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W.P.Nos.4938 of 2023 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos. 4938 , 14696, 4941, 4944, 4945, 4946, 14580, 14581, 4952, 4967, 14688, 14579, 15154, 14578, 14557, 12495, 14031, 14544, 14571, 14697, 4970, 14583, , 14587, 14672, 14674, 4978, 12493, 14556, 14561, 14564, 14576, 14692, 14572, 14573, 14575, 14693, 4968, 4950, 14577, 14565, 14689, 14567, 4971, 4972, 4973, 4974, 4975, 4977, 14582, 14676, 14678, 14679, 14683, 14684, 14685, 14686, 14574, 14542, 14552, 14554 and 14687 of 2023

and

WMP Nos.12324, 14176, 14177, 14166, 12320, 14033, 14048, 14050, 14052, 14179, 14181, 14648, 13665, 14023, 14158, 14159, 14165, 14051, 14162, 4983, 4957, 4958, 4959, 14186, 14187, 14035, 14018, 14039, 4977, 4979, 4981, 4984, 4985, 4986, 4989, 14044, 14045, 14047, 14043, 14036, 14042, 14055, 14056, 14059, 14171, 14173, 14174, 14175, 14178, 4954, 4963, 4965, 4990, 4991, 4993, 14046, 14028, 14030, 14049, 14053, 14054 and 4953 of 2023

W.P.No.4938 of 2023

N.Dhamotharan

...Petitioner

-Vs-

1. State of TamilNadu Rep by
The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.
2. The Director,
Directorate of Public Health and Prevective Medicine (DPHS),
No.359, Anna Salai, DMS Complex, Teynampet,
Chennai-600 006/



W.P.Nos.4938 of 2023 etc., batch

3. The Deputy Director Health Service,
Office of Deputy Director of Health Service,
Chengalpattu HUD, No.17, Periyar Rd, J C K Nagar,
Chengalpattu-603 001.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order in Na.Ka.No.6569/P5/2015-3 dated 07.02.2023 passed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to reinstate the petitioner with all consequential monetary and other service benefits from the date of dismissal.

For Petitioner : Mr.L.Chandrakumar
in all the W.Ps for Mr.S.Vijayakumar

For Respondents : Mr.S.Silambannan
Addl.Advocate General
assisted by
Mrs.V.Yamuna Devi
Special Government Pleader

COMMON ORDER

Heard Mr.L.Chandrakumar, learned counsel for the petitioners and Mr.Silambannan, learned Additional Advocate General for the respondents.



2. In all these writ petitions, the legal issue involved is one and the same and therefore, all the writ petitions are disposed of through a common order.

3. All the petitioners herein were appointed in the sanctioned post of hospital workers/sanitary workers/mazdoors/sweepers. All these posts are termed as Multi-purpose Hospital Workers.

4. At the time of appointment, all these petitioners herein were appointed on regular time scale of pay by the Deputy Director of Health Services and were posted to various Government Hospitals/Primary Health centres. According to the respondents, their appointments ought not to have been made under the guidelines issued by the Government of Tamil Nadu in G.O.M.No.325, Health and Family Welfare Department dated 20.11.2022, which permits such absorption only on contract basis on consolidated pay and therefore, the present appointment of the petitioners on regular time scale of pay in the sanctioned posts is not in accordance with the Government Order and therefore, show cause notices have been issued for terminating their services and in some cases, termination orders have also been passed. These show cause notices and termination orders are put under challenge in these writ petitions.



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5. Learned counsel for the petitioners submits that since the appointments have been made only in the sanctioned vacancies and all the petitioners possess the necessary qualifications to be appointed through various posts, there is no illegality in such appointments and the mistake committed on the part of the respondents shall not be put against these petitioners.

6. On the other hand, Mr.S.Silambannan, learned Additional Advocate General, appearing for the respondents, submits that as per G.O.Ms.No.325, Health and Family Welfare Department dated 20.11.2022, appointments can be made only on contract basis and on consolidated pay alone and since it is subsequently found that the petitioners were brought under regular time scale of pay, their appointments cannot be continued and accordingly, their appointments have been cancelled after issuance of show cause notices. With this submission, learned Additional Advocate General sought for dismissal of all the writ petitions.

7. It is not in dispute that all the petitioners herein have been appointed in sanctioned vacancies and they were brought under regular time scale of pay. In the counter affidavit filed by the respondents, the appointments are not termed as



illegal. If that be so, the mistake committed by the respondents in absorbing the petitioners in regular time scale of pay instead of contract basis on consolidated pay can be termed only to be a irregular appointment and not an illegal appointment.

