



W.P.Nos.22328 of 2022, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.22328, 22351, 22353, 22356, 22357, 28836 & 30111 of 2022
and WMP.Nos.21365, 21368, 21390, 21391, 21401, 21402, 21404,
21406, 21395, 21396, 28127, 28136 & 29542 of 2022

WP.No.22328 of 2022

M.Karuthapandi

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep. By its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-9
- 2.The Director of Public Health & Preventive Medicine,
O/o. the Public Health and Preventive Medicine,
DMS Compound, Teynampet,
Chennai-6
- 3.The Deputy Director of Health Services,
O/o. the Deputy Directorate of Health Services,
Thiruvannamalai,
Thiruvannamalai District
- 4.The Block Medical Officers,
Kalasapakkam Block,
Thiruvannamalai District

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st Respondent vide his proceedings in G.O.Ms.No.25 Health and Family welfare (C2) Department dated 13.01.2022 and the consequential impugned order passed by the 3rd respondent vide his proceedings in K. Dis.No.7270 / A6/2022 dated 30.06.2022 and quash the same as illegal insofar as giving regularization to the petitioner with effect from 13.01.2022 is concerned and consequentially to direct the respondents to regularize the petitioner's service w.e.f. the date of his initial appointment i.e. 29.09.2008 in the light of the order made in W.A.No.139 of 2008 dated 30.04.2008 on the file of the Principal Seat of this Court.

For Petitioner : Mr.S.Nambi Arooran
for M/s.Ajmal Associates

For Respondents : Mrs.M.Sneha,
Special Counsel for Health Department

COMMON ORDER

These writ petitions have been filed challenging the order passed by the first respondent in G.O.Ms.No.25 Health and Family Welfare (C2) Department dated 13.01.2022 and the consequential orders passed by the third respondent insofar as regularising the



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service of the petitioners with effect from 13.01.2022 instead of from the date of initial appointment.

2. The petitioners are qualified with two years Diploma in Optometry from Regional Institute of Ophthalmology, Government Ophthalmic Hospital, Egmore, Chennai and they are qualified to the post of Ophthalmic Assistant. The qualification for the post of Ophthalmic Assistant is two years Ophthalmic Assistant Course and it was stopped by the Government. However, the Government order in GO.Ms.No.455 Health and Family Welfare Department dated 13.04.1993 was issued whereby private institutions were given permission to offer Ophthalmic Assistant Certificate Course. Since there were shortage of candidates for the post of Ophthalmic Assistant, the Government had given three months additional training i.e. Condensed Para Medical Ophthalmic Assistant Certificate Course (hereinafter called as 'condensed certificate course') to the persons qualified with Diploma in Optometry from Government Institutions for



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appointment to the post of Ophthalmic Assistant vide GO.Ms.No.662 Health and Family Welfare Department dated 09.12.1998. Accordingly, the Special Rules was amended to that effect that. Aggrieved by the same, the persons who completed the condensed certificate course from the private institutions filed application before the Tamilnadu Administrative Tribunal in OA.No.7723 of 1999 for direction to appoint them as Ophthalmic Assistant in Government Primary Health Centres. Simultaneously, the persons who had completed the diploma course and had undergone three months training also filed application before the Tamilnadu Administrative Tribunal in OA.No.7965 of 2001 for direction to appoint them as Ophthalmic Assistant as they are senior to those qualified from private institutions. The Tribunal passed common order dated 30.04.2002 that the persons qualified from Government Institutions should be given preference for appointment to the post of Ophthalmic Assistant. Further, the persons who completed course from the private institutions, may be considered after suitable relaxation of rules.



