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W.A.Nos.59,62,65,66,68,69,73 and 74 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.59, 62, 65, 66, 68, 69, 73 and 74 of 2023 &
C.M.P.Nos.554, 555, 566, 568, 577, 580, 581, 583, 585
587, 588, 592, 593, 594, 598 of 2023

- 1.State of Tamil Nadu,
Rep. by its Secretary,
Department of Public Health & Family Welfare,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Public Health & Preventive Medicine,
D.M.S.Compound,
Teynampet, Chennai - 600 018. ... Appellants 1 and 2 in
all the writ appeals.
- 3.The Deputy Director,
Health Service,
Thiruvannamalai. ... 3rd appellant in
WA.Nos.59 and 69/2023
The Deputy Director,
Primary Health Centre,
Keezhkulam, Nagarcoil District ... 3rd appellant in
WA.No.62/2023
The Deputy Director,
Primary Health Centre,
Arudesam, Nagarcoil District ... 3rd appellant in
WA.No.65/2023



WEB CONTENT



W.A.Nos.59,62,65,66,68,69,73 and 74 of 20

The Deputy Director,
Health Service,
Sivagangai .

... 3rd appellant in
WA.No.66/2023

The Deputy Director,
Health Service,
Thogaimalaia, Karur.

... 3rd appellant in
WA.No.68/2023

The Deputy Director,
Primary Health Centre,
Munjirai, Nagarcoil District

... 3rd appellant in
WA.No.73/2023

The Deputy Director,
Health Service,
Kilakadu, Kallakurichi.

... 3rd appellant in
WA.No.74/2023

Vs.

L.R.Jobin

... Respondent in
W.A.No.59 of 2023

T.Jose

... Respondent in
W.A.No.62 of 2023

J.Viju

... Respondent in
W.A.No.65 of 2023

T.Justin Raj

... Respondent in
W.A.No.66 of 2023

K.Balagopalan Nair

... Respondent in
W.A.No.68 of 2023

Reguvaran Nair

... Respondent in
W.A.No.69 of 2023



J.N.Shajin

WEB C... C.N.Sunil Kumar



W.A.Nos.59,62,65,66,68,69,73 and 74 of 20

... Respondent in
W.A.No.73 of 2023

... Respondent in
W.A.No.74 of 2023

Writ Appeals filed under Clause 15 of the Letters Patent, against the order dated 15.11.2021 passed by the learned Judge in W.P.Nos.30113 of 2019, 15409 of 2020, 15416 of 2020, 30124 of 2019, 30118 of 2019, 30106 of 2019, 15412 of 2020 and 30121 of 2019.

For Appellants in
all Writ Appeals : Mr.Silambanan
Additional Advocate General
Assisted by Mr.S.Yashwanth
Additional Government Pleader

For Respondents in
all Writ Appeals : M/s.Anna Mathew

COMMON JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

Assailing the common order dated 15.11.2021 passed by the learned Judge in WP.No.30106 of 2019, etc. cases, these writ appeals have been filed by the State.



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2. Brief facts which are necessitated for disposal of these appeals are that the Government of Tamil Nadu had issued G.O.Ms.No.305 Health and Family Welfare (N1) Department, dated 22.09.2009, by which appointments to the post of Health Inspector Grade-II were permitted to be made to the persons, who acquired qualifications outside Tamil Nadu and also ordering relaxation under Rule 5(b)(iii) of the Public Health Subordinate Service Adhoc Rules. An annexure has also been enclosed along with the G.O. specifying the names of 55 candidates who were to be given relaxation and appointment. The respondents' names were found in the annexure of 55 candidates. The Government order further directed the second appellant to take steps to appoint the said 55 candidates after verifying their certificates. Even though the respondents' names were found in the said annexure, instead of appointing them, the authorities have called for a list from Employment Exchange, fixed cut off marks and interviewed the candidates. On the other hand, by order dated 13.01.2011, the second appellant left out 9 persons whose names were found in the annexure and appointed some other persons whose names were not found in the annexure or in the list furnished by the Employment Exchange. After filing of the writ petition viz., WP.No.7376 of 2011 by these respondents, this Court directed the appellants



