

(2017) 06 MAD CK 0099
In the Madras High Court
Case No : 37294 of 2015

K V SRINIVASAN & ORS.

APPELLANT

Vs

STATE OF TAMIL NADU & ORS.

RESPONDENT

Date of Decision : 05-06-2017

Acts Referred:

[Tamil Nadu State and Subordinate Services Rules, 1961](#), Rule 35(aa)

Citation : (2017) 06 MAD CK 0099

Hon'ble Judges : T Raja

Bench : SINGLE BENCH

Advocate : T Raja

Final Decision : Dismissed

Judgement

1. With the consent of the learned counsel for the parties, all the writ petitions are taken up together for disposal by this common order. The petitioners in W.P.No.37294 of 2015 have sought for issuance of a writ of certiorari, to call for the records relating to the impugned G.O.(D) No.1358, Health and Family Welfare (L2) Department dated 29.10.2015 passed by the first respondent, to quash the same. 1.1. The petitioners in W.P.No.1764 of 2016 have sought for issuance of writ of certiorarified mandamus, to call for the records relating to the order No.R.No.94401/MP-1/s3/2007 dated 16.07.2015 passed by the second respondent, to quash the same with a consequential direction to the second respondent to extend the benefits of judgment dated 13.07.2007 in W.P.No.29794 of 2007 in favour of the petitioners. 1.2. The petitioners in W.P.Nos.32557 & 32558 of 2016 have sought for issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in R.No. 56727/MP/II/S1/2016 dated 01.09.2016, to quash the same with a consequential direction to the respondents to revise the seniority of the petitioners in the post of Health Inspector Grade-I in furtherance to implementation of orders passed by Hon'ble Supreme Court of India in Civil Appeal No.6660 of 2011 dated 25.02.2015 with

consequential promotion to the post of Block Health Supervisor within a time frame to be fixed by this Hon'ble Court. 1.3. The petitioner in W.P.No.32247 of 2016 has sought for issuance of a writ of certiorari, to call for the records relating to the order No.R.No.56727/MPII/S1/2016 dated 01.09.2016 passed by the second respondent and to quash the same.

2. Mr.N.G.R.Prasad, learned counsel for the petitioners in W.P.Nos.37294 of 2015, 1764 & 32247 of 2016, leading the arguments, submitted that all these petitioners were originally appointed as Multipurpose Health Assistants and subsequently promoted as Health Inspectors Grade I. Explaining further, he has stated that when the petitioners in W.P.No.37294 of 2015 were appointed on 20.7.89, 2.1.89, 24.7.89, 2.1.89 & 7.7.89 with Seniority Nos.4103, 3989, 4138, 3987 & 3991 respectively; that the petitioners in W.P.No.1764 of 2016 were appointed on 20.7.89 & 24.7.89 with Seniority Nos.4103 & 4138 respectively; that the petitioner in W.P.No.32247 of 2016 was appointed on 1.7.91 with Seniority No.4259, they approached the Tamil Nadu Administrative Tribunal with the respective original applications seeking promotion to the post of Health Supervisor and the said original applications were disposed of by the Tribunal giving a direction to the Director of Public Health and Preventive Medicine to consider their representations. After sometime, one Mr.M.Janarthanan and others filed W.P.Nos.29794 of 2005 seeking a direction to regularise their services with all consequential monetary benefits, as has been done in the case of Mr.M.Ramalingam in G.O.(D) No.359, Health and Family Welfare Department dated 26.4.2004, and this Court, while disposing of the said writ petitions by order dated 13.7.2007, directed the respondents therein to consider the cases of the petitioners with regard to regularisation of their services with retrospective effect, giving promotion as per the seniority list prepared by the Government by virtue of the proceedings dated 5.3.96 and the order of the Tribunal dated 10.8.2001 and also the consequential G.O.(D) No.359, Health and Family Welfare (N2) Department dated 26.4.2004. Again when appeals were filed before the Supreme Court against the said order, the Supreme Court in Civil Appeal Nos.6660 of 2011 dated 25.2.2015 confirmed the order dated 13.7.2007 passed in W.P.Nos.29794 of 2005 etc. Accepting the Supreme Court order dated 25.2.2015, the respondents implemented the same. While implementing the same, again they have promoted the private respondents to the post of Block Health Supervisor and P.A. to Deputy Director of Health Services/Senior Sanitarian.

