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WA Nos. 1386, 1387 & 1388/2022 & WP Nos.4081 & 4084/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09-01-2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos. 1386, 1387 and 1388 of 2022
and
CMP. Nos. 8929, 8933 and 8938 of 2022
&
Writ Petition Nos. 4081 and 4084 of 2021
and
WMP. Nos. 4651 and 4653 of 2021

Writ Appeal Nos. 1386 to 1388 of 2022

1. The State of Tamil Nadu
rep. by its Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai - 600 009
 2. The Director of Public Health and
Preventive Medicine
DMS Campus, Teynampet
Chennai - 600 006
 3. The Director of Medical and Rural Health Services
DMS Campus, Teynampet
Chennai - 600 006
 4. Medical and Rural Health Services Department (Leprosy)
rep. by its Additional Director
DMS Campus, Teynampet
Chennai - 600 006
- .. Appellants in all the
Writ Appeals



WA Nos. 1386, 1387 & 1388/2022 & WP Nos.4081 & 4084/2021

Versus

T. Devi

.. 1st Respondent in
WA No. 1386

P. Esther

.. 1st Respondent in
WA No. 1387

S. Palanisamy

.. 1st Respondent in
WA No. 1388

Voluntary Health Services Leprosy Project
rep. by its Director
Sakthi Nagar (Appakudal)
Erode District - 638 315

.. 2nd Respondent in
all the Writ Appeals

Writ Petition Nos. 4081 & 4084 of 2021

J. Sakkrayas

.. Petitioner in
WP No. 4081/21

TK. Raveendran

.. Petitioner in
WP No. 4084/21

Versus

1. The State of Tamil Nadu
rep. by its Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai - 600 009
2. The Director of Public Health and
Preventive Medicine
DMS Campus, Teynampet
Chennai - 600 006
3. The Director of Medical and Rural Health Services
DMS Campus, Teynampet
Chennai - 600 006



WA Nos. 1386, 1387 & 1388/2022 & WP Nos.4081 & 4084/2021

4. Gremalters (HI)

rep. by its Directors Referral Hospital and Leprosy Centre
No.5, Gajapathy Street
Chennai - 600 030

5. Medical and Rural Health Services Department (Leprosy)

rep. by its Additional Director
DMS Campus, Teynampet
Chennai - 600 006

.. Respondents in both
Writ Petitions

WA No. 1386 of 2022:- Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 06.10.2021 passed in Writ Petition No. 28903 of 2019 on the file of this Court.

WA No. 1387 of 2022:- Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 06.10.2021 passed in Writ Petition No. 28909 of 2019 on the file of this Court.

WA No. 1388 of 2022:- Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 06.10.2021 passed in Writ Petition No. 28916 of 2019 on the file of this Court.

Writ Petition Nos. 4081 and 4084 of 2021:- Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to order made in Letter No.12692/L1/2019-3 dated 07.02.2020 by first respondent communicated in Ref.No.7765/1ep/2020 dated 09.03.2020 of third respondent and quash the same and consequently direct the first respondent to absorb the petitioner by providing suitable job in terms of G.O. Ms. No.268 dated 20.09.2010, G.O. (Ms) No.83 dated 22.03.2017 and G.O. Ms. No.448 dated 02.12.2017 passed by the first respondent.

Writ Appeal Nos. 1386 to 1388 of 2022

For Appellants : Mr. Silambannan, Additional Advocate General
assisted by Mrs. S. Anitha, Special Govt. Pleader
in all the Writ Appeals



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For Respondent : Mr. G. Ethirajulu for R1
in all the Writ Appeals

No appearance for R2
in all the Writ Appeals

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Writ Petition Nos. 4048 and 4084 of 2021

For Petitioners : Mr. G. Ethirajulu
in both the Writ Petitions

For Respondents : Mr. Silambannan, Additional Advocate General
assisted by Mrs. S. Anitha, Special Govt. Pleader
in both the Writ Petitions for RR1, 2, 3 & 5

COMMON JUDGMENT

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

All the three Writ Appeals arise from a common order dated 06.10.2021 passed by the learned Judge in Writ Petition Nos. 28903, 28909 and 28916 of 2019, whereby the said writ petitions filed by the first respondents in these appeals were allowed.

