

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2011

CORAM:

THE HON'BLE MR. JUSTICE K.CHANDRU

W.P.Nos.48060 to 48065 of 2006
(O.A.Nos.925, 1813, 1810, 1172, 1160 of 2000 and 1242 of 1998

V.Sumathi .. Petitioner in W.P.48060/2006
N.Yasodaha .. Petitioner in W.P.48061/2006
P.Dhanasekar .. Petitioner in W.P.48062/2006
P.Suresh .. Petitioner in W.P.48063/2006
C.Selvaraj .. Petitioner in W.P.48064/2006

Jehovah-Jireh Life Centre
Reg.No.119/94
Leprosy Cottages
Samadhanapuram,
Gollapalli Village
Yemakal Natham P.O.
(via) Bargur,
Dharmapuri District
rep.by its Secretary

K.R.Immanual Illavaraan .. Petitioner in W.P.48065/2006

Vs.

1. The Director of Public Health and Preventive Medicine
Teynampet, Chennai 6 .. 1st respondent in
W.P.Nos.48060 to 48064/2006
and 3rd respondent in
W.P.No.48065/2006
2. The Deputy Director of Health Service
Nagapattinam .. 2nd respondent in
W.P.Nos.48060 to 48064/2006

3. A.Ananda Raman

(3rd respondent impleaded as per order
dated 24.10.2000 in M.A.No.4035,
4404, 4955, 5260, 5449 of 2000)

.. 3rd Respondent in W.P.48060
48063 and 48064/2006/
4th Respondent in W.P.48061
48062 of 2006

4. The Medical Officer
Government PHC
Neermullai,
Nagapattinam District
.. 3rd respondent in W.P.48061/2006
5. The Medical Officer
Government PHC
Thirumullaivasal,
Nagapattinam District
.. 3rd respondent in W.P.No.48062/2006
6. State rep.by Secretary to Government)
Health and Family Welfare Dept.,)
Chennai 9)
7. Director of Medical and)
Rural Health Service) 1st & 2nd
Chennai 6) respondents in
W.P.48065/2006

Prayer in W.P.Nos.48060, 48063 and 48064/2006: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records on the file of the 2nd respondent in connection with his proceedings R.No.541/2000/A1 dated 25.1.2000 and set aside the same and consequently direct the respondents to regularise the service of the petitioner by reinstating her with all consequential monetary and service benefits from the date of termination till reinstatement.

Prayer in W.P.Nos.48061 and 48062/2006: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the 2nd respondent herein in Pro.R.No.541/2000/A1 dated 25.1.2000 quash the same and issue directions to the respondents to reinstatement of the petitioner in service with consequential benefits of continuity in service back pay etc.

Prayer in W.P.No.48065/2006: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records connected with G.O.Ms.No.296, Health and Family Welfare Department dated 17.6.1997 and set aside the same and consequently to direct the respondents to continue to provide appointment to the cured leprosy patients as per the scheme introduced in G.O.Ms.No.140 Health and family welfare Department dated 21.1.65 and amended in G.O.Ms.No.1499 Health and Family Welfare Department dated 14.8.89.

For Petitioner in
W.P.48060, 48063
and 48064 of 2006

:: Ms.T.Aananthi

For petitioner in
W.P.48061 &
48062/2006

:: Mr.Baskar for
Mr.R.Thamaraaislvn

For petitioner in
W.P.48065/2006

:: Mr.S.Ilamvaludhi

For Respondents

1 & 2 in
W.P.48060, 1 & 2 in 48063 and
1 & 2 in 48064 of 2006
and for respondents
1 to 3 in
W.P.48061, 1 to 3 in 48062 &
1 to 3 in 48065 of 2006

:: Mr.R.Murali, G.A

For 3rd respondent in
W.P.48060, R3 in 48063 and
R4 in 48064 of 2006 &
for 4th respondent in
W.P.48061 and R4 in
48062 of 2006

:: Mr.V.Chandrasekar

COMMON ORDER

In W.P.Nos.48060 to 48064 of 2006, the petitioners were all employed in the Department of Health Services. They were accommodated as Hospital Workers in various Government Primary Health Centres. This was on the basis that the petitioners were originally inflicted with leprosy and they were subsequently got it cured. In order to rehabilitate them, certain Government Orders were issued by granting preference as well as from exemption from the sponsorship by the Employment Exchange. The said Government Order, namely G.O.Ms.No.140, Education and Public Health dated 21.1.1965 issued various guidelines for appointment of ex-leprosy patients for Government Leprosy Institutions and other offices. This was based upon the recommendation made by the Estimate Committee of the Parliament, which directed the Governments to take concerted efforts of disabuse the minds of the people about the nature of Leprosy disease and the need to have proper treatment. In such case, the committee also recommended to utilise the service of the cured leprosy patients with advantage both to the cured patients as well as for eradication of Leprosy in various Institutions. Upon these considerations, the Committee also recommended such patients may be

employed in various categories without consulting the Employment Exchange as well as without being consulted by the TNPSC.

