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W.P.No.14339 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.14339 of 2023

V.Velu

...Petitioner

-Vs-

1. The State of Tamilnadu,
Rep by its Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-9.

2. The Director,
Department of Public Health and Preventive Medicine,
Teynampet, Chennai-6.

3. The Deputy Director,
Filaria Officer (in-charge),
Public Health and Preventive Medicine
National Filaria Control Unit,
Chengalpet,
Kanchipuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the entire records connected with the impugned show cause notice passed by the 3rd respondent vide Na.Ka.No.1472/A2/2023-21 dated 21.04.2023 and quash the same.



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For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mr.M.Bindran,
Additional Government Pleader

ORDER

This Writ Petition is filed challenging the impugned show cause notice passed by the 3rd respondent vide Na.Ka.No.1472/A2/2023-21 dated 21.04.2023.

2. The Petitioner hails from Adi Dravida Community and passed 8th Std., and registered the same in the Employment Exchange. The 3rd respondent issued Paper Advertisement in daily magazine namely Dinakaran and Dina Thanthi on 14.02.2016, inviting applications for the post of Mazdoor (Sanitary Workers). The Petitioner appeared for interview and certificate verification. The 3rd respondent by an order dated 29.02.2016, appointed the Petitioner as temporary Mazdoor under Rule 10 (a)(i) of Tamil Nadu Sub-ordinate Service Rules. The Petitioner joined in the Sub-Station, Kanchipuram as Mazdoor on 01.03.2016. The Petitioner was issued order of deputation in the following occasions i.e., Kaja



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Cyclone, Athivaradhar Festival and Covid-19 Pandemic. The Petitioner during the Covid period on deputation, he suffered with Covid and undergone treatment in the Government Hospital. The 3rd respondent regularized the service of three Mazdoors, namely, P.Ramesh, R.Bharath Kumar and P.Sathish Kumar from the date of initial appointment. However, the 3rd respondent has not regularized other Mazdoors. One Mr.Surya and 39 others filed W.P.No.5306 of 2023 for direction. By an order dated 23.02.2023, this Hon'ble Court directed the 2nd respondent to consider the representation of the Petitioner for regularization with monetary benefits in accordance of law within a period of four weeks. For non-compliance of the order, Mr.Surya and 39 others initiated Contempt Proceedings against the respondents. The 2nd respondent by proceeding dated 21.03.2023 rejected the claim of Mr.Surya and 39 others on the ground that their initial appointment is irregular and contrary to rule. Subsequently, by proceeding dated 13.04.2023, the 3rd respondent cancelled the order of regularization issued to R.Bharath Kumar and two others. Mr.R.Bharath Kumar filed Writ Petition in W.P.No.12497 of 2023, against the cancellation of rejection order dated 13.04.2023 and obtained interim order.



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3. The petitioner is not party of the W.P.No.5306/2023 nor contempt proceeding and however, the 3rd respondent issued impugned show cause notice dated 21.04.2023, directing the Petitioner to show cause the reason on the allegation that the appointment of the Petitioner is irregular and contrary to the rules. The Petitioner submits that the enquiry notice dated 24.09.2018, the 2nd respondent has directed the Petitioner to appear for inquiry on 04.10.2018 on the allegation that his appointment as Mazdoor passed by the 3rd respondent is irregular and contrary to rules. The Petitioner appeared for inquiry on 04.10.2018 before the 2nd respondent and the 2nd respondent obtained statement from the Petitioner. When the 2nd respondent ceased the proceedings, after lapse of 4 and half years, the 3rd respondent issued impugned show cause notice on the same set of allegation is impermissible in law and without jurisdiction. The petitioner submits that the very appointment of the petitioner made by the 3rd respondent by an order dated 29.02.2016, is under Rule 10(a)(1) of Tamil Nadu Subordinate Rules, as temporary Mazdoor on the basis of Administrative exigencies. Therefore, the very issuance of show cause



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notice of the 3rd respondent on the allegation that the appointment of the Petitioner is irregular and contrary rule is unsustainable in law. The Petitioner submits that the Supreme Court in the case of ***State of Jammu and Kashmir & Ors. vs. District Bar Association***, 8 Dec, 2016 held that the irregular appointments can be regularised but illegal appointments cannot be legalized. The Petitioner submits that the full bench held that in the case of ***State of Tamil Nadu rep. by its Secretary to Government and Ors, School Education Department & ors vs S.S.Somasundaram & another***, reported in ***2008(3) MLJ 492***, the appointment made by the department by direct recruitment without reference to employment exchange on merits, it will be in order. The appointment of the petitioner made by the 3rd respondent on conducting interview and due certificate verification is in order. The petitioner apprehends that the 3rd respondent may at any time oust/terminate the service of the petitioner. Hence the petitioner filed present writ petition against the impugned show cause notice of the 3rd respondent.



