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W.P.Nos.14171, 14176, 14177, 14179, 14180, 16500 and 1722



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.14171, 14175, 14176, 14177, 14179, 14180, 16500
and 17229 of 2020

&

W.M.P.Nos.17645, 17644, 17649, 17650, 17651, 17652, 20475
and 21297 of 2020

W.P.No.14171 of 2020

R.Ravichandran

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Fort St. George, Chennai – 600 009.

2. The Project Director,
Tamil Nadu State AIDS Control Society,
417, Pantheon Road, Egmore,
Chennai – 600 008.

3. The Chairman,
Medical Services Recruitment Board,
Teynampet, Chennai – 600 006.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the issuance of order in Ref.No.00155/A3/Estt/TANSACS/2020, dated 07.02.2020 passed by the 2nd respondent herein and quash the same consequently direct the respondents herein to appoint the petitioner as regular employee (i.e.,) Lab



Technician Grade II with all available benefits.

In all W.Ps

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For Petitioners : Mr.C.Umashankar

For R1 : M/s.M.Sneha,
Special Government Pleader for
Health and Family Welfare

For R2 : M/s.Niraimathi

For R3 : Mr.L.Murugavelu

COMMON ORDER

All the petitioners herein were appointed as 'Lab Technician' in the Tamil Nadu State AIDS Control Society during the year 2009 on consolidated pay and they have been continuing as such till date. Their respective appointment orders were issued by the District Collector concerned, after having conducted interviews. The petitioners having continued in service for more then 5 years, approached this Court by filing a batch of Writ Petitions viz., W.P.Nos.1829 to 1885 of 2016 and the said batch of writ petitions were disposed of by a learned Single Judge of this Court by an order dated 28.06.2017 duly recording the submissions made by the then learned Additional Advocate General to the effect that the services of the petitioners will not be discontinued in view of the notification issued proposing to fill-up the vacancies of 'Laboratory Assistant' by way of direct recruitment. Further, it is observed that



regularization of the services of the petitioners is a matter to be considered by the respondent, considering the fact that the petitioner therein have been working for more than 13 years continuously. It is thereafter the petitioners made a claim for regularization of their services by submitting individual representations dated 24.10.2019 and thereafter approached this Court by filing W.P.No.33041 of 2019 and batch complaining the inaction on the part of the respondents. The said batch of Writ Petitions were disposed of by a learned Single Judge of this Court by an order dated 25.11.2019 directing the respondents to consider the said representations submitted by the petitioners and to pass appropriate orders in accordance with law. It is pursuant to the said order dated 25.11.2019, the claim of the petitioners for regularization of their services was considered by the Respondent No.2/ Society and the same was rejected by passing individual orders dated 07.02.2020. Aggrieved by the said orders, the petitioners once again approached this Court by filing the present Writ Petitions. The operative portion of the said impugned orders reads as under:-

“ With reference to the above, it is informed that TANSACS is functioning under the guidelines of National AIDS Control Organization (NACO). The staff under TANSACS service are being appointed on contractual basis on a consolidated monthly remuneration for specific purpose and period. As per NACO guidelines, the contractual posts are temporary and project-tied and only for the duration of the



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project period and is co-terminus with the project. All contractual posts have to be on contract and all such contracts should be made for one year and new contract is entered into every year based on assessment of performance. The contractual posts are not allowed to be continued without a break. Accordingly, after assessment of performance and based on their satisfactory performance in duties, their contract service is being renewed on every year after giving one day break in their service.

Also, the National AIDS Control Program (NACP) has reached the end of its IV phase and is a centrally sponsored scheme. The NACP is co-terminus with plan period and accordingly no provision is there for regularization or continuation of contractual position or any other benefits. Further, the post of Lab. Technician Grade-II was not sanctioned by NACO to SACS. It is also informed that as per NACO directives, the reservation policy of Government of India is not applicable in respect of contractual appointments, as these appointments are made for specific purpose and for specific period on consolidated remuneration.

Considering the above fact, the requests made in your representation is not feasible for compliance.”



