

W.P.No.27655 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2024

PRONOUNCED ON: 25.10.2024

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

W.P.No.27655 of 2015

and

MP.No.1 of 2015

- 1.The Union of India,
Through the Government of Puducherry,
Represented by the Chief Secretary,
Government of Puducherry,
Chief Secretariat,
Puducherry.
- 2.The Union of India,
Through the Government of Puducherry,
Represented by the Secretary to Government,
Department of Animal Husbandry & Animal Welfare,
Chief Secretariat,
Puducherry.
- 3.The Director of Animal Husbandry & Animal Welfare,
Directorate of Animal Husbandry & Animal Welfare,
Government of Puducherry.

... Petitioners

Vs.

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench.



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2.Dr.S.Sarala Devi

3.Dr.A.Sattiaprabha

4.Dr.K.Pritha

5.Dr.Trevor Francis Fernandez

6.The Union Public Service Commission,
Rep. By its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi – 110 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in its order in Original Application No.333/2012 dated 17.7.2014 and quash the same.

For Petitioners : Mr.Syed Mustafa
Special Government Pleader (Pondicherry)

For Respondents : Mr.Karthik Rajan (for R2 to R5)

Mr.V.Chandrasekaran (for R6)

ORDER

(Order of the Court was delivered by Dr.ANITA SUMANTH,J.)

The petitioners challenge an order of the Central Administrative Tribunal, Madras Bench (CAT/Tribunal). The impugned order is dated 17.07.2014 and



allows the prayer of four (4) applicants, who had sought regularisation of their services as Veterinary Assistant Surgeons in the Union territory of Puducherry from the date of their respective initial appointments with all attendant benefits.

2. Heard Mr.Syed Mustafa, learned Special Government Pleader (Pondicherry), for the petitioners, Mr.Karthik Rajan for R2 to R5 (private respondents) and Mr.V.Chandrasekaran for R6/Union Public Service Commission (UPSC).

3. The third petitioner had issued Notification No. 3499/DAH & AW/A1/2004, dated Nil, August, 2005, calling for applications from qualified persons for the posts of Veterinary Assistant Surgeons. The engagement was to be on contract basis. The educational qualifications required were a recognised veterinary qualification as per the Indian Veterinary Council Act (B.V.Sc.) and registration with the State Veterinary or Indian Veterinary Councils. The candidates were to be aged less than 35 years and their applications were to be accompanied by various certificates in support of the qualifications prescribed. The number of posts notified was 19.

4. Admittedly, all private respondents hold the requisite qualifications, educational and otherwise. Their applications were processed by a duly constituted selection committee. Their services were engaged in



December 2005. They have been rendering services since then. In fact, the petitioners had issued a Notification in the year 2008 for filling up of vacancies for the post of Veterinary Assistant Surgeons by direct recruitment. Though the private respondents submitted applications, they were not called for an interview, as they state that the recruitment had ultimately been carried out only in respect of short listed candidates who possessed degrees of Masters in Veterinary Sciences. Thus, the fact that they had not been successful in direct recruitment was not on account of their unsuitability in any respect but since the recruitment was finalized on other, short listed criteria.

5. Be that as it may, their services were periodically renewed despite the direct recruitment and their contracts were extended from time to time. They were posted in regular establishments and underwent duties in the clinical lab, laboratories and 24 hours dispensary as and when there was necessity. Their services were also sought at times in the minor veterinary dispensaries in line with various schemes. In all, they would submit that there was no difference between the nature of service undertaken by them and those that had been rendered by direct recruits.