3. Continuing his arguments, Mr.N.G.R.Prasad submitted that without first undertaking the exercise of revision of seniority list dated 25.10.2013, the private respondents cannot be considered for promotion to the post of Block Health Supervisor and P.A. to Deputy Director of Health Services/Senior Sanitarian. Hence they have given representations to the second respondent to revise the seniority list dated 25.10.2013 on the basis of the order of the Supreme Court in Civil Appeal Nos.6660 of 2011 dated 25.2.2015. But the second respondent has not considered the case of the petitioners. Again he has

contended that the respondents 1 & 2 are taking dual stand, on the one hand they are taking steps to implement the order of the Supreme Court in Civil Appeal Nos.6660 of 2011 dated 25.2.2015 and on the other hand, contrary to the same, they are promoting persons to the post of Block Health Supervisor and P.A.to Deputy Director of Health Services/Senior Sanitarian, as a result the ranking of the petitioners in the seniority list has been pushed down. Consequently, the private respondents and others were promoted as Technical Personal Assistant Grade I and Senior Sanitarian by issuance of G.O.(D)No.1358, Health and Family Welfare (L2) Department dated 29.10.2015. Therefore the said Government Order is liable to be set aside. Finally, placing reliance on the judgment of the Supreme Court in S.Sivaguru and others v. State of Tamil Nadu and others, (2013) 7 SCC 335, he has further contended that when there was a complete merger of the cadre of Health Inspector Grade IB with Health Inspector Grade IA and thus all being redesignated as Health Inspector Grade I, G.O.Ms.No.382 of 2007 failed to consider the case of the petitioners, since their services from 1997 to 2007 were robbed. Therefore after merger with effect from 27.6.97, when all the incumbents in the posts of Health Inspector Grade IA and Health Inspector Grade IB were performing the same duties and formed one homogenous cadre, the State Government was not justified in denying to the erstwhile Health Inspector Grade IB the same treatment as was given to Health Inspector Grade IA, for the reason that after merger with effect from 27.6.97, there is no distinction in the services rendered by Health Inspector Grade IA and Health Inspector Grade IB. On this basis, the Supreme Court has clearly held that the provision in G.O.Ms.No.382 of 2007 not to grant the Health Inspectors Grade IB/erstwhile Leprosy Inspectors the benefit of the service from 1997 for determination of their seniority for promotion to the post of Block Health Supervisor was completely unjustified. Hence he prayed for setting aside the impugned Government Order dated 29.10.2015.

4. Mr.G.Sankaran, learned counsel for the petitioners in W.P.Nos.32557 & 32558 of 2016, adopting the arguments of Mr.N.G.R.Prasad, by way of addition also submitted that when the cases of Mr.M.Ramalingam and Mr.M.Janarthanan, who are similarly placed like that of the petitioners, were accepted by the State Government by issuance of G.O.(D) No.359, Health and Family Welfare (N2) Department dated 26.4.2004, the writ petitioners cannot be isolated. If they do so, they would be violating the order passed by this Court in W.P.Nos.29794 of 2005 etc., dated 13.7.2007, which was confirmed by the Supreme Court in Civil Appeal Nos.6660 of 2011 dated 25.2.2015.

5. Detailed counter affidavits have been filed by the respondents 1 & 2 in W.P.Nos.37294 of 2015, 1764 & 32557 of 2016. The learned Additional Advocate General for the respondents 1 & 2 submitted that initially the Public Health Department was consisting of Multipurpose Health Workers and Unipurpose Health Workers, who were engaged in various schemes for eradication of different diseases throughout the State. However, in the year 1982, as per the recommendation of Government of India, the Government of Tamil Nadu

