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W.P.No.27788 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.27788 of 2021

K. Appuraj

... Petitioner

Vs.

1. The Principal Secretary to the Government
Public Health and Family Welfare Department,
Secretariat, St.George Fort,
Chennai 600 009.
2. The Director
Public Health and Preventive Medicine
DMS Complex, Teynampet,
Chennai 600 006.
3. The Deputy Director
Public Health and Services,
Opp.to Govt.General Hospital,
Salem – 636 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus to direct the respondents to regularise the petitioner's service forthwith as per Government Order in G.O.(Ms).No.325 dated 20.11.2012.



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For Petitioner : Mr.S.Kolandasamy

For Respondents : Mrs.C.Meera Arumugam
Addl. Government Pleader

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus to direct the respondents to regularise the petitioner's service forthwith as per Government Order in G.O.(Ms).No.325 dated 20.11.2012.

2. The learned counsel for the petitioner submitted that the petitioner was working as a Multi Purpose Hospital Worker (MPHW) in Sedapatty Primary Health Centre (PHC), Salem for the last 7 years and 10 months. Even after completion of five years of service he was not regularised as per G.O.(MS).No.325 dated 20.11.2012. Thereafter, the petitioner was called for an interview for Multi Purpose Hospital Worker through employment exchange letter No.20130000 dated 17.01.2013 and attended interview on 20.02.2013 as per 3rd respondent's letter No.12000/E2/2012 dated 11.02.2013 for Multi Purpose Hospital Worker. The petitioner was selected and was appointed as Multipurpose Hospital Worker (MPHW) on a daily basis in Sedapatty Primary Health Centre (PHC) as per 3rd respondent proceeding Letter



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No.12000/E2/2012 dated 07.03.2013 based on G.O.(Ms).M.L.No.325, Public Health and Family Welfare (F2) Department dated 20.11.2012 as well as proceedings of the 2nd respondent letter No.6258/PHC7/A3/2012 dated 06.12.2012.

3. The learned counsel further submitted that the petitioner was appointed on daily wages fixed by the concern District Collector for unskilled worker as per G.O.(MS).No.325 dated 20.11.2012 and he has been working as MPHWS as Attender for Male and Female Nurses, Hospital Staff Attender, Sweeper's Attender, Stretcher workers. The G.O.(Ms).No.325 dated 20.11.2012 clearly reveals for regularising the temporary appointment, after completion of 5 years in the temporary post. As per the G.O.(Ms).No.325 the appointment shall be made initially for a period of one year which shall be extended every year based on the performance of the incumbent upto a total period of 5 years and whereas the petitioner has completed 7 years and 10 months but not regularised so far.

4. The learned counsel further submitted that the respondents have assured regarding the regularisation as per G.O (Ms).No.325 dated 20.11.2012



and the petitioner has given several representation to the respondents through their Association, but there was no response from the respondents in regard to his regularisation. The petitioner and other similarly placed persons have already crossed the age of 44 years and their regularisation is just and necessary for getting retirement benefits at old age.

5. The learned counsel for the petitioner further submitted that as per G.O.(Ms)No.325 dated 20.11.2012 the petitioner should have completed five years for regularisation of service but whereas the petitioner has completed 7 years and 6 months of service, even then he was not regularised and in this context, the learned counsel drew the attention of this Court to para 2 clause (vi) of the G.O.(Ms) No.325, Health and Family Welfare (F2) Department, dated 20.11.2012 and the same is extracted as below:-

2 (vi) “to approve the proposals in respect of offices and dispensaries etc., where the beds are not sanctioned. For Medical Colleges and similar institutions to continue the present hiring system by designating the persons as Multi Purpose Hospital Workers who may be brought under the 5 year contract and then regularise their services”.

6. Further, the learned counsel submitted that the petitioner's name



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was registered in the employment exchange and he awaited more than a decade and obtained these daily basis appointment based on the assurance of G.O.(Ms) No.325 dated 20.11.2012 that after 5 years tenure he would be regularised and most of the persons have crossed 45 years and completed 10 years but they have not been regularised. The respondents ought to have regularised the persons those who have completed 5 years of service forthwith but they did not take any steps for the petitioner's regularisation and others, even though they have completed 10 years of service as on date and at the time of filing the writ petition the petitioner has completed 7 years and 6 months of service.

7. The learned Additional Government Pleader appearing for the respondents has filed a counter affidavit filed by the third respondent dated 25.02.2020 and submitted that the service of the petitioner was extended beyond 5 years only based on sympathy.

8. Heard both sides and perused the materials available on record.

9. In the case on hand, the petitioner was appointed temporarily as Multipurpose Hospital Worker (MPHW) by the proceedings of the 3rd



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respondent letter No.12000/E2/2012 dated 07.03.2013 based on the G.O.Ms.No.325, Public Health and Family Welfare (F2) Department, dated 20.11.2012 as well as the proceedings of the 2nd respondent letter No.6258 / PHC7/A3/2012 dated 06.12.2012. At this juncture, it is relevant to extract para 2 clause (vi) of the above G.O. and the same is extracted as below:-

(vi) to approve the proposals in respect of offices and dispensaries etc., where the beds are not sanctioned. For Medical Colleges and similar institutions to continue the present hiring system by designating the persons as Multi Purpose Hospital Workers who may be brought under the 5 year contract and then regularise their services.