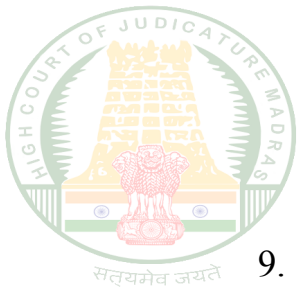
6. The petitioners resist the request for regularisation by the private respondents on the ground that their appointment was only on



adhoc/contractual basis and as a stop-gap arrangement. The Government of Puducherry had proposed to extend Veterinary Health services to villages as well by upgrading identified, key village units as minor veterinary dispensaries. A proposal had been sent to the Government of India for creation of Group 'A' posts for the purposes of upgradation. Pending approval of the proposal, the private respondents, as well as others, who are not part of the present litigation but who are similarly placed to the private respondents, had been engaged by P2 on contract basis.

7. The contract was for a period of 120 days and their terms were clear to the effect that there was no vested right for claiming regular employment. It was also made clear to them that their services would be terminated as and when regular appointments were made by the Union Public Service Commission (UPSC).

8. The UPSC would, for its part, point to Article 320 of the Constitution of India, arguing that recruitments for the post of Veterinary Assistant Surgeons (Group 'A' gazetted posts), would have to be made only with the concurrence of the UPSC. Hence, the question of regularisation or absorption of contractual employees was out of the question.



9. Before the Tribunal though, the reply of the UPSC had been that the litigation concerned only the Government of Puducherry and the employees, and the UPSC had no part to play therein. After taking note of the submissions, the application of R2 to R5 came to be allowed and the petitioners were directed to prospectively regularise the services of the private respondents, within a period of eight (8) weeks of that order. It is assailing that order that the present writ petition has been filed.

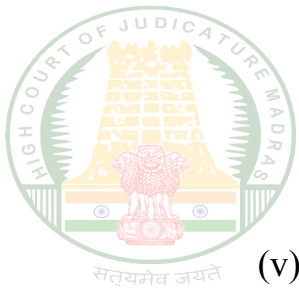
10. Heard all learned counsel and perused the material papers as well as the cases cited. The undisputed facts that arise are as follows:

(i)The private respondents have been engaged as Veterinary Assistant Surgeons in 2005 on contract basis.

(ii)The contract was for a period of 120 days extended periodically and they have been in continuous engagement since then.

(iii)Pending writ petition, no interim orders have been obtained by the petitioners disturbing the services of the private respondents whose engagement thus continues till date, for a period in excess of eighteen (18) years.

(iv)The only break suffered is the artificial 24 hour period between contract periods that the petitioners impose to press the point that the private respondents are not regular employees.



(v) All four private respondents satisfy the educational qualifications prescribed under the Notification.

(vi) They satisfy all other conditions including the condition of age.

(vii) In fact, the conditions stipulated in Notification dated Nil, August, 2005, draws from the Recruitment Rules of the Department of Animal Husbandry and Animal Welfare, Government of Puducherry and hence it is an admitted position that the private respondents satisfy the educational qualifications prescribed in the Recruitment Rules.

(viii) Their selection was by a duly constituted selection committee and the process has undoubtedly been transparent. There is no allegation from any quarter, of their appointments being contrary to the Rules, opaque or by way of backdoor entry.

(ix) Their services have been exploited ever since their engagement in 2005, till date and there is no dispute that the nature of services performed by them aligns with what is performed by regularly appointed employees.

(x) They had responded to a Notification for filling up of vacancies by direct recruitment but were not considered, since the recruitment was finalized based on short listed criteria only. However, their services continued even after



the regular appointments were made bringing home the fact that their services was necessary and unimpeachable.

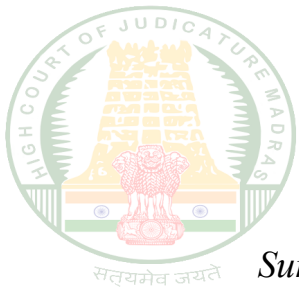
(xi) Their presence within the Petitioner Department has never, at any point in time, been in excess of the sanctioned number of posts. In fact, even as on the date of hearing of this writ petition, there are 33 vacancies for the post of Veterinary Assistant Surgeons in that Department.