introduced Multipurpose Health Workers Scheme and as per the said scheme, where a worker will be having multiple works catering to a smaller population than the Unipurpose worker having one job with a larger population. After examining various issues relating to identification of various public health staff to be brought under the categories of Multipurpose Health Worker (Male) and Multipurpose Health Supervisor (Male), fixation of inter-se seniority, evolution of unified scale of pay and fitment, it was decided to appoint Multipurpose Health Supervisor (Male). Accordingly, G.O.Ms.No.1936, Health and Family Welfare Department dated 29.9.82 was issued. In the meanwhile, G.O.Ms.No.593, Health and Family Welfare Department dated 11.9.95 was issued reorganising the male component in Multipurpose Health Worker Scheme, whereby the post of Multipurpose Health Supervisor and Multipurpose Health Assistant were re-designated as Health Inspector Grade I and Health Inspector Grade II respectively. The Basic Health Workers, Vaccinators, Cholera Workers who were absorbed as Multipurpose Health Assistant and have completed 20 years of service were also promoted as Multipurpose Health Supervisors including the Unipurpose Health Workers, by upgrading the post they had held and the excess in the category of Multipurpose Health Supervisor (Health Inspector Grade I) were allowed to continue till they retire from service. This relaxation was given as an one time measure. But the G.O.Ms.No.593 dated 11.9.95 was challenged by certain aggrieved persons in W.P.Nos.17550 & 25608 of 2006. In the meanwhile, during 1990-91, the Government of India had suggested the integration of leprosy services and it was also felt that in order to sustain leprosy services at the operation level, its integration with the public health services would be desirable and the integration would not result in abolition of special services. Since the purpose of integration would be to involve the leprosy field staff in public health work and Health Inspectors in the leprosy work so that the Leprosy Inspector will cover a population of 5000 to 10000, as against 25000 being covered at that time by the Leprosy Inspectors, G.O.Ms.No.320, Health and Family Welfare Department dated 27.6.97 was issued, among other things, for having the administrative control of the National Leprosy Eradication Programme under the Director of Public Health and Preventive Medicine. Besides, the post of Health Educator, Non Medical Supervisor and Leprosy Inspector (Health Inspector Grade IB) were also brought under the Director of Public Health and Preventive Medicine from the Director of Medical and Rural Health Services and their seniority was maintained separately by giving promotions in the respective categories in the existing channels for the staff viz., Non Medical Supervisors and Health Educators.

6. Continuing his arguments, the learned Additional Advocate General for the respondents 1 & 2 submitted that since two categories of Health Inspectors existed at that time consequent on the integration of the leprosy service with the Public Health Department, namely, Category I consisting of directly recruited Health Inspector Grade II in Public Health Department after undergoing Multipurpose Health Worker Training and Category II consisting of Health

Inspector Grade IB absorbed from Leprosy wing in Director of Medical and Rural Health Services and the promotion channels for the aforesaid two categories are in the following way:-

Category-I Category-II

Health Inspector Grade II (directly recruited at HSC level)

Health Inspector Grade IB (redesignated from Leprosy Inspectors) HSC level

Health Inspector Grade I

Block Health Supervisor

Non Medical Supervisor

Technical Personal Assistant Health Educator

Explaining further, it was stated that the first category was appointed directly as Health Inspector Grade II during the year 1989 after undergoing the Multipurpose Health Worker (Male) training course for a period of one year and the Health Inspector Grade II, on completion of 5 years in the said post, becomes eligible for promotion as Health Inspector Grade I as per the adhoc rules prescribed in G.O.Ms.No.1507, Health dated 16.8.89. Pursuant to the integration of Leprosy services with the Public Health Department, G.O.Ms.No.382, Health and Family Welfare Department dated 12.10.2007 was issued to regulate the service and for fixing the inter se seniority. However, the said G.O.Ms.No.382 dated 12.10.2007 was challenged before a Division Bench of this Court and by order dated 23.7.2010, the Division Bench quashed paragraph 6(iv) & (v) of G.O.Ms.No.382, Health and Family Welfare Department dated 12.10.2007. Aggrieved by the same, when the matter was taken to the Supreme Court in Civil Appeal Nos.4483-4485 of 2013, the Hon'ble Supreme Court, by order dated 7.5.2013, held that after the complete integration of the posts of Leprosy Inspector and Multipurpose Health Supervisor by virtue of G.O.Ms.No.320 dated 27.6.97, both categories are entitled to the same treatment, thereby confirmed the order of this Court quashing paragraph 6(iv) & (v) of the G.O.Ms.No.382 dated 12.10.2007. Therefore, as per the direction of the Supreme Court, action was taken to implement the above judgment. Accordingly, a seniority list was prepared and published vide Director of Public Health and Preventive Medicine vide proceedings No.40029/MP2/S1/2013 dated 16.7.2013 placing the re-designated Health Inspector Grade IB with effect from 1.8.97.

