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W.A.No.356 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.08.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN
W.A.No.356 of 2022

1. The State of Tamil Nadu,
represented by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-60 009.

2. The Director of Public Health and
Preventive Medicine,
Teynampet, Chennai-600 006

3. The Deputy Director,
Health Services, Salem,
Salem-636 001.

.... Appellants

Versus

M.Senthil Kumar

.... Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, praying
to set aside the order dated 05.10.2021 made in W.P.No.12643 of 2020.

For appellant(s): Mr.R.Neelagandan, AAG
assisted by
Mr.U.M.Ravichandra, Spl.GP



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For Respondent(s): Mr. V.Raghavachari, Sr. counsel ¹
for Mrs.V.Srimathi

JUDGMENT

(By J.Nisha Banu,J.)

This Writ Appeal has been directed against the order dated 05.10.2021 passed by a learned single Judge of this Court in W.P.No.12643 of 2020.

2. The brief facts, which led to the filing of the present appeal are as follows:

The respondent herein was engaged as a Driver on daily wage basis from 29.9.2009 in Mobile Medical Unit under National Health Mission Scheme at Government Primary Health Centre, Namagripet, Namakkal Unit District. According to the respondent, he was aged about 27 years when he came to be engaged in work on daily wage basis and the services of the similarly placed persons have been regularized by the 3rd appellant by virtue of G.O.Ms.No.70 dated 2002.2016, however, the service of the respondent was not regularized despite several representations, which prompted the respondent to approach this Court by filing a Writ Petition in W.P.No.29543



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of 2019, which came to be disposed of vide order, dated 16.10.2019 by this Court, directing the authority to pass appropriate orders in accordance with law. Pursuant to the same, the 3rd appellant herein, passed the order, dated 22.7.2020 impugned in the Writ Petition, declining to regularize the service of the respondent on the ground that he was age barred. Challenging the same, the respondent moved the Writ Petition and a learned single Judge of this Court, vide order, dated 05.10.2021, on consideration of the facts of the case, more particularly, the respondent has been working for quite a long time and on earlier occasion, this Court already passed orders, directing the authorities to consider the claim of the respondent by relaxing his if he is otherwise eligible and also on relying upon a decision of the Hon'ble Supreme Court in “*Sheo Narain Nagar Versus State of U.P.*” reported in (2018) 13 SCC 432, allowed the Writ Petition, directing the appellants herein to pass appropriate orders to regularise the service within a period of 90 days from the date of receipt of a copy of the order.

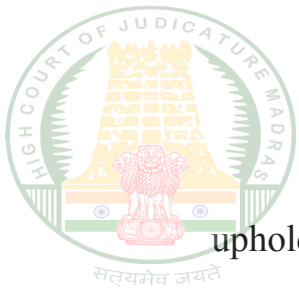
3. Questioning the same, the present Writ Appeal has been filed by the appellants.



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4. The learned Addl. Advocate General appearing for the appellants would contend that the respondent was engaged as a Driver only on daily wage basis as and when need arises under National Health Mission scheme and such engagement is not governed by any recruitment rules and by virtue of G.O.Ms.No.70, dated 20.02.2016, temporarily recruited persons were absorbed into regular time scale of pay, who were appointed by the District Collector/Project Director/Member Secretary by following the recruitment Rules in force and if the claim of the respondent is considered, it would dilute rules of recruitment and conditions of service. He would refer to a decision of the Hon'ble Supreme Court in ***“Uma Devi versus State of Karnataka”*** reported in (2006) 4 SCC 1 and submitted that ordinarily it is not proper for the Courts or Tribunals to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme. He would further submit that adherence to the rule of equality in public employment is a basic feature of the Constitution and since the rule of law is the core of the Constitution, a Court would certainly be disabled from passing an order



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upholding a violation of Article 14.

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5. He would further submit that pursuant to the directions of this Court in earlier Writ proceedings only, the appellants have rightly rejected the claim of the respondent, however, the learned Judge without considering the settled position, has erroneously directed the appellants to regularize the service of the respondent, which cannot be sustained and hence, he would urged this Court to set aside the order of the learned single Judge.