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to consider their representations and pass appropriate orders. Since the said order has not been complied with, the respondents herein filed a Contempt Petition in Cont.P.No.1422 of 2011, in which, counter affidavit has been filed by the second appellant giving reasons for non-appointment. Recording the same, the contempt petition was closed leaving it open to the respondents to challenge the non-appointment. Subsequently, the second appellant issued orders to some of these respondents stating that they did not acquire the necessary marks and hence, they were not considered for appointment. Aggrieved by the same, the respondents preferred writ petitions, viz., WP.No.16488 of 2012 etc., in which, this Court took serious objection to the Government's action in overlooking the respondents herein while giving irregular appointments to others. Stating so, the said writ petitions were allowed on 26.03.2015 by quashing the orders passed by the authorities. Pursuant to the same, the second appellant issued orders stating that the Government had permitted to appoint the respondents as Multi Purpose Health Workers (M) and accordingly, they were appointed to the said post in the scale of Rs.5200-20200 +2400 on 27.07.2015 under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Services Rules, which Rule envisages only temporary appointments to meet administrative exigencies.



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3. With the above background, the respondents herein filed the instant writ petitions to direct the appellants herein to appoint them on a regular basis as Health Inspectors Grade II [now known as Multipurpose Health Workers (M)] with effect from 13.01.2011 in accordance with G.O.Ms.No.305 dated 22.09.2009 read with the judgment dated 26.03.2015 passed by this Court in W.P.No.16488 of 2012 with all consequential benefits of seniority, increments, arrears of salary and promotion with effect from the same date when other such appointees in 2011 were promoted pursuant to the panel dated 24.10.2019.

4. The contention of the respondents before the writ Court was that because of denial of appointment as per G.O.Ms.No.305 dated 22.09.2009 and the subsequent temporary appointment, the next avenue of promotion has been affected and the persons who have not at all in the annexure, have gone ahead of these respondents. It was also stated that the name of the post was changed to Multipurpose Health Worker (Male) and the qualifications were also changed in the year 2013, which has no bearing on their appointment. Further, the second appellant has issued an order dated 11.10.2017 by which the persons like that of the respondents herein have been informed that their services will not be regularized since they need



relaxation of age as per Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules. In this regard, the respondents contended that had they been properly appointed in 2011 along with other employees, the respondents would have been in the age limit of 35 years and the age relaxation will not be required.

5. Counter affidavit was filed on behalf of the Government, wherein, amongst other grounds, it was specifically stated that G.O.Ms.No.305 dated 22.09.2009 explicitly stated that the list was enclosed only for reference and all the posts should be filled up by getting the list of eligible persons from Employment Exchange and no relaxation of rules were given to these candidates.

6. Considering the submissions made on either side, the learned Judge by common order dated 15.11.2021, allowed the writ petitions holding that appointment of the respondents has to be treated as regular appointment with effect from the date of initial appointment of 53 appointees / batchmates of the respondents who were appointed in 2011 and consequently, they are entitled for notional promotion on par with their appointees / batchmates, and that, the services of the respondents have to be regularized and they have to be paid arrears of salaries and other allowances.



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7. Challenging the aforesaid common order passed in the writ petitions, the present appeals have been filed by the Government / State.

8. The learned Additional Advocate General appearing for the appellants has submitted that the order impugned herein is contrary to G.O.Ms.No.305 dated 22.09.2009. Since the respondents herein were appointed only in the year 2015, they cannot be treated as having been appointed with effect from 2011. Adding further, he submitted that the Government has taken a policy decision of enhancing the quality of services to the people duly taking note of increased threat of communicable and non-communicable diseases and hence, some criteria should be followed in the selection of Health Inspector Grade-II and therefore, a Committee was formed and appointments were made through the said Committee. These respondents were appointed based on the marks obtained by them and following communal rotation. The list enclosed along with G.O.Ms.No.305 dated 22.09.2009 was communicated for reference only and not for appointment and therefore, all appointments were filled up by getting the list of eligible persons from Employment Exchange. Without considering all these factors, the learned Judge erred in allowing the claim of the respondents, by the order



impugned herein, which will have to be set aside.

9. Per contra, the learned counsel appearing for the respondents submitted that the learned Judge passed the order impugned herein, after a detailed scrutiny of records and that, the findings have been given very clearly to emphasise that these respondents are entitled to the prayer sought for by them. Therefore, the learned counsel submitted that the order impugned in these appeals, does not require any interference by this court.