7. Based on the above seniority list, 161 Health Inspector Grade I (redesignated Health Inspector Grade IB) were given promotion as Block Health Supervisor vide the proceedings of the Director of Public Health and Preventive Medicine dated 29.7.2013 bearing No.62247/MP2/S1/2013 and 72 Health Inspector Grade I (re-designated Health Inspector Grade IB) were given promotion as Non

Medical Supervisor vide the proceedings of the Director of Public Health and Preventive Medicine dated 29.7.2013 bearing No.62250/MP4/S1/2013. Finally, G.O.Ms.No.110, Health and Family Welfare (L1) Department dated 6.5.2014 was issued re-designating Health Inspector Grade IB as Health Inspector Grade I with effect from 1.8.97 and subsequently G.O.Ms.No.917, Health and Family Welfare (L1) Department dated 11.9.2014 was issued for counting of services rendered in the post of erstwhile Leprosy Inspector for award of Selection Grade/Special Grade in the post of Health Inspector Grade I. Besides, Health Inspector Grade I (re-designated Health Inspector Grade IB) were promoted as Block Health Supervisors and Non Medical Supervisors. Accordingly, 222 Block Health Supervisor and 321 Non Medical Supervisor were given the benefit of promotion. With this background, after the final order was passed by the Supreme Court in Civil Appeal Nos.4483-4485 of 2013 dated 7.5.2013, the seniority list was revised and promotions were given and the writ petitioners have been placed as juniors to the private respondents as per the direction of the Supreme Court. Forgetting these facts, the petitioners cannot come to this Court asking for revision of seniority once again. Therefore the writ petitions are not legally maintainable, hence, they should be dismissed, he pleaded.

8. Again referring to the cases of Mr.A.Ramalingam and Mr.M.Janarthanam, it was stated that after examining the prayer of Mr.M.Janarthanam and 216 others, the State Government had rejected their cases in letter dated 13.7.2015 citing the reason that the retrospective regularisation awarded to Mr.A.Ramalingam, Health Inspector (Retired) in G.O.(D) No.359, Health and Family Welfare Department dated 26.4.2004 is an erroneous one, but the order was issued in favour of Mr.A.Ramalingam only to honour the order of the Tribunal dated 4.12.97 in O.A.No.7622 of 1997, since the appeals were dismissed by the High Court and the Supreme Court. Concluding his arguments, it was stated that the prayer of the petitioners for refixing their seniority with effect from 1995 cannot be accepted, since the seniority of the erstwhile Leprosy Inspectors who have been absorbed with effect from 1997 would be disturbed. Moreover, any attempt to disturb the seniority of the Leprosy Inspectors would be contrary to the decision of the Supreme Court in Sivaguru's case.

9. Heard Mrs.Nalini Chidambaram, learned senior counsel, Mr.V.Raghavachari, Mr.K.Raja and Mr.Karthick, learned counsel appearing for the respective respondents.

10. Mrs.Nalini Chidambaram, learned senior counsel for the respondents 10 & 11 in W.P.No.37294 of 2015 heavily urged this Court to dismiss the writ petition on the ground that the petitioners, having challenged the seniority given to the erstwhile Leprosy Inspectors, who have been absorbed in the cadre of Health Inspector Grade I, had also suffered a final order by the Hon''ble Supreme Court giving a finding on the very same issue. The said judgment also has been reported in Sivaguru's case, therefore, once again the petitioners cannot set up a claim that they should be given seniority over the erstwhile Leprosy Inspectors

who had been absorbed as Health Inspector Grade I.

11. The learned counsel for the fourth respondent in W.P.No.37294 of 2015, supporting the arguments advanced by Mrs.Nalini Chidambaram, further submitted that the present writ petitioners have no authority to challenge the Government Order, since the impugned G.O.Ms.No.1358 dated 29.10.2015 passed by the first respondent is in compliance with the order of the Supreme Court in Sivaguru's case. Therefore the present writ petitions are gross abuse of the process of law seeking to revive the matters that were concluded by the Supreme Court. Hence the writ petitions are liable to be dismissed as devoid of any merit. Concluding his arguments, he has stated that the Directorate of Public Health and Preventive Medicine had recommended the filling up of the vacant post of Technical Personal Assistant to the Deputy Director of Health Services for the year 2014-15 and accepting the proposal, the Government had identified the Block Health Supervisors to the said post. Challenging the same, the present writ petitions have been filed on the ground that Mr.M.Janarthanam and others have filed W.P.No.29794 of 2005 seeking a mandamus to regularize their services with monetary benefits. Similarly, one Mr.Ramalingam, who had the benefit of G.O.Ms.No.359, Health and Family Welfare Department dated 26.4.2004, was issued with an order granting promotion to the post of Health Inspector Grade I with retrospective effect from the date of acquiring the qualification. Their request was to ignore the date of actual promotion. However, the High Court without passing a positive order had directed the Government to consider their representation by order dated 13.7.2007. However, aggrieved by the said direction to consider their case, the respondent Department had taken up the matter to the Supreme Court. As there was only a direction to consider their representation, the Supreme Court in Civil Appeal No.6666 of 2011 batch dated 25.2.2015 dismissed the civil appeal, finding that there was no infirmity with the order passed by the High Court directing the first respondent to consider their case. Only after 15 years, the petitioners have claimed that had made a representation on 16.3.2015 to regularize their services with retrospective promotion and consequential benefits to the post of Health Inspector Grade I. When a similar challenge made by Mr.Sivaguru was outrightly rejected by the Hon"ble Division Bench of this Court, he has preferred appeal before the Supreme Court in Civil Appeal No.4483 of 2013 etc., and the Supreme Court after hearing the parties had again rejected the appeal on 7.5.2013 by making it clear that the High Court had correctly observed that upon integration and merger into one cadre, the pre-existing length of service of the Leprosy Inspectors re-designated as Health Inspector Grade IB had to be protected as it cannot be obliterated. Therefore, the Leprosy Inspectors have been correctly placed at the bottom of seniority list of the already existing Health Inspectors Grade I with effect from 27.6.97. Hence it cannot be said that the benefit has been given to the Leprosy Inspectors/Health Inspector Grade IB/Health Inspector Grade I with retrospective effect. Finally it was observed that the seniority of the respondents before the Supreme Court has to be fixed in the cadre of Health