1.1. The first respondents in the writ appeals have filed the aforesaid Writ Petitions challenging the orders of rejection dated 16.05.2019 of the first appellant herein and consequently, directing the appellants herein to absorb the writ petitioners by providing suitable job in terms of G.O. (Ms) No. 83 dated



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22.03.2017, G.O. (Ms) No.292 dated 22.08.2017 and G.O. (Ms) No. 448 dated 02.12.2017 passed by the first appellant.

2. Both the writ petitions viz., WP. Nos. 4081 and 4084 of 2021 are filed by the petitioners praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order made in Letter No.12692/L1/2019-3 dated 07.02.2020 by the first respondent, which was communicated in Ref.No.7765/1ep/2020 dated 09.03.2020 by the third respondent, quash both the orders and consequently direct the first respondent to absorb the petitioners by providing suitable job to them in terms of G.O. Ms. No.268 dated 20.09.2010, G.O. (Ms) No.83 dated 22.03.2017 and G.O. Ms. No.448 dated 02.12.2017 passed by the first respondent.

3. In view of the commonality of the issue involved and the grounds raised, the aforesaid writ petitions were tagged along with the writ appeals and all these cases were posted before us, as per the administrative order of the Hon'ble Acting Chief Justice, dated 15.03.2023. In all the writ appeals as well as the writ petitions, the learned counsel appearing for both sides advanced common arguments. Therefore, all the cases are decided by this common judgment.



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WRIT APPEALS:

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4. (i) According to the first respondents in the appeals, the Government of India introduced a National Leprosy Eradication Programme during 1985 with an object of early detection and treatment of all patients suffering from Leprosy in the country. Following the same, they commenced the Leprosy Eradication Programme under the guidance of Central Government to ensure that leprosy is eradicated in the Country in entirety. To implement the programme, the Government of Tamil Nadu entrusted the task with certain voluntary organisations under the control of the Director of Public Health and Preventive Medicine. Such voluntary organisations appointed various categories of employees, who will be paid by the Central and State Governments. In this context, the first respondent in WA No. 1386 of 2022 was appointed on 30.09.1995 as Dresser (Basic Servant); the first respondent in Writ Appeal No. 1387 of 2022 was appointed as Auxiliary Nurse and Midwife on 09.02.1995 and the first respondent in Writ Appeal No. 1388 of 2022 was appointed as Office Boy on 06.05.1991; and all of them were posted in VHC Leprosy Project Hospital, Erode District.

(ii) It was further stated that the Government of Tamil Nadu, by G.O. Ms No.320, Health and Family Welfare Department dated 27.06.1997, vested the administrative control of the National Leprosy Eradication Programme



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with the Director of Public Health and Preventive medicine and brought the organisations involved in the Leprosy eradication programme under the control of the Directorate of Public Health and Preventive Medicine. As per the said Government Order, the voluntary organisations with which they were working, have been taken over by the Government of Tamil Nadu and the Government employees were deployed in the said areas to do the work in the place of the employees of the voluntary organisation. Therefore, some of the voluntary organisations have orally directed the employees, who are similarly placed like the first respondents in these appeals, to seek employment elsewhere. Subsequently, by a communication dated 01.10.2004, the Voluntary Health Services (VHC) terminated the employment of the first respondents with effect from 01.10.2004. According to the first respondents, they have put in nearly 10 years of service in the Leprosy Eradication Programme and therefore, instead of absorbing them, the Government has issued the said G.O. Ms. No.320, based on which their services were terminated by VHC.

(iii) Feeling aggrieved, some of the employees have submitted representations seeking to absorb them in the Health Department of the Government of Tamil Nadu. The members of the Union have also taken out a procession demanding absorption. It was specifically demanded that the



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Government has already absorbed some of the employees by virtue of G.O.

