



W.P.Nos.31902 and 27596 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.31902 and 27596 of 2017

and

W.M.P.Nos.35048 and 29525 of 2017

W.P.No.31902 of 2017:

S.Nagarj

Vs.

... Petitioner

1 The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai 9.

2 The Commissioner of Indian
Medicine and Homeopathy,
Arumbakkam,
Chennai – 106.

3 The District Siddha Medical Officer,
Dharmapuri.

... Respondents



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W.P.No. 27596 of 2017:

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1.K.Govindaraj
2.M.Murugesan
3.R.Venkatachalam

... Petitioners

Vs.

1 The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai -9.

2 The Commissioner of Indian
Medicine and Homeopathy,
Arumbakkam,
Chennai 106.

3 The District Siddha Medical Officer,
Salem - 600 007.

... Respondents

Prayer in W.P.No. 27596 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to absorb the petitioner as Multi Purpose Workers in Yoga and Naturopathy Life Style Clinics established at all District Head Quarters Hospitals and Modern Medical College Hospitals under G.O.Ms. No. 257 Health and Family Welfare (IM 2-1) Department dt 5.11.2013.



W.P.Nos.31902 and 27596 of 2017

Prayer in W.P.No.31902 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to absorb the petitioners as Multi Purpose Workers in Yoga and Naturopathy Life Style Clinics established at all District Headquarters Hospitals and Modern Medical College Hospitals under G.O.Ms. No. 257 Health and Family Welfare (IM 2 - 2) Department dt 5.11.2013.

For Petitioners : Mr.R.Prem Narayan
in both petitions

For Respondent : Mr.V.Arun,
Additional Advocate General,
assisted by
Mr.J.M.Rajangam,
Government Advocate
in both petitions

COMMON ORDER

These Writ Petitions have been filed for a direction to absorb the petitioners as Multi Purpose Workers in Yoga and Naturopathy Life Style Clinics established at all District Headquarters Hospitals and Modern Medical College Hospitals under G.O.Ms.No.257 Health and Family Welfare (IM 2 - 1) Department dated 05.11.2013.



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2. For the sake of brevity, the facts are being taken from
W.P.No.31902 of 2017.

2.1. The petitioner's name was sponsored through Employment Exchange for the purpose of appointment as Multipurpose Worker and he was engaged for three days per week from 2009 to 2013 and thereafter, was engaged for half day for 6 days per week from 2013 to 2015. Later, the Multipurpose Workers were engaged on full time basis for 6 days per week on daily wage basis.

2.2. Government issued G.O.Ms.No.257 Health and Family Welfare (IM2-2) Department dated 05.11.2013 for establishing Yoga and Naturopathy life style clinics at all District Head Quarter Hospitals and Modern Medical College Hospitals and subsequently, issued another G.O.(D) No.848 Health & Family Welfare (IMO2-1) Department dated 20.08.2014, permitting the 2nd respondent herein to fill up the post of Assistant Medical Officer (Yoga & Naturopathy), etc.



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2.3. As per the said Government Order dated 20.08.2014, the petitioner is entitled for absorption in the Yoga and Naturopathy life style clinics and though several representations were given for absorbing him as Multipurpose Worker, there is no response on the same and hence, he is before this Court.

3. The 3rd respondent has filed a counter affidavit, inter alia stating as follows:

i) Government issued G.O.Ms.No.268 / Health and Family Welfare (EAP-II (2) Department, dated 01.09.2009, creating AYUSH Clinics in Primary Health Centers with One Multipurpose Worker in each center under National Rural Health Mission exclusively to undertake AYUSH activity on Hiring Basis and Hiring Charges and a list of suitable candidates for the Multipurpose Worker Posts was obtained from concerned District Employment Office;

ii) The Petitioners, who were sponsored from the District Employment Office were engaged as Multipurpose Worker Vide Ref. No.



