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W.P.No.26856 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.26856 of 2024
WMP No.29373 of 2024

Manikandan
Petitioner

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Vs.

- 1.The Secretary to Government of Tamilnadu,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.
2. The Director,
Directorate of Medical Education,
Poonamallee High Road,
Chennai 600 010
- 3.The Director of Public Health and Preventive Medicines,
DMS Campus, Teynampet,
Chennai – 600 006.
- 4.The Director of Medical and Rural Health Services,
DMS Complex,
Teynampet, Chennai – 600 006.
- 5.The Chairman
Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
358, Anna Salai, Teynampet,
Chennai – 600 006.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to regularize the service of the petitioner against the regular vacancies of Pharmacist in accordance with G.O.Ms.No.335 Health and Family Welfare (C1) Department dated 12.11.2015 before recruiting fresh candidates from the open market.

For petitioner	:	Mr.T.Padmanabhan
For RR 1 to 4	:	Mr.M.Sneha Special counsel
For R5	:	Mr.L.Murugavelu Standing Counsel

ORDER

This writ petition has been filed seeking issuance of a writ of mandamus directing the respondents to regularize the services of the petitioner in regular vacancies in the post of Pharmacist as per G.O.Ms.335, Health and Family Welfare (C1) Department, dated 12.11.2015.



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2. Heard the learned counsel for the petitioner and the learned Special Counsel for respondents 1 to 4 and the learned Standing Counsel for the 5th respondent.

3. The case of petitioner is that the petitioner was appointed as pharmacists under the RBSK scheme with consolidated salary. He also discharged his duties during the pandemic period. The Government issued G.O.Ms.335, Health and Family Welfare (C1) Department, dated 12.11.2015 whereby the pharmacists, who were appointed under the RBSK scheme, were sought to be absorbed in the regular vacancies in the Primary Health Centers after completion of 2 years of service on consolidated pay. The petitioner has made a request to the respondents in this regard. Since the request made by the petitioner was not considered, the present writ petition has been filed before this Court.

4. The case in hand is covered by the earlier order passed by this Court in a batch of writ petitions in W.P.No.14122 of 2024 *etc.* The relevant portions in the order are extracted hereunder:

"3. The Government of India initiated a new programme



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called Rashtriya Bal Swasthya Karyakram (hereinafter referred to as “RBSK”) Child Health Screening and Early Intervention Service Program under National Rural Health Mission (hereinafter referred to as “NRHM”). This scheme itself is meant for early detection and management of defects of birth, diseases in children, deficiency conditions, development delays including disabilities of children. For the purpose of implementation of RBSK in Tamil Nadu and sanction of manpower to the programme the order was passed in G.O.Ms.No.123, dated 09.05.2014. As per the Government order, the Mission Director, State Health Society was also permitted to appoint the persons on contract basis from the NRHM funds to the State Unit, DEIC and Block Level Mobile Health Teams. Under the level of State Unit one post for Consultant-I, one post for Consultant-II, one post for System Analyst, one post for Data Entry Operator were sanctioned. Under the level of DEIC 9, categories were created (i) 31 posts for Physiotherapist (ii) 31 posts for Audiologist/Speech Therapist (iii) 31 posts for Psychologist (iv) 31 posts for Optometrist (v) 31 posts for Early intervention cum special Educator cum Social Worker (vi) 62 posts for Lab Technician (vii) 31 Posts for Dental Technician (viii) 31 posts for System Analyst (ix) 31 pots for Data Entry Operator were sanctioned. Under the level of Block Mobile Health Team two categories 770 posts for Staff Nurse and 770 posts for Pharmacist were sanctioned. The appointment to the post of Pharmacist is through contract basis at the rate of Rs.10,000/- per month as consolidated pay.

4. As per the Government order, the operationalization of the RBSK programme there will be 385 blocks in the entire State of Tamil Nadu and each block consist of two Pharmacists. The petitioners acquired the qualification in Diploma in Pharmacy and they were appointed as Pharmacists under RBSK scheme with consolidated salary of Rs.10,000/- per month. In fact, they were also deputed for COVID-19 duty in their respective blocks. They discharged their duties during pandemic period and they were recognized as front line workers during COVID-19. Therefore, their consolidated pay was increased to Rs.15,000/-. Now, they had completed eight years of service as Pharmacist from the date of their appointment.



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5. As per G.O.Ms.No.335, Health and Family Welfare (C1) Department, dated 12.11.2015, the Pharmacist appointed under RBSK scheme would be absorbed against regular vacancies in the Primary Health Centers, after completion of two years of service on consolidated pay. It is also provided that even if there was no vacancy, they would be continued on consolidated pay till such time vacancies arise in the Primary Health Centers after which were directed to be appointed in regular time scale of pay. While being so, in the year 2022, the Medical Service Recruitment Board issued notification for filling up the 889 vacancies for the post of Pharmacists, without regularising the petitioners as Pharmacist as per G.O.Ms.No.335 dated 12.11.2015. Therefore, the petitioners submitted representation to regularise their service in the regular vacancies of Pharmacist.

