



W.P.No.4704 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2024

PRONOUNCED ON : 27.03.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.4704 of 2018
and WMP.No.5807 of 2018

1. Dr.A.Babu, B.I.M.,
2. Dr.C.Somasundaram, B.I.M.,
3. Dr.T.Rajalakshmi, B.I.M.,
4. Dr.J.Padmanandan, B.I.M.,
5. Dr.V.Pugazendhi, B.I.M.,
6. Dr.T.Srinivasan, B.I.M.

... Petitioners

Vs.

1. The Secretary to the Government,
Health and Family Welfare Department,
Fort St. George,
Chennai 600 009.
2. The Additional Chief Secretary/
Commissioner of Indian Medicine and Homeopathy,
Arumbakkam,
Chennai 600 106.

... Respondents



PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to regularize the petitioners service with effect from the date of their initial appointment in the post of Assistant Medical Officer in terms of G.O.Ms.No.442, dated 12.09.1997, G.O.Ms.No.245, dated 04.06.1998 issued by the first respondent and grant notional consequential terminal

For Petitioners : Mr.G.Ethirajulu

For Respondents : Mr.M.Alagu Goutham, G.A.

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

2. The case of the petitioners is that all petitioners completed their Bachelor of Indian Medicine during the year 1981 and 1982 respectively and they are all consequently appointed through the Professional and Executive Employment Exchange as Temporary Medical Officers and posted in Rural Areas, wherein their services were in need. More than 200 members were appointed through 3 Government Orders vide, i)



G.O.Ms.No.1451, Helath 01.08.1981, ii) G.O.Ms.No.30, Health dated 07.01.1982 and iii) GO.Ms.No.107, Health dated 21.05.1982 and they were all appointed on the basis of the Orders issued by the Director of Indian Medicine and Homeopathy, Government of Tamil Nadu.

3. The petitioners state that they were advised to pass the Medical Code Test and Account Test for Executive Officers. Accordingly, they have passed the Medical Code Test and Account Test for Executive Officers. In the meantime, the Indian Medicine and Homeopathy Department initiated steps to fill the post of Assistant Medical Officers through Tamil Nadu Public Service Commission during the year 1984-1985 and requested the Commission to conduct an oral test for direct requirement to the Temporary Assistant Medical Officers, who have been serving in the Government for many years. The petitioners participated in the oral test and were declared as successful candidates by the Public Service Commission in their Memo No.8673/G4/81, dated 04.06.1985 and G.O.Ms.No.118, Indian Medicine and Homeopathy dated 07.10.1987 and it was published in the Tamil Nadu Government Gazette No.42, dated 04.09.1987. Based on the results, they were given fresh appointment with effect from 03.03.1984, instead of their



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original date of temporary appointment during 1981-1982 through the Professional and Executive Employment Exchange. The petitioners made several representations to pre-date their date of appointment to that of their respective temporary appointment dates for which, they did not receive any reply.

4. In the meantime, some of the temporary Assistant Medical Officers, objected and refused to take this special qualifying test conducted by the TNPSC on the ground that they should not be subject to such a test after having worked for so many years in Rural and remote Villages with handful of experience in treating more than thousands of patients. As the Department had not acceded to their request, they filed Original Application in OA.No.707 of 1991 in the Tamil Nadu State Administrative Tribunal and the Tamil Nadu Indian Medicine Graduates Association being the applicant pleaded that TNPSC does not conduct the AMO examination every year and there was a gap of 4 to 5 years between two examinations, although every year there are sufficient number of vacancies for conducting the examination and the temporary appointments made during the intervening periods should be regularised from the date of the temporary appointment. In the said OA,



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they also pleaded that similarly placed Temporary Junior Professors working in the Tamil Nadu Legal Educational Service and the Agricultural Engineering Department have been given the benefit of regularisation, vide G.O.Ms.No.1733 dated 28.12.1990 and G.O.Ms.No.444 dated 13.06.1990, respectively from the date of their initial temporary appointment and they sought to extend the same benefit.

