

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2015

CORAM

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.29755 of 2008

and

M.P.No.1 of 2008

R.Vedagiri

...Petitioner

Vs.

The Deputy Director of Public
Health and Preventive Medicine,
Institute of Public Health,
Poonamallee, Chennai - 56.

...Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondent culminated in the impugned termination order in Na.Ka.No.6199/PA-1/85 dated 04.08.2008 and quash the said order and entire proceedings thereunder against the petitioner and reinstate the petitioner in service as a Mazdoor in the respondent department forthwith along with all attendant and monetary benefits and continuity of service.

For Petitioner : Mr.B.Balachander

For Respondent : Mr.A.Kumar,
Spl. Govt. Pleader

ORDER

Petitioner - R.Vedagiri, who has been appointed on compassionate ground on 03.04.1986 and terminated on 04.08.2008, after 22 years of service, filed the present writ petition, challenging the validity of the order of termination dated 04.08.2008 issued by the Deputy Director of Public Health and Preventive Medicine, Institute of P Public Health, Poonamallee, Chennai in Na.Ka.No.6199/PA-1/85.

2.The petitioner was appointed temporarily as Mazdoor in the Institute of Public Health, Poonamallee under the power delegated in G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977 and Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services by order dated 03.04.1986. His father - V.Rangan, who was serving as Mazdoor died on 16.06.1985. In view of the sudden death of his father, the petitioner applied for job on compassionate ground by making a representation dated 07.08.1985. Subsequently, the appointing authority, after thorough verification and scrutiny of the certificates, more particularly, considering the indigenous circumstances faced by the petitioner and his family, keeping in mind that his family was also consisting of 10 members and the petitioner being an elder one, satisfied with the particulars furnished by him and appointed him as a temporary Mazdoor on 03.04.1986. Thereafter, his services were regularised with effect from 04.04.1986. While the petitioner was working without any blemish and to the satisfaction of his superiors, the Director of Public Health and Preventive Medicine, Chennai called for the report from the Deputy Director with respect to irregular appointment of Mazdoors on compassionate grounds. In response thereto, the respondent also sent a report to the Director of Public Health and Preventive Medicine, Chennai. More particularly, the respondent, in his recommendation vide letter in R.No.4044/E1/91 dated 24.08.1997, made a request to the Director of Public Health and Preventive Medicine to take necessary action to obtain ratification of the Government in respect of the appointment of the petitioner. The said request was also sent along with the inspection report. Therefore, it goes without saying that the petitioner was appointed as Mazdoor at Institute of Public Health and Preventive Medicine on 03.04.1986 as per G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977 and Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services, wherein it is mentioned that the dependant of the Government servant died in harness leaving his family in indigenous circumstances is also eligible to avail the concession granted in G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977 even when there is already an earning member in the family. On this basis, the learned counsel for the petitioner would submit that on the date when the petitioner was appointed on 03.04.1986 under Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services, his appointment was protected by G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977.

3.In view of the above G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977, the request made by the Deputy Director of Public Health and Preventive Medicine, Chennai to the Director to take necessary action to obtain ratification of the Government ought

to have been considered. On the other hand, the Director of Public Health and Preventive Medicine finding fault with the case of the petitioner that when he was appointed on compassionate ground, his mother was in employment, issued a show cause notice on 11.07.2008 calling upon the petitioner to submit his explanation within seven days from the date of receipt of the show cause notice. In response thereto, the petitioner again submitted his detailed explanation on 26.07.2008. In the meanwhile, when the petitioner was regularised in service, without even taking into account the petitioner has been working satisfactorily and there is also G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977 permitting the petitioner to be appointed on compassionate ground, wrongly passed the order of termination on 04.08.2008 on the ground that the petitioner has suppressed the fact with regard to the service of his mother as Mazdoor while getting employment.