Ms. No.347 dated 29.09.2000 in regular time scale of pay, but the same benefit was not extended to all those who were appointed and working in the Leprosy Eradication Programme. Some of the employees have also filed O.A. No. 3884 of 2001 before the Tamil Nadu Administrative Tribunal. On abolition of the Tribunal, the Original Application stood transferred and re-numbered as Writ Petition No. 5160 of 2007. When the said writ petition was taken up for hearing, it was informed that by virtue of G.O. Ms. No.268 dated 20.09.2010, about 51 employees, who are members of a registered trade union namely National Leprosy Medical Employees Union, have been absorbed, but such benefit was not extended to the first respondents in these appeals. Therefore, by order dated 02.02.2011, the learned Judge directed the Government to consider the absorption of members of the Union and also directed the individual employees to make representation to that effect for consideration. However, when representations were made, the Government of Tamil Nadu rejected the claim of some of the employees by a communication dated 29.07.2013. Challenging the same, the trade Union filed Writ Petition No. 21824 of 2013, which was allowed by the learned Judge vide order dated 22.09.2015. Since the order dated 22.09.2015 was not complied with, Contempt Petition No. 882 of 2016 was filed. Pending contempt petition, the



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Government issued G.O. Ms. No. 83, Health and Family Welfare Department dated 22.03.2017 and absorbed several employees, who are similarly placed like the first respondents in the appeals. However, some of the employees, including the first respondents were not absorbed. Therefore, while closing the contempt petition, the learned Judge directed the individual employees to submit a representation by placing reliance on G.O. Ms. No.83 dated 22.03.2017 and seek for absorption.

(iv) On the basis of the directions issued in Contempt Petition No. 882 of 2016, representations were made by the first respondents in these appeals, but the Government rejected the same and refused to absorb them in regular service. Challenging the orders of rejection, the first respondents filed Writ Petition Nos. 17290, 17291 and 17292 of 2017, which were allowed by the learned Judge, vide order 06.12.2018 by setting aside the orders of rejection and remanded the matter to the Government for considering the claim of the first respondents in these appeals, in the light of G.O. Ms. No.268 dated 20.09.2010 within a period of twelve weeks.

(v) Since the order dated 06.12.2018 made in WP Nos. 17290 to 17292 of 2017 has not been complied with, Contempt Petition No. 1241 of 2019 was filed by the first respondent in W.A. No. 1388 of 2022. When the Contempt Petition No. 1241 of 2019 was taken up for hearing on 18.09.2019,



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the learned Special Government Pleader submitted that the claim of the first respondent in the appeal, was rejected by the Government by passing an order dated 16.05.2019. Assailing the said order, the first respondents filed WP Nos. 28903, 28909 and 28916 of 2019 before the writ court.

5. Opposing the writ petitions, counter affidavits were filed by the Government of Tamil Nadu, through the Secretary to Government, Health and Family Welfare Department, contending *inter alia* that on the basis of G.O. Ms. No.320 dated 27.06.1997, the voluntary organisation in which the first respondents in the appeals, were working, issued notice dated 01.10.2004 terminating their services. The first respondents have been given enough time to seek for alternative employment, but they have not chosen to do so. The order passed in G.O. Ms. No.268 dated 20.09.2010, absorbing 110 individuals as Health Inspectors Grade-II, was based on specific recommendations made by the Directorate of Public Health and Preventive Medicine and it cannot be cited by the first respondents in the appeals. The Government has taken a policy decision to accommodate few individuals by relaxing the qualification necessary to hold the post of Health Inspector Grade-II and such policy decision cannot be cited by the first respondents as a precedent. Moreover, when G.O. Ms. No.268 dated 20.09.2010 was issued, the first respondents did



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not submit any representation seeking to absorb them in regular service and therefore, they cannot expect the Government to absorb them in service. The representation dated 04.02.2016 sent by the first respondent/writ petitioner in WP No. 28903 of 2016 seeking absorption, was rejected as belated. Therefore, the rejection of the claim of the first respondents by the Government was justified. The counter affidavit further proceeds to state that the appointment of few individuals based on the directions issued by this Court, cannot be cited as a precedent by the first respondents/writ petitioners, when they have not approached this Court at the earliest point of time. After long lapse of time, the first respondents have filed the writ petitions assailing the orders of rejection passed by the Government and also directing the authorities to absorb them into regular service and therefore, the writ petitions are not maintainable.

