

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.NO.21728 OF 2015

S. Saraswathi

..Petitioner

Vs

The Secretary,
Ministry of Overseas Indian Affairs,
Government of India,
Akbar Bhawan,
Chanakyapuri,
New Delhi 110 021.

..Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus to direct the respondent to issue Emigration clearance certificate through M/s. Shubh Laksh Overseas Placement Services, without insisting on new regulation of recruitment service by considering the petitioner's representation dated 29.6.2015.

For Petitioner : Mr.S.Kumaresan

For Respondent : Mr.Su. Srinivasan,
Asst. Solicitor General of India.

ORDER

The petitioner has filed this writ petition praying for issuance of Writ of Mandamus to direct the respondent to issue Emigration clearance certificate through M/s.Shubh Laksh Overseas Placement Services, without insisting on new regulation of recruitment service by considering the petitioner's representation dated 29.6.2015.

2. Heard the learned counsel for petitioner and learned Assistant Solicitor General of India appearing for respondent.

3. The petitioner completed her Diploma in General Nursing and midwifery course in the year 2002 to 2005 and she worked as a Nurse in various hospitals. During 2011, she got an opportunity to work in Iraq and worked in Iraq Government Hospital, but later, due to the affairs happened in Iraq, as she was unable to continue her job, she left her job in 2014 and returned to India.

4. According to the petitioner, as she aspired to work abroad, in the year 2014, she entered a Non-UAE Employment Contract with the Dubai Health Authority through a private recruitment agency M/s.Shubh-Laksh Overseas Placement Services on 19.02.2015. The said contract is for a period of four years and her employment is with Dubai Health Authority Nursing Department. The entire recruitment process of her job has been completed and the petitioner is awaiting for obtaining emigration clearance from the Ministry of Overseas Indian Affairs.

5. Whiles, on 12.03.2015, an order was passed by the respondent/Ministry of Overseas Indian Affairs, stipulating that from 30.4.2015 onwards, recruitment of nurses for overseas employment will be restricted through State run recruiting agencies.

6. Learned counsel for petitioner contended that when the agreement having been entered into between petitioner and Dubai Health Authority on 19.02.2015, the subsequent order dated 12.3.2015 does not have an application as the agreement was entered before the issuance of notification.

7. As rightly submitted by the learned counsel for the petitioner, there was indeed an agreement entered into between the Dubai Health Authority and the petitioner as early as on 19.2.2015 through a private agency. Admittedly at the relevant point of time, such a procedure was permissible. Thus the order dated 12.3.2015 of the respondent herein can only be termed as prospective in covering those cases, where contracts have been entered into between the foreign authority with an Indian National through a private agency.

8. Even otherwise, a further perusal of the order dated 12.3.2015 would show that it is only a temporary in nature and recruitment would be allowed for a specific country whenever such a proposal is received from that country, of course, subject to the issuance of country's specific order from the Ministry of Overseas Indian Affairs. Thus, it is seen that the said order being a prospective and a right having been concluded in favour of the petitioner prior to passing of such order, the same cannot be put against her.

9. Therefore, this Writ Petition is disposed by directing the respondent to issue Immigration certificate through M/s. Shubh-Laksh

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Overseas Placement Services without complying the order dated 12.03.2015 subject to the other procedures that can be followed, within a period of four weeks from the date of receipt of a copy of this order. No costs.
Msr

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

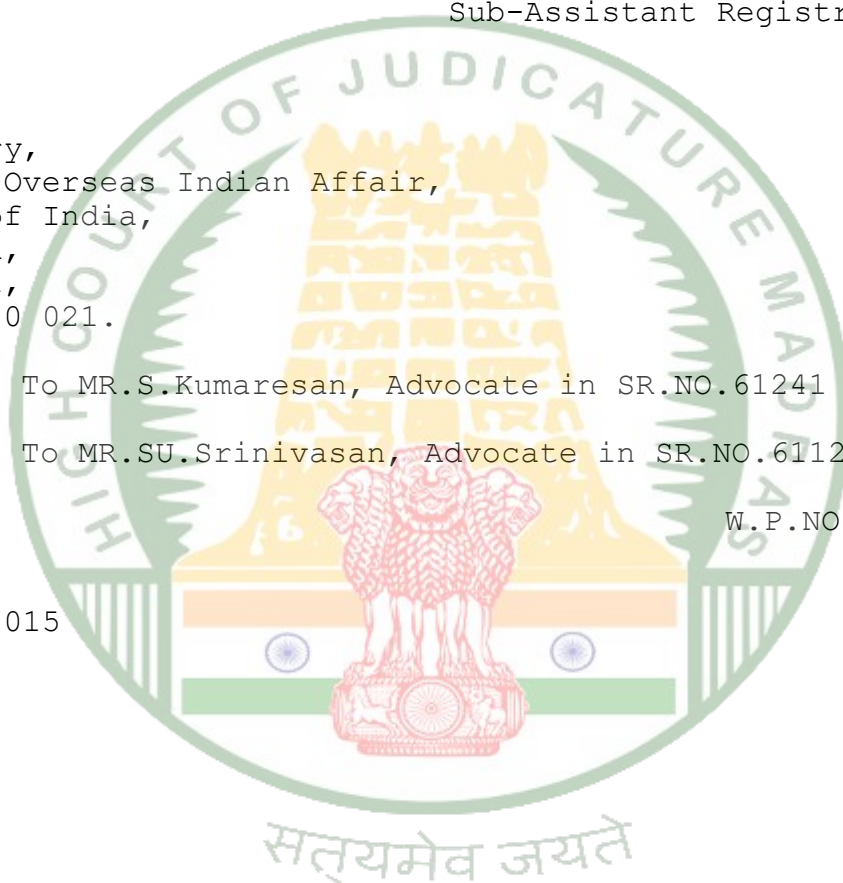
The Secretary,
Ministry of Overseas Indian Affairs,
Government of India,
Akbar Bhawan,
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New Delhi 110 021.

+1 C.C. To MR.S.Kumaresan, Advocate in SR.NO.61241

+1 C.C. To MR.SU.Srinivasan, Advocate in SR.NO.61120

W.P.NO.21728 OF 2015

TM(CO)
sd : 26/11/2015



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