



W.P.(MD)No.9304 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 26.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

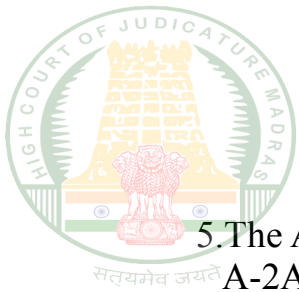
W.P.(MD)No.9304 of 2019
and
W.M.P.(MD)No.7310 of 2019

S.Jeya Roslin

... Petitioner

Vs

- 1.The Under Secretary,
Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi – 110 108.
- 2.The Postmaster General,
Central Region – Tamil Nadu,
Tiruchirappalli – 620 001.
- 3.The Director,
Central Government Health Scheme,
435-C, Nirman Bhavan,
Ministry of Health and Family Welfare,
New Delhi – 110108.
- 4.The Officer In-charge,
Directorate General of Health Services,
446-A, Nirman Bhawan,
New Delhi – 110011.



W.P.(MD)No.9304 of 2019

5.The Additional Director,
A-2A, Health and Family Welfare,
Rajaji Bhavan,
Third Avenue,
Nr Besant Nagar Terminal,
Chennai – 600 090.

6.The Chief Medical Officer,
Postal Dispensary,
Trichy – 1.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the fifth respondent to direct the respondents 2 and 6 to permit the petitioner as a Pharmacist, at Postal Dispensary, Tiruchirappalli based on her earlier appointment and continuous service from the year 2001 by considering her representation, dated 01.04.2019.

For Petitioner : Mr.NA.Palaniyandi

For R1 : Mr.R.Senthi Kumar
Standing Counsel

For R5 & R6 : Mr.K.R.Badurus Zaman

ORDER

This writ petition has been filed directing the fifth respondent to direct the respondents 2 and 6 to permit the petitioner to work as a Pharmacist, at Postal Dispensary, Tiruchirappalli based on her earlier



W.P.(MD)No.9304 of 2019

appointment and continuous service from the year 2001 by considering her representation, dated 01.04.2019.

2. It is the case of the petitioner that the petitioner was orthopaedically handicapped and completed Diploma in Pharmacy in the year 1998 and enrolled as registered Pharmacist on 26.05.1999 in the Tamil Nadu Pharmacy Council, Chennai. The District Employment Exchange nominated her as sponsored candidate for the post of Pharmacist at Postal Dispensary, Trichy. The second respondent conducted the interview for the said post on 02.04.2001 and appointed the petitioner for the post of Pharmacist for leave vacancy at Postal Dispensary, Trichy vide proceedings, dated 26.04.2001. The petitioner has not been regularised even after working for more than 10 years as Pharmacist in the dispensary. She made several requests to the second respondent to regularise her service. She gone to the office on 01.04.2019 and at that time, her superiors did not permit her to work, since the first respondent issued an order, dated 21.12.2018, wherein, it is stated that the 33 postal dispensaries will be merged with CGHS in All Over India and it shall be effected from 01.01.2019. In that effect, the above Tiruchirappalli Postal Dispensary is also merged with CGHS. The above said merger order permitted only the



W.P.(MD)No.9304 of 2019

permanent employees not for the outsiders. The petitioner was not a permanent employee. Hence, she was treated as outsider and not permitted to continue her job. The respondents 2 and 6 have wrongly interpreted the order, dated 21.12.2018 and they prevented the petitioner only on the ground that the permanent employee comes under the Administrative control of the Department of Health and Family Welfare not for casual and outsiders. She made a representation to the respondents and the higher authorities on 01.04.2019 requesting to regularise and absorb as Pharmacist at Postal Dispensary, Trichy. But the respondents did not consider the representation. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner had sent representation on 01.04.2019 requesting to regularise and absorb as Pharmacist, so far it was not considered and the same is pending before the authorities concerned. He would submit that the petitioner all along worked as a Pharmacist since from 2001. He would submit that the order, dated 21.12.2018 issued by the Government of India, Ministry of Health and Family Welfare, Department of Health and Family Welfare, wherein, Column D states that all employees (technical/non-technical staff) along with the work allocated and posts they are currently



W.P.(MD)No.9304 of 2019

holding in these 33 dispensaries shall be taken over by CGHS. Their seniority and other condition of service in CGHS shall be governed by the relevant instructions and guidelines issued by DOPT from time to time. Therefore, as per the order of the first respondent, dated 21.12.2018, the petitioner is entitled for regularisation and absorption in the said post.

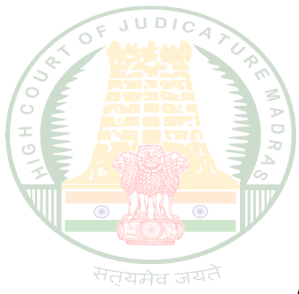
4. Per contra, learned counsel appearing for the respondents would submit that the petitioner was appointed only in the leave vacancy and the service can be posted at any point of time and the petitioner is not eligible for regularisation or absorption in the post.

5. This Court considered the rival submissions made on either sides.

6. The provisional appointment order issued to the writ petitioner states as follows:

“The selection for the post of Pharmacist for leave vacancy at the P & T Dispensary Tiruchirappalli.