2. The Government in G.O.Ms.No.1499, dated 14.8.1989 also issued amending the earlier directives. The petitioners were appointed by producing necessary certificate showing that they were cured leprosy patients. On the strength of the same, they were given appointment by the Deputy Director of Health Services. But, however, by the impugned order dated 25.1.2000, the Deputy Director of Health Services, namely, 2nd respondent terminated the service of the petitioners on the basis of the letter received from the Director of Public Health and Preventive Medicine, Chennai dated 12.1.2000 and a reference was also made to the Government Order in G.O.Ms.No.296, Health and Family Welfare Department dated 17.6.1997. By the Government Order referred to therein, the Government decided to do away with the scheme of appointment of cured leprosy patients to the post of Junior Assistants and other posts in the various Government Leprosy Institutions as well as other Institutions under the control of the Health Department. The Government also stated that any deviation by the Officers contrary to the Government Order will be viewed seriously. Since the petitioners were appointed subsequent to the withdrawal of the Scheme, the Unit Level Officers felt that action may be taken against them and issued the order terminating the service even though they have rendered few years of service by then.

3. Under the circumstances, the petitioners moved the Tribunal with various Original Applications starting from O.A.Nos.195, 1830, 1810, 1172 and 1160 of 2000. The Tribunal entertained the Original Applications and granted interim stay on 11.2.2000. The said interim order came to be extended until further orders by a further order dated 25.2.2000 in respect of the 1st case and similar orders were also passed in the other Original Applications. However, an application was taken out by one A.Ananda Raman, who got impleaded himself as 3rd respondent in O.A.No.925 of 2000 and also as a party in other Original Applications seeking to vacate the interim order. It was on the ground that seniority was not followed while recruitments were made. The Tribunal did not vacate the interim order.

4. On notices from the Tribunal, the official respondents have filed a reply affidavit dated 31.7.2000. In the reply affidavit, it is stated that the appointments have been made in respect of the petitioners relying upon the earlier concession made by the Government. Since the Government by G.O.Ms.No.296, Health and Family Welfare Department dated 17.6.1997 directed action to be taken to terminate the service of the individual, they were terminated from service. Since the earlier scheme of appointment being done without reference to the Employment Exchange has been taken away, the

petitioners cannot be continued in service. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P.No.48060 to 48064 of 2006.

5. While these matters are pending before the Tribunal, one NGO by name Jehovah-Jireh Life Centre filed O.A.No.1242 of 1998 challenging the order of the Government in G.O.Ms.No.296, Health and Family Welfare Department dated 17.6.1997. This was on the ground that the rehabilitation machinery taken by the Government cannot be suddenly withdrawn. Therefore, the Government Order dispensing with the grant of concession was illegal. In the said Original Application, Notice of Motion was ordered by the Tribunal on 20.2.1998. But, no interim order was granted in the said Original Application. Subsequent to the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P.No.48065 of 2006.

6. When the matter came up, Mr.S.Ilamvaludhi, learned counsel appearing for the petitioner in W.P.48065 of 2006 fairly stated that the petitioners in other W.P.Nos.48060 to 48064 of 2006 during the pendency of the proceedings have been subsequently regularised and nothing survives in their Writ Petition. These facts were not denied by the learned counsel for respondents.

7. Though the learned counsel for the impleaded 3rd respondent Mr.V.Chandrasekar wanted to contend that the appointments were illegal and his client has been overlooked in the matter of appointment and also placing heavy reliance upon the judgment of this Court in A.Senthilkumar vs. The Deputy Registrar of Cooperative Societies, and two others reported in(2000) (IV) CTC 485 would contend that in respect of illegal appointment, there is no necessity to grant any notice, this Court is not inclined to accept this contention at this stage in the light of the subsequent development. In the absence of the 3rd respondent having not filed any independent case for his employment and the petitioners having been regularised and it is unnecessary to go into the legality or otherwise in the matter. In the light of the above, the W.P.Nos.48060 to 48064 of 2006 will stand dismissed as infructuous. No costs.