2. The learned counsel for the petitioners contended that the impugned order was passed by the Respondent No.2 without reference to the views of the Respondent No.1 herein and also further contended that the claim of the petitioners for regularization of their services is not with reference to the posts held by them in the Respondent No.2/ Society, but their claim is for absorption/ regularization of their services in the post of 'Laboratory Technician Grade II' existing in the Medical and the Health Department of the Respondent No.1. But the Respondent No.2 passed the impugned orders rejecting the claim of the petitioners and no orders have been passed by the Respondent No.1/ Government. It is his further contention that in terms of the orders passed by this Court in W.P.Nos.33041 of 2019 and batch dated 25.11.2019, the Respondent No.1 is also under obligation to consider the claim of the petitioners, but no such orders are passed by the Respondent No.1 pursuant to the order passed by this Court referred to above. He also further contended that the basis for the petitioners to claim for absorption of their services in the posts available under the control of the Respondent No.1 is the Government Order issued in G.O (Ms) No.335, Health and Family Welfare Department, dated 15.10.2008 wherein the Respondent No.1 absorbed the contract Laboratory Technicians, Laboratory Supervisors working in the revised National Tuberculosis Control Programme (hereinafter referred to as 'RNTCP' for short) on permanent basis.



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3. According to learned counsel for the petitioners, the said RTNCP is also a similar organization like the Respondent No.2/ Society. The services of the temporary employees working in RTNCP were absorbed in to the posts under the control of the Respondent No.1, taking into consideration the long continuance of the persons in RNTCP and the petitioners herein are also similarly situated like the beneficiaries under G.O (Ms) No.335 dated 15.05.2008. He also further contended that the Respondent No.1 also issued orders in G.O (Ms) No.132, Health and Family Welfare Department dated 27.04.2009 permitting the Respondent No.2/ Society to extend the benefit of regular time scale of pay to some of the employees, who were appointed and continuing in the Respondent No.2/ Society for long time. Thus, it is contended that the petitioners are also entitled for absorption of their services in the post of 'Laboratory Technician/ Laboratory Assistant, Grade II' existing under the control of the Respondent No.1

4. On the other hand, M/s.Sneha, learned Special Government Pleader for the Health and Family Welfare Department appearing for the Respondent No.1 contended that all the petitioners herein were appointed in the Respondent No.2/ Society, which has nothing to do with the Respondent No.1 therein and no budget is



allocated for the Respondent No.2/ Society by the Respondent No.1 and therefore, the question of absorbing the services of the petitioners by the Respondent No.1 does not arise. She also further contended that the petitioners herein were appointed on contractual basis for a period of one year and their services are being renewed from year to year with one day gap and there are no sanctioned posts for regularizing the services of the petitioners in the Respondent No.2/ Society. She also further contended that the posts of 'Laboratory Technician Grade II/ Laboratory Technician Grade III' in the Tamil Nadu Medical Sub-ordinate Services are governed by a set of Rules, wherein the method of the appointment, qualifications etc., were prescribed and any appointment to the said posts has to be made in accordance with the said Rules and hence, the question of regularizing the services of the petitioners, who are working under the Respondent No.2/ Society does not arise. She also further contended that the services of the petitioners can be continued so long as the need to continue the Respondent No.2/ Society exists and funds are allocated by the Government of India and the National AIDS Control Organization. Thus, it is contended that the question of absorbing or regularizing the services of the petitioners on permanent basis cannot be considered.

5. M/s.Niraimathi, learned Standing Counsel appearing for the Respondent



No.2/ Society also reiterated the contentions raised by the learned Special Government Pleader for the Health and Family Welfare Department .

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6. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

7. It is not in dispute that the petitioners approached this Court on two earlier occasions and this Court by an order dated 25.11.2019 in W.P.No.33041 of 2019 and batch directed consideration of the individual representations dated 24.10.2019 submitted by the petitioners. The respondents in the said batch of Writ Petitions are Respondents 1 to 3 herein. Though Respondent No.2 passed the impugned orders dated 07.02.2020 rejecting the claim of the petitioners, there is nothing on record to show that the Respondent No.1 has considered the cases of the petitioners for their absorption/ regularization as directed by this Court by order dated 25.11.2019. The said order dated 25.11.2019 was passed after hearing the counsel appearing for the Respondents 1 to 3 herein and the said order has undisputedly become final. In such a situation, in terms of the said order, the Respondent No.1 is equally under obligation to consider the representation dated 24.10.2019 submitted by the



petitioners claiming for absorption/ regularization. But, admittedly, neither there is any such consideration nor any order passed by the Respondent No.1 as on date.