5. The said OA was disposed of with the direction that those who have been temporarily appointed before 1985 would be eligible for regularisation in terms of the approach adopted by the High Court of Madras in OA.No.2116 of 1989. Basing on the common orders of the Tamil Nadu Administrative Tribunal, Madras, dated 15.02.1996 in OA.No.573 of 1995 and batch, the temporary services of Siddha Doctors, who were recruited through Professional and Executive Employment Exchange were regularised from the date of their initial temporary appointment. In compliance of the order in OA.No.707/1991, filed by the Tamil Nadu Indian Medicine Graduates Association, the Government issued the regularisation order vide G.O.Ms.No.876 dated 30.11.1994 and the regularisation was fixed from the date of issue of the order i.e., from 30.11.1994. Before issuing the said



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order, the Government of Tamil Nadu consulted the Tamil Nadu Public Service Commission and sought its opinion. The commission opined that there is no strong case to file SLP before the Supreme Court and accordingly, advised to send a proposal for regularisation of the services of all eligible temporary Assistant Medical Officers, who have put in 4 years of continuous service, including those not covered by the order of the Administrative Tribunal.

6. Accordingly, the Director of Indian Medicine and Homeopathy furnished a list of 48 eligible Medical Officers, who were put in 4 years of continuous service. The Public Service Commission had given its concurrence for regularisation from the date of their initial appointment in exercise of the powers conferred under Rules 48 of the General Rules contained in Part II of the Tamil Nadu State and Subordinate Service Rules, the Governor of Tamil Nadu relaxed the provisions of Rules 7 of the Adhoc Rules for the post of Assistant Medical Officers in Tamil Medical Services in favour of the 48 Assistant Medical Officers (Siddha, Ayurveda, and Unani) and enable them to be regularly appointed in the post of Assistant Medical Officers with effect from the date of their initial appointment vide



G.O.Ms.No.442, dated 12.09.1997.

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7. The seniority of the petitioners was circulated by the Director of Indian Medicine and Homeopathy on 20th October 1987. To the shock and surprise of the petitioners their seniority have been shown from 03.03.1984 and not from the date of their initial temporary appointment.

8. It is the case of the petitioners that those who have not even appeared and passed in the oral test for direct recruitment conducted by the Tamil Nadu Public Service Commission and were even juniors as Temporary Medical Assistant Officer to the petitioners, filed a case before the Administrative Tribunal and the Tribunal allowed the petitions and directed the Government to regularise the services of the Assistant Medical Officers from the date of their initial temporarily appointment. But the same benefit was not extended to the petitioners. The petitioners have submitted several representations to the respondents, but the request of the petitioners was not accepted by them. Aggrieved by the action of the respondents, they are constrained to file this Writ Petition.



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9. On behalf of the respondents, counter affidavit has been filed. It is averred in the said counter that the post of Assistant Medical Officer of the Government of Indian Medicine and Homeopathy was under the purview of the Tamil Nadu Public Service Commission and now it is under the purview of the Medical Services Recruitment Board. During the year 1981, 1982 and 1986, certain posts of Assistant Medical Officers were filled by through the list of candidates drawn through Professional and Executive Employment Exchange, Chennai in order to keep the Indian System of Medicine wings functioning. In order to keep all the Indian system of Medicine Wings functioning, a list of Medical Personnel were called for from the Professional and Executive Employment Exchange and appointments were made on temporary basis, till the regular candidates join duty. The petitioners herein have also been appointed through Employment Exchange on temporary basis.

10. It is also stated that the petitioners were selected and appointed in the post of Assistant Medical Officers on regular basis vide G.O.(Ms).No.118, dated 07.10.1987. As per the adhoc rules for the post of Assistant Medical Officers (Siddha) issued in G.O.Ms.No.1753, Health and



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Family Welfare Department, dated 07.07.1976, they have to pass the Account Test for Executive Officers and Departmental Test in Tamil Nadu Medical Service within the period of probation / within the period of 4 years, respectively. As acquisition of qualifications have been mandated as per the adhoc rules, the petitioners were directed to acquire the same. The Government had appointed 136 candidates including the petitioners selected by the Public Service Commission on regular basis with effect from the dates mentioned against their names or from the date of taking charge of the appointment, as the case may be, vide G.O.Ms.No.118, Indian Medicine and Homeopathy Department, dated 07.10.1987. As per G.O.(Ms).No.429, Personnel and Administrative Reforms (Per.P) Department, dated 17.04.1986, the date of commencement of probation of 137 candidates, who are to be appointed as Assistant Medical Officer regularly with retrospective effect from the date of their temporary appointment should not be earlier than the date of commencement of probation of junior most person, who is already in service as Assistant Medical Officer on regular basis. As per the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the date of commencement of probation of junior most person already (viz., Dr.G. Thilagavathy-a candidate selected by the Tamil Nadu Public Service



Commission) in service being 03.03.1984, the services of the petitioners could not be regularized earlier than 03.03.1984. Hence, the requests of the petitioners to regularize their temporary service from the date of appointment could not be considered.

