



W.P.(MD).No.20638 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 21.01.2025

ORDER PRONOUNCED ON : 24.01.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.20638 of 2023
and WMP(MD).Nos.17064 & 17065 of 2023**

1.P.Parameswaran

2.B.Thalapathy

3.P.Dhanapal

4.M.Senthilkumar

5.P.Alagudevi

6.T.Hemalatha

7.K.Praveen Kumar

8.S.Thiruvadi

....Petitioners

Vs

1.State of Tamil Nadu
Represented by its Principal Secretary
Department of Health and Family Welfare
Secretariat
Chennai -9



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2.The Director
Public Health and Preventive Medicine
Teynampet, Chennai – 6

3.The Director
Medical and Rural Health Services
Teynampet, Chennai – 06

4.The Deputy Director
Health Services
Viswanathapuram
Madurai

....Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent No.1 to dispose the proposal sent by the respondent No.2 dated 12.04.2018 and bring the petitioners services under time scale of pay from the date competition of five years of their service and regularise their service in the light of G.O.Ms.No. 325, dated 20.11.2012 on the file of the respondent No.1 with all consequences benefits and consequently restraining the respondents from making any appointments on the basis of G.O.Ms.No.604 dated 05.06.2023 passed by the respondent No.1 till the regularisation of the petitioners service by considering the petitioners' representation dated 12.08.2023 within the time stipulated by this Court.

For Petitioners : Mr.T.Thirumurugan

For Respondents : Mr.T.Amjadkhan
Government Advocate



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ORDER

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The present writ petition has been filed by Multipurpose Hospital Workers working in various Primary Health Centres in Madurai District seeking a mandamus to direct the first respondent to dispose of the proposal sent by the second respondent on 12.04.2018 and to bring the petitioners under time scale of pay from the date of completion of 5 years of service and to regularize their services in the light of G.O.(Ms).No.325 Health and Family Welfare (F2) Department dated 20.11.2012. The petitioners have further prayed for restraining the respondents from making any appointment on the basis of G.O.(D).No.604 Health and Family Welfare (AB1) Department, dated 05.06.2023 by considering their representation dated 12.08.2023.

(A)Facts leading to the filing of this present writ petition are as follows:

2.The fourth respondent in the writ petition has issued appointment orders to the writ petitioners on 29.04.2023 appointing them as Multipurpose Hospital Workers on contractual basis for a period of one year. The appointment order further discloses that their services may be renewed every year up to five years depending upon the performance of the employees.

3.Pursuant to the said order, the petitioners have joined duty and they are receiving a sum of Rs.400/- as daily wage as fixed by the District



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Collector, Madurai. The said appointment was made based upon G.O(Ms).No.325, Health and Family Welfare (F2) Department dated 20.11.2012.

4.A perusal of G.O(Ms).No.325, Health and Family Welfare (F2) Department dated 20.11.2012 reveals that the Project Director, Tamil Nadu Health System Project had formulated a policy for recruitment of Hospital Workers/Sanitary Workers in Government Medical Institutions and has forwarded the same to the third respondent. As per Clause-VI of the above said policy, the Multipurpose Hospital Workers who have completed five years on contract may be regularised. However, the Government has not accepted with the said policy for regularisation and in Clause-V of the above said Government Order, the Government has taken a policy decision that the services of the Sanitary Workers/Hospital Workers in Hospital having having more than 200 beds shall be outsourced. The Government has also directed the third respondent to prepare Draft Service Rules to the uniformed category of Multipurpose Hospital Workers.

5.On 18.10.2019, a communication was addressed by the Deputy Director to the third petitioner informing him that the request for regularisation of services of the contractual employees who have completed five years of service is under consideration of the Government.



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6.In the meantime, the Government had issued G.O.(D).No.604 Health and Family Welfare (AB1) Department dated 05.06.2023 to appoint Sanitary Workers in the existing 878 Multipurpose Hospital Workers on temporary contract basis through District Health Society on daily wages basis without exceeding the cadre strength sanctioned in G.O.Ms.No.325, Health and Family Welfare Department, dated 20.11.2012. As per the said Government Order, the vacancy post of Multipurpose Hospital Workers shall be filled up by eligible Reproductive Child Health Sanitary Workers in future vacancies.

7.It is the grievance of the writ petitioners that without regularising their services, as contemplated under G.O.Ms.No.325, dated 20.11.2012, the Government has issued G.O.(D).No.604 dated 05.06.2023. Since their representation was not considered, the present writ petition has been filed.

(B)Contentions of the learned counsel appearing on either side are as follows:

8.According to the learned counsel for the petitioners, the Government has taken a policy decision to regularize the services of Multipurpose Hospital Workers who were appointed on a contract basis and who have completed five years of service as per G.O.(Ms).No.325, Health and Family Welfare (F2) Department dated 20.11.2012. Only based on the above said Government Order, the appointment orders were issued to the writ petitioners. Without issuing regularisation order, now a new Government



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Order has been issued under G.O.(D).No.604 Health and Family Welfare (AB1) Department dated 05.06.2023 to fill up the vacant Multipurpose Hospital Workers post by way of Reproductive Child Health Sanitary Workers, again on contract basis.