6. On considering the rival submissions, the learned Judge allowed the writ petition Nos. 28903, 28909 and 28916 of 2019 on 06.10.2021 on the ground that similarly placed persons like the first respondents in the appeals were absorbed in government service and the refusal to extend the same benefit in favour of the first respondents would amount to discrimination. The relevant portion of the common order dated 06.10.2021 passed by the learned Judge in the writ petitions, reads as follows:



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"11. A co-joint reading of the Hon'ble Supreme Court's decision together with the aforesaid orders of this Court, it could be said that denial of consideration of the petitioners' case herein, particularly when similarly placed persons were given the benefits, the same would amount to discrimination. Moreover, when this Court had passed orders in the petitioners' case on 06.12.2018, it had suggestively condoned the delay and laches on the facts of the case by calling upon the Government to reconsider the petitioners' case. It is needless to point out that the ground of laches and delay, was available even at that point of time. Thus, when this Court has condoned such laches and directed the Government to reconsider their cases, it is not now open to them to reject their claims on the ground of laches and delay. Even otherwise, the absorption of some of the similarly placed employees in G.O.(Ms)No.83 dated 22.03.2017 and G.O.(Ms) No.292 dated 22.08.2017, was pursuant to the orders passed by this Court, which orders were based on the decision rendered by the Hon'ble Supreme Court in Umadevi's case (supra), which is a "judgment in rem".

12. In the State of U.P. and Others Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347, it was held that when similarly situated persons were given certain benefits, the resultant cannot be treated differently. It was also held therein that if there is any delay and laches in making such a claim, the same would not apply to cases where benefit was given to similarly situated persons through judgment of the Court which is considered to be a judgment in rem. The relevant portion of the order reads as follows:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.



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22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India* (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

13. The aforesaid ratio is squarely applicable to the present case in hand on two ratios held therein. Firstly, as a normal rule, the Government cannot refuse to absorb the petitioners herein since similarly placed persons have already been absorbed. Secondly, the Government had chosen to pass orders for absorption to similarly placed persons based on the decision of this Court in W.P.No.21824 of 2013, which was in turn based on Umadevi's case (supra), which is a judgment in rem, intended to grant relief to all persons seeking employment on the ground of discrimination. When such a ratio laid is pursuant to a judgment in rem, the decision in Arvind Kumar Sri Vastava extracted above, would squarely apply and therefore rejection of the petitioners' claim on the ground of delay and laches, cannot be sustained.

14. Thus, the cases of the petitioners could be concluded by holding that, denial of their requests, inspite of similarly



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placed persons being absorbed, would amount to discrimination. Likewise, when the Government had chosen to absorb similarly placed persons on the basis of the orders of this Court, which in turn is based on the decision of the Hon'ble Supreme Court in Umadevi's case (supra), such a denial is against the well laid principles, as substantiated in the decisions referred to in the above paragraphs.

15. For all the foregoing reasons, the impugned orders passed by the first respondent herein dated 16.05.2019, are quashed. Consequently, there shall be a direction to the first respondent to forthwith absorb the petitioners herein namely, Mrs.T.Devi (W.P.No.28903 of 2019); Mrs.P.Esther (W.P.No.28909 of 2019) and Mr.S.Palanisamy (W.P.No.28916 of 2019), by providing suitable Government jobs. The first respondent herein shall endeavor to issue such appointment and posting orders, atleast within a period of 12 weeks from the date of receipt of a copy of this order. All these Writ Petitions stand allowed accordingly. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs."

7. It is as against the common order dated 06.10.2021 passed in WP Nos. 28903, 28909 and 28916 of 2019, the appellants / Government have filed the present writ appeals viz., WA. Nos. 1386 to 1388 of 2022 before this Court.

WRIT PETITIONS

8. (i) It is stated that the petitioner in WP No. 4081 of 2021 joined as Mutli Drug Therapy Assistant (MDT) on 01.10.1990 and the petitioner in WP No. 4084 of 2021 joined as Para Medical Worker on 14.09.1989 in the fourth respondent hospital. Referring to G.O. Ms. No.320 dated 27.06.1997, it is



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submitted by the petitioners that the Government vested the administrative control of the National Leprosy Eradication Programme with the Directorate of Public Health and Preventive Medicines, based on which, the employees employed by the Voluntary Organisations along with regular government employees have worked together in order to ensure that leprosy is completely eradicated from the State.