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4. The learned Additional Government Pleader submitted that as per G.O.Ms.No.325, Health and Family Welfare Department dated 20.11.2022, appointments can be made only on contract basis and on consolidated pay alone and since it is subsequently found that the petitioner was brought under regular time scale of pay, his appointment cannot be continued and therefore, show cause notice was issued for terminating the petitioner.

5. At the time of appointment, the petitioner was appointed on regular time scale of pay by the Deputy Director of Health Services and he was posted to various Government Hospital/Primary Health Centres. According to the respondents, their appointments ought not have been made under the guidelines issued by the Government of Tamilnadu in G.O.Ms.No.325, Health and Family Welfare Department dated 20.11.2022, which permits such absorption only on contract basis on consolidated pay and therefore, the present appointment of the petitioners on regular time scale of pay in the sanctioned posts is not in accordance with the



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Government Order and therefore, show cause notice has been issued for terminating his service. The appointments have been made only in the sanctioned vacancies and the petitioner possess the necessary qualifications to be appointed in the post, there is no illegality in such appointment and the mistake committed on the part of the respondents shall not be put against the petitioner. The petitioner has been appointed in the sanctioned vacancies and he was brought under regular time scale of pay. The mistake committed by the respondents in absorbing the petitioner in regular time scale of pay instead of contract basis on consolidated pay can be termed only to be a irregular appointment and not an illegal appointment.

6. Such a proposition has already been upheld by the Hon'ble Supreme Court in several decisions and held that such irregularities committed in the appointment can be cured since there is no illegality in them. In the case of *Secretary, State of Karnatka vs Uma Devi* reported in **2006 (4) SCC 1**, the Hon'ble Supreme Court has held that irregular appointments would not render appointment as illegal and thereby directed the Government to regularise such irregular appointments. In the case of



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Secretary, State of Karnataka & others vs Umadevi & others reported in

2006 (4) SCC 1 had held that, 'irregular appointments' would not render the appointments as 'illegal and thereby directed the Government to regularise such irregular appointments as a one time measure.

7. In ***B.N.Nagarajan & others vs State of Karnataka & others*** reported in **1979 (4) SCC 507**, the Hon'ble Apex Court had categorically held that all irregularities can be regularized, but illegalities cannot be. Likewise, in the **State of Madhya Pradesh & Others vs Lalit Kumar Verma** reported in **2007 (1) SCC 575**, the Hon'ble Apex Court had made a distinction between "irregular appointment" and "illegal appointment" in the following manner:

"12. The question which, thus arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to."



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8. In the case of *Post Master General, Kolkata & others vs Tutu Das* reported in *2007 (5) SCC 317*, the Constitutional Bench of the Hon'ble Apex Court had upheld the ratio that an 'irregular appointment' does not stand equated to that of an 'illegal appointment'. As such when irregular appointments can be ratified on the strength of all these decisions of the Hon'ble Supreme Court and by taking note of the fact that the respondents themselves have only claim certain alleged irregularities in the selection process and not illegalities, the cancellation of the appointment orders on account of such alleged irregular selection process, cannot be sustained. Even otherwise, these alleged infirmities may not strictly termed to be as "irregularities" also for the reasons stated in the foregoing paragraphs of this order.

9. The present case is similar to the finding of the Hon'ble Supreme Court of India, wherein, the respondents have pointed out that the appointment of the petitioner is only irregular in nature and not illegal. Hence, by applying the ratio laid down by the Hon'ble Supreme Court of



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India, the consequential action taken by the respondents in issuing show cause notice for terminating the petitioner's service cannot be legally sustainable.

10. Accordingly, the impugned show cause notice 21.04.2023 passed by third respondent is quashed and in view of quashing of the show cause notice, there shall be a direction to the Director of Public Health and Preventive Medicine, Chennai and the Deputy Director, Filaria Officer (incharge), Public Health and Preventive Medicine, National Filaria Control Unit, Chengalpet, Kanchipuram District to forthwith pass appropriate orders for reinstating the petitioner back into service, together with all service and monetary benefits. Such order shall be passed within a period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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

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To

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Rep by its Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-9.
2. The Director,
Department of Public Health and Preventive Medicine,
Teynampet, Chennai-6.
3. The Deputy Director,
Filaria Officer (in-charge),
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G.K.ILANTHIRAIYAN,J.
gvn

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