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5565/E1/2/2009 dated 11.11.2009 of the 2nd respondent & Ref.No.2128/A(E)/2009 dated 15.12.2009 of the 3rd respondent and joined duty as Multipurpose Worker at the rate of Rs.300/- per day purely on temporary basis and it was clearly and categorically stated that their appointment was purely temporary and they will be provided work for three days only in a week and will be paid Rs.300/- per day;

iii) It was also clearly stated in that order that they will be paid only for those days, on the availability of the work provided to them and the wages were paid from the NRHM funds. Government in G.O. (D) No 848, Health and Family Welfare Department, dated 20.08.2014 have permitted the 2nd respondent to absorb only 14 Multipurpose worker working under NRHM scheme for the Yoga and Naturopathy Lifestyle clinics only on temporary basis till the regular candidates are recruited. As such the Multipurpose Workers working in Yoga Lifestyle clinic were temporarily absorbed in the posts under regular time scale of pay till the regular candidates are recruited, whereas the Multipurpose Workers are working in



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the NRHM life style clinics only on hiring basis where no such posts have been created;

iv) Government in Lr.No.19008/IM2(1)/2015-1, Health & Family Welfare Department dated 21.09.2015 clearly directed that the proposal for absorbing 199 Multi Purpose Worker working under NRHM and Ayush Scheme quoting the G.O.(D).No.848, Health and Family Welfare Department dated 20.08.2014 is not feasible for consideration. Hence, no Multi Purpose Workers working under NRHM and Ayush Scheme are entitled to be absorbed quoting the above said GO as per the orders in force;

v) There is no provision to appoint Multipurpose Worker on daily wages to the post created under regular time scale of pay as per the rules prescribed for appointment of the Multipurpose Worker. The Multipurpose Workers are engaged on daily wages under NRHM Scheme on Purely temporary basis and with availability of the work and does not possess any service rights. Hence the petitioners cannot claim any priority



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for the appointment to the post of Multipurpose Worker. The averments made by the petitioners that the Multipurpose Workers engaged under NRHM scheme on hiring basis into Yoga and Naturopathy Lifestyle clinics were absorbed as per the G.O.(D) No.848, Health and Family Welfare (IM2-1) Department dated 20.08.2014 is not correct, as it is open to the petitioners to apply for the post of Multipurpose Workers in the regular time scale of pay as when called for. Hence, there is no discrimination and violations of Article 14 of Constitution of India as contended by the petitioners. Since the Multipurpose Workers working under NRHM scheme were hired temporarily on daily wages, they have no service rights to claim any weightage for appointment and it is open to them to apply for any regular post according to their eligibility for such posts as and when notified. Hence, it is prayed that the Writ Petition, being devoid of merits is liable to be dismissed.

4. Heard the learned counsel for the parties and perused the material documents available on record.



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5. The petitioners have been initially appointed as Multipurpose Workers in terms of G.O.Ms.No.268 dated 01.09.2005, by which centres had been created for the purpose of prescribing Indian medicines, such as Siddha, Unani, Ayurvedha, Homeopathy, Naturopathy and Yoga under National Rural Health Mission. Subsequently, from October, 2015, the Multipurpose Workers were engaged on full time basis for 6 days a week. On perusal of G.O.Ms.No.257 dated 05.11.2013, it was issued for establishing Yoga and Naturopathy life style clinics at all District Head Quarter Hospitals and Modern Medical College Hospitals, whereas G.O.No.848 dated 20.08.2014 prescribes the procedures and method of selection in respect of Assistant Medical Officer (Yoga and Naturopathy), Therapeutic Assistant and Multipurpose Workers.

6. It is pertinent to mention here that the Apex Court in the case of *Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N.Visweshwara Rao*, reported in *1996 (6) SCC 216*, held that recruitment through Employment Exchange is not the only source. it is



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a settled legal proposition that no person can be appointed even on a temporary or adhoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates, who are eligible for the post from being considered.

7. At this juncture, learned counsel for the petitioners produced a copy of the judgment dated 27.09.2018, rendered by a Division Bench of this Court in W.A.No.2152 of 2018, in which, it was ordered to give some weightage to candidates already working, while filling up any notified vacancies in future.

8. In the cases on hand, it is no doubt true that the petitioners were brought on full time basis on daily wage basis for 6 days per week



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from 2015. In view of the afore-stated position, these Writ Petitions are disposed, with a direction to the respondents to give weightage of marks to these persons, while issuing Notification to fill up the notified posts in future and in the event of the petitioners being found eligible for the posts to be notified in future, they can also participate and compete with others with the benefit of weightage of marks to be awarded by the respondents. No costs. Consequently, connected miscellaneous petitions are closed.

22.11.2023

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
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V.BHAVANI SUBBAROYAN, J,
mps

To

- 1 The Principal Secretary to Government,
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Fort St. George, Chennai 9.
- 2 The Commissioner of Indian
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- 3 The District Siddha Medical Officer,
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