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2.1 Though the petitioners had completed their diploma course and had undergone three months condensed certificate course, they were not issued any appointment order in respect of the post of Ophthalmic Assistant. But the similarly placed other 28 persons were given appointment orders and their services were also regularised in the post of Ophthalmic Assistant. While being so, the Government passed order in GO.Ms.No.1127 Health and Family Welfare (C2) Department dated 30.10.2006 thereby permitted the second respondent to appoint the 10 persons who completed Ophthalmic Assistant Certificate Course from private institutions and ordered to relax Rule 5(b) of the Ad hoc Rules for the post of Ophthalmic Assistant. Therefore, it was challenged before this Court in WP.No.8285 of 2007 and this Court by order dated 12.12.2007 quashed the said order. Aggrieved by the same, writ appeal was filed in WA.No.139 of 2008 and the same was also dismissed by an order dated 30.04.2008. Subsequently the petitioners filed writ petitions seeking direction to



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appoint them in the post of Ophthalmic Assistant in the light of the order passed by the Hon'ble Division Bench of this Court in WA.No.139 of 2008 dated 30.04.2008.

2.2 Accordingly, the petitioners were appointed as Ophthalmic Assistants in the year 2008. However, their services were not regularised and as such they repeatedly submitted representations. Finally by GO.Ms.No.25 Health and Family Welfare (C2) Department dated 13.01.2022, it was directed to regularise the service of 29 Ophthalmic Assistants qualified from both private and Government institutions including the petitioners with monetary benefits from the date of issuance of the said order by suitable relaxation of the Rules.

3. The learned counsel appearing for the petitioners would submit that the petitioners were appointed only after the direction issued by this Court and they did not enter the said post through back door entry. They were fully qualified to be appointed in the post of



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Ophthalmic Assistant. In fact, they completed their diploma course in Government institutions and had undergone three months condensed certificate course as contemplated in the Ad hoc Rules for the post of Ophthalmic Assistant. Therefore, they ought to have been regularised from the date of their initial appointment and not from the date of the Government order in GO.Ms.No.25 Health and Family Welfare (C2) Department dated 13.01.2022.

4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. On perusal of the counter filed by respondents 1 to 3 and on hearing the submissions of the learned Special Counsel for Health Department revealed that the post of Paramedical Ophthalmic Assistant is classified under Tamilnadu Medical Subordinate Services. The Ad hoc Rules for the said post was issued in GO.Ms.No.2484 Health, Indian Medicine and Family Welfare Department dated 22.12.1988,



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which is extracted hereunder:

2. *Constitution - The post shall constitute a separate category said Branch of the said service.*

3. *Appointment.- Appointment to the post shall be made follows:*

- i. by direct recruitment; or*
- ii. by transfer from any other class or category; or*
- iii. by recruitment by transfer from any other service.*

4. *Appointing authority. The appointing authority for the post shall be the Heads of Medical Institutions concerned not below the rank of a Civil Surgeon.*

5. *Qualifications. a) Age. No person shall be eligible appointment to the recruitment, if he has completed or will complete the age of twenty eight on the first day of July of the year in which the selection for appointment is made.*

b) Other Qualifications. No person shall be eligible for appointment to the post unless he has passed the Ophthalmic Assistant Course conducted by the State Medical Colleges.

6. *Probation.- Every person appointed to the post by direct recruitment shall from the date on which he joins duty be*



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on probation for a total period of two years on duty within a continuous period of three years.

7. Pay. There shall be paid to the holder of the post monthly pay calculated in the scale of Rs.350- 10- 420- 15- 600.

Provided that with effect on and from the 1st October 1984 the monthly pay shall be calculated in the scale of Rs.705- 20- 745- 25- 845- 35- 1230

6. Accordingly, the qualification to the said post is the Ophthalmic Assistant Course conducted by the State Medical Colleges. The petitioners had completed their Diploma in Optometry from Government institutions and thereafter, they had undergone the Ophthalmic Assistant Course for a period of three months. Therefore, they are eligible to be appointed to the post of Ophthalmic Assistant. Writ petition was filed in WP.No.8285 of 2007 challenging the GO(D).No.1127 Health and Family Welfare Department dated 30.10.2006 and to fill up the Ophthalmic Assistant post. This Court by order dated 12.12.2007, quashed the GO.(D).No.1127 dated 30.10.2006 and directed to appoint in the post of Ophthalmic Assistant



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by relaxing the Rules. It was challenged before the Hon'ble Division Bench of this Court in WA.No.139 of 2008 and by order dated 30.04.2008, direction was given that the persons who were already appointed to be placed over and above the petitioners in seniority.