11. It is also stated in the counter affidavit that the then Tamil Nadu Administrative Tribunal, Madras in its order dated 23.12.1991 in OA.No.707 of 1991 batch has ordered among other things that the following persons have served for 4 years or more when the vacancies were notified in the Tamil Nadu Public Service Commission and therefore they may be considered for regularisation. The TNPSC also given its concurrence under the latter part of Regulation 16(b) of the Tamil Nadu Public Service Commission Regulations, 1954 to regularise the services of the above individuals from the date of issue of order without the ordinary statutory reference to it, subject to relaxation of rule relating to age in their favour and subject to their being found to be physically fit for the appointment. Accordingly, the Government have issued orders of regularisation, in respect of those 8 Assistant Medical Officers (Siddha) with effect from the date of issue of order in relaxing rule 4 of the adhoc Rules. Subsequent to issuance



of the said order, Tamil Nadu Public Service Commission has been requested to conduct special qualified examination for regularisation of the Assistant Medical Officers for those appointed on temporary basis and they were not selected by the Tamil Nadu Public Service Commission under direct recruitment during the year 1989. Meanwhile, 27 temporarily appointed Assistant Medical Officers filed OA.No.575 of 1995 and batch before the Administrative Tribunal seeking direction to quash the notification relating to special qualifying exam on the ground that they are entitled for regularisation without subjecting them in all the selection process. The Administrative Tribunal in its order dated 15.02.1996, had directed the respondents therein to regularise all the applicants who have been continuously working for 4 years or more than with all attendant service benefits. The Government basing on the direction of the Administrative Tribunal and basing on the suggestions of the Public Service for regularisation of the temporary services of the 48 Assistant Medical Officers with effect from the date of initial appointment relaxing the provisions of Rule 7 of Adhoc Rules for the post of Assistant Medical Officers in the Tamil Nadu Medical Service vide G.O.Ms.No.442, Health and Family Welfare Department, dated 12.09.1997.



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12. It is also stated in the counter affidavit that 83 Medical Officers (Siddha) whose services were regularised from the date of issue of the order vide G.O.Ms.No.876, Health and Family Welfare Department, dated 30.11.1994 have filed Writ Petitions in WP.No.3682 of 2007 and batch seeking direction to regularise their services from the date of their initial appointment as ordered in GO.Ms.No.442, dated 12.09.1997. The High Court has directed to regularise their services from the date of their initial appointment as was so in the case of Assistant Medical Officers by virtue of GO.Ms.No.442, dated 12.09.1997. Accordingly, the Government regularised temporary services of 8 medical officers with effect from the initial date of temporary appointment vide G.O.Ms.No.1674 Health and Welfare Department dated 31st December 2015.

13. It is stated in the counter that the representations of the petitioners dated 22.02.2016 were forwarded to the first respondent by the second respondent vide letter dated 23.06.2016, and the first respondent in turn has informed that the request of the petitioners with retrospective regularisation with effect from the initial date of appointment as done in the case of



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K.Kesvan and seven others is not agreeable since their services were regularised with retrospective effect by following first proviso to General Rule 23(a)(1) of the Tamil Nadu State and Subordinate Service Rules (now Tamil Nadu Government Servants' (Conditions of Service) Act, 2016). Hence, the regularisation order of the petitioners issued in G.O.Ms.No.118, dated 07.10.1987 is in order and in accordance with rule, by Government letter dated 02.11.2016. As such, the petitioners have no right to seek the relief sought for in the Writ Petition and prayed to dismiss the Writ Petition.

14. The learned counsel for the petitioner and the learned Government Advocate appearing for the respondents advanced their arguments in the same line as averred in the affidavit of the Writ Petition and the counter affidavit of the respondents.

15. Having heard the submissions of the respective counsels, it appears that the petitioners were initially appointed through the Professional and Executive Employment Exchange as temporary Assistant Medical Officers in the year between 1980 and 1982 vide different Government



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orders. Subsequently, they passed the Medical Code Test and Account Test for Executive Officers. The petitioners also appeared for the oral test conducted by the Tamil Nadu Public Service Commission during the year 1984-85. Basing on the oral test conducted by the Public Service Commission, they were given fresh appointment with effect from 03.03.1984. The petitioners made several representations to the respondents requesting to pre-date their date of appointment to that of their respective temporary appointment dates. It appears meanwhile similarly situated persons approached the Tamil Nadu Administrative Tribunal by filing OA.No.707 of 1991 and the said O.A. was disposed of with a direction that those who have been temporarily appointed before 1985 would be eligible for regularisation in terms of the order in OA.No.2116 of 1989. Accordingly, the Government issued G.O.Ms.No.442 dated 12.09.1997, regularising their services from the date of their initial temporary appointment.

