



W.P.Nos.6140 & 6142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.6140 & 6142 of 2023 &

WMP.Nos.6159 & 6160 of 2023

K.Loganathan
N.Nagendran

... Petitioner in W.P.No.6140 of 2023
... Petitioner in W.P.No.6142 of 2023

Vs

1. State of Tamil Nady Rep. by its
Chief Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai – 600 009.

2. The Director of Medical Education,
Kilpauk, Chennai – 600 010.

3. The Dean,
Government Stanley Hospital,
Chennai – 600 001.

... Respondents in both WPs

Prayer:- Writ Petitions filed under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in G.O.(D) No.1448 dated 14.08.2018 and quash the same as illegal and invalid and consequently direct the respondents to



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regularize petitioners service as Hospital Worker from 08.06.1994 being the date of petitioners appointment in service on par with the petitioners fellow employees who had been appointed on the same dated and regularized in the following year i.e. 1995 along with all attendant and monetary benefits.

For Petitioners : Mr.Ashok Menon
in both WPs

For Respondents : Mr.P.Bladhandayutham
in both WPs Special Government Pleader - R1 to R3

COMMON ORDER

These Writ Petitions have been filed to quash the impugned Order of the first respondent in G.O.(D) No.1448 dated 14.08.2018 as illegal and invalid and consequently direct the respondents to regularize petitioners service as Hospital Worker from 08.06.1994 being the date of petitioners appointment in service on par with the petitioners fellow employees who had been appointed on the same dated and regularized in the following year i.e. 1995 along with all attendant and monetary benefits.



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2. The case of the petitioners is that the petitioner was appointed as substituted staff on 12.07.1988 and they were posted as hospital worker from 31.05.1994. It is the grievance of the petitioners that other persons appointed along with the petitioners have been regularized by G.O.Ms.No.8 dated 31.07.2008. Except the petitioners, all others appointed on the same day through employment exchange have been regularized. Thereafter, the third respondent sent a letter to the second respondent in Na.Ka.No.21819/N2[2]/2000 dated 22.06.2010 indicating that the petitioners have also been appointed within the age and they are not over aged and both of them are working in the Stanley Government hospital and they also should be regularized. However, now the impugned Order has been passed in the year 2018 rejecting the claim of the petitioners. Challenging the same, the present Writ Petition has been filed.

3. In the counter, it is the stand of the respondents that the petitioners' appointment is illegal and they are over aged at the relevant



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point of time and Rules and Reservations have not been followed and the Rules have to be relaxed accordingly. It is their further contention that the Rules have been relaxed in the impugned Order and they should be regularized from the date of the Government Order. Therefore, it is their contention that once Rules are relaxed, they cannot seek retrospective regularization. Hence, opposed the Writ Petition.

4. I have perused entire materials. It is not in dispute that the petitioners are originally employed through employment exchange on 12.07.1988 and the seniority list also prepared on 26.09.1988. Thereafter, as per G.O.No.4 [D] 8, 36 people who have been appointed on 12.07.1988 were regularized from the date of their initial employment on 31.07.2008. However, petitioners alone have not been considered in the above Government Order. Immediately, the Superintendent of Medical College, Stanley Government Hospital by letter dated 22.06.2010 in Na.Ka.No.21819/N2[2]/2000 has recommended to the Director of Medical Education that the petitioners also joined along with others and they are appointed within the age and they are eligible for



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regularization and they have also completed 7th and 6th standard at the relevant point of time and they are eligible to be appointed permanently. Hence, recommended for regularization. Based on the above recommendation, the second respondent Director of Medical Education by letter dated 23.05.2011 forwarded the recommendation to the Government. Having received the recommendation, now the impugned Order has been passed in the year 2018 on different set of facts as if the petitioners during their appointment is over aged and there is no reservation followed.

5. It is relevant to note that while regularizing similarly situated persons, at the earlier point of time, no issue with regard to the over age and reservation have been raised. On the recommendation of the second respondent dated 27.05.2011, no action has been taken. Only a reminder has been sent in the year 2017. Now the G.O. has been passed as if the petitioners are over aged at the time of their initial appointment. Even in the recommendation made by the Superintendent of Medical College it has been clearly stated that the petitioners are within the age at the time



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of their initial appointment. It is also not disputed that the petitioners have been appointed through employment exchange. Such being the position, when similarly situated persons have already been regularized, non suiting the petitioners, that too sitting over the recommendation for more than 7 years, is nothing but discrimination and the same cannot be sustained in the eye of law. Hence, the impugned Order is liable to be quashed.

6. Accordingly, the impugned Order dated 14.08.2018 is quashed and this Writ Petitions are allowed. The first respondent is directed to extend the benefit which was extended to similarly situated person on the basis of the Government Order in G.O.4[D] No.8 dated 31.07.2008. Such an exercise shall be completed within a period of four months from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2023

Index:Yes/No
Neutral Citation : Yes/No
vrc



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To,

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Health and Family Welfare Department,
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N.SATHISH KUMAR, J.

VTC

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