7. Further, the learned Special Counsel appearing for the respondents specifically contended that the petitioners were not appointed with reference to the employment exchange and rule of reservation has not been followed. All the petitioners were appointed only on the directions issued by the Tamilnadu Administrative Tribunal as well as this Court.

8. If so, the respondents ought to have taken action as against the petitioners for their improper and illegal appointments. They were appointed in the year 2008. Even till today, no action has been taken as against the petitioners for their improper appointments. In fact, their services were regularised and they have been brought into time



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scale of pay from 13.01.2022. Therefore, the only issue in these writ petitions is that whether the petitioners are entitled to be regularised from the date of initial appointment.

9. Once the Government decided to regularise the service of the petitioners with monetary benefits on the date of issuance of Government order by relaxing Rule 3 (method of appointment), Rule 5(a) (age), Rule 5(b)(educational qualification) of the Ad hoc Rules for the post of Ophthalmic Assistant and Section 27 of Tamilnadu Government Servants (Condition of Services) Act, 2016, their services are entitled to be regularised from the date of their initial appointment.

10. Admittedly all the petitioners are qualified with required educational qualification for appointment to the post of Ophthalmic Assistant. They had completed their Diploma in Optometry from the Regional Institute of Ophthalmology, Government Ophthalmic Hospital, Egmore, Chennai and also had undergone three months condensed



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certificate course. So far age is concerned, they were below 28 years at the time of their appointment. When the petitioners were appointed in pursuant to the order passed by this Court as well as the Tribunal, it does not mean that their entry into service is backdoor. In fact the orders passed by the Tribunal as well as this Court had arisen on the mistake committed by the Government by giving appointments to the persons qualified from the private institutions in spite of the fact that as per the rules existed at that time, only the persons who have qualified from Government institutions were eligible to be posted as Ophthalmic Assistant. Therefore, the petitioners are fully qualified and eligible to be appointed as Ophthalmic Assistant. If the Government had appointed them already as Ophthalmic Assistant, their service ought to have been regularised by considering their employment exchange seniority.

11. That apart, immediately after their appointment, they have been allotted contributory pension scheme account number and contributions are deducted from their salary. Further, from the date of



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their appointment, they are rendering service continuously without any break. When the similarly placed persons who completed the diploma course from the Government institutions and had undergone condensed certificate course, were appointed as Ophthalmic Assistant and their services were already regularised from the date of their initial appointment, therefore the service of the petitioners regularising only from 13.01.2022 is clear violation of Articles 14 and 16 (1) of the Constitution of India. The service which was already rendered by the petitioners cannot be thrown out simply without regularising their service from the date of initial appointment.

12. In view of the above, the impugned order issued by the first respondent in G.O.Ms.No.25 Health and Family welfare (C2) Department dated 13.01.2022 is quashed insofar as giving regularisation to the petitioners with effect from 13.01.2022. The third respondent is directed to regularize the petitioners' services with effect from the date of their initial appointment in the light of the order of this



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Court passed in WA.No.139 of 2008 dated 30.04.2008 within a period of eight weeks from the date of receipt of copy of this order.

13. With the above direction, all the writ petitions are allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

23.07.2024

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Principal Secretary to Government,
The State of Tamilnadu,
Health and Family Welfare Department,
Secretariat, Chennai-9
- 2.The Director of Public Health & Preventive Medicine,
O/o. the Public Health and Preventive Medicine,
DMS Compound, Teynampet,
Chennai-6
- 3.The Deputy Director of Health Services,
O/o. the Deputy Directorate of Health Services,
Thiruvannamalai,
Thiruvannamalai District
- 4.The Block Medical Officers,
Kalasapakkam Block,
Thiruvannamalai District



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G.K.ILANTHIRAIYAN, J.

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