

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.2407 of 2020 & 4884 of 2017

and

W.M.P(MD)Nos.3923 of 2017 & 13731 of 2018

W.P(MD)No.2407 of 2020:

Arun

... Petitioner

Vs

- 1.The State represented by
The Secretary,
Health and Family Welfare Department,
St.George Fort,
Chennai – 600 009.
- 2.The Director of Medical Education
and Rural Health Services,
Kilpauk,
Chennai – 600 010.
- 3.The Joint Director,
Rural Development Family Welfare,
Thenkasi,
Tirunelveli District.

4.The Dean,
Tirunelveli Medical College,
Tirunelveli District.

5.The President Society for Education and
Women Development,
No.7, Thangapandi Thevar Complex,
Near Post Office and Bus Stand,
Thirupparankundram,
Madurai – 625 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents, especially the respondents 2 to 4 to reinstate the petitioner in the post of Lab Attender in Tirunelveli Medical College Hospital, Tirunelveli with continuity of service and back wages and other attended benefits by considering the petitioner's representations dated 30.09.2016 and 29.01.2019 respectively.

For Petitioner : Mr.C.Kishore

For Respondents : Mr.K.Balasubramani
Special Government Pleader
for R.1 to R.4

W.P(MD)No.4884 of 2017:

1.Jayalakshmi
2.Murugesan
3.M.Ganesan
4.Mahendra Selvi
5.M.Velumani
6.Muthumari

... Petitioners

Vs

- 1.The State represented by
The Secretary,
Health and Family Welfare Department,
St.George Fort,
Chennai – 600 009.
- 2.The Director,
Director of Medical and Rural Health Services,
Kilpauk,
Chennai – 600 010.
- 3.The Joint Director,
Rural Development and Family Welfare,
Thenkasi,
Tirunelveli,
Tirunelveli District.
- 4.The Dean,
Tirunelveli Medical College,
Tirunelveli District.
- 5.The President,
Society for Education and
Women Development,
No.7, Thangapandi Thevar Complex,
Near Post Office and Bus Stand,
Thirupparankundram,
Madurai – 625 005.

... 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 records pertaining to the impugned termination order passed by the fourth respondent in his proceedings in Mu.Mu.No.5591/Ne-4/12, dated 31.05.2013 and quash the same as illegal and consequently direct the respondents, especially the respondents 2 to 4 to reinstate the petitioners with continuity of service and back wages and other attended benefits, forthwith.

For Petitioners : Mr.C.Kishore
For Respondents : Mr.K.Balasubramani
Special Government Pleader
for R.1 to R.4

COMMON ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Special Government Pleader appearing for the official respondents.

2.The writ petitioners herein had been engaged as Lab Attenders in the fourth respondent hospital for quite a few years. In the year 2013, the petitioners were relieved from service. Formal order was issued in the case of the petitioners in W.P(MD)No.4884 of 2017. No formal order appears to have been issued in case of Arun, the petitioner in W.P(MD)No.2407 of 2020. The petitioners seek reinstatement.

3.The respondents have filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents and submitted that the writ petitioners did not have any legal right as such the petitioner deserved to be dismissed.

4. My attention has been drawn to the order dated 19.03.2018 passed by me in W.P(MD)No.24275 of 2016 etc batch. Similarly placed persons had filed I.D.No.63 of 2015 before the Labour Court, Tirunelveli and an award has been passed in their favour directing reinstatement, backwages and continuity of service. I had set aside the said award primarily on the ground that persons originally recruited under the aegis of the private body and outsourcing basis cannot claim regularisation even if they had served in a public department for a number of years. Relying on the decision of the Hon'ble Full Bench judgment ***(2007) 5 CTC 369 (R.Radhakrishnan Vs. The Deputy Registrar of Co-operative Societies)*** and the decision of the Hon'ble Apex Court reported in ***(2017) 4 SCC 113 (State of Tamil Nadu Vs A.Singamuthu)*** I had held that the provision of the Permanency Act, 1981 or the Industrial Dispute Act, 1947, cannot be pressed into service by them. However, I clarified that if employees were working on the date of passing of the order, they need not be ousted from service till regular recruitment is conducted and that as and when regular recruitment process takes place, claimants can participate therein and even age relaxation can be given in their favour.

5.The petitioners herein had been relieved from service even in the year 2013. Therefore, question of directing the reinstatement or regularisation does not arise. However, taking into account, the observations made by this Court in the order dated 19.03.2018, I direct the fourth respondent to objectively assess the need for engaging paramedical staff to their requirements.

6.The learned Special Government Pleader submitted that there are no sanctioned posts and that the Government had also abolished the policy of outsourcing. The order dated 31.05.2013 relieving the petitioners in W.P(MD)No.4884 of 2017 appears to be more a knee-jerk reaction . In view of the policy of the Government, there should not be any outsourcing arrangement. If there is a need to engage the persons as paramedical staff in whatever capacity, the petitioners herein can very well be engaged. I make it clear that the petitioners cannot claim any right even if they are re-engaged. The only concession which they can claim is the right to participate in future recruitment process and make out a case for age-relaxation. The fourth respondent shall pass an appropriate order taking in account the observations made in the writ petition within a period of six weeks from the date of receipt of a copy of this order.

7.These writ petitions are disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.03.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

1.The Secretary,
Health and Family Welfare Department,
St.George Fort,
Chennai – 600 009.

2.The Director of Medical Education
and Rural Health Services,
Kilpauk,
Chennai – 600 010.

3.The Joint Director,
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4.The Dean,
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Tirunelveli District.

W.P(MD)Nos.2407 of 2020 & 4884 of 2017

G.R.SWAMINATHAN, J.

MGA

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