8. Such a preposition has already been upheld by the Hon'ble Supreme Court in several decisions and held that such irregularities committed in the appointments can be cured since there is no illegality in them. In the case of *Secretary, State of Karnataka vs Uma Devi reported in 2006 4 SCC 1*, the Hon'ble Supreme Court has held that irregular appointments would not render appointment as illegal and thereby directed the Government to regularise such irregular appointments. In the case of *Secretary, State of Karnataka & Others Vs. Umadevi & Others reported in 2006 (4) SCC 1* had held that, 'irregular appointments' would not render the appointments as “illegal” and thereby directed the Government to regularise such irregular appointments as a one time measure.

9. In *B.N. Nagarajan & Others Vs. State of Karnataka & Others reported in 1979 (4) SCC 507*, the Hon'ble Apex Court had categorically held that all



irregularities can be regularised, but illegalities cannot be. Likewise, in the ***State of***

Madhya Pradesh & Others Vs. Lalit Kumar Verma reported in ***2007 (1) SCC***

575, the Hon'ble Apex Court had made a distinction between “irregular appointment” and “illegal appointment” in the following manner:

“12.The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of [Article 12](#) of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.”



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10. In the case of *Post Master General, Kolkata & Others Vs. Tutu Das* reported in **2007 (5) SCC 317**, the Constitutional Bench of the Hon'ble Apex Court had upheld the ratio that an 'irregular appointment' does not stand equated to that of an 'illegal appointment'. As such when irregular appointments can be ratified on the strength of all these decisions of the Hon'ble Supreme Court and by taking note of the fact that the respondents themselves have only claim certain alleged irregularities in the selection process and not illegalities, the cancellation of the appointment orders on account of such alleged irregular selection process, cannot be sustained. Even otherwise, these alleged infirmities may not strictly termed to be as “irregularities” also for the reasons stated in the foregoing paragraphs of this order.

11. All these present cases are similar to the findings of the Hon'ble Supreme Court, wherein, the respondents have pointed out that the appointment of the petitioners are only irregular in nature and not illegal. Hence, by applying the ratio laid down by the Hon'ble Supreme Court, the consequential action taken by the respondents in either issuing show cause notices for terminating the petitioners' services or terminating their services itself by passing of orders, cannot be legally



W.P.Nos.4938 of 2023 etc., batch

sustainable.

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12. Accordingly, the following directions are issued:-

(a) In WP Nos.4977, 4946, 4968, 4971, 4974, 4972, 4952, 4950, 4945, 4944, 4941, 4978, 4975, 4973, 4970, 4967, 4938 of 2023, insofar as it relates to the termination of services of the petitioners from their respective posts, are quashed;

(b) In W.P.Nos.14696, 14580, 14581, 14688, 14579, 15154, 14578, 14557, 12495, 14031, 14544, 14571, 14697, 14583, 14587, 14672, 14674, 12493, 14556, 14561, 14564, 14576, 14692, 14572, 14573, 14575, 14693, 14577, 14565, 14689, 14567, 14582, 14676, 14678, 14679, 14683, 14684, 14685, 14686, 14574, 14542, 14552, 14554 and 14687 of 2023, insofar as it relates to issuance of show cause notices are quashed;

(c) In view of quashing of the termination orders as well



WEB COPY



W.P.Nos.4938 of 2023 etc., batch

as the show cause notices, there shall be a direction to the Director of Public Health and Preventive Medicine, No.359, Anna Salai, DMS Complex, Teynampet, Chennai-600 006 and the Deputy Director of Health Service, Office of Deputy Directorate of Health Service, Chengalpattu HUD No.17, Periyar Road, J C K Nagar, Chengalpattu-603 001, to forthwith pass appropriate orders for reinstating the petitioners back into service, together with all service and monetary benefits.

(d) The order referred to clause (c) above shall be passed within a period of four weeks from the date of receipt of a copy of this order.

13. With the above direction, all the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.12.2023

Index:Yes
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WEB COPY



W.P.Nos.4938 of 2023 etc., batch



WEB COPY



W.P.Nos.4938 of 2023 etc., batch

M.S.RAMESH,J.,

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To

- 1.The Principal Secretary to Government,
State of Tamil Naud,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.
2. The Director,
Directorate of Publilc Health and Prevetive Medicine (DPHS),
No.359, Anna Salai, DMS Complex, Teynampet,
Chennai-600 006/
3. The Deputy Director Health Service,
Office of Deputy Director of Health Service,
Chengalpattu HUD, No.17, Periyar Rd, J C K Nagar,
Chengalpattu-603 001.

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