10. Heard the learned counsel on either side and perused the materials available on record.

11. It is seen that pursuant to the representation submitted by the Sanitary Inspectors who have undergone the Diploma Course outside Tamil Nadu, the Director of Public Health and Immune Medicine Department instructed his subordinate Dr.Selva Vinayagam, Health Officer to visit the centres of All India Local Self Government Institution which has been established in outside Tamil Nadu, inspect the infrastructure of the system and the syllabus taught by the said institution in the diploma course, and submit a report. Accordingly, a comprehensive report was submitted to the effect that the institutions are having necessary infrastructural facilities and



the standard of syllabus in all those institutions is on par with the Health Worker Training syllabus adopted by the Public Health Department, Chennai. Based on the said report, the Director of Public Health and Immune Medicine Department, the second appellant herein, made a recommendation to the Government to relax the provisions of the ad hoc rules as a special case, so as to appoint the Diploma Holders from Tamil Nadu who have completed training elsewhere as Health Inspector Grade II. The Government examined the issue and ultimately relaxed Rule 5(b)(iii) of the Public Health Subordinate Service Adhoc Rules, by facilitating the appointment of persons belonging to the State of Tamil Nadu who have completed the required training as Sanitary Inspectors, for appointment to the post of Health Inspectors Grade II. Accordingly, the Government, by G.O.Ms.No.305, dated 22.09.2009, issued a direction to the Director of Public Health and Immune Medicine Department, to take necessary action to verify the genuineness of the educational qualification certificates and to appoint them as Health Inspector Grade II. Along with the GO., a list of 55 candidates has been annexed. For better appreciation, the relevant portion of the said G.O. is reproduced below:

“7.In view of the power granted under Article 309 of the Constitution of India, His Excellency the Governor of Tamil Nadu, the eligibility for the post of Health Inspector Grade -II, the Adhoc Rules under



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5 (b)(iii) of the Subordinate Service Rules of Public Health is relaxed to those having undergone the training at All India Local Self Government Institution as Sanitary Inspector and having registered their name at the employment office to those candidates belonging to Tamil Nadu so as to enable them be appointed as Health Inspector Grade 2, the said rule is hereby relaxed and order is issued.

8.It is hereby requested to the Director of Public Health and Immune Medicine Department by adducing and verifying the genuineness of their educational qualification certificates to take appropriate steps to appoint them in the post of Health Inspector Grade 2.”

Thus, it is evident from the above G.O. that the Government had directed the second appellant to relax the age limit and accommodate all the 55 candidates to the post of Health Inspector Grade II, after verifying their educational qualification certificates and registration with employment office.

12. However, contrary to the aforesaid Government Order, the second appellant, instead of appointing 55 candidates, conducted interview, after fixing cut off marks arbitrarily and appointed only some of the candidates mentioned therein by order dated 13.01.2011. It is pertinent to point out at this juncture that in the said G.O., there was no direction from the Government to conduct interview for selecting candidates and the second appellant was expected only to verify the certificates of named candidates and appoint them as Health Inspector Grade II, but he has adopted his own procedure and appointed the individuals of his choice, who were neither recommended by Employment Exchange nor covered by G.O.Ms.No.305



dated 22.09.2009. Therefore, it is manifest that the second appellant had voluntarily adopted a method to eliminate the named Sanitary Inspectors for whose benefit the order in G.O.Ms.No.305 dated 22.09.2009, was issued.

13. Admittedly, the names of the respondents were found in the list annexed to the aforesaid Government Order. However, they were not given appointment and extended the benefit conferred under G.O.Ms.No.305 dated 22.09.2009. Therefore, the respondents preferred writ petitions in WP.No.16488 of 2012 etc. batch, seeking direction to the appellants to appoint them as Health Inspector Grade II, with effect from 13.01.2011 when 55 others were appointed as per G.O.Ms.No.305 dated 22.09.2009 with continuity of service, arrears of salary and all other attendant benefits. The writ court by order dated 26.03.2015, allowed the writ petitions, by observing that the appellants have selected the candidates through interview, without any written test and the cut off marks were fixed without any rationale and the same were also awarded in a highly arbitrary manner. The relevant paragraphs of the said order are quoted below for ready reference:

“18.The Government have taken a conscious decision to accommodate 55 sanitary Inspectors from Tamil Nadu who have undergone their studies outside the State. The Government have made it very clear that the order was issued for appointing the unemployed persons belonging to Tamil Nadu, who have completed diploma course for the post of Sanitary



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Inspector. Their names were shown in the annexure to the Government Order. The second respondent was expected only to verify the certificates of named candidates and appoint them as Health Inspector Grade II. The second respondent, by giving a go-by to the Government Order, adopted his own procedure and appointed individuals of his choice, who were neither recommended by employment exchange nor covered by Government order in G.O.Ms.No.305 dated 22 September 2009. The petitioners are therefore correct in their contention that the selection is liable to be set aside."

"22.The Government have already granted age relaxation to the petitioners and similarly placed Sanitary Inspectors who have undergone Diploma Course outside the State. Age limit is therefore not a problem for appointing the petitioners as Health Inspector Grade II. It is also not necessary to disturb the appointment of others in view of large number of vacancies in the post of Health Inspector Grade II. I am therefore of the view that immediate steps should be taken by the respondents to appoint the petitioners as Health Inspector Grade-II."

"23.In the result, a writ in the nature of a Writ of Mandamus is issued, directing the respondents to appoint the petitioners as Health Inspector Grade II, in the light of Government Order in G.O.Ms.No.305 Public Health and Family Welfare Department, dated 22 September 2009 and more particularly, paragraph 8 of the said order. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."

It is evident from the aforesaid order that the learned Judge categorically stated that by G.O.Ms.No.305 dated 22.09.2009, appointments were sanctioned, age relaxation was given to the respondents, and their names were mentioned in the annexure appended thereto, and hence, the respondents have to be appointed as Health Inspector Grade II, after verifying the certificates. However, the respondents were appointed as Multi Purpose Health Workers (M) in the scale of Rs.5200-2022 + 2400 on 27.07.2015 under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules



(Part II-General Rules), which is contrary and utter disregard to the aforesaid order passed by the learned Judge on 26.03.2015 in the writ petitions.

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14. In the mean while, the other named candidates in G.O.Ms.No.305 dated 22.09.2009 and appointed as Health Inspector Grade II on 13.01.2011, were considered for promotion to the post of Health Inspector Grade – I. Whereas, the claim of the respondents for reckoning their entry into service from the date on which the other candidates were appointed on 13.01.2011, and further claim for promotion to the post of Health Inspector Grade I (Multi purpose Health Supervisor) were rejected on the ground that as per G.O.Ms.No.232 dated 17.10.2013, only those who had completed five years service in the post of Multi Purpose Health Worker (Male) can be considered for promotion to Multi Purpose Health Supervisor (Male). Subsequently, by another order dated 11.10.2017 passed by the second appellant, the respondents were required to get age relaxation and educational qualification for further promotion to the post of Multipurpose Health Worker Supervisor (Male). It was the specific contention of the learned counsel for the respondents that had the respondents been properly appointed in 2011 along with other named candidates as per G.O.Ms.No.305 dated 22.09.2009, they would have been considered for further promotion,



regularisation of service, etc., without any order relating to age relaxation and education qualification. Taking note of the same, the learned Judge in the instant writ petitions filed by the respondents in W.P.No.30106 of 2020 etc. batch, has allowed their claims and passed the following order, on 15.11.2021, which is impugned in these appeals:

“ i) The appointment of the petitioners shall be treated as a regular appointment with effect from the date of the initial appointment of 53 appointees / batchmates of the petitioners who were appointed in 2011;

ii) The respondents are therefore directed to regularize the services of the petitioners and make appropriate entry in the Service Register of the respective petitioners as permanent employees on par with 53 appointees/batchmates of the petitioners who were appointed in 2011;

iii) Consequently respective petitioners are entitled for notional promotion on par with their appointees/batchmates of the petitioners who were appointed in 2011;

iv) The respondents shall pay arrears of salaries and other allowances to the respective petitioners;

v) The 1st respondent shall implement this order by issuing appropriate G.O.

vi) The above exercise shall be carried out within a period of 18 weeks from the date of receipt of this order.”

