



WEB COPY

W.A.No.1607 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

W.A.No.1607 of 2021

and

CMP.No.10019 of 2021

University of Madras,
University Centenary Building,
Chepauk,
Chennai - 600 005,
Tamilnadu.

... Appellant

Vs.

1.Dr.S.Ravindran
2.The State rep. by the Secretary to the Government,
Department of Higher Education,
Government of Tamil Nadu,
Fort.St.George/Secretariat,
Chennai - 600 020.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 06.05.2021 passed in W.P.No.27439 of 2017.



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For Appellant : Mr.A.S.Vijayaragavan
For R1 : Mr.Thomas T.Jacob
For R2 : Mr.D.Ravichander
Special Government Pleader
[Higher Education]

J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The first respondent was appointed as Medical Officer on contract basis *vide* letter dated 26.12.2006. The appointment was made on consolidated pay of Rs.12,000/- Per month for a period of one year. The terms and conditions stipulated under the contractual appointment reads as under:

"1. You shall submit the duplicate copy of this appointment order within seven days on receipt of this communication duly signed indicating your acceptance of the offer of appointment.

2. You shall report for duty to the Registrar forthwith.

3. Your service in the University shall take effect from the date of your joining duty.

4. On your satisfactory performance in the first years, as reported by the Registrar, your extension for the remaining period



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will be considered by the Vice-Chancellor. In any exigencies, it shall be the power of the Syndicate to dispense with your services as Medical Officer.

5. *You shall devote whole time to the duties of your office and shall perform such duties as furnished hereunder besides other directives issued by the authorities from time to time and generally render such assistance as may be desired by the Vice-Chancellor/Registrar in the performance of your official duties.*

(a) The Medical Officer shall be required to be present at the University Medical Care Centre of the Chepauk Campus, from 10 a.m. to 5.45 p.m; on all working days. During this time of work she shall provide Medical advise for the staff and students who visit Medical Care Centre for consultation.

(b) Weekly once to each campus hostel for 2 hours outpatient service."

2. Mr.A.S.Vijayaragavan, the learned Counsel appearing on behalf of the appellant/University would submit that there is no sanctioned post of Medical Officer in Madras University. The first respondent was appointed on contract basis to cater the needs of the students, teaching staff and non-teaching staff working in the University campus.



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3. The service of the first respondent has been extended periodically. Subsequently, the benefit of time scale of pay was granted to the first respondent. The first respondent submitted a representation on 12.03.2012 seeking regularisation of his services in the sanctioned post of Medical Officer. The University replied on 18.04.2012 stating that regularisation is not feasible, since the first respondent was appointed on contract basis and there is no sanction for the post of Medical Officer.

4. The learned Counsel for the appellant would submit that the first respondent is not continuing in service as of now. However, he continued in service till the year 2017 on contract basis. The tenure of contract was extended on terms and conditions. Therefore, the writ order granting the benefit of regularization is running counter to the legal principles settled.

5. It is brought to the notice of this Court that the post of Medical Officer has not been sanctioned in Madras University.

6. Mr.Thomas T.Jacob, the learned Counsel for the first respondent



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relied on the Official communication of University of Madras dated 22.08.2017, wherein a reference has been made about the decision of the Syndicate for regularization of services. However, such regularization of services are subject to sanctioning of post by the Government of Tamil Nadu. The Government of Tamil Nadu is sanctioning grant to pay salary to the teaching and non-teaching staff. Unless the Government sanction the post of Medical Officer, University cannot grant regularization.

7. Mr.D.Ravichander, learned Special Government Pleader appearing on behalf of the 2nd respondent would submit that no post of Medical Officer has been sanctioned to Madras University. Mere contract appointment would not confer any right to seek regularization of service. Therefore, the writ court has committed an error. The writ Court directed the Government to sanction post. In our opinion such a direction is beyond the scope of the power of Judicial Review, conferred under Article 226 of the Constitution of India.

8. The power of Judicial Review of the High Court is to ensure the processes through which a decision has been taken in consonance with the



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statutes and rules in force, but not the decision itself. When the post has not been sanctioned, issuing a direction to the Government to sanction the post, in our opinion would not fall under the power of Judicial Review and sanctioning of post would be the decision of the Government. Creation or abolition of post is the prerogative of an employer. Therefore, Courts cannot issue any such direction to sanction the post and grant regularization or permanent absorption.

9. In the present case, the legal principles settled in *Uma Devi's* case reported in **2006 (4) SCC 1** and *Govindasamy's* case reported in **2014 (4) SCC 769** have not been followed by the writ court. Therefore, we are inclined to interfere.

10. The first respondent, admittedly, continued as temporary employee as Medical Officer on tenure basis and he was terminated from service. Now he cannot seek the benefit of regularization or permanent absorption, since no post of Medical Officer has been sanctioned in Madras University. Even in case the Government sanction the post of Medical



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Officer, recruitment is to be made by strictly following the service rules in force and through open competitive process. Since equal opportunity in public employment is the constitutional mandate, all eligible candidates including the petitioner is at liberty to participate and secure employment on merits and in accordance with law.

11. Accordingly, the order impugned dated 06.05.2021 in W.P.No.27439 of 2017 is set aside and the Writ Appeal stands **allowed**. No costs. Connected miscellaneous petition is closed.

[S.M.S., J.] [N.S., J.]
05.07.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
veda
To

1. The District Collector,
Collectorate Buildings,
Coimbatore.
2. The Special Officer cum
Block Development Officer,
Servakaranpalayam Panchayat,
Pollachi North Union,



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Pollachi Taluk,
Coimbatore District.



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S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.

veda

Judgment in
W.A.No.1607 of 2021

05.07.2024
(1/2)