(ii) The writ petitioners placed reliance on the proceedings dated 07.08.1991 of the third respondent, wherein it was stated that if the voluntary organisations are closed in future for want of funds or for some other reasons, the employees of such organisations shall be absorbed in Government service. Accordingly, the employees of Belgion Leprosy Centre, Perumbakkam were absorbed. However, the respondents have not chosen to absorb those employees who were made jobless due to closure of voluntary organisations between 1997 to 2004 and they were left in lurch. The writ petitioners have therefore submitted repeated representations on 10.11.1997, 14.05.1998, 30.07.1998, 09.10.1998, 29.12.1998 and 10.03.1999 seeking absorption, but the said representations were not considered. While the petitioners were anticipating for favourable response, the Government passed an order dated 31.07.2000 refusing to absorb the employees in Government Service. On the other hand, the Government issued G.O. Ms. No.347 dated 29.09.2000



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absorbing certain employees in the regular scale of pay and it amounts to discrimination.

(iii) The writ petitioners further submitted that they have filed O.A. No. 3884 of 2001 before the Tamil Nadu Administrative Tribunal through a registered trade union namely National Leprosy Medical Employees Union. As the Tribunal was abolished, the Original Application stood transferred to this Court and re-numbered as WP No. 5160 of 2007. Even during the pendency of the same, the Government issued G.O. Ms. No.268 dated 20.09.2010 absorbing more than 51 employees, who are members of the said Trade Union, but the petitioners were excluded from being absorbed into regular service.

(iv) According to the petitioners, by order dated 02.02.2011, the learned Judge directed the Government to consider absorbing the members of the trade union in terms of G.O. Ms. No.268 dated 20.09.2010 and by considering the representations made by the individuals. Thereafter, the representations of the petitioners were forwarded to the Government by the Director of Public Health and Preventive Medicine, on 28.09.2011 specifically recommending to absorb the petitioners. Subsequently, by communication dated 17.01.2013, another recommendaiton was made by the said authority for absorption of petitioners and others. Inspite of the same, the Government



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passed the order of rejection dated 29.07.2013 solely on the ground that the petitioners did not produce any records relating to their appointment and termination.

(v) Challenging the order dated 29.07.2013, the trade union has filed WP No. 21824 of 2013. The learned Judge by order dated 09.07.2018, set aside the order dated 29.07.2013 and directed the Government to pass appropriate orders taking into consideration G.O. Ms. No.268 dated 20.09.2010, within a period of eight weeks. Despite the same, no order was passed by the Government and therefore, Contempt Petition No. 882 of 2016 was filed. When the Contempt Petition was taken up for hearing on 23.02.2019, it was reported that except six persons, including the petitioners herein, others have been absorbed into regular service. Therefore, by order dated 23.02.2019, the learned Judge granted liberty to the petitioners to work out their remedy in the manner known to law.

(vi) Pursuant to the order dated 23.02.2019 passed in Contempt Petition No. 882 of 2016, the petitioners and others sent representations on 03.04.2019 and 04.10.2019 to the Government seeking absorption into regular service. However, by order dated 07.02.2020, the Government rejected the representations. Therefore, the present writ petitions viz., WP Nos. 4081 and 4084 of 2021, came to be filed.



SUBMISSIONS OF THE COUNSELS

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9. (i) Mr. Silambannan, learned Additional Advocate General appearing for the appellants in the writ appeals and respondents in the writ petitions submitted that the writ petitioners were appointed by various non-governmental leprosy organisations without any consultation or concurrence from the Government. Such appointment of the writ petitioners is purely an internal administrative procedure vested with such voluntary organisation over which the Government cannot exercise any control. Even as per the G.O. Ms. No.320, Health and Family Welfare Department dated 27.06.1997, the Government ordered that the voluntary organisations involved in Leprosy Eradication programme will come under the control of Director of Public Health and Preventive Medicine for disbursement of grants to enable the voluntary organisations to utilise it for implementation of the programme, which includes salary and other allowance payable to the employees engaged by them. The said G.O. Ms. No.320 dated 27.06.1997 has got nothing to do with absorption of the employees engaged by the voluntary organisation. As per the said Government Order, the services of the writ petitioners were terminated by the Voluntary Organisation themselves and it has got nothing to do with the absorption of their service by the Government. It is also submitted that the service of the petitioners in WP Nos. 28903, 28909 and 28916 of 2019



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/ first respondents in these appeals, were terminated on 01.10.2004 itself and therefore it is futile on their part to contend that they were employed for several long years in the voluntary organisations and they have to be absorbed.