10. The above clause clearly states that the person who have worked under 5 years contract, their services can be regularised and in the instant case the petitioner has worked for 7 years and 10 months as on date of filing the writ petition and as on date has completed 10 years and 6 months and despite this the petitioner was not regularised. In the counter affidavit dated 25.02.2022 filed by the 3rd respondent it is stated that even after the completion of 5 years, the service of the petitioner was extended only on the ground of sympathy, hence the request for regularisation cannot be accepted. This Court passed an order in W.P.No.4343 of 2020 dated 25.02.2020 and the relevant portion of the



order is extracted as below:-

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2. The case of the petitioner is that he is working in the 3rd respondent Multipurpose Hospital Worker (MPHW). The petitioner has been working for the last 6 ½ years in the 3rd respondent Hospital and the grievance of the petitioner is that no steps have been taken to regularise the services of the petitioner. According to the petitioner, the services of the petitioner has to be regularised in accordance with G.O.(Ms).No.325, dated 20.11.2012 which contemplates regularisation after the completion of five years period. The petitioner has given a representation to the respondents on 20.12.2019 seeking for regularisation as per the above Government order. Since, the same was not considered, the present writ petition has been filed before this Court.

4. "Taking into consideration the facts and circumstances of the case and also the limited relief that has been sought for this writ petition, there shall be a direction to the 2nd and 3rd respondents to send the service particulars regarding the petitioner to the 1st respondent, within a period of four weeks from the date of receipt of copy of this order and the 1st respondent on receipt of those particulars shall pass appropriate orders, within a period of six weeks. Thereafter, the 1st respondent shall see whether the petitioner is entitled to claim for regularisation as per G.O.(MS).No.325 dated 20.11.2012. The petitioner is directed to make a fresh representation to the 2nd and 3rd respondents along with a copy of the representation dated 20.12.2019 and copy of this order. The petitioner shall mark a copy of the representation to the 1st respondent also."

11. In the above order, the petitioner therein was directed to make a fresh representation to the 2nd & 3rd respondents along with the copy of the



representation dated 20.12.2019 and a copy of the order and the first respondent was directed to pass orders on merits and in accordance with law and subsequently the third respondent herein in its counter affidavit dated 25.02.2022 has stated that after completion of 5 years of service by the petitioner the same was extended only on the ground of sympathy, hence his request for regularisation cannot be accepted. The learned counsel for the petitioner has also rightly relied on the judgment of the Division Bench of this Court in W.A.No.1458 of 2019 dated 20.01.2023, wherein the division bench in para 24 & 25 held thus:-

“24. We therefore, have no hesitation in setting aside the order of the Writ Court and directing regularisation of the appellants with effect from the date on which they completed 10 years in service. We make it clear that the appellants would be entitled to monetary benefits only from the date on which they came before this Court in W.P.No.32112 of 2018 i.e., on 03.12.2018.

25. In fine, this Writ Appeal is allowed, the order of the Writ Court is set aside. There will be a direction to the respondents to regularise the service of the appellants with effect from the date on which they had completed 10 years of service from the date of their initial appointment. It is made clear that the appellants would be entitled to monetary benefits of such regularisation only from 03.12.2018. In the circumstances, we spare costs with the fond hope that the Government will discontinue exploitation of its citizens by employing them as daily rated employees atleast in future.



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12. The petitioner is entitled for regularisation on completion of 5 years of service as per G.O.(Ms).No.325, Health and Family Welfare (F2) Department, dated 20.11.2012 and there is no question of extending the services of the petitioner on the ground of sympathy as stated by the third respondent and the petitioner is entitled for regularisation.

13. The respondent having extended and extracted the service from the petitioner beyond the period of 5 years cannot deprive the legitimate right of regularisation as contemplated in para 2 clause (vi) of the above Government Order stated Supra. It is the duty cast upon the respondents to regularise the services as per the Government Order and rejecting or denying regularisation to the petitioner is in gross violation of the Government order. The respondents are bound to follow the Government order and they cannot deviate from the same under any circumstances since the same is binding on the respondents.

14. In view of the above factual matrix of the case and in the light of the order passed by the Division Bench of this Court in W.A.No.1458 of 2019 dated 20.01.2023, the respondents are directed to regularise the petitioner from



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the date of completion of 5 years of his appointment within a period of eight weeks from the date of receipt of a copy of this order.

15. In the result, this writ petition stands allowed with the above observation and direction. Consequently, connected miscellaneous petition are also closed.

25.09.2023

dpq

Index : Yes /No

Speaking/Non speaking order

To

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