6. On the other hand, Mr.V.Raghavachari, learned Senior counsel appearing for the respondent would contend that the respondent all along has been working as a Driver temporarily for years together and though this Court directed to consider the claim of the respondent for regularization of his service, by the order dated 22.07.2020 impugned in the Writ Petition, the 3rd appellant rejected the claim on the ground that he was aged barred, but it is not in dispute that at the time when he was engaged as Driver, he was aged 27 years, the authority can very well relax the age limit. He would submit that having utilized the service of the respondent for years together,



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depriving him the status of regular employee is highly unjustified. He also pointed out that time and again the issue of regularization of the temporarily appointed persons has been dealt with by this Court in several writ petitions and directed the authorities to regularize the services of the persons, who had worked more than 10 years on temporary basis. He would refer a judgment passed by a Division Bench in W.A.No.s.391 of 2020, directing the Government to regularize the employees who are similarly placed as that of the respondent. He would also point out that the learned single Judge having followed the decision of the Hon'ble Supreme Court “*Sheo Narain Nagar Versus State of U.P.*,” reported in (2018) 13 SCC 432 only, allowed the Writ Petition, granting the relief as sought for by the respondent herein, which requires no interference. Therefore, the learned Senior counsel sought for dismissal of the Writ Appeal.

7. Heard the learned counsel for the appellant and the respondents and perused the entire materials available on record.

8. The facts are not in dispute between the parties, that the respondent



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has been engaged as a Driver on daily wage basis for years together and that though similarly placed persons were regularized, but the services of the respondent were not regularized. Nature of work of the respondent is perennial he has been engaged all along. The fact that, the respondent has been made to work continuously for years together even after the issuance of G.O.(Ms) No.74, shows that, there is need for regular employment and in fact, there is a regular post, but kept unfilled for a long time, which shows that the appellants have given a go-by to the old Government Order, i.e. G.O.(Ms) No.22, dated 28.02.2006. That being the case, the respondent who had been on the rolls ever since the date of entry, will have to be regularized in service. It is pertinent to state here that the appointment of the respondent is not by way of any illegal mode, but in other words, it can be said that his appointment can be construed, at the most, as irregular.

9. A Division Bench of this Court in the case of **T".Kingsly Thaya Singh and Others vs. The Chief Engineer General, Highways & Rural Works Department and Others [W.A.(MD)Nos.786 to 788 of 2019]** decided **on 17.09.2019**, interfered with the order of the learned Single Judge and directed the Government to regularize the services of the petitioners therein, by holding as under:



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"8. Be that as it may, we do not find any ground to take a different stand between the persons who were already granted the benefit and the appellants, as we are fully convinced that the directions issued in the earlier writ petitions and affirmed by the Division Bench would govern the present cases as well. However, we find that the order and direction issued in W.P. (MD) No. 8512 of 2014 dated 10.07.2015 in the case of V. Meenakshi Sundaram and others v. Secretary to Government, Highways Department and another would be a reasonable order as it takes care of the interest of the appellant employees as well as that of the respondent Government. This decision has been confirmed in W.A. (MD) No. 913 of 2015 dated 21.02.2017. The relevant portion of the judgment reads as follows:

"5. The learned Single Judge by order dated 10.07.2015, has allowed the Writ Petition, directing the appellants to regularize the services of the respondents from the date of the respondents approaching this Court in the earlier Writ Petition and affect monetary benefits with effect from 01.06.2015. In the said order, the learned Single Judge has also observed that the respondents are not entitled to backwages and that the period that the period of service during which they were actually working, which are mentioned in the counter and the said period alone shall be taken into account for the purpose of pensionary benefits and that period or any other period will not be taken into account for gratuity and other benefits. Aggrieved over the same, the present Writ Appeal has been filed."

9. Thus, following the above, these Writ Appeals are allowed and the respondents are directed to regularize the services of the appellants from the date on which they approached this Court by filing the writ petitions i.e., from



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01.02.2010. However, the appellants are not entitled to backwages and the period of service, which they were actually worked alone shall be taken into account for the purpose of pensionary benefits and that period and any other period will not be taken for gratuity and other benefits. No costs."

10. The learned single Judge was of the view that the Government being the largest employer, ought to have been benovent by considering the plight or workers employed on temporary basis and in this regard, the learned single Judge has followed the decision of the Hon'ble Supreme Court in *Sheo Narain Nagar Versus State of U.P.*," reported in (2018) 13 SCC 432 and granted the relief, which we do not find any infirmity to interfere with the same.



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11. For the foregoing reasons, the Writ Appeal fails and it is dismissed. No costs. The Appellants are directed to comply with the order of the learned single Judge forthwith, preferably within a period of four weeks from the date of receipt of a copy of this order.

J.N.B.J.,) (M.J.R,J.,)
06.08.2025

Index: Yes / No
Internet: Yes / No
Speaking Order / Non Speaking Order
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To

1. The State of Tamil Nadu,
represented by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-60 009.
2. The Director of Public Health and
Preventive Medicine,
Teynampet, Chennai-600 006
3. The Deputy Director,
Health Services, Salem,
Salem-636 001.

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