



W.A(MD)No.711 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.02.2024

PRONOUNCED ON : 25.03.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.A(MD)No.711 of 2022
and
C.M.P(MD)No.5963 of 2022**

1.P.Chandrasekaran
2.M.Vignesh

... Appellants/Petitioners

vs.

1.Director of Public Health and Preventive Medicine,
D.M.S Complex,
Thenampet,
Chennai – 6.

2.Deputy Director of Health Service,
Sivakasi,
Virudhunagar District.

3.Block Medical Officer,
Jamin Kollamkondan,
Kizhavikulam,
Virudhunagar.

... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.03.2021 passed in W.P(MD)No.5417 of 2020, on the file of this Court.

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For Appellants : Mr.Raja.Karthikeyan
For Respondents : Mr.S.P.Maharajan
Special Government Pleader

JUDGMENT

D. KRISHNAKUMAR,J.

Assailing the order, dated 21.02.2022 passed by the learned Single Judge in W.P(MD)No.3254 of 2022, this Writ Appeal has been filed by the appellants / writ petitioners.

2.The brief facts leading to the filing of the Writ Appeal are as follows:

The appellants/writ petitioners were appointed as Multipurpose Health Workers (Male) / Sanitary Inspector Grade-II through outsourcing mode by the second respondent on 23.04.2020 and the first appellant was posted at Kilavikulam Primary Health Centre and the second appellant was posted at Sethur Primary Health Centre. Both of them were appointed on contract basis on certain terms and conditions. The appointments were made in order to meet out the emergency circumstances arose on account

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of COVID-19 pandemic situation. On expiry of the contract period, the writ petitioners were relieved, by order dated 19.11.2021 passed by the third respondent. Challenging the same, the writ petitioners have filed the Writ Petition.

3.The learned Single Judge, by order 21.02.2022, dismissed the Writ Petition, the relevant portion reads as follows:

'7.The principles to be followed in the matter of public appointments are that, all appointments are to be made strictly in accordance with the rules in force. Equal opportunity in public employment is the constitutional mandate. All recruitments are to be made through open competitive process providing opportunity to all the eligible candidates who are all aspiring to secure public employment. In the event of grant of irregular continuance of an employee in the name of daily wage or contract basis, the same would result in violation of Articles 14 and 16 of the Constitution of India. In such emergency circumstances, if the contract appointments are made, soon after the exigency disappeared, all such contract appointees must be discharged from service and the regular courses are to be filled up only in accordance with the recruitment rules in force.

8.The employees, who were appointed on daily wages basis, contract basis or consolidated pay, have no right to claim permanent absorption or regularizing their services in such capacity. The legal principles are settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi



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and others. Thus, the persons, who are temporarily appointed, must be discharged soon after the emergency circumstances disappeared or the period of contract expired. In the event of allowing such employees, unnecessarily scope is provided to them for the purpose of claiming regularization or permanent absorption. Thus, if the Authority is not discharging the contract employees after the expiry of the contract period, appropriate disciplinary actions are to be initiated against such authority who all are allowing such temporary employees to continue for an indefinite period. They are causing not only loss to the State but also committing an act of unconstitutionality, by depriving the right of eligible persons to participate in the process of recruitment under the constitutional scheme and in accordance with the rules in force. Thus, the Authorities Competent must be fixed with responsibility and accountability at the time of appointing the candidates on temporarily, daily wages basis, consolidated pay or contract basis. All such employments must be dispensed with, soon after the emergency disappears and their continuance if made in an irregular manner by the authorities, all such authorities must be prosecuted for committing an act of unconstitutionality and providing unnecessary scope to such employees to claim regularization and permanent absorption.

9. In the present case, admittedly, both the petitioners were appointed on contract basis. Further, the petitioners are not possessing the requisite educational qualification as contemplated under the rules. Therefore, they have no right to continue in the post and the respondents are bound to consider all such unqualified persons who are all continuing and initiate appropriate action to ensure that the regular post of Health Inspector Grade - II are filled up by following the recruitment rules and by providing equal opportunity to all the citizens,



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who are all longing to secure public employment through open competitive process. This being the principles to be followed, the writ petitioners have not established any right for their continuance. Thus, this Court do not find any infirmity in respect of the order impugned.

10. The Principal Secretary to Government, Health and Family Welfare Department, Government of Tamil Nadu, Fort St.George, Chennai - 600 009 has been suo moto impleaded as fourth respondent in this Writ Petition for the limited purpose of initiating appropriate actions in a uniform manner to deal with such contract employees across the State of Tamil Nadu.

11. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.'

Aggrieved over the same, the instant Writ Appeal has been filed by the appellants.

4.The learned counsel appearing for the appellants/writ petitioners would submit that the third respondent, without issuing any notice and without conducting any enquiry, has passed the impugned relieving order from the post of Multipurpose Health Worker (Male) / Sanitary Inspector Grade – II, which is in violation of the principles of natural justice. Further according to the appellants, the second respondent is the appointing authority, but the third respondent has passed the impugned order, who is



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not a competent authority. The second and third respondents failed to consider that the first respondent has issued the revised guidelines and post approval of training certificate as a one time measure, as the same was considered by this Court in W.P.No.2115 of 2016, dated 19.07.2017. The writ petitioners are having eligible qualification. Without calling for any explanation from the writ petitioners, the third respondent has passed the order impugned in the Writ Petition.