Inspector Grade I by giving the benefit of service from 27.6.97 and further on completion of five years of service in the post of Health Inspector Grade I, though they can be placed at the bottom of the seniority as Sanitary Inspectors as on 1.8.97, this was not even brought to the notice of the Supreme Court. Subsequently, when the Civil Appeal No.6666 of 2011 batch was decided on 27.5.2013, the writ petitions being gross misuse of the process of law shall be liable to be dismissed, he pleaded.

12. Heard the learned counsel for the parties.

13. For eradication of different diseases spread throughout the State, initially the Public Health Department was having Multipurpose Health Workers and Unipurpose Health Workers, who were engaged in various schemes. While dealing with various issues relating to identification of various public health staff to be brought under the categories of Multipurpose Health Worker (Male) and Multipurpose Health Supervisor (Male), fixation of inter-se seniority, evolution of unified scale of pay and fitment, the unification of various categories into Health Workers and Supervisors were examined and finally it was decided to appoint Multipurpose Health Supervisor (Male). Accordingly, G.O.Ms.No.1936, Health and Family Welfare Department dated 29.9.82 was issued stating that the Multipurpose Health Supervisor (Male) shall be drawn from the categories of staff stated therein and according to the vacancies, first from the seniority list of persons in the "A" group followed by persons in the seniority list of "B" group and finally followed by persons in the seniority list of "C" group as detailed below:-

S.No.

Name of the Category No.available Scale of pay

"A" Group

1.

Health Inspectors Ordinary & Selection Grade 1162 350-10-420-15-600 and 525-25-675-30-

855-35-925

ii.

Basic Health Inspectors (Qualified) Ordinary & Selection Grade 380 350-10-420-15-600 and 400-15-490-20-

600-25-700

Total 1542

"B" Group

i.

Health Assistants in K.K.District & Shenkottai

Taluk (Government side)

Ordinary Grade & Selection

Grade 62 325-10-445-15-550 and 350-10-420-15-600

ii. Cholera Supervisors (Government side)

6 325-10-445-15-600

Iii.

Health Assistants in Panchayat Unions Ordinary Grade &

Selection Grade 629 325-10-445-15-550 350-10-420-15-600

Total 697

"C" Group

i. Basic Health Inspectors (Unqualified)

237 325-10-445-45-550

ii. Additional Posts 10

Total 2486

Their seniority was also ordered to be fixed with reference to rule 35(aa) of the General Rules for the Tamil Nadu State and Subordinate Services Rules. Since various litigations were brought, the above scheme was introduced in Tamil Nadu by abolishing the Unipurpose Health Workers Scheme with effect from 4.11.88 only. Thereafter, G.O.Ms.No.1507, Health dated 16.8.89 was issued prescribing adhoc rules for the category of Multipurpose Health Worker and Multipurpose Health Supervisor with retrospective effect from 4.11.88. Thereafter, Basic Health Workers, Vaccinators, Cholera Workers already working under Unipurpose Health Scheme were merged and they were appointed as Multipurpose Health Assistant (Male). Similarly the Health Inspectors, Basic Health Inspectors, Cholera Supervisors, Health Assistants of Panchayat Union were merged and appointed as Multipurpose Health Supervisors, making it clear that the Multipurpose Health Supervisor will supervise the work of six Multipurpose Health Assistants. After sometime, the persons in the category of Multipurpose Health Assistants could not get promotion even after crossing 50 years of age and rendering 20 years of service. Therefore, G.O.Ms.No.593, Health and Family Welfare Department dated 11.9.95 was issued and the post of Multipurpose Health Supervisor and Multipurpose Health Assistant were re-designated as Health Inspector Grade I and Health Inspector Grade II respectively. The Basic Health Workers, Vaccinators, Cholera Workers who were absorbed as

