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W.P.No.22439 of 2022 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.22439, 25150, 25152, 25154,
25155, 30314, 30319 & 30324 of 2022

and

W.M.P.Nos.21486, 24104, 24105, 24107,
24108, 29759, 29762 & 29766 of 2022

W.P.No.22439 of 2022:-

K.Gopinathan

... Petitioner

Vs

1. The Principal Secretary to Government
Chairman, Core Committee,
Health & Family Welfare Department,
Fort St. George,
Chennai – 600 009.
2. The Director of Medical &
Rural Health Services,
DMS Campus,
Teynampet,
Chennai – 600 006.
3. The Dean,
Rajiv Gandhi Government General Hospital,
Poonamallee High Road,
Chennai – 600 003.



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4. The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Buildings,
No.359, Anna Saalai,
Teynampet,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order issued by the second respondent in proceedings Ref.No.647/N1/2/2022 dated 11.05.2022 & quash the same and consequently direct the respondents to absorb the petitioner as Government Nurse on regular time scale of pay with effect from the date of his initial appointment as Nurse on 23.01.2017 with all consequential service and monetary benefits.

In all W.Ps.

For Petitioner : Mr.P.Prem Narayan
For Respondents
For R1 to R3 : Mr.M.Bindran
Additional Government Pleader
For R4 : Mr.L.Murugavelu
Standing Counsel.

COMMON ORDER

These writ petitions have been filed as against the orders dated 11.05.2022 passed by the second respondent thereby, rejected the request made by the petitioners seeking regularization of their service in regular time scale of pay with effect from their date of initial appointment as Nurse.



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2. The issues involved in all the writ petitions are similar in nature and therefore, this Court is inclined to pass common order in all the writ petitions.

3. The Medical Recruitment Board issued notification dated 19.04.2015, thereby invited applications for recruitment to 7243 posts of Nurses on contract and consolidated pay basis. Out of 7243 posts, 6792 posts were reserved for women. The requisite qualification is a degree or diploma in Nursing. The petitioners were qualified to apply for the said post and they secured good marks in the written examination. Thereafter, they were selected and appointed as Nurse on contract and consolidated salary. Further the additional vacancies were also created due to non joining of the selected candidates and due to the sanction of fresh posts of contract nurses.

4. As per the appointment order, the petitioners were joined in their respective hospitals during the year 2016. For the past eight years, they were working as Nurse on contract basis and also on consolidated salary. Therefore, the petitioners made request for regularization of their



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service on regular time scale of pay with effect from their initial appointment. The said request was not considered and as such the petitioners were constrained to approach this Court and this Court directed the respondents to consider the representations submitted by the petitioners and pass appropriate orders on its own merits and in accordance with law. Accordingly, the second respondent considered the representations submitted by the petitioners and rejected the request made by them stating that the petitioners will be regularized based on the regular available vacancies in a phased manner and absorbed them into regular time scale of pay strictly based on seniority and eligibility. Aggrieved by the same, the petitioners filed the present writ petitions.

5. The learned counsel appearing for the petitioners submitted that for the past eight years, the petitioners are working as Nurse without time scale of pay and without regularization of their post. Though they were appointed on contract basis and on consolidated salary, they are entitled to be absorbed in the time scale of pay by regularization of service, since they were appointed through an open competitive examination conducted by the fourth respondent. Further the petitioners were appointed in the sanctioned vacancies. The post of Nurse falls under



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the Tamil Nadu Medical Subordinate Services. They also hold necessary qualification for appointment to the post of Nurse. In fact, they were recruited in the regular selection process into the sanctioned post. Therefore, there is no illegality in the appointment and they were entitled to regularization in the post of regular government Nurse on regular time scale of pay.

5.1. In fact, the notification itself stated that the recruitees will be absorbed into regular time scale of pay after completion of a minimum of two years excluding leave period (strictly based on seniority and eligibility). He further submitted that the Hon'ble Division Bench of this Court in W.P.No.31213 of 2017 by an interim order dated 11.06.2018, directed the authorities to consider the regularization of contract Nurse subject to the existing vacancies.

