



W.P(MD)No.20317 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2025

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THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

WP(MD)No.20317 of 2019 &
W.M.P(MD)No.16933 of 2019

S.Edwin Jose

...Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.

2.The Director of Medical Education,
Directorate of Medical Education,
Chennai - 600 010.

3.The Director of Public Health and Preventive Medicine,
Directorate of Medical Education,
Chennai - 600 006.

4.The Director of Medical and Rural Health Services,
Chennai - 600 006.

5.The Dean,
Kanyakumari Medical College and Hospital,
Asaripallam,
Kanyakumari District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.5846/Ni.5/2018 dated .06.2019 signed on 21.06.2019 on the file of the respondent No.5 and quash the same as



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illegal and consequently direct the respondents to absorb the petitioner in the post of Lab Attendant by extending the benefit of G.O.Ms.No.325 Health and Family Welfare (C1) Department, dated 11.09.2017.

For Petitioner : Mr.S.Louis

For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

The present writ petition has been filed by the writ petitioner to issue a writ of certiorarified mandamus to quash the rejection order dated 21.06.2019 passed by the fifth respondent and consequently, to absorb the petitioner in the post of Lab Attendant

2. Heard both sides.

3. The learned counsel for the petitioner would submit that the petitioner was initially appointed in the fifth respondent Hospital through out sourcing and since 2005, he has been continuing in the said post, namely, office assistant. In the meanwhile, the petitioner and similarly placed persons were terminated vide Termination Order dated 21.09.2012 and they challenged the same in W.P.No.29702 of 2012, wherein, the Principal Bench of this Court vide order dated 01.08.2018, directed the fourth respondent to consider the engagement of the petitioner and similarly placed persons as



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contract drivers / sanitary workers / hospital workers / lab assistants while appointing any fresh candidate. In spite of such a direction, though the petitioner has given a representation, the same was rejected by the fifth respondent vide the order dated 21.06.2019. Such an order is in contravention to the settled principles of this Court and to support his contention he relied upon the Division Bench Judgement of this Court in *1.The State of Tamil Nadu and three others vs. K.Balamurugan and 42 others*, W.A.(MD)No.840 of 2022, dated 09.09.2024. Hence, prayed to allow this petition.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the recruitment of lab assistants comes under the purview of G.O.(Ms)No.1, Health and Family Welfare (C2) Department, dated 02.01.2012 and hence, vide order dated 21.09.2012, the petitioner and other similarly placed persons were terminated. The learned Single Judge had only given direction to consider the petitioner in contract posts and he is still working there. It is his further submission that since 2015, he is continuously entering into an agreement with Kanyakumari Government Medical College Hospital and last agreement was signed by him on 07.08.2025. Therefore, the question of regularising him does not arise. Hence, prayed to dismiss this petition.



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5. I have given anxious consideration to either side submissions.

6. Admittedly, the petitioner was not appointed through proper recruitment process. It is well settled principle of law that any public employment should be done in accordance with recruitment Rules. In the case in hand, initially the petitioner was appointed as a contract employee without following any recruitment Rules. Since 2012, the post of Lab Assistant comes within the purview of Tamil Nadu Medical Services Recruitment Board and there are separate recruitment Rules to appoint a Lab Assistant. Though the petitioner would contend that he was appointed in the year 2005 and the learned Single Judge has directed the fourth respondent to give preference to him in any fresh appointment on contract basis, in the case in hand, his case was considered favourably and he is continuing to work by way of agreements. Agreement dated 07.08.2025 between Kanyakumari Government Medical College Hospital and the petitioner is the last agreement and since 2015, every year, the petitioner has been executing agreement to the fifth respondent Hospital. The Hon'ble Supreme Court in *State of Karnataka and others vs. V.Umadevi and others*, reported in, AIR 2006 SC 1806 has observed as follows.

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual



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basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

7. In the case in hand, the only ground urged by the petitioner is that he has been continuously working from the year 2005. Admittedly, when there are recruitment Rules and if the petitioner's appointment as contract worker is regularised, it would affect Articles 14 and 16 of the Constitution of India and such decision had been categorically ratiocinated in Umadevi's case. Though the learned counsel for the petitioner relies upon the Division Bench Judgement of this Court in *1.The State of Tamil Nadu and three others vs. K.Balamurugan and 42 others*, W.A.(MD)No.840 of 2022, dated 09.09.2024, it relates to Tamil Nadu basic services, whereas, the petitioner's case comes within medical services. Therefore, the above Judgment is not applicable to the facts of the present case.



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8. It is well settled principle of law that while exercising the power of judicial review, this Court cannot direct the authorities to create a post. Even according to Clause 5 of the Agreement dated 07.08.2025, the petitioner is well aware that he should continue only till completion of Chief Minister's Comprehensive Health Insurance Scheme. Therefore, this Court absolutely does not find any merit in the writ petition and it is liable to be dismissed.

9. Accordingly, this writ petition is dismissed. No costs.
Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
NCC : Yes/No
Internet :Yes

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C.KUMARAPPAN, J.

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