6. The relevant portion of the Government Order in G.O.Ms.No.335, Health and Family Welfare (C1) Department, dated 12.11.2015, reads as follows :-

“3. After careful examination, the Government have decided to accept the proposal of the Director of Public Health and Preventive Medicine and accord permission to Director of Public Health and preventive Medicine to fill up 770 post of Pharmacists sanctioned under Rashtriya Bal Swasthya Karyakram (RBSK) Scheme on consolidated pay of Rs.10,000/- per month with the following conditions:-

(i). The recruitment process will be done through the Medical Services Recruitment Board as per the rules of procedure followed by the Board for recruitment.

(ii). The candidates who are appointed under the Rashtriya Bal Swasthya Karyakram (RBSK) Scheme would be absorbed to the regular time scale vacancies in Primary Health Center after the completion of 2 years of service on Consolidated Pay of Rs.10,000/- per month as and when the vacancy arises in the regular time scale. If there is no vacancy even after the completion of two years, they will continue to be on consolidated pay till such time vacancy arises in Primary Health Center and they should not claim to absorb them into regular time scale immediately after completion of two years. They



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should be absorbed only as and when the regular time scale vacancies arises in the posts existing in Government departments.

(iii). An individual who moves to the regular scale pay post in primary Health Centre before completing the 2 years shall be paid consolidated pay only till the prescribed period of 2 years.

(iv). The movement will be based on seniority to the Primary Health Centre from the RBSK scheme. After filling up the 770 post of Pharmacists, the mode of entry to the post of Pharmacists in Primary Health Center shall be made to contract post only through Block Level Mobile School Health Team or any other scheme like Urban Primary Health Centre in which contract posts are sanctioned.

(v). The expenditure for contract pay will be met from the NRHM funds.”

7. The learned counsel for the respondents 1, 3 and 4 filed counter and submitted that the State Health Society is permitted to launch and implement the RBSK scheme in all the 31 District of the State except Chennai District vide G.O.Ms.No.123, Health and Family Welfare (EAP-II/1) Department, dated 09.05.2014. Accordingly, sanction has been accorded for creation of 770 posts of Medical Officers in time scale of pay by direct recruitment through Director of Medical and Rural Health Services as per the seniority list or through out-sourcing from the NRHM funds under contract salary of Rs.10,000/- per month. Accordingly, all the Deputy Directors of Health Services were requested to take action to outsource Pharmacists under RBSK scheme by strictly following the procedures laid down for appointment to the post of Pharmacist under NRHM. Accordingly, the petitioners were appointed on contract basis under consolidated salary of Rs.10,000/- per month.

8. The Government order says that the recruitment process will be done through the Medical Service Recruitment Board as per the rules of procedure followed by the Board for recruitment. Further, the counter doesn't say anything about the second limb of the Government order. Once again, this Court emphasized Clause



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II that the candidates who are appointed under RBSK scheme would be observed in the regular time scale vacancies in Primary Health Centers after completion of two years of service on consolidated pay of Rs.10,000/- per month and when the vacancy arises in the regular time scale. If there is no vacancy even after the completion of two years, they will continue to be on consolidated pay till such time vacancy arises in Primary Health Centers. Admittedly, there are vacancies and in pursuant to which, the Medical Service Recruitment Board issued notification of the year 2022 for filling up 990 vacancies for the post of Pharmacists.

9. Thus, it is clear that only after regularisation of the persons who were appointed under RBSK scheme, the other recruitments to be made. Further even as per the counter, there are more than 900 Pharmacist posts are vacant under various Primary, Secondary and Tertiary Care Institutions. Therefore, the selected candidates under the notification of the year 2022 issued by the Medical Service Recruitment Board filed implead petition and objected the direction sought for by the petitioners on the ground that already they were selected and also issued appointment orders. They are yet to join.

10. Considering the above facts and circumstances of the case, the respondents are directed to regularise the service of the petitioners in the regular vacancies in the post of Pharmacist as per the G.O.Ms.No.335, dated 12.11.2015 within a period of eight weeks from the date of receipt of a copy of this order, without disturbing the candidates who are selected as per the notification of the year 2022."

5.This writ petition is also allowed in the above terms since the claim made by the petitioner also falls under the same category. There shall be a direction to the respondents to regularize the services of the petitioner in the regular vacancies in the post of pharmacist as per G.O.Ms.335, Health and Family Welfare (C1) Department, dated



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12.11.2015 within a period of eight (8) weeks from the date of receipt of a copy of this order without disturbing the candidates, who were selected as per the notification of the year 2022. No costs. Consequently, the connected miscellaneous petition is closed.

18.09.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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N.ANAND VENKATESH, J.

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