15. This court finds no error / fault in the order so passed by the learned Judge, in view of the reason that though the respondents have agreed with the order of this court in their favour, they have not been appointed on par with their batchmates, as per G.O.Ms.No.305 dated 22.09.2009. Instead,



the respondents were appointed as Multi Purpose Health Workers (M) only on temporary basis in the year 2015 and their claim for regularisation and further promotion, was erroneously rejected citing the amended rules, relating to age and qualification. As already stated above, the Government had given age relaxation and appointment to the post of Health Inspector Grade II to the 55 named candidates in G.O.Ms.No.305 dated 22.09.2009, in which, the names of the respondents were found; and in the order dated 26.03.2015 passed in WP.No.16488 of 2012 etc. batch, the learned Judge specifically pointed out that various irregularities were committed by the appellants in the appointment of 55 candidates as Health Inspector Grade II; and the selection was not made in accordance with G.O.Ms.No.305 dated 22.09.2009. Despite the two orders having been passed by the writ court in favour of the respondents, the appellants have not complied with the same, but have preferred these appeals, by dragging on the matter, which cannot be countenanced by this court.

16.1. During the course of argument, apart from the other grounds, the learned Additional Advocate General raised a plea that the respondents were appointed to the post of Multi Purpose Health Workers (M) only in the year 2015 and hence, they cannot be granted arrears of salary and allowances



for the period during which they had not actually worked by applying the principle of 'no work no pay' and accordingly, the order of the learned Judge will have to be revisited.

16.2. Finding merit in the submission so made on the side of the appellants, this court directed the learned counsel appearing for the respondents to get instructions in this regard. Accordingly, the learned counsel for the respondents submitted that the respondents are now inclined to forego their arrears of salaries and other allowances for the period which they had not actually worked, provided the appellants comply with all other directions issued by the writ court. In support of the same, separate affidavits dated 18.06.2023 with identical averments made by the respondents have been filed before this court. The relevant passage of one such affidavit filed in one of the appeals viz., WA.No.59 of 2023, is usefully extracted below:

“6.However, I once again reiterate that I am willing to forego my arrears of salary from 13.01.2011 to 26.07.2015, provided the appellants comply with the order passed by this Hon'ble Court in W.P.No.30113 of 2019 dated 15.11.2021 in all other respects relating to my service. My service register should be opened from 13.01.2011 as directed by the Hon'ble Court in the writ petition. I would also be entitled to notional fixation of pay from 13.1.2011, but monetary payment of arrears from 27.07.2015 including all consequential benefits of seniority and notional promotions on par with my batchmates who were appointed on 13.01.2011 with all other attendant benefits.

7.I also reiterate that I am willing to forego my monetary benefits as mentioned in para 6 above and restricting my right as stated above, only on



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the basis of the appellant's agreeing to comply with order in the writ petition in all other respects and that they will not challenge the said order before any forum.

8.This revised prayer is without prejudice to my rights in this writ appeal. I pray that this Hon'ble Court may be pleased to pass appropriate orders to meet the ends of justice."

16.3. In view of the above, this court is inclined to modify the order of the learned Judge only in respect of the direction issued to the appellants for payment of arrears of salary and allowances to the respondents, by applying the principle of 'no work no pay'.

17. Accordingly, all these writ appeals are disposed of, in the following terms:

(i)The appellants are directed to comply with the order of the learned Judge which is impugned herein, in respect of the directions (i)(ii)(iii) and (v), issued at paragraph 58, within a period of 18 (eighteen) weeks from the date of receipt of a copy of this judgment.

(ii)In the light of the affidavits filed by the respondents and by applying the principle of "no work, no pay", the respondents herein are not entitled for arrears of salaries and other allowances, for the period from 13.01.2011 to 26.07.2015 which they had not actually worked; and the direction (iv) at paragraph 58 of the order dated 15.11.2021 passed by the



learned Judge, is accordingly modified.

No costs. Consequently, connected miscellaneous petitions are closed.

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[R.M.D,J.] [M.S.Q, J.]
01.08.2023

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Speaking Order / Non-speaking order

Internet : Yes.

Index : Yes /No

To

- 1.The Secretary,
Government of Tamil Nadu,
Department of Public Health & Family Welfare,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Public Health & Preventive Medicine,
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