Multipurpose Health Assistant and have completed 20 years of service were also promoted as Multipurpose Health Supervisors including the Unipurpose Health Workers, by upgrading the post and the excess in the category of Multipurpose Health Supervisor (Health Inspector Grade I) were allowed to continue till they retire from service. This relaxation was given as an one time measure. However, this was challenged in W.P.Nos.17550 & 25608 of 2006.

14. Later on, G.O.Ms.No.382, Health and Family Welfare Department dated 12.10.2007 was issued to regulate the service and for fixing the inter se seniority as follows:- "(i) The post of Health Inspector Grade IB shall hereafter be designated as Health Inspector Grade I and the scale of pay of Rs.4500-125-7000 be allowed to them from the date of issue of the order.

(ii) Fixation of pay in the revised scale of pay shall be allowed only from the date of issue of orders under FR 23 at the same stage if there is a stage or next stage, if there is no such stage. They are eligible for monetary benefits only from the date of issue of the Government Order.

(iii) The above re-designation is subject to the result of Writ Petition No.23893/06 pending in the High Court of Madras and Writ Petition Nos.6250 & 6251/06 pending before the Madurai Bench of Madras High Court.

(iv) These re-designated Health Inspector Grade I will be placed in the seniority list of Health Inspector Grade-I below the last person of the Health Inspector Grade I already working in the Department. As the re-designation as Health Inspector Grade I is given only from the date of issue of the order in relaxation of rule relating to possession of sanitary inspectors course, these re-designated Health Inspector Grade I cannot claim seniority now or in future in the post of Health Inspector Grade I from the date of their absorption in the Public Health Department as per G.O.Ms.No.320, Health dated 27.6.97.

(v) The re-designated Health Inspector Grade I cannot claim promotion to the post of Block Health Supervisor and Technical Personal Assistant till the last person in the existing list of Health Inspector Grade I gets promotion as Block Health Supervisor and Technical Personal Assistant. However the existing promotion channel as Non Medical Supervisor and Health Educator shall be allowed to them till their turn for promotion to the post of Block Health Supervisor, Technical Personal Assistant, comes as per their seniority."

The said Government Order was questioned in W.P.Nos.23893 of 2006 etc., and the Hon"ble Division Bench of this Court, in its order dated 23.7.2010, striking down paragraph 6(iv) and (v) of G.O.Ms.No.382 dated 12.10.2007, taking into account the fact that the Unipurpose Health Workers were absorbed as Multipurpose Health Assistant from the date of their absorption without insisting the required certificates, the Leprosy Inspectors could not be denied the same benefit as that of the Unipurpose Health Workers, when the Leprosy Inspectors got integrated into Multipurpose Health Worker Scheme, held inter alia that G.O.Ms.No.382 dated 12.10.2007 is not correct in treating the Health Inspectors

Grade IB as Health Inspectors Grade I with effect from the date of G.O. Likewise, paragraph 6(iv) and (v) of G.O.Ms.No.382 were also held as bad in denying promotion to the re-designated Health Inspectors Grade I to the post of Block Health Supervisor and Technical Personal Assistant till the last person in the existing list of Health Inspectors Grade I gets promotion as Block Health Supervisor and Technical Personal Assistant and that the Leprosy Inspectors on integration into Multipurpose Health Workers as on 1.8.97 should be treated as Health Inspectors Grade I and they should be given promotion as Block Health Supervisor, allowed the writ petitions holding as follows:- "29. For all these reasons, more particularly, taking into account the fact that in the same Department, the Uni Purpose Health Workers were absorbed as Multi Purpose Health Assistants from the date of their absorption without insisting the required certificates, referred to above, the Leprosy Inspectors could not be denied the same benefit as that of the Uni Purpose Health Workers, when the Leprosy Inspectors were got integrated into Multi Purpose Health Worker Scheme. Therefore, G.O.Ms.No.382, Health and Family Welfare (N1) Department, dated 12.10.2007 is not correct in treating the Health Inspectors Grade IB as Health Inspectors Grade I with effect from the date of G.O., and granting them the scale of pay of Rs.4500-7000 from the date of the said G.O., and the Leprosy Inspectors who were absorbed into Multi Purpose Health Worker Scheme on 01.08.1997 are entitled to be re-designated as Health Inspectors Grade I with the scale of Rs.1350-2200 from 01.08.1997 and they should be given the scale of Rs.4500-7000 when the Health Inspectors Grade I were granted with all consequential benefits.