11. The second petitioner, the Department of Animal Husbandry & Animal Welfare had, as early as on 13.02.2013 requested approval for creation of 24 posts of Veterinary Assistant Surgeons in the Department of Animal Husbandry and Animal Welfare, Puducherry under a communication bearing No.3131/CS(AH)/2012-13 dated 14.02.2013. This is what the communication, addressed to the Secretary to Government of India, Department of Animal Husbandry, Dairying and Fisheries states:

'Sub: Chief Secretariat (Animal Husbandry) - Creation of 24 posts of Veterinary Assistant Surgeons in the Department of Animal Husbandry & Animal Welfare, Puducherry – Approval - Requested.

Ref: This Secretariat Lr.No.3141/CS(AH)/2010-11 dated 18.07.2011.

I am to refer this Secretariat letter of even no. dated 18.07.2011 cited under reference wherein it was requested to convey approval for creation of 24 posts of Veterinary Assistant



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Surgeons in the Department of Animal Husbandry and Animal Welfare, Puducherry.

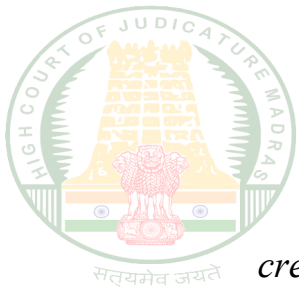
2.I am to state that 20 Key Village Units have been upgraded into Minor Veterinary Dispensaries and four 24 hours Veterinary Health Services have been introduced in Puducherry and Karaikal Regions. In order to look after the duties in the aforesaid institutions and as a stop-gap arrangement, 24 Veterinary Assistant Surgeons were engaged on contract basis. Since the Minor Veterinary Dispensaries and 24 hours Veterinary Health Services could not function without the Veterinary Assistant Surgeons, it is proposed to create 24 posts of Veterinary Assistant Surgeons and the creation of these posts has been included in the Action Plan 2012-13 under the scheme Veterinary Health Services- PLAN.

3.It is brought to your kind attention that the ban on creation of posts is in existence vide OM.7(2)-E-co-ord/2005 dated 23-11-2005. Therefore, any post creation requires relaxation of ban orders from the Ministry of Finance, Department of Expenditure.

4.The nodal Ministry for all Union Territories is the Ministry of Home Affairs. However, without the recommendations of the subject Ministry, the Home Ministry will not be in a position to recommend the proposal to Department of Expenditure.

5.I am also to state that the entire expenditure will be borne by the Union Territory Government and there is no liability on the Central Government on account of these new post creation.

6.I am to inform that pending creation of necessary posts, contract Doctors are being engaged for a period of 120 days with 1 day break in service before engaging them on contract basis subsequently. The Finance Department and the Chief Secretary, Government of Puducherry have advised us to get the posts



created on regular basis and then appoint. Doctors on contract basis till the posts are filled up on regular basis through UPSC.

7.I therefore request your kind consideration and recommendation of the proposal to the Ministry of Home Affairs with a request to take it up with Department of Expenditure, Ministry of Finance. Copies of the check list, detailed justification and particulars in Form I(a) and (b) which were sent earlier are enclosed for your ready reference.'

12. As on that date there were 33 vacancies in the sanctioned posts. Since it is impossible for the Union Territory to run without adequate personnel manning the veterinary services in the State, the Government of Puducherry has adopted a practical approach in the matter, and rightly, since the services of Veterinary Surgeons constitute essential services. The Union Territory thus took upon itself the process of addressing and filling that need, appointing persons on contract basis, to, in a way, keep the show running.

13. Learned counsel before us would not dispute the position that, as on date when the Notification was issued in August 2005 pursuant to which the private respondents have been engaged, the number of vacancies in the posts of Veterinary Assistant Surgeons exceeded the number of Veterinary Assistant Surgeons engaged contractually. It is nobody's case that their appointments exceeded the limit for sanctioned posts or that they were unqualified. In fact, we



are given to understand that even as on date there are 25 vacancies for the posts of Veterinary Assistant Surgeons.

