

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.02.2015

Delivered on: 19.02.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.NO. 7 of 2015

and

M.P.Nos. 1 and 2 of 2015

1. Tmt.V.Jayanthi
2. Tmt.S.Ezhilarasi
3. Tmt.R.Kavitha
4. Tmt.M.Tamilselvi
5. Tmt.R.Rasathilagam
6. Tmt.C.Sumathi
7. Tmt.R.Chandravanitha
8. Tmt.P.Jayaseely

...Petitioners

Vs.

The Principal District Judge,
Villupuram District,
Villupuram.

...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking the issue of a writ of certiorarified Mandamus calling for the records of the respondent relating to the impugned proceedings in A.No.430/2014, dated 26.08.2014 in so far as they relate to the ouster from service on 31.8.2014 of the petitioners herein and in so far as the petitioners herein are concerned and to quash the same in respect of the petitioners herein and direct the respondent to treat the service of the petitioners as continuous from the date of their original appointment without any break on 31.08.2014 and with all service rights including increment due under the Rules.

For Petitioners

: Mr.S.Vadivelu

O R D E R

V.Ramasubramanian,J

The petitioners were appointed as Junior Assistants/Steno-Typists/Typists, in various courts in Villupuram District, on temporary basis on several dates. The dates of first appointment of the petitioners respectively are 9.07.2010, 29.04.2010, 29.04.2010, 21.12.2009, 29.04.2010, 07.07.2010, 20.06.2011 and 20.06.2011.

2. According to the petitioners, they had put in more than three years of continuous service without any break. However, by an order dated 26.08.2014, the respondent terminated the services of the petitioners with effect from the After Noon of 31.08.2014 and reappointed them with effect from 02.09.2014. In other words the respondent gave a break in service of one day for the petitioners by the said order. Aggrieved by the said order, the petitioners have come up with the above writ petition.

3. We have heard Mr.S.Vadivelu, learned counsel for the petitioner.

4. At the outset, it was conceded by Mr.S.Vadivelu, learned counsel for the petitioners that the petitioners are not seeking regularisation of their services. This is in view of the admitted position that the petitioners were appointed on temporary basis under Rule 16(a)(i) of the Special Rules for Tamil Nadu Judicial Ministerial Services. The posts of Typists, Steno-Typists and Junior Assistants are in the Ministerial Service and they come within the purview of the Tamil Nadu Public Service Commission. Therefore, the petitioners who were not selected through the Tamil Nadu Public Service Commission, but appointed without a process of selection, cannot claim regularisation.

5. The petitioners are actually aggrieved by two things namely: (a) that there cannot be an artificial break in service, leading to their dis-entitlement of Annual Increments and (b) that till candidates selected through Tamil Nadu Public Service Commission are sponsored and allotted for appointment, they cannot be replaced.

6. In so far as the second contention is concerned, it must be said that normally one candidate temporarily appointed under Rule 10

(a)(i) of the General Rules cannot be replaced by another candidate appointed on similar basis. The very object of making appointments even under Rule 10(a)(i) of the General Rules, is to take care of emergent situations. The appointment under Rule 10(a)(i) is not to be resorted to, as a matter of routine. Such appointees are liable to be replaced at the earliest by those sponsored by the Tamil Nadu Public Service Commission. As a matter of fact clause (iii) of General Rule 10(a) stipulates that a person appointed under clause (i) cannot be continued for a period of more than one year. It would be useful to extract the relevant parts of General Rule 10(a)(i), which reads as follows:-

"Rule: 10. Temporary appointments:- a(i)(1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

Provided that no appointment @ by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts with in the purview of the Tamil Nadu Public Service Commission.

(ii)

(iii) A person appointed under clause (i) shall be replaced as soon as possible by a member of a service or an approved candidate qualified to hold the post under the rules, and in any case, he shall not be continued for a period of more than one year from the date of his temporary appointment. "

7. Therefore, a close reading of Rule 10(a)(i) would show that the continuance of the petitioners beyond one year was itself contrary to Rule 10(a)(iii) of the General Rule for Tamil Nadu State and Subordinate Services. In such circumstances, we do not think that the petitioners can really make out a grievance.

8. Mr.S.Vadivelu, learned counsel for the petitioners contended that by virtue of the Special Rules of Tamil Nadu Judicial Ministerial Services, the petitioners were even granted Annual

Increments. According to the learned counsel, the petitioners were appointed under Rule 16(a)(i) of the Special Rules for Tamil Nadu Judicial Ministerial Services and that their right to receive Annual Increments was jeopardised by the impugned order giving a day's break.

9. Rule 16(a)(i) of the Special Rules for Tamil Nadu Judicial Ministerial Services, is in pari materia with General Rule 10(a)(i). 16(c) of the Special Rules reads as follows:-

" 16. Temporary Appointments:-

(a)

(b)

(c) A person appointed under Sub-rule (a) shall, whether or not he possesses the qualifications prescribed for the post to which he is appointed, be replaced as soon as possible by a member of the service or an approved candidate to hold the post under these rules."

10. A careful look at Rule 16(c) of the Special Rules shows that it is also in pari materia with General Rule 10(a)(iii). The only difference is that the rider contained in General Rule 10(a)(iii) to the effect that a temporary appointee cannot be continued for more than one year is not to be found in Rule 16(c).