8. In the last Writ Petition, namely W.P.No.48065 of 2006, it was contended by Mr.S.Ilamvaludhi that when the Government having granted concession earlier recruiting candidates who are ex-leprosy patients and also appointed on the basis of the Government Order, they are estopped from withdrawing the concession already made. First of all, Association is a total stranger to the service. It is not claimed as to how the Association can file such an Original

Application before the Tribunal. Under the provisions of the Administrative Tribunals Act, the scope of filing any Original Application on public interest or by third parties is clearly not maintainable. Even assuming that after transfer of the petition to this Court and renumbered as Writ Petition, a public interest litigation can be maintainable, the question that arises for consideration is the Government having granted a relief to a set of persons, it is always entitled to review the said concession and have a relook on this matter. In the absence of the petitioner having any vested right or legal or enforceable right, the challenge to the Government Order in G.O.Ms.No.296, dated 17.6.1997 is clearly not maintainable. In the said order, the dispensation of original requirement of sponsorship through employment exchange, which was earlier dispensed with, has now been cancelled. Since all candidates must be sponsored through Employment Exchange as per law, it will only enhance the right to under Articles 14 and 16 of the Constitution. Further it will avoid complaints similar to the one made by the 3rd respondent in W.P.No.48060 of 2006. This Court is not inclined to entertain that Writ Petition. Hence, the Writ Petition No.48065 of 2006 will stand dismissed. No costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

ajr

To

1. The Director of Public Health and Preventive Medicine
Teynampet, Chennai 6
2. The Deputy Director of Health Service
Nagapattinam
3. The Medical Officer
Government PHC
Neermullai,
Nagapattinam District
4. The Medical Officer
Government PHC
Thirumullaivasal,
Nagapattinam District

5. Secretary to Government)
Health and Family Welfare Dept.,
Chennai 9

6. Director of Medical and
Rural Health Service
Chennai 6

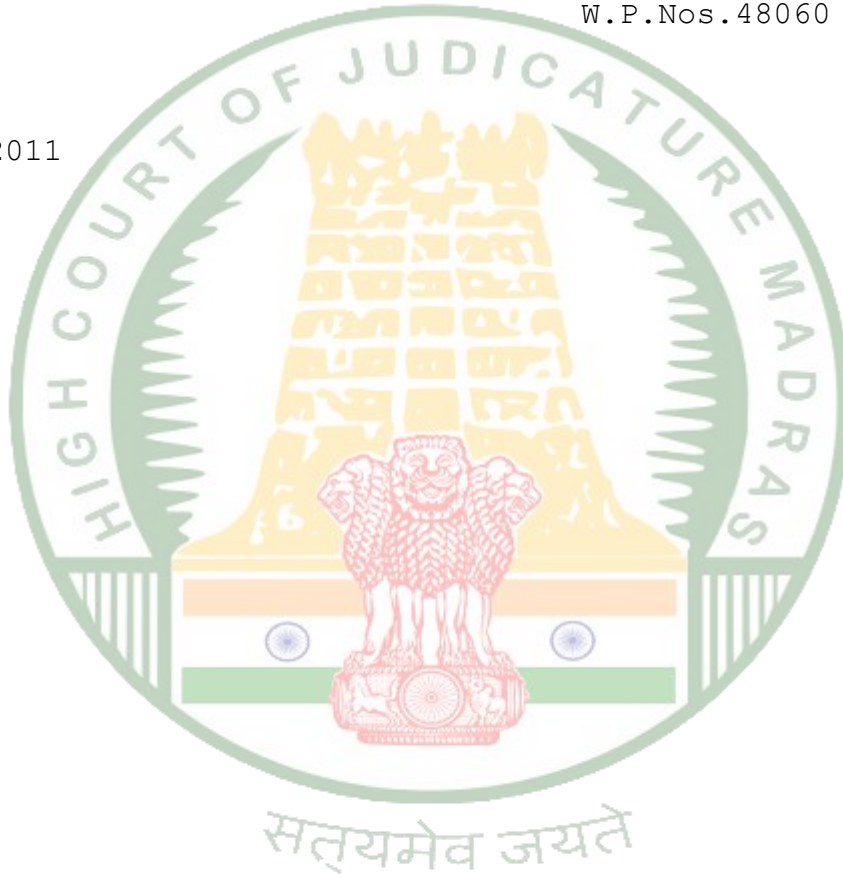
3 cc To Mrs.T.Aananthi, Advocate, SR.6991, 6993 & 6994.

1 cc To Mr.T.Chandrasekar, Advocate, SR.7789

1 cc To The Government Pleader, SR.7371

W.P.Nos.48060 to 48065 of 2006

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pmk.10.2.2011



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