You have been provisionally selected to work as Pharmacist to be utilised in the leave vacancy, at the P & T Dispensary Tiruchirappalli in the interview held on 02.04.2001. Kindly, note that the selection is purely for utilizing you as Pharmacist in leave arrangement only and it will not confer on you any right for regular appointment or absorption in the Department of Posts.



W.P.(MD)No.9304 of 2019

WEB COPY

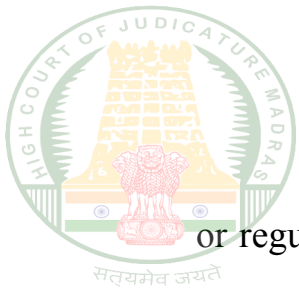
You will be paid remuneration @ minimum of the scale post plus usual allowances on prorata basis for the period of employment only.

You are not eligible for any to and fro fare for attending the duty whenever called for.

You should attend to duty at the P & T Dispensary Tiruchirappalli at short notice or intimation from the chief medical officer, P & T Dispensary Tiruchirappalli."

7. It is seen from the order issued to the petitioner that the petitioner was selected in the post of Pharmacist for leave vacancy and she has been provisionally selected to work as Pharmacist to be utilised in the leave vacancy, wherein also stated that the selection is purely for utilising the petitioner as Pharmacist in leave arrangement only and it will not confer on any right for regular appointment or absorption in the Department of posts. According to the learned counsel for the petitioner, the petitioner continuously served as Pharmacist from 26.04.2001 to 2019 and as per the order issued by the first respondent, dated 21.12.2018, the petitioner has also entitled for regularisation or absorption in the said post.

8. It is pertinent to mention that in the context of the legal principles set out in the preliminary paragraphs, the irregular, illegal and backdoor appointments would not provide any right to secure permanent absorption



or regularisation in view of the legal principles settled by the Constitution

WEB COPY

Bench of the Hon'ble Supreme Court of India in ***Secretary, State of Karnataka and others Vs. Uma Devi and others***, reported in **2006 4 SCC**

1. Further, whether an exception can be carved out in the present case is to be considered. The Hon'ble Supreme Court of India in the case of ***State of Rajasthan and others Vs. Dayalal and others***, reported in **(2011) 2 SCC 429**, the judgment delivered after ***Uma Devi's case*** (cited supra) summarises the principles regarding permanent absorption and regularisation as under:

“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

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

(ii) Mere continuation of service by a temporary or ad hoc or dailywage employee, under cover of some interim



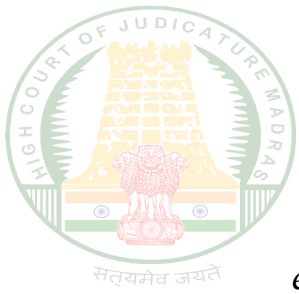
orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, 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 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.”

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , M. Raja v. CEERI Educational Society [(2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897] , Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .]



WEB COPY

23. If at all the outsiders aspire to secure permanent employment, they will have to participate in the process of recruitment, if any notified. As far as their initial engagement as outsiders are concerned, no recruitment rules are followed, reservation rules are not followed and other service rules relating to selection are not complied with. Therefore, such appointments if resulted in permanent absorption, it will cause gross injustice to the society at large. Therefore, we are of the considered opinion that the relief granted by the Central Administrative Tribunal in the impugned order is running counter to the legal principles settled by the Constitution Bench and also the recruitment rules, which all are applicable for regular appointments in Postal Departments for various cadres.

9. In view of the settled proposition in the case on hand though the writ petitioner is qualified in the post and have been worked for more than 7 years and she was not appointed in the sanctioned post, she cannot avail any concession for regularisation or absorption in that post, there is no reason to consider the representation submitted by the petitioner. The continuance of service alone is not a criteria to consider the case of the writ petitioner. The temporary appointment made by the respondents is only a stop gap arrangement to run the administration on need basis in that department. If at all the outsiders asked to secure permanent employment, they have to necessarily participate in the process of recruitment if notified.



W.P.(MD)No.9304 of 2019

WEB COPY 10. Therefore, there is no merit in the case of the writ petitioner and the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

26.02.2025

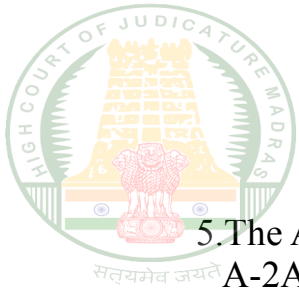
Index : Yes / No

NCC : Yes / No

sn

To

- 1.The Under Secretary,
Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi – 110 108.
- 2.The Postmaster General,
Central Region – Tamil Nadu,
Tiruchirappalli – 620 001.
- 3.The Director,
Central Government Health Scheme,
435-C, Nirman Bhavan,
Ministry of Health and Family Welfare,
New Delhi – 110108.
- 4.The Officer In-charge,
Directorate General of Health Services,
446-A, Nirman Bhawan,
New Delhi – 110011.



W.P.(MD)No.9304 of 2019

5.The Additional Director,
A-2A, Health and Family Welfare,
Rajaji Bhavan,
Third Avenue,
Nr Besant Nagar Terminal,
Chennai – 600 090.

6.The Chief Medical Officer,
Postal Dispensary,
Trichy – 1.



WEB COPY



W.P.(MD)No.9304 of 2019

M.JOTHIRAMAN,J.

sn

W.P.(MD)No.9304 of 2019

26.02.2025