9.The learned counsel for the writ petitioners had relied upon various Government Orders under which the services of the physically challenged persons who have completed two years of contract service have been regularised. The learned counsel had also relied upon a decision of this Court in WP(MD).No.21955 of 2022 dated 28.11.2022 wherein this Court has directed to regularize the physically challenged persons who have completed two years of service. Therefore, according to the learned counsel for the petitioners, similar regularisation order should have been issued to the writ petitioners who have completed five years of contract service. However, without regularising their services, the State is attempting to appoint some other candidates again on contract basis as Multipurpose Hospital Workers.

10.The learned counsel for the petitioners had also relied upon a Division Bench judgment of our High Court in WA(MD).No.840 of 2024 dated 09.09.2024 wherein the Hon'ble Division Bench has dismissed the writ appeal holding that the full time posts which are governed by Tamil Nadu Basic Service Rules, cannot be outsourced. Hence, the petitioners prayed for allowing the writ petition.



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11.Per contra, the learned Government Advocate appearing for the respondents had contended that the reference with regard to regularisation of contract service beyond a period of five years under G.O.(Ms).No.325, Health and Family Welfare (F2) Department dated 20.11.2012 is only a recommendation made by the Project Director. The said recommendation was not accepted by the Government in the above said Government Order. On the other hand, the Government has only directed the concerned authority to outsource the said post. Only relying upon the above said Government Order, the petitioners have been issued with appointment order for a period of one year. In such circumstances, the petitioners cannot take advantage of the recommendation of the Project Director.

12.The learned Government Advocate had relied upon G.O.(Ms).No. 563, Health and Family Welfare (C1) Department dated 16.12.2021 wherein the Government has superseded the direction issued in G.O.(Ms).No.325 dated 20.11.2012. He had further pointed out that as per Clause-4(b) of G.O.Ms.No.563 Health and Family Welfare (C1) Department dated 16.12.2021, the post of Hospital Worker/Sanitary Worker find place in the Special Rules for Tamil Nadu Basic Service and can be filled up only through outsourcing as per G.O(Ms).No.49, Personnel and Administrative Reforms (F) Department, dated 14.05.2002. Therefore, according to him, the petitioners cannot rely upon G.O(Ms).No.325 dated 20.11.2012.



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13.The learned Government Advocate further contended that the Government has decided to appoint Reproductive Child Health Sanitary Workers in the vacant posts of Multipurpose Hospital Workers as per G.O. (D).No.604, dated 05.06.2023. Since the said Government Order is only for filling up the vacant post of Multipurpose Hospital Workers, the services of the writ petitioners are not likely to be affected. That apart, without challenging G.O.(D).No.604, the petitioners cannot seek a mandamus as against the authorities not to make any appointment pursuant to the above said Government Order. Hence, he prayed for dismissal of the writ petition.

14.I have considered the submissions made on either side and perused the material records.

(C)Discussion:

15.The Government had issued G.O.(Ms).No.325 Health and Family Welfare (F2) Department dated 20.11.2012. The relevant portion for the purposes of disposal of this writ petition are as follows:

“Clause.4....

(i)The existing system of having own staff for the services like cleaning, sanitation, house keeping and security services in hospitals with less than 200 Beds, Primary Health Centres as well as in offices, dispensaries etc. where the beds are not sanctioned be continued.

(v)The Services of Sanitary Worker/ Hospital Worker in all



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Medical College Hospitals, District Headquarters Hospitals, Major Taluk Hospitals, Accreditation Hospitals and other hospitals having more than 200 beds shall be outsourced. The outsourcing of services shall be done for that much of the area of the hospital covered by vacant staff only as and when future vacancy arises due to retirement of the above staff, those areas shall also be covered by outsourcing. No additional staff shall be sanctioned to these hospitals.

6.The Government also direct the Director of Medical and Rural Health Services to prepare draft service rules for the unified category of Multipurpose Hospital Worker and send the same to Government within three months from the date of issue of this order.”

16.Relying upon the said Government Order, the petitioners were issued with the appointment orders on 29.04.2023 on contract basis for a period of one year to be renewed up to a period of five years based upon their performance.

17.The Government had issued G.O.(Ms).No.563, Health and Family Welfare (C1) Department dated 16.12.2021 wherein the Government had superseded G.O.(Ms).No.325 Health and Family Welfare (F2) Department dated 20.11.2012 to the extent of excluding the post of Nursing Assistant Grade-II from the unified category of Multipurpose Hospital Workers. However, the above said Government Order reiterated, that the post of Hospital Worker/Sanitary Worker shall be filled up only through outsourcing



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as per G.O.Ms.No.49, Personnel and Administrative Reforms (F) Department dated 14.05.2002. The Government had also dropped the direction to frame the Service Rules in the category of Multipurpose Hospital Workers in view of the fact that the said posts have to be outsourced.