16. It is also an admitted fact that the TNPSC also agreed that there is



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no strong case for filing SLP and also advised to send a proposal for regularisation of the services of all eligible temporary Assistant Medical Officers, who have put in 4 years of continuous service including those not covered by the order of the Tamil Nadu Administrative Tribunal. Thereafter also, one Dr.K.Muthukaruppan and Dr.K.Kesvan and 6 others represented to the Government. Thereafter, they filed Writ Petition No.3682 of 2007 and batch. This Court by order dated 27.04.2009 directed to regularise the services of the petitioners therein from the date of their initial appointment as was done in the case of other Assistant Medical Officers by virtue of G.O.Ms.No.442 dated 12.09.1997. Accordingly, G.O.(D) No.1674 was issued on 31.12.2015, regularising the Siddha Doctors from their initial date of appointment with all consequential and attendant benefits. Thereafter, on 20.10.1987, the seniority of the petitioners were circulated by the Director of Indian Medicine and Homeopathy, Chennai, but the petitioners seniority have been shown from 03.03.1984 and not from the date of their initial temporary appointment.

17. On consideration of materials available on record, it is established that those Assistant Medical Officers even not appeared and passed oral test



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for direct recruitment conducted by the Tamil Nadu Public Service Commission and who were even juniors as temporary Assistant Medical Officer to the petitioners have been regularised from the date of their initial temporary appointment. But the same benefit was not extended to the petitioners. It appears that though the petitioners were initially appointed during 1981 and 1982 through Professional and Executive Employment Exchange and they have participated in the oral test for direct recruitment conducted by the TNPSC for regularisation of their services, their services were regularised from the date of probation only and not from the date of initial appointment. Though the petitioners made several representations, they were not considered by the respondents. It is an admitted fact that the petitioners have put in more than 30 years of service and retired from service.

18. This Court finds substantial force with the contentions of the learned counsel for the petitioners that the respondents being a statutory authority, they have to discharge their legal obligations by considering the representations of the petitioners either to accept the claim of the petitioners or to reject it. But the action of the respondents in not passing any order on



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the representations of the petitioners to be construed that the respondents failed to discharge their legitimate duties. In the light of the order of the Tamil Nadu Administrative Tribunal, dated 15.02.1996, in OA.No.573 of 1995 and the order dated 27.04.2009 in Writ Petition No.3682 of 2007 by this Court, the similarly situated persons who were appointed as Assistant Medical Officers temporarily were regularised from the date of their initial appointment. But the same benefit was not extended to the petitioners even though the petitioners were initially appointed through Professional and Executive Employment Exchange and the petitioners passed oral test for direct recruitment conducted by TNPSC for regularisation of their services. It also appears that some of the Assistant Medical Officers who were appointed initially as temporary Assistant Medical Officers, along with the petitioners though they did not qualify in the oral test conducted by the TNPSC, their services were regularised basing on the orders of the Administrative Tribunal and this Court. Under these circumstances, the action of the respondents in not considering the claim of the petitioners to extend the same benefit to the petitioners amounts to discrimination, which is against to the Article 14 of the Constitution of India. As such, the action of the respondents in not extending the benefit of regularising the services of



the petitioners from the date of their initial appointment for the post of Assistant Medical Officer in terms of G.O.Ms.No.442 dated 12.09.1997 and G.O.Ms.No.245 dated 04.06.1998 on par with the similarly situated persons has to be declared as illegal, arbitrary and discriminatory.

19. Accordingly, this Writ Petition is allowed with the following directions:

i) The respondents are directed to regularise the petitioners service with effect from the date of their initial appointment for the post of Assistant Medical Officers in terms of G.O.Ms.No.442, Health and Family Welfare Department, dated 12.09.1997 and G.O.Ms.No.245, Health and Family Welfare Department, dated 04.06.1998 and their notional consequential terminal benefits with all attendant benefits shall be extended to them within a period of two months from the date of receipt of a copy of this order.

ii) No costs.



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iii) Consequently, connected miscellaneous petition is closed.

27.03.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs

To

1. The Secretary to the Government,
Health and Family Welfare Department,
Fort St. George,
Chennai 600 009.
2. The Additional Chief Secretary/
Commissioner of Indian Medicine and Homeopathy,
Arumbakkam,
Chennai 600 106.



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BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.No.4704 of 2018
and WMP.No.5807 of 2018

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