(ii) The learned Additional Advocate General further submitted that upon effective implementation of the Leprosy eradication programme in the State, the employees employed in the Voluntary Organisations have been rendered jobless. When representations have been received from the employees individually and through Union, the Government has taken a policy decision to absorb some of the employees. Therefore, the question of absorption of all the employees employed under the Voluntary Organisations will not arise and the employees employed in such organisations have no right to insist for their absorption in government service. As a sequel to such policy decision, the Government issued G.O. Ms. No.268 dated 20.09.2010 by which 110 individuals were employed as Health Inspector Grade-II on fulfilment of the educational qualification and other criteria for such appointment. While so, the writ petitioners cannot, as a matter of right, seek for absorption of their employment on par with those who are covered under G.O. Ms. No.268 dated 20.09.2010.

(iii) It is also submitted that the learned Judge did not consider the fact that the first respondents in the writ appeals / writ petitioners in WP Nos.



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28903, 28909 and 28916 of 2019 have challenged the order of rejection passed on 01.10.2004 after a lapse of 13 years by filing the first writ petition namely WP Nos. 17290, 17291 and 17292 of 2017. Before filing such writ petitions, the first respondents in these appeals, have not sent any representation seeking to absorb them in the government service. They only waited for adjudication of the cases filed by the trade Union without filing any individual case. While so, the learned Judge ought not to have entertained the writ petitions viz., WP Nos. 28903, 28909 and 28916 of 2019, instead dismissed them on the ground of delay and laches.

(iv) The learned Additional Advocate General further submitted that after appointment of 110 individuals, the Government also made appointment and/or absorption of some of the employees based on the orders passed by this Court by issuing G.O. Ms. No.292, Health and Family Welfare Department dated 22.08.2017. Here again, a policy decision has been taken by the Government to absorb some of the employees and not all those who were engaged by the voluntary organisations in to regular service. If such appointments are made, it would not only open the flood gates, but also cause enormous financial burden to the government. This was not taken note of by the learned Judge, while allowing the writ petitions filed by the writ petitioners in WP Nos.28903, 28909 and 28916 of 2019. The learned Additional



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Advocate General therefore prayed for allowing the writ appeals by setting aside the common order dated 06.10.2021.

(v) With respect to the claim of the writ petitioners, it is submitted by the learned Additional Advocate General that the writ petitioners cannot, as a matter of right, seek for absorption in government service by placing reliance on the absorption of employees employed by some of the voluntary organisations. The Government have not absorbed all the employees working in the voluntary organisations. A policy decision was taken by the Government to accommodate a few persons to strengthen their existing public health system. The voluntary organisation in which the writ petitioners were engaged have terminated their service even in the year 2004 and now about 19 years have passed and therefore also, the claim of the writ petitioners has to be declined. The absorption of the employees engaged by the Voluntary organisations into government service was a policy decision in which this Court need not interfere and issue a direction to accommodate the petitioners. The writ petitioners have not been employed in the leprosy eradication programme from 2004 and hence, their present claim has to be rejected. Above all, it is submitted that every post in the government service is governed by either special rules or adhoc rules. Since the scheme under which the writ petitioners were working has been integrated with the Directorate of



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Public Health and Preventive Medicine even in the year 2004, the present claim of the writ petitioners cannot be countenanced. Stating so, the learned Additional Advocate General prayed for dismissal of the writ petitions.

10. Mr. G. Ethirajulu, learned counsel appearing for the first respondents in the writ appeals and the petitioners in the writ petitions submitted that the Government have accommodated several persons similarly placed like that of the first respondents in the writ appeals and the writ petitioners in government service. The first respondents in these appeals and the writ petitioners have also been engaged in eradication of leprosy programme. When a policy decision is taken by the Government, it should be made to treat the equals with equals and it cannot be used to discriminate and disentitle the same set of employees. They have been left in lurch from the year 2004. Even though the first respondents in the appeals did not submit any representations seeking absorption, they were fighting out through their respective Unions. The Unions have filed Writ Petitions as well as contempt petitions before this Court on behalf of the members, including the first respondents in the appeals. At the behest of the union, the Government have absorbed several employees, but for the reasons best known, the first respondents in the appeals, and the writ petitioners have not been absorbed.