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8. In the light of the above, the claim of the petitioners is for absorption in the post of 'Laboratory Technician/ Laboratory Assistant, Grade II' is under the control of the Respondent No.1 herein, this Court is of the considered view that it is for Respondent No.1, and rather obligatory on the part of the Respondent No.1 to consider the claim of the petitioners for absorption/ regularization, in the teeth of the order dated 25.11.2009.

9. At this stage, it would be relevant to refer to the Government Order relied upon by the learned counsel for the petitioners in G.O (Ms) No.335, Health and Family Welfare Department, dated 15.10.2008. The Respondent No.1 having considered the said claim of the temporary employees working in RNTCP, absorbed their services on completion of 5 years of service though they were also appointed in a different organization sponsored by the Government of India and are not the employees appointed by the State Government or paid from the State funds. The relevant paragraphs, viz., Paragraph Nos.5 and 6 of the said Government Order reads as under:-



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Government Order after verifying their educational qualification in the existing Lab Technician Grade-III vacancies. If any relaxation of rules is Involved in any case, such candidates may be appointed on temporary basis and then proposals be sent to the Government for relaxation of rules. The State T.B. Officer is directed to appoint the outsourcing Lab Technicians working in the Government Hospitals, Medical College Hospitals, and Primary Health Centre in the resultant contract Lab Technician and Lab Supervisor vacancies in the programme who possess Certificate in the Medical Lab Technology issued by the Director of Medical Education as per their Employment Exchange Seniority. ”

So also, the services of some of the employees appointed in the Respondent No.2/ Society herein were permitted to be extended the benefit of time scale of pay through its order G.O (Ms) No.132, Health and Family Department dated 27.04.2009.

10. The law with regard to absorption, regularization etc., of the persons appointed on temporary or on consolidated pay etc., have fallen for consideration before the Hon'ble Apex Court in the case of “**Secretary, State of Karnataka and Others -vs- Uma Devi**” reported in **2006 (4) SCC 1** and a learned Single Judge of



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this Court having taken note of the said decision of the Hon'ble Apex Court in *Uma Devi's* case also passed orders in W.P.No.21440 of 2015 and batch dated 19.02.2021. The law in this regard is now well settled and the entitlement or dis-entitlement of the petitioners for regularization/ absorption is a matter to be considered by the respondents as a matter of policy and no mandamus can be issued directing the regularization/ absorption of the services of the petitioners by this Court in exercise of its powers under Article 226 of the Constitution of India, in the absence of any scheme providing for such regularization.

11. Then, coming to the objections raised by learned counsel appearing for the Respondent No.2 on the maintainability of the present Writ Petitions by placing reliance on a decision of a learned Division Bench of this Court in W.A.No.2412 of 2019 dated 02.01.2024 is concerned, this Court does not see any impediment to dispose of this batch of Writ Petitions by virtue of the above referred order. Firstly for the reason that the main grievance of the petitioners in these Writ Petitions is against the Respondent No.1 and secondly, on the ground that the Respondent No.2/ Society though is a Society registered under the Tamil Nadu Societies Registration Act, 1975, the same is fully funded by the National AIDS Control Organization, which is a body working under the Ministry of Health and Family Welfare of the



Government of India. The fact that the Respondent No.2 is fully funded by the Government of India is not in dispute and also it is not in dispute that the Respondent No.2/ Society is manned by the officials of the Respondent No.1 and the same is controlled by the Health and Family Welfare Department of the Government of Tamil Nadu.