11. However, Rule 16(e)(i) of the Special Rules makes it clear that temporary appointees do not have a preferential claim to future appointment and that their services can be terminated at any time without any reason. Rule 16(e)(i) of the Special Rules reads as follows:-

" 16. Temporary Appointments:-

(a)

(b)

(c)

(d)

(e)(i) A person appointed under sub-rule (a), (b) or (d) to a post borne on the date of the service shall not be regarded as a probationer or be entitled by reason only of such appointment to any preferential claim to future appointment, the services of such a person in the post shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned."

12. The reliance placed by Mr.S.Vadivelu, learned counsel for the petitioner on Rule 16(ff) of the Special Rules, for the purpose of Increment, is of no assistance to the petitioners. Rule 16(ff) conferring a right to increment, is actually subject to the right of the appointing authority to terminate the services of the temporary appointees under Rule 16(e). In any case, the right to increment has nothing to do with the termination of services. Therefore, the claim of the petitioners cannot be accepted.

13. Relying upon the decision of the Supreme Court in Karnataka State Private College staff gap Lecturers Association vs. State of Karnataka [1992 (1) SLR (SC) 643], it is contended by Mr.S.Vadivelu, learned counsel for the petitioners that the practice of giving artificial break for one day has been condemned by the Supreme Court.

14. It is true that in the aforesaid decision, the Supreme Court condemned such practice on the part of privately managed Degree Colleges which were receiving cent percent Grant-in-Aid. But nevertheless the Supreme Court pointed out in the said case that ad hoc appointments have become a convenient way of entry usually from back door, at times even in disregard of Rules and Regulations. The Supreme Court was primarily concerned in the said case with a provision contained in an order passed by the Education Youth Services Department of the State of Karnataka. The Supreme Court felt that the said statutory provision was an invention made for the purpose of outwitting the requirement of law. In fact, the State of Tamil Nadu had a similar provision under the General Rules. However, the said provision was later deleted.

15. In the case on hand, no such provision was resorted to. Even according to the petitioners, the respondent had not made it a regular practice to oust the services of the petitioners once in 90 days. Therefore, the situation on hand is not comparable to the case before the Supreme Court.

16. In view of the above, we find no merit in the writ petition and hence it is dismissed. There will be no order as to costs. Consequently, M.P.Nos. 1 and 2 of 2015 are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gr.

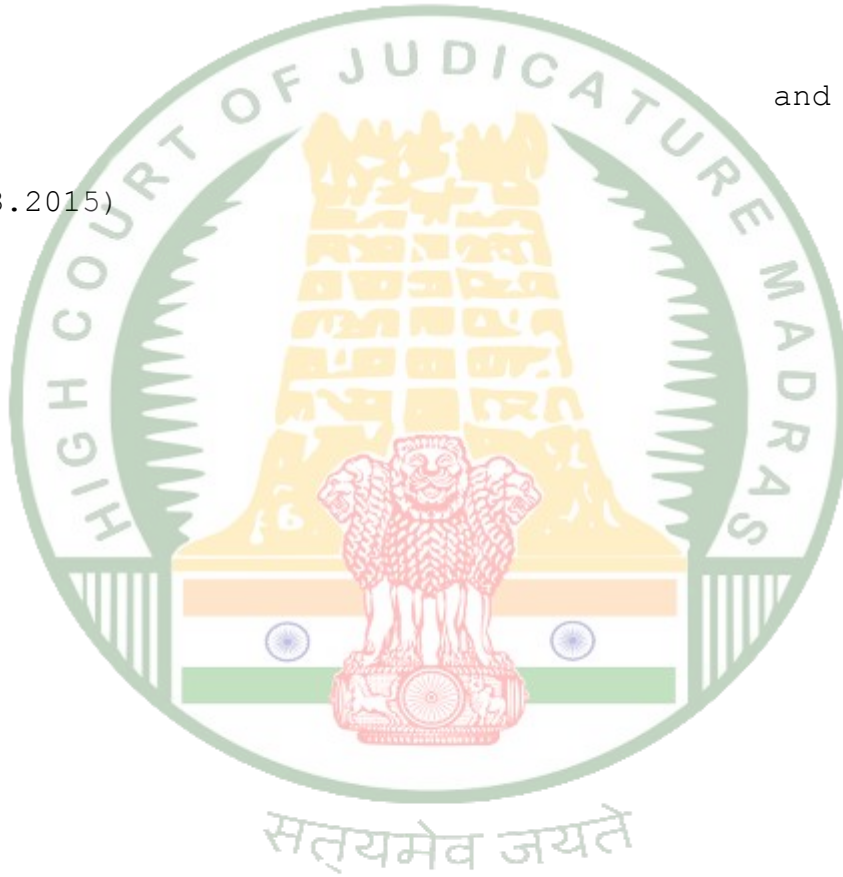
To

The Principal District Judge,
Villupuram District,
Villupuram.

2 CCs to Mr.S.Vadivelu, Advocate SR.No. 9057

W.P.NO.7 OF 2015
and M.P.No.1 of 2015

KK (CO)
PSI (10.03.2015)



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