

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.31478 of 2015
and
M.P.No.1 of 2015

D.Ambika

...Petitioner

- Vs -

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.
2. The Deputy Director,
Public Health Services,
Krishnagiri District.
3. The Chief Medical Officer,
Anandur Primary Health Centre,
Krishnagiri District.
4. The Block Medical Officer,
Saralpet,
Krishnagiri District.

...Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents herein to regularize the services of the petitioner in the post of Staff Nurse by considering the fact that the initial appointment of the petitioner has been only by way of paper advertisement and the transparent selection process by conducting a Special Recruitment Test, if necessary.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents : Mr.S.Gunasekaran
Government Advocate

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner participated in a walk-in interview conducted by M/s.EKAM Foundation, New No.16, Old No.19, Jayalakshmipuram 1st Street, Nungambakkam, Chennai - 600 034 and was selected to the post of Staff Nurse (in the Intervention Programme). She was informed that her appointment is on contractual basis and that the period of employment will be up to 30.09.2013 or till the regular contractual staffs are appointed by the department, whichever is earlier. In the order of appointment dated 10.03.2013, issued by the said Foundation, certain terms and conditions were also stipulated. As per Clause 3.1, it has been stated that the appointment is based purely on temporary basis as aforementioned and she cannot claim any right for any future appointment in Government Services and as per Clause 3.2, she will not be entitled to seek permanency either with Ekam or with the Hospital. The grievance now expressed by the petitioner is that she is going to be replaced by another contractual appointee and in this regard, has also submitted a representation to the second respondent and since no orders has been passed, came forward to file this writ petition.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to a judgment of the Hon'ble Supreme Court reported in (1992) 4 SCC 118 (State of Haryana Vs. Piara Singh) and would submit that in the light of the ratio laid down by the Hon'ble Supreme Court that an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he/she must be replaced only by a regularly selected employee as this is necessary to avoid arbitrary action on the part of the appointing authority and hence prays for appropriate orders.

4. Mr.S.Gunasekaran, learned Government Advocate accepts notice on behalf of the respondents and would submit that the petitioner was admittedly appointed on contractual basis as Staff Nurse by M/s.Ekam Foundation and therefore she cannot maintain the writ petition against the official respondents and prays for dismissal of the writ petition.

5. In response to the said submissions, the learned counsel appearing for the petitioner would submit that since the services of the petitioner is likely to be disengaged / terminated, she is constrained to approach this Court by filing this writ petition.

6. This Court heard the rival submissions and also perused the materials placed before it.

7. Though the petitioner prays for a larger relief, this Court in the light of the facts and circumstances of the case, without going into the merits of the same, directs the petitioner to submit one more representation to the second respondent as well as to the above said Foundation, within a period of two weeks from the date of receipt of a copy of this order and the second respondent on receipt of the same, is directed to consider the said representation on merits and in accordance in law and pass orders within a further period of four weeks thereafter and communicate the decision taken, to the petitioner and till then shall maintain status quo as exist today, in so far as, the petitioner is concerned. The writ petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.
2. The Deputy Director,
Public Health Services,
Krishnagiri District.
3. The Chief Medical Officer,
Anandur Primary Health Centre,
Krishnagiri District.

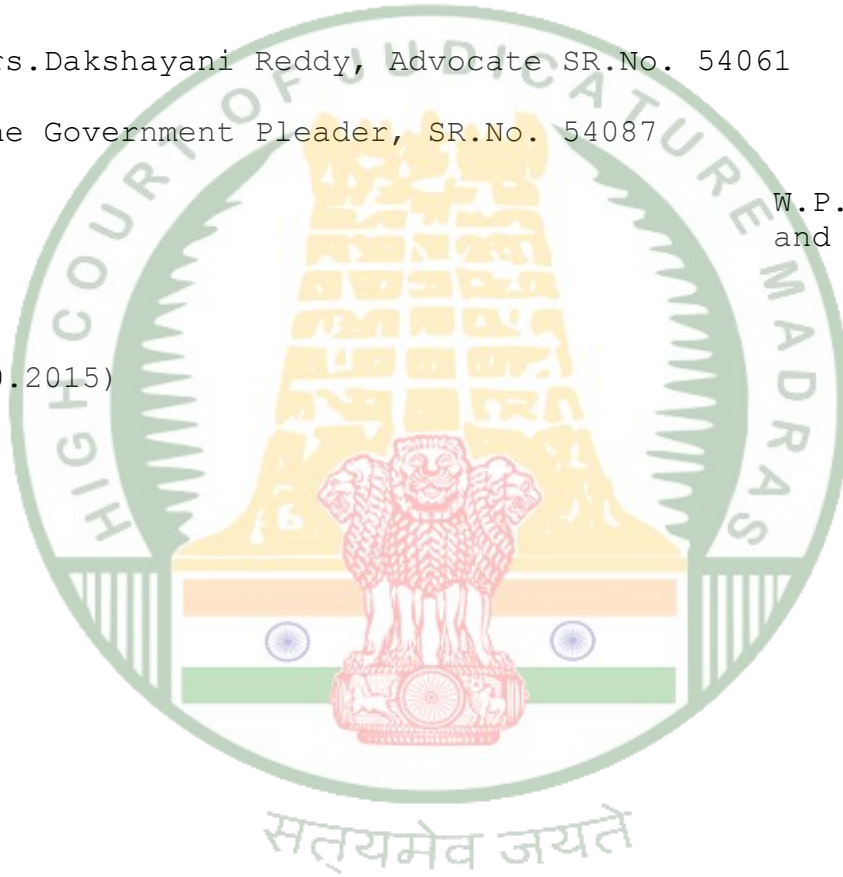
4. The Block Medical Officer,
Saralpet,
Krishnagiri District.
5. M/s.EKAM Foundation,
New No.16, Old No.19,
Jayalakshmipuram 1st Street,
Nungambakkam, Chennai - 600 034.

1 CC to Mrs.Dakshayani Reddy, Advocate SR.No. 54061

1 CC to the Government Pleader, SR.No. 54087

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BVR (CO)
PSI (06.10.2015)



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