon'ble Supreme Court of India, in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in (2006) 4 SCC 1 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 with 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.

6.In the present case, the petitioner was appointed under the National Health Mission, as a temporary daily wage employee and therefore, she is not entitled for the relief and the reasons stated in the impugned order is in consonance with the principles settled by the Constitution Bench of Supreme Court of India in **Uma Devi's** case(cited supra).

7.With these observations, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

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

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

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

+1 CC to M/s.S. KUMAR, Advocate (SR-22436[F] dated 29/04/2022)

+1 CC to M/s.SPL.GP (SR-23226[F] dated 02/05/2022)

W.P. (MD) No.26079 of 2019

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USK/01.06.2022/4P/6C