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The benefit of absorption in government service is a remedy in rem and when it was exercised in favour of a set of employees, the same has to be equally extended in favour of others, who are also similarly placed. The learned Judge, by taking note of the above position, has rightly passed the order dated 06.10.2021 and allowed the writ petitions filed by the first respondents in the writ appeals. Therefore, the learned counsel prayed for dismissal of the writ appeals and allowing the writ petitions.

11. We have heard the learned Additional Advocate General appearing for the appellants as well as the learned counsel for the contesting first respondents / writ petitioners and also perused the materials available on record.

12. It is seen that the writ petitions viz., WP. Nos. 28903, 28909 and 28916 of 2019 the subject matter of which is the issue involved in the writ appeals, as well as the writ petitions viz., WP Nos. 4081 and 4084 of 2021 have been filed mainly by placing reliance on the orders passed by the Government, absorbing some of the persons, who are similarly placed. It is no doubt true that when certain class of employees have been given benefit by the Government, the same has to be equally extended in favour of others, who are



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similarly placed. However, there are certain exceptions and/or restrictions to be imposed for seeking such a relief on par with others. First of all, such a relief cannot be conferred in a routine manner and it is subject to various factors, guidelines, relaxation, etc. The individual, who seeks such relief to be extended in his or her favour, must approach the authorities concerned within the earliest point of time. Thus, such benefit cannot be sought to be extended as a matter of right and it is for the Government, in deserving case, to extend the same relief on par with others. With this background, we proceed to analyse the claim for absorption made by the first respondents in the writ appeals and the writ petitioners.

13. In the case of the first respondents in the writ appeals, they were appointed on 30.09.2005, 09.02.1995 and 06.05.1991 respectively in the concerned Voluntary Health Organisations, to whom the task of implementing the National Leprosy Eradication Programme was entrusted by the Government. It is an admitted fact that when the Government dispensed with the engagement of voluntary organisation in the programme and brought it within the administrative fold of the Directorate of Public Health and Preventive Medicine, the voluntary organisation, with which the first respondents in the writ appeals were employed, sent a communication dated



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01.01.2004, informing them to seek for employment elsewhere. Immediately, the first respondents in the writ appeals did not seek for redressal. There is nothing on record to show that they have even sent a representation seeking absorption into Government service. On the contrary, it appears that they have approached the trade union namely National Leprosy Medical Employees Union, who have taken up their cause. Thus, from 2004 onwards, the first respondents in the writ appeals were not in service and they were terminated by the respective voluntary organisation.

14. Similarly, in the case of the writ petitioners, they joined the Leprosy Eradication Programme sometime on 01.10.1990 and 14.09.1989 respectively. In their writ petitions, reference was made to a proceeding dated 07.08.1991 of the Directorate of Medical and Rural Health Service, Chennai whereby it was informed that in future, for want of funds, if the voluntary organisations are closed, the employees of such organisations shall be absorbed in Government service. They have also referred to G.O. Ms. No.320 dated 27.06.1997 by which some of the employees, employed by the voluntary organisations, have been absorbed in Government service. In the case of the writ petitioners, they stated to have sent representations dated 10.11.1997, 14.05.1998, 30.07.1998, 09.10.1998, 29.12.1998 and 10.03.1999 seeking



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absorption, but their representations were rejected even on 31.07.2000 refusing to absorb them in government service. However, the writ petitioners did not challenge the said rejection order, but they appeared to have approached the National Leprosy Medical Employees Union, which have taken up their cause and filed Original Application No. 3884 of 2001. Thus, it is evident that the writ petitioners have slept over their right to independently assail the order of rejection dated 31.07.2000 passed against them. They have merely waited for the outcome of the orders to be passed in the Original Application filed by the Trade Union.

15. It is also seen that the first respondents in the writ appeals have filed the Writ Petitions seeking to issue a Writ of Certiorarified Mandamus challenging the orders of rejection dated 16.05.2019 of the first appellant herein with a consequential relief of directing the appellants herein to absorb them by providing suitable employment in terms of G.O. (Ms) No. 83 dated 22.03.2017, G.O. (Ms) No.292 dated 22.08.2017 and G.O. (Ms) No. 448 dated 02.12.2017 passed by the first appellant. It is needless to mention that the first respondents in the appeals, whose services were dispensed with even on 01.01.2004, have filed the said writ petitions only in the year 2019. There is no explanation forthcoming as to why the first respondents in the writ appeals or



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the writ petitioners in the writ petitions have remained quiet without seeking for absorption of their service between 2004 and 2019 for about fifteen years.