30. Likewise, paras 6(iv) and (v) of G.O.Ms.No.382 are bad and illegal as clause (iv) of para 6 places Health Inspectors Grade IB who were re-designated as Health Inspectors Grade I by G.O.Ms.No.382 en bloc below the last person of the Health Inspector Grade I already working in the Department. Clause (v) of para 6 is also not correct in denying promotion to the re25 designated Health Inspectors Grade I to the post of Block Health Supervisor and Technical Personal Assistant till the last person in the existing list of Health Inspectors Grade I gets promotion as Block Health Supervisor and Technical Personal Assistant. The Leprosy Inspectors on integration into Multipurpose Health Workers as on 1.8.97 should be treated as Health Inspectors Grade I and they should be given promotion as Block Health Supervisor and Technical Personal Assistant from the date of which their juniors were promoted, with all consequential benefits. However, it is made clear that on redesignating the Leprosy Inspectors as Health Inspectors Grade IA / Grade I as on 01.08.1997, they could be placed at the bottom of the seniority of the serving Health Inspectors Grade I as on 01.08.1997."

The said order was also confirmed by the Supreme Court in Civil Appeal Nos.4483-4485 of 2013 etc., by judgment dated 7.5.2013. It is pertinent to extract paragraph-59 of the judgment of the Apex Court, as follows:- "59. Having accepted the complete merger of the cadre of Health Inspector Grade IB with

Health Inspector Grade IA and all being redesignated as Health Inspector Grade I, GO Ms.No.382 of 2007 failed to achieve the intended result. It still discriminated against the erstwhile Health Inspector Grade IB, by robbing them of service from 1997 to 2007. They were given the pay scale of Rs.4500-125-7000 but from the date of the GO Ms.No.382 of 2007 i.e. 12.10.2007. Further, they were placed en bloc at the bottom of the seniority list of Health Inspector Grade I. This denial of seniority was justified on the ground that "as the redesignation of Health Inspector Grade I is given only from the date of issue of the order in relaxation of rule relating to possession of Sanitary Inspector Course, they cannot claim the benefit of service since integration on 27.6.1997. The redesignated Health Inspector Grade I were also denied promotion on the post of Block Health Supervisor and Technical Personal Assistant till the last person in the category of Health Inspector Grade I is promoted as Block Health Supervisor. They were given the alternate route of promotion as Non Medical Supervisor and Health Educator, till their turn comes for promotion, as per their seniority."

15. Therefore, when the Supreme Court as well as the Division Bench of this Court have held that upon merger with effect from 27.6.97, there was no distinction in the services rendered by Health Inspector Grade IA and Health Inspector Grade IB and hence paragraph 6(iv) and (v) of G.O.Ms.No.382 of 2007 not to grant the benefit of service from 1997 for determination of their seniority for promotion to the post of Block Health Supervisor was held unjustified, I find merits on the stand taken by the official respondents that by re-fixing the seniority of the petitioners and similarly placed persons with effect from the date on which they held the post of Health Inspector Grade I would be contrary to the decision of the Supreme Court in Sivaguru's case dated 7.5.2013. Hence the seniority of the Health Inspector Grade I as on 1.8.97 should be protected, as it attained finality in view of the judgment of the Supreme Court dated 7.5.2013.

16. Secondly, the comparison of the cases of the petitioners herein with the case of Mr.A.Ramalingam also cannot be acceded to. The reason is that when Mr.A.Ramalingam, who was not even appointed as Health Inspector, approached the Tribunal seeking a similar relief of retrospective regularisation in the post of Health Inspector from the date on which he acquired the qualification, namely, Sanitary Inspector Course Certificate, the Tribunal granted the relief in its order dated 4.12.97 in O.A.No.7622 of 1997 without going into the merits of the matter. A perusal of the order also shows that by merely saying that he is a similarly placed person like Mr.D.Dhanasekaran, a direction was given to consider the case of Mr.A.Ramalingam. However, as against the said order, W.P.No.11465 of 1999 was filed before this Court with a long delay, which was dismissed on 5.7.99 on the ground of laches. Subsequently, S.L.P.No.6564 of 2002 was filed before the Supreme Court and the same was also dismissed. In the meanwhile, Mr.A.Ramalingam retired from service on 31.3.2002 on attaining the age of superannuation. Subsequently, the Government was under compulsion to implement the order passed by the Tribunal, confirmed by the High Court and