14. The UPSC would strenuously argue based on the mandate of Article 320 of the Constitution of India. They submit that any appointments made without reference to the UPSC cannot be sustained. If such illegal appointments were to be regularised, it would only encourage and embolden the Union Territory to repeat the modus operandi for more illegal appointments in the future as well.

15. Article 320 deals with the functions of the Public Service Commission and reads thus:

“320. Functions of Public Service Commissions.

(1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—



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(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

.....”

16. Article 320(3) mandates that the UPSC shall be consulted on all matters relating to recruitment to civil services and civil posts. Hence, R6 argues that the post of Veterinary Assistant Surgeons ought to have been made only through the UPSC. Undoubtedly, there is a mandate cast on the petitioners by way of Article 320. Both the petitioners and private respondents have also drawn attention to the word ‘consulted’ as employed in Sub-Article (3) of Article 20 pointing out that no ‘concurrence’ is required for the UPSC. They make a distinction between the two terms attempting to whittle down the role and participation of the UPSC in matters of recruitment by the Union Territories.

17. This Court would not normally consider a stamp of approval in cases of appointments that are contrary to law. However, having regard to the factual matrix in this matter as noticed in the paragraphs supra, we believe that



this is not one such case and thus, reliance upon Article 320 would take R6 forward only to a limited extent and no further.

18. Based on the undisputed factual position, we are of the view that the appointments of the private respondents is, at the highest, irregular, and at any rate not illegal. Reference by the petitioners to the decision in *Secretary, State of Karnataka and Others v. Umadevi and Others* [(2006) 4 SCC 1] is thus misplaced.

19. Evidently, there was a crying need for Veterinary Assistant Surgeons in Puducherry. It has been amply demonstrated that Puducherry had already identified the requirement for the Veterinary surgeons and communicated the need for creation of additional posts. No response was forthcoming in a timely manner. It is thus an unfortunate, but admitted position, that the process of effecting direct recruitments is cumbersome and slow, not really addressing urgent exigencies or immediate demand for qualified professionals.

20. Thus, notwithstanding the mandate of Article 320, we concur with the conclusion of the Tribunal that the appointments / engagement of the private respondents filled a pressing and urgent need and could not await the luxury of following the long-winded procedure contemplated by resort to Article 320, as

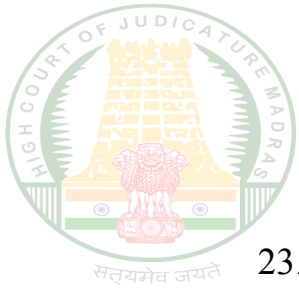


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it is presently is. In an ideal world, where the employment requirements of the Union Territory are addressed in a timely fashion, we would have had no hesitation in holding that the process contemplated under Article 320 has necessarily to be followed, and failure would result in fatal consequences.

21. The Union Territory in this case had no option but to rise to the occasion to find other measures to fill the vacancies. This is what has been occasioned in the present case. In view of the fact that the veterinary surgeons render essential services, the Union Territory of Puducherry proceeded to fill the vacancies on contractual basis, adhering scrupulously to (i) the overall number/limit of sanctioned posts (ii) insistence on educational and other qualifications and requirements as per the Recruitment Rules (iii) transparent and stringent vetting process. There is also no dispute that the private respondents have thus far, served well.

22. In the aforesaid circumstances, it was a mystery as to why at all the Union Territory had challenged the order of the Tribunal as the subject appointments had been made by it consciously and to fill a pressing need. The candid response of the parties was that the writ petition was instituted by the petitioners only at the instance/dictates of R6!



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23. In light of the detailed discussion as above, we have no hesitation in confirming the order of the Tribunal dated 17.07.2014 and dismiss this writ petition. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
25.10.2024

Index : Yes
Speaking Order
Neutral citation: Yes
vs

To

The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi – 110 001.



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VERDICTUM.IN



W.P.No.27655 of 2015

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

VS

W.P.No.27655 of 2015 and

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