Therefore, the writ petitions filed by the first respondents in the appeals are hit by the principles of delay and laches and they are disentitled to seek for absorption into government service. However, the claim of the first respondents in the writ appeals was allowed by the learned Judge mainly by relying similar orders passed by the appellants. In the case of the writ petitioners, they also did not assert their right to seek for absorption at an early point of time. They have not challenged the orders of rejection dated 31.07.2000 passed by the first appellant refusing to absorb them in government service, at an early point of time. However, they have challenged the subsequent rejection order dated 07.02.2020 of the first appellant, which was communicated on 09.03.2020 by the third appellant, by filing the writ petitions in the year 2021. Therefore, the writ petitions filed by the writ petitioners are also hit by the principles of delay and laches and they are disentitled to seek for absorption in government service.

16. The learned Additional Advocate General appearing for the appellants categorically submitted that the services of the writ petitioners and the first respondents in these appeals were terminated on 01.10.2004 itself and



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therefore, after long number of years, the claim for absorption made by them need not be entertained. It is also submitted that the Government has taken a policy decision to absorb some of the employees, who fulfil the criteria such as age, educational qualification etc., by issuing G.O. Ms. No.268 dated 20.09.2010, by which 110 individuals were employed as Health Inspector Grade-II. Subsequently, the Government also made appointment and/or absorption of some of the employees based on the orders passed by this Court by issuing G.O. Ms. No.292, Health and Family Welfare Department dated 22.08.2017. Such a policy decision taken by the Government to absorb some of the employees cannot be extended in favour of all those who were engaged by the voluntary organisations in to regular service. The policy decision taken by the Government was to accommodate a few persons to strengthen their existing public health system and therefore, interference of this Court is not warranted.

17. Admittedly, the Government absorbed some of the employees who were engaged in the Leprosy Eradication Programme in a phased manner. Some of them have been absorbed pursuant to the directions issued by this Court in the writ petitions as well as contempt petitions. Insofar as the first respondents in the appeals as well as the writ petitioners are concerned, they



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have not approached the Government at the earliest point of time and they have only approached the trade union to espouse their cause. They have also waited for adjudication of the Original Application filed by the trade union without independently filing any such applications before the competent Court of law. In any event, at this length of time, no relief can be granted in favour of the first respondents in the appeals as well as the writ petitioners. In such circumstances, the learned Judge ought to have dismissed the writ petitions filed by the first respondents in these appeals on the ground of delay and laches, but the same were allowed by directing the appellants to absorb the first respondents into government service, by the order impugned in the appeals, which is liable to be set aside. In this context, we are fortified by the decision of the Honourable Supreme Court in the case of **IL and FS Financial Services Limited** reported in **(2023) 9 Supreme Court Cases 570** wherein the Honourable Supreme Court observed that *Vigilantibus non dormientibus jura subveniunt - the law assists those who are vigilant, not those who sleep over their rights is a fundamental legal maxim on which statutes of limitations are premised*. Applying this maxim to the facts of the present case, wherein the first respondents in the appeals as well as the writ petitioners have slept over their right to claim absorption into government service at the earliest point of time, we are of the view that their claim for absorption is stale and therefore,



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the writ petitions filed by them, are liable to be dismissed on the ground of delay and laches.

18. In view of the above reasonings,

(i) All the writ appeals are allowed by setting aside the order dated 06.10.2021 passed by the learned Judge in W.P. Nos. 28903, 28909 and 28916 of 2019.

(ii) Both the writ petitions are dismissed.

(iii) No costs. Connected miscellaneous petitions are closed.

(R.M.D., J) (M.S.Q., J)
09.01.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking / Non-Speaking Order
rsh

To

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

2. The Director of Public Health and
Preventive Medicine
DMS Campus, Teynampet
Chennai - 600 006



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3. The Director of Medical and Rural Health Services
DMS Campus, Teynampet
Chennai - 600 006

4. The Directors Referral Hospital and Leprosy Centre
Gremalters (HI)
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5. Additional Director
Medical and Rural Health Services Department (Leprosy)
DMS Campus, Teynampet
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R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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09.01.2024