6. The second respondent filed counter and the learned Additional Government Pleader appearing for the respondents submitted that the working nature of the petitioners, who were appointed on contract basis and on consolidated salary, is completely different from the regularly appointed Nurse on regular time scale of pay. Though the



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petitioners were recruited through recruitment process, they were appointed on contract basis and on consolidated salary. Though it was stated that their services will be regularised after completion of two years of service, it depends upon the availability of vacancies. Therefore, whenever the petitioners are coming under the zone of consideration, they will be considered for regularization on regular time scale of pay. Therefore, there is absolutely no infirmity or illegality in the order passed by the second respondent and prayed for dismissal of all the writ petitions.

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

8. Admittedly the petitioners were appointed on contract basis and on consolidated salary, but they were recruited by the Medical Service Recruitment Board, as per the notification dated 19.04.2015. After qualifying in the written examination, they were called for interview. After interview, they were selected to the post of Nurse on contract basis and on consolidated salary. As per the notification, the recruitees will be absorbed into regular time scale of pay, after completion



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of a minimum period of two years excluding leave period, subject to availability of vacancies strictly based on seniority and eligibility. Even after completion of two years, the petitioners' service was not regularized and their consolidated pay is not yet changed into regular scale of pay. For the past eight years, they are receiving the consolidated salary with a minimum increase every year.

9. The Hon'ble Division Bench of this Court in W.P.No.31213 of 2017 by an order dated 02.07.2018, directed the contract nurses, who are aggrieved by the decision taken by the Core Committee, to approach this Court in accordance with law. The issue arose in the said case is in respect of the enhancement of salary to the contract Nurses, wherein the Hon'ble Division Bench observed that the exercise of scrutinizing the duties performed by the contract Nurses, to ascertain whether they perform the same duties as regular Government Nurses appointed in Government hospitals and are thus entitled to the same pay and emoluments, has to be done on a case to case basis, and such exercise shall be completed by the Core Committee within a period of six months. However, no report has been filed by the Core Committee so far.



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10. However, the issue of enhanced salary has nothing to do with the present writ petition. The present writ petitions have been filed challenging the rejection of the request made by the petitioners seeking regularization of their service from the date of their initial appointment and seeking regular time scale of pay. The Hon'ble Supreme Court of India in ***SLP(C) No.22241-42 of 2016*** by an order dated **30.01.2024** in the case of ***Vinod Kumar & ors Vs. Union of India & ors*** held as follows :-

“7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128: AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409: (1972) 2 SCR 799]



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and B.N. Nagarajan [(1979) 4 SCC 507: 1980 SCC (L&S) 4: (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or



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making permanent, those not duly appointed as per the constitutional scheme."

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations."

The issue in the above case was that regularization of Accounts Clerk to Divisional Railway Manager. They were also appointed temporary for a specific scheme. Therefore, their request for regularization or absorption into permanent post was rejected. Thus, it is clear that non regularization of the petitioners and their continuous service akin to permanent employees runs counter to the principles of equity, fairness and the intent behind employment regulations.

11. On perusal of the impugned order revealed that the petitioners whenever come to the zone of consideration for regularization, their case will be considered for regularization in regular time scale of



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pay. Admittedly, the petitioners are working as Nurse for the past eight years on consolidated salary. Therefore, the impugned order cannot be sustained and liable to be quashed.

12. Accordingly, the orders passed by the second respondent dated 11.05.2022 are hereby quashed. The second respondent is directed to regularise the petitioner in the post of Nurse and absorb them into regular time scale of pay with effect from the date of their initial appointment as Nurse with all consequential service benefits, based on their seniority, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that the petitioners are not entitled for monetary benefits from the date of their appointment till the date of their regularization.

13. With the above directions, all the Writ Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.



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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

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