5.The learned counsel appearing for the appellants would further submit that the first appellant had obtained a Bachelor Degree in Chemistry and obtained Post Graduate Diploma in environmental sanitation science and the said course was approved by the Madurai Kamaraj University, which is equivalent to Multipurpose Health Worker (Male) training course approved by the Directorate of Public Health and Preventive Medicine. The second appellant had completed Post Graduate in Diploma at Gandhi Gramam University in the Month of May, 2019. Based on the abovesaid qualifications, the third respondent appointed the appellants as Multipurpose Health Worker (Male) / Sanitary Inspector Grade-II. However, all of a sudden, the third respondent relieved the appellants from service stating that they had not obtained post graduate degree from the recognized institution and not



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fulfilled the requisite educational qualification. In respect of the educational qualification, relaxation was given by the Government as one time measure and based on one time measure, the appellants were appointed in the year 2020. Therefore, the concessions must be extended and they may be permitted to continue in the said post of Health Inspector Grade – II and prayed for allowing the Writ Appeal.

6.The learned Special Government Pleader appearing for the respondents would submit that the appellants have not possessed the requisite educational qualification prescribed vide proceedings of the first respondent in R.No.26666/MP.1/S1/2020, dated 15.04.2020. Therefore, the claim of the appellants is liable to be rejected.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.Admittedly, the appellants were appointed as Multipurpose Health Workers (Male) / Sanitary Inspector Grade II through outsourcing mode by the second respondent on 23.04.2020 on certain terms and conditions. Asfar as the first appellant is concerned, he is not possessing the



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requisite educational qualification, as he has not studied Zoology or Botany in plus two, but he studied Computer Science. The second appellant is also not qualified, as he completed the Health Inspector Training after the cut-off date, ie., 13.04.2017. Therefore, both the appellants are not qualified for the post of Health Inspector Grade – II and furthermore, the appellants were initially appointed as contract employees in order to meet out the emergency circumstances arose on account of COVID-19 pandemic. Therefore, they have no right to continue in the post and as such, the impugned relieving orders issued are in accordance with the terms and conditions of the contract.

9.This Court in the case of ***the Secretary to Government for Women and Child Welfare Department, Puducherry Vs. S.Anbu in W.A.Nos.69 to 72 and 74 of 2019, dated 16.06.2023*** (in which, one of us was a member) has discussed in detail as to whether the respondents/writ petitioners, who are working as Temporary Daily Wage Employees for several years in the seventh respondent Commission in non-sanctioned posts, are entitled for regularization in the light of G.O.Ms.No.22, Personnel and Administrative Reforms dated 27.02.2009 and rejected the claim made by the respondents/writ petitioners for absorption.



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10. At this juncture, it would be relevant to refer the decision of the Honourable Supreme Court in ***Secretary to Government, School Education Department, Chennai vs. R. Govindaswamy and others [(2014) 4 SCC 769]*** wherein in Paragraph Nos. 7 & 8, it has been observed as follows:

'7. This Court in State of Rajasthan & Ors. vs. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

'8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to



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the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full



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time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.'

(Emphasis added)

11.As held by the Honourable Apex Court in **R.Govindaswamy's case** (supra) mere continuation of service by a temporary or daily wage employee would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily wage service for a long number of years will not entitle such employee to claim regularisation, if he is not working against a sanctioned post.

12.When a person enters a temporary employment or gets engagement as a contractual or casual workers and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made by following a proper procedure for selection. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. The State cannot constitutionally make such a promise.



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13.The learned Single Judge has also rightly observed in the order that both the appellants were appointed on contract basis. Further, they are not possessing the requisite educational qualification as contemplated under the Rules and therefore, they have no right to continue in the post and the Department are bound to consider all such unqualified persons who are all continuing and initiate appropriate action to ensure that the regular post of Health Inspector Grade – II are filled up by following the recruitment rules and by providing equal opportunity to all the citizens, who are all longing to secure public employment through open competitive process. This being the principles to be followed, the appellants have not established any right for their continuance in service. Thus, we are not inclined to interfere with the order passed by the Writ Court and the Writ Appeal is therefore liable to be dismissed.

14.In the result, the Writ Appeal fails and the same is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [R.V.,J.]
25.03.2024

NCC : Yes / No
Index : Yes / No
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To

1. Director of Public Health and Preventive Medicine,
D.M.S Complex,
Thenampet,
Chennai – 6.
2. Deputy Director of Health Service,
Sivakasi,
Virudhunagar District.
3. Block Medical Officer,
Jamin Kollamkondan,
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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

PRE-DELIVERY JUDGMNET MADE IN
W.A(MD)No.711 of 2022

DATED : 25.03.2024