4. Adding further, learned counsel for the petitioner would submit that when there is no proper enquiry conducted, the petitioner was deprived of the opportunity to submit his case before the enquiry officer. Mere issuance of show cause notice and submitting a reply will not absolve the respondent from holding the proper enquiry. As a matter of fact, in the present case, after issuance of the show cause notice dated 11.07.2008, till date, no enquiry has been conducted. Therefore, the impugned order, terminating the petitioner after allowing him to work for 22 long years is not only bad in law but also in violation of principles of natural justice and also shocks the conscience of the Court. Therefore, the impugned order is liable to be set aside. The learned counsel for the petitioner would also rely on the order of this Court in W.P.No.29754 of 2008 dated 26.02.2014 and further submit that in the event of ordering reinstatement in favour of the petitioner, the petitioner would not claim backwages for the period he was unemployed.

5. Mr. A. Kumar, learned Special Government Pleader for the respondent in reply submitted that the order passed by this Court in W.P.No.29754 of 2008 dated 26.02.2014 cannot be pressed into service in favour of the petitioner, since in that case, the direction was issued by this Court to examine the official records including the application of the petitioner seeking appointment on compassionate ground to find out whether the petitioner therein has suppressed or misled the appointing authority. But in the present case, admittedly, when the petitioner was appointed as Mazdoor on 03.04.1986, his mother was also working. Therefore, no reliance can be made either by the petitioner or by this Court on the order passed by this Court in W.P.No.29754 of 2008 dated 26.02.2014.

6.This Court is not able to appreciate the contentions made by the learned Special Government Pleader. First of all, there is no counter affidavit filed by the respondent even after the passage of almost seven years from the date of filing of the writ petition in 2008. Secondly, the petitioner was appointed as Mazdoor at the Institute of Public Health and Preventive Medicine, under Rule 10(a) (i) of the General Rules for Tamil Nadu State and Subordinate Services, on 03.04.1986, on compassionate ground since his father died in harness. Thirdly, G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977 also supports the case of the petitioner. Therefore, it is necessary to extract the relevant portion, which reads as under:

"The Government of India in the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, have granted certain further concessions to the dependants of their Government Servant who died in harness leaving their families in indigent circumstances. After the issue of the G.O. 7th read above, the Collector of Madras have raised certain clarifications arising out of the above G.O. The Government have examined these in detail and then pass the following orders:

1.The dependant of a Government Servant who died in harness leaving his family in indigent circumstances, is eligible to avail of the concession granted in the Government order read above, even when there is already an earning member in the family, if in the opinion of the appointing authority the family is in indigent circumstances. Before deciding the indigent circumstances of the family, the appointing authority should take into account the number of dependants left, the movable and immovable assets and liabilities left by the deceased Government servant, the income of the earning member in the family, as also his liabilities. However the concession under the Government orders read above should not be granted to more than one dependant in the family of the deceased Government servant.

2.The District Collectors are requested to register the dependants of Government servants appointed under the Government orders read above and ousted for want of vacancy, in the register, maintained as per G.O.Ms.No.50 P & AR dated 19.11.1976 and provide them employment in preference to other ousted temporary Government Servants."

7.It is not in dispute that the petitioner's father died in harness. Subsequently, the petitioner was appointed on 03.04.1986 as temporary Mazdoor. Thereafter, his services were regularised with

effect from 04.04.1986. The Deputy Director, Public Health and Preventive Medicine, Chennai also sent a representation to the Director requesting him to take necessary action to obtain ratification of the Government in respect of the appointment of the petitioner. When the petitioner was issued with show cause notice dated 11.07.2008, as pleaded by the learned counsel for the petitioner, there was no oral enquiry or departmental enquiry conducted. That clearly shows that the principles of natural justice have been completely violated. As the petitioner was not provided with reasonable opportunity and there is no record to show that there was departmental proceedings initiated against the petitioner for the alleged suppression, the impugned order has to go. Therefore, the impugned order is set aside. As pleaded by the learned counsel for the petitioner, since the petitioner is having only five years of leftover service, the respondent is directed to reinstate the petitioner in service without the benefit of backwages. Such direction shall be complied with, within a period of six weeks from the date of receipt of a copy of this order.

8. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi

To

The Deputy Director of Public
Health and Preventive Medicine,
Institute of Public Health,
Poonamallee, Chennai - 56.

2 CCs to M/s. Ashok Menon, Advocate SR.No. 26917

1 CC to the Government Pleader, SR.No. 26867

TEJ (CO)
PSI (15.07.2015)

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