18.The Government had issued G.O.Ms.No.49, Personnel and Administrative Reforms (F) Department dated 14.05.2002 wherein it has taken up a policy decision that the work of all Group-D categories like Sweeper, Scavenger, Cleaner and Gardener shall be progressively outsourced and entrusted on contract basis. As per the said Government Order, the outsourcing contractor has to ensure that the existing NMR/consolidated wage/daily wage employees are to be given preference in employment by the contractor to protect the interest of such persons.

19.The Government of Tamil Nadu had issued G.O.(D).No.604 dated 05.06.2023 wherein the Government had decided to fill up the vacant post of 878 Multipurpose Hospital Workers by appointing eligible Reproductive Child Health Sanitary Workers on temporary contract basis. The petitioners herein have sought for a mandamus restraining the authority from making any appointment pursuant to the above said Government Order.

20.A perusal of the above said G.O(D).No.604, Health and Family Welfare (AB1) Department dated 05.06.2023 reveals that the Government has decided to fill up the vacant post of Multipurpose Hospital Workers and no



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decision has been taken to disengage the writ petitioners who are already working as Multipurpose Hospital Workers. Therefore, the petitioners cannot have any grievance over the filling up of 878 vacancies.

21.The petitioners have sought for regularisation of their services primarily relying upon G.O.(Ms).No.325, dated 20.11.2012 especially Clause-vi of the recommendation made by the Project Director, Tamil Nadu Health System Project. A perusal of the said Government Order reveals that the Project Director had requested the Government to regularise the Multipurpose Hospital Workers, if they have completed five years of contract service. However, this recommendation has not been accepted by the Government.

22.As far as the Primary Health Centres are concerned, the Government has directed those establishments to continue with the existing system of having their own staff for the services like cleaning, sanitation, housekeeping and security services. In other cases where there are more than 200 beds, the concerned Hospitals have been directed to outsource the services.

23.Only in compliance and in continuation of the above said Government Order dated 20.11.2012, the petitioners have been issued with the appointment orders on 29.04.2013 in various Primary Health Centres in Madurai District. Therefore, the petitioners are not factually correct in relying



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upon the recommendations of the Project Director in G.O.(Ms).No.325 dated 20.11.2012 when the same has not been accepted by the Government.

24.The learned counsel for the petitioners had relied upon the order of this Court in *WP(MD).No.21955 of 2022 (M.Kesavan Vs. The State of Tamil Nadu and others)* wherein this Court has directed to regularize the employee who had completed two years of service. A perusal of the said order reveals that the petitioner therein is a physically challenged person and he is governed under G.O.Ms.No.151, Social Welfare (Ma) Nutrition (Sa.Na.4) Department dated 16.10.2008. The petitioners herein are not physically challenged persons and therefore, they cannot take advantage of the above said Government Order or the order passed by this Court.

25.The request of the petitioners seeking regularisation of their services is solely based upon the recommendation referred in G.O.(Ms).No. 325 which has not been accepted by the Government. In such circumstances, unless the Government takes a policy decision to regularize the services of the Multipurpose Hospital Workers by way of separate Government Order, the petitioners cannot seek mandamus to regularize their services and to bring them under time scale of pay on completion of five years of service. That apart, as far as the second limb of prayer seeking to restrain the respondents from making appointment on the basis of G.O.(D).No.604 dated 05.06.2023 is concerned, the said order would not result in disengagement of the writ



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petitioners. On the other hand, only in the vacant posts of Multipurpose Hospital Workers, the State intends to engage eligible Reproductive Child Health Sanitary Workers as Multipurpose Hospital Workers. Viewed from any angle, the prayer sought for by the petitioners cannot be granted.

26.The Hon'ble Supreme Court in a judgment reported *in (2022) 15 SCC 540 (Manish Gupta and another Vs. President, Jan Bhagidari Samiti and another)* has categorically held that an ad hoc employee can be replaced only by regularly appointed candidate and not by another ad hoc employee. Therefore, the apprehension of the writ petitioner is misconceived.

27.In view of the above said deliberations, there are no merits in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

24.01.2025.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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WEB COPY To

1.The Principal Secretary
State of Tamil Nadu
Represented by its
Department of Health and Family Welfare
Secretariat
Chennai -9

2.The Director
Public Health and Preventive Medicine
Teynampet, Chennai – 6

3.The Director
Medical and Rural Health Services
Teynampet, Chennai – 06

4.The Deputy Director
Health Services
Viswanathapuram
Madurai



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.20638 of 2023 and
WMP(MD).Nos.17064 & 17065 of
2023

24.01.2025