

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

W.P.No.10933 of 2015
and M.P.No.1 of 2015

A.Kasturi ...Petitioner

-Vs-

1.Union of India
rep. By Chief Post Master General
Tamil Nadu Circle
Anna Salai, Chennai-600 002

2.Post Master General
Central Region, Tamil Nadu Circle
Trichy-620 001

3.Senior Superintendent of Post Office
Tiruchirapalli Division
Trichy-620 001

4.Chief Medical Officer
Postal Dispensary
Trichy-620 001

5.The Registrar
Central Administrative Tribunal
Madras Bench, Chennai-600 104

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the concerned records relating to the order in O.A.No.1399/2013 dated 30.03.2015 passed by the Central Administrative Tribunal, Chennai Bench and quash the same and consequently direct the 2nd respondent to continue to engage the petitioner as Lab Technician in Postal Dispensary, Trichy as per the order No.WLF/302-9/TR/08 dated 11.05.2010 at Trichy-620 001 passed by the 2nd respondent.

For petitioner

: Mr.M.Gnanasekar

For respondents

: Mr.Venkataswamy Babu
Central Govt.Standing Counsel.

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN, J.)

The petitioner whose services were engaged admittedly on temporary basis as Lab Technician for nearly three decades, has come up with the above writ petition, challenging the rejection of his claim by the Central Administrative Tribunal.

2. Heard Mr.M.Gnanasekar, learned counsel for the petitioner and Mr.Venkataswamy Babu, learned Central Government Standing Counsel for the respondents.

3. The petitioner herein filed an application in O.A.No.1399 of 2013, seeking declaration that the action of the Post Master General, Central Region in engaging a third party to render the service of Lab Technician in her place was bad in law and for a consequential direction to the second respondent to continue to engage her as Lab Technician. The case of the petitioner before the Tribunal was that she completed S.S.L.C., in the year 1976; that thereafter she studied Diploma in Medical Laboratory Technology in Cochin School of Technology and came out successful in April 1979 and that she was sponsored through Employment Exchange and appointed in a casual vacancy in the cadre of Lab Technician in the office of the second respondent.

4. According to the petitioner, she was continuously engaged from 03.06.1982 and that suddenly from 2012, she was disengaged. Therefore, when she made a representation to accommodate her against the vacancy that arose due to the retirement of one Mr.Periyasamy on 31.05.2013, the said request was not considered favourably forcing her to go before the Tribunal. The respondents filed a reply statement. In the reply statement, it was contended by the respondents that the petitioner was provisionally selected for casual employment in a leave vacancy, by a letter dated 03.06.1982 on condition that it was only an engagement to fill up a leave vacancy. As per counter filed by the respondents before the Tribunal, the services of the petitioner were utilised in the leave arrangement, from the year 1982 till October 2003 as and when occasion arose. The respondents claimed that after 2003, she was not engaged, due to the de-linking of B.S.N.L., employees from the Postal Dispensary which led to a decline in the number of cardholders.

5. The further case of the respondents before the Tribunal was that in a review conducted in October 2005, it was found that only one post of Lab Technician was justified. Therefore, the services of the petitioner were utilised in the leave vacancies and a decision was taken to engage the services of the petitioner in leave vacancies. But her engagement was discontinued from 22.02.2012. Hence it was claimed by the respondents that the petitioner had no right either to seek continuous engagement or to seek direction to

the respondents not to out-source the duties of the post of Lab Technician.

6. By a final order dated 30.03.2015, the Tribunal dismissed the application of the petitioner on the short ground that the post itself was found to be not required by the Department and that therefore no direction to absorb the petitioner could be issued. It is seen from the order of the Tribunal that paragraph 8 of the order which contains the only reason for the dismissal of the application, cited non-availability of a post.

7. However, we find that both parties in this case have lost sight of the position as per statutory rules. The positive case of the petitioner before the Tribunal was that she was engaged from June 1982 continuously for more than 30 years. The counsel for the petitioner has produced the interview call letter dated 12.05.1982 issued by the Divisional Engineer, Tiruchirappalli Telephones Circle, by which the petitioner was called for an oral interview for considering her claim for a casual vacancy. The interview call letter indicated that the successful candidate will be appointed on casual basis in leave vacancies on a daily rated basis.

8. But despite the same, the services of the petitioner appear to have been engaged continuously. The order of appointment issued on 03.06.1982 shows that the petitioner was provisionally selected for casual employment in the leave vacancy of one Mr.T.Ananda Divakaran. But thereafter by an order of appointment dated 19.06.1982, the petitioner was appointed on a time scale of pay subject to certain terms and conditions.

9. The order of appointment dated 19.06.1982 reads as follows:-

" The Divisional Engineer, Telephone, Tiruchy-620 001 is pleased to appoint provisionally Kum.E.C.Kasturi as Casual Lab Technician in the leave vacancy of Sri.T.Ananda Thivakaran, Lab.Technician P&T Dispensary Tiruchy purely on a casual day to day basis at Rs.330/- P.M., in the scale of pay of Rs.330-10-380-EB-12-500-EB-15-560 plus usual allowances for two days on 4-6-82 and 5-6-82. "

It is seen from the order of appointment that the appointment was on a time scale of pay and not on daily rated basis as indicated in the interview call letter. Consequently the petitioner continued to have engaged in a time scale of pay.

10. Even the proceedings dated 11.05.2010 issued by the Post Master General shows that the petitioner was granted even Dearness Allowance on pro rata basis. If persons are engaged on a time scale of pay and they continue for the prescribed period of time, they acquire some status and some rights in terms of the statutory rules issued by the Central Government. These statutory rules known as

Central Civil Services (Temporary Service) Rules, 1965 define what a Temporary Service is and prescribe procedure for termination of such temporary service. The case of the petitioner has not been examined in the light of these statutory rules issued in exercise of the power conferred by the proviso to Article 309 of the Constitution of India.

11. It is no doubt true that engagement on casual basis and engagement against leave vacancies will not create any right to an employee. Primarily the reason for such legal position is that such appointments are not made in accordance with the rules and they are mostly presumed to be back door entries. But in the case of the petitioner, she was sponsored through employment exchange in the year 1982 and appointed after having been found fully qualified for appointment. Therefore this is not the case of back door entry.

12. Moreover a casual engagement or engagement on a leave vacancy is supposed to last only for a few days. At the most it may last for few months. Her continuation for about 30 years defies any logic. Therefore, the Writ Petition is allowed. The impugned order of the Tribunal is set aside and a direction is issued to the respondents to examine the case of the petitioner with reference to the Central Civil Services (Temporary Service) Rules, 1965 and take a decision in accordance with law within a period of eight weeks from the date of receipt of a copy of this order on the basis of the observations made above. Till then, no third parties shall be engaged to do the job. As and when necessity arises for the engagement for the Lab Technician, the petitioner's service may be utilised. No costs. Connected MP is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

nvsri

To

1.The Chief Post Master General

Tamil Nadu Circle, Anna Salai, Chennai-600 002

2.Post Master General, Central Region, Tamil Nadu Circle
Trichy-620 001

3.Senior Superintendent of Post Office

Tiruchirapalli Division, Trichy-620 001

4.Chief Medical Officer, Postal Dispensary, Trichy-620 001

5.The Registrar, Central Administrative Tribunal
Madras Bench, Chennai-600 104

1 cc to Mr.Venkataswamy Babu , Advocate Sr.No.32757

1 cc to Mr.M.Gnanasekar , Advocate Sr.No.32897

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