12. In this regard, it will be relevant to extract Paragraph No.4 of the counter-affidavit filed by the Respondent No.1 which reads as under:-

“4. With regard to the averments made in para 3 of the affidavit, it is submitted that the 2nd respondent Society Tamil Nadu State AIDS Control Society herein is an independent and autonomous body, registered under the Tamil Nadu Societies Registration Act 1975 vide Registration No. 167 of 1994 with an objective to prevent and control HIV / AIDS and to provide care, support and treatment to People Living with HIV/AIDS (PLHAS). The Society functions under the regulatory control of the Health and Family Welfare Department of the Government of Tamil Nadu with the funds dispersed from National AIDS Control Organisation (NACO) based in New Delhi. This Society would cease to function when the cause for which it is formed is accomplished or on stoppage of funds are made available by NACO. The



Respondent Society is not included in the Annual Budget Plan of the State Government. The 2nd respondent Society has also its own service rules and hence the Government statutory rules are not applicable to it. The contract employees are governed by the Contract Service Agreement. In W.P. No. 11672 of 2009 filed against the Respondent Society the Hon'ble High Court of Madras held on 25.11.2009 that the Writ Petition against the Society is not maintainable and the same has been upheld and confirmed by the Division Bench in W.A. No. 1895 / 2009 by its order dated 19.10.2010. Hence, the above writ petition is not maintainable and the same is liable to be dismissed in limine.”

13. This Court has thoroughly gone through the order passed by the learned Division Bench in W.A.No.2412 of 2019 dated 02.01.2024 and is of the considered view that the conclusion arrived at in the said decision holding that the Writ Petition under Article 226 of the Constitution of India is not maintainable against the Respondent No.2 is contrary to the law laid down by a Constitution Bench of the Hon'ble Apex Court in the case of “***Ajay Hasia and others -vs- Khalid Mujib Sehravardi and others***” reported in **AIR 1981 SC 487**, wherein the Hon'ble Apex Court held as under:-

“The tests for determining as to when a corporation



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can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case [(1979) 3 SCC 489] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression “other authorities”, it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case [(1979) 3 SCC 489] as follows:

“(1)One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2)Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the



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corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) ‘Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference’ of the corporation being an instrumentality or agency of Government.”

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case [(1979) 3 SCC 489] , be an “authority” and, therefore, ‘State’ within the meaning of the expression in Article 12.

10. We find that the same view has been taken by Chinnappa Reddy, J. in a subsequent decision of this Court in the U.P. Warehousing Corporation v. Vijay Narayan [(1980) 3 SCC 459 : 1980 SCC (L&S) 453] and the observations made by the learned Judge in that case strongly



reinforced the view we are taking particularly in the matrix of our constitutional system."

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14. In view of the same, the Respondent No.2/ Society satisfies most of the criteria laid down by the Hon'ble Apex Court and the same would definitely fall within the meaning of an authority under Article 12 of the Constitution of India. The mere fact that the Respondent No.2 was registered under the Tamil Nadu Societies Registration Act, 1975 and therefore, it does not satisfy the requirement does not fall within the meaning of Article 12 cannot be accepted.

15. In the light of the above, with respect, this Court is unable to agree with the view taken by learned Division Bench of this Court in W.A.No.2412 of 2019 dated 02.01.2024 as the learned Division Bench has not taken note of the fact that the Respondent No.2 is fully funded by the Government of India and law laid down in *Ajay's case* was not taken into consideration. This Court is inclined to follow the decision of the Hon'ble Apex Court in the case of *Ajay Hasia's* case and accordingly, conclude that the writ petitions under Article 226 of the Constitution of India are very much maintainable against the Respondent No.2/ Society.

16. In the light of the above, all the Writ Petitions are disposed of permitting



the petitioners to submit a fresh individual representation to the Respondent No.1 through the Respondent No.2 within a period of 4 weeks from the date of receipt of a copy of this order and on submission of such a representation, the Respondent No.2 shall forward the same to the Respondent No.1 with its remarks/ observations within a further period of eight weeks. On receipt of the such representation from the Respondent No.2, the Respondent No.1 shall consider the same and pass appropriate orders in accordance with a period of three months from the date on receipt of the same from the Respondent No.2.

17. Accordingly, all the Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions, if any shall stand closed.

03.07.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary to Government of Tamil Nadu,
Department of Health and Family Welfare,
Fort St. George, Chennai – 600 009.
2. The Project Director, Tamil Nadu State AIDS Control Society,
417, Pantheon Road, Egmore, Chennai – 600 008.



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3. The Chairman,
Medical Services Recruitment Board,
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MUMMINENI SUDHEER KUMAR, J.

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