Supreme Court by dismissing the matter on delay. Therefore the Government also, while issuing G.O.Ms.No.359, Health and Family Welfare (N2) Department dated 26.4.2004, clearly mentioned that the order could not be treated as a precedent in future, since the case of Mr.A.Ramalingam is not similarly placed with Mr.D.Dhanasekaran. The said G.O.Ms.No.359 dated 26.4.2004 also shows that the Government was in a position of no other way except to honour the order of the Tribunal dated 4.12.97 in O.A.No.7622 of 1997, as the appeal petitions were dismissed by the High Court and the Supreme Court.

17. At the risk of repetition, when the order passed by the Hon"ble Division Bench was taken to the Supreme Court in Civil Appeal No.4483 of 2013 etc., the Hon"ble Supreme Court, after hearing the parties, had rejected the appeals on 7.5.2013 and confirmed the order of the Division Bench. Therefore when paragraph 6(iv) and (v) of G.O.Ms.No.382 placing Health Inspectors Grade IB who were re-designated as Health Inspectors Grade I en bloc below the last person of the Health Inspector Grade I was found to be not correct, in denying promotion to the redesignated Health Inspectors Grade I to the post of Block Health Supervisor and Technical Personal Assistant till the last person in the existed list of Health Inspectors Grade I got his promotion as Block Health Supervisor and Technical Personal Assistant, these orders were not brought to the notice of the Apex Court when Civil Appeal No.6666 of 2011 batch arising out of order dated 13.7.2007 passed in W.P.No.29794 of 2005 batch was considered. A careful perusal of the order passed by the Apex Court in Civil Appeal No.6666 of 2011 dated 25.2.2015 does not speak about the earlier judgment of the Apex Court in Sivaguru's case dated 7.5.2013. In any event, since the order passed by the Hon"ble Division Bench on 13.7.2007 in W.P.No.29794 of 2005 etc., directed the respondent therein to consider the case of the petitioners with regard to regularization of their service with retrospective effect, which order has been confirmed by the Apex Court in Civil Appeal No.6666 of 2011 dated 25.2.2015, the Government, while considering the prayer, concluded that the case of Mr.A.Ramalingam has no application to the case of the petitioners and the reason shows that the retrospective regularization awarded to Mr.A.Ramalingam, Health Inspector in G.O.Ms.No.359 dated 26.4.2004, is an erroneous one without having any merit as per law. However the order of the Tribunal passed in O.A.No.7622 of 1997 was implemented for the simple reason that the appeal was dismissed by the High Court on the ground of delay and subsequently by the Apex Court.

18. Secondly, it could be seen that the request to regularize their service in the post of Health Inspector with effect from the date of acquiring the Sanitary Inspector's course cannot be considered, because the promotion is being effected in the post on the availability of vacancy and based upon the eligibility and seniority in the feeder category post and none of the candidates had however worked as Health Inspector at the relevant point of time due to non availability of vacancies. On this basis, the request of the petitioners to promote them in the post of Health Inspector retrospectively with effect from the date of

passing the Sanitary Inspector's course was turned down and this was also communicated to them.

19. A perusal of the judgment of the Apex Court in Sivaguru's case and others holding that the seniority of Health Inspectors Grade I as on 1.8.97 should be protected, as it attained its finality on 7.5.2013 cannot be disturbed once again, inasmuch as the challenge made to the seniority given to the erstwhile Leprosy Inspectors who had been absorbed in the cadre of Health Inspector Grade I was already considered by the Supreme Court in the said Sivaguru's case. Therefore, once again the petitioners cannot set up a claim that they should be given seniority over the erstwhile Leprosy Inspectors who had been absorbed as Health Inspector Grade I. As the seniority issue has already been decided by the Hon'ble Apex Court in a detailed order, this Court can neither revise it nor clarify it.

20. For all the aforementioned reasons, the writ petitions fail and they are dismissed. Consequently, M.P.Nos.1, 2, 3, 4 of 2015, W.M.P.Nos.1602, 21273, 28207, 28208, 28209, 28210, 27963 & 27964 of 2016 are also dismissed. No costs.