



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) .No.10403 of 2015

and

M.P. (MD) No.1 of 2015

Dr.A.Thandeeswaran

:Petitioner

vs.

1.The Director,
Irrigation Management Training Institute,
Thiruchirappalli - 620 015.

2.The Secretary (Ex-Officio),
Governing Council of IMTI and
Director,
Irrigation Management Training Institute,
Thiruchirappalli - 620 015.

3.The President (Ex-Officio),
Governing Council of IMTI and
Secretary to Govt.of Tamil Nadu,
Public Works Department,
Secretariat, Fort St.George,
Chennai - 600 009.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Se.Mu.Aa.No.A3/A.521/faculty (outsource) / 2015, dated 12.06.2015 and quash the same and consequently direct the 1st respondent to reinstate the petitioner in the service with continuity of service, back wages and all the other benefits.

For Petitioner :Mr.S.Gunalan

For Respondents :Mr.K.P.Krishnadoss,
Government AdvocateO R D E R

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Se.Mu.Aa.No.A3/A.521/faculty (outsource) / 2015, dated 12.06.2015 and quash the same and consequently, to direct the 1st respondent, to reinstate the petitioner in the service, with continuity of service, back wages and all the other benefits.

<https://hcservices.ecourts.gov.in/hcservices/>

2.By consent of both parties, the writ petition itself is taken up for final disposal.



3. Challenge in the Writ Petition is to an order of termination, dated 12.06.2015, which according to the petitioner, is illegal. The case of the petitioner is that he possess a Master of Philosophy (M.Phil) degree in Sociology from Bharathidasan University, Thiruchirappalli and a Doctoral Degree (Ph.D) in Sociology from the University of Madras. He got 7 years of prior teaching experience in reputed institutions such as St. Joseph's College, Thiruchirappalli. It is the submission of the petitioner that based on the advertisement in a newspaper, he applied for the post of Research Associates (Core Faculty) in Irrigation Management Training Institute (herein after call IMTI), on a consolidated pay. The petitioner has signed an agreement that he would continue in service for a period of three years as outsource person, on 01.03.2010 and that the period was extended by two years on 05.04.2013. Eventhough the period was not extended prior to the completion of three years' period, a separate order was issued extending the period. The petitioner submitted that he has been working without any room for complaint and that the services have been extended by another two years, by an order dated 17.04.2015 and that the period stands extended only upto April 2017.

4. To his shock, he was served with an order, dated 12.06.2015, which is impugned in this writ petition that he has to vacate the premises forthwith and he has been terminated from service. There is no reason assigned for such termination. As the order of termination has been issued within two months from the order of extending his services in April 2015 and that the respondent did not act as model employer and instead of regularizing his services and thereby extending the services repeatedly keeping an outsource employee itself was illegal. The termination order, which is the subject matter of this writ petition has given great hardship to himself and his family members and that a child, who is studying in the School are going to face the hardship.

5. The Petitioner further submitted that the order passed by the Director is bad and that he does not have approval of the governing Council before issuing the order of termination. The Director can appoint a person only with the approval of the governing Council and since there is no approval from the governing Council, the order itself got to be interfered with by this Court. He also submitted that he is conducting a social economic wing and by virtue of the irrational order passed by the respondents, the entire Social and Economic Wing is going to come to a stand-still.

6. The petitioner was recruited as a 'core faculty' only on the basis of a detailed analysis and a study by IMTI and ratification by the governing Council, which wanted at least 50% of the staff to remain as permanent staff to ensure continuity. The act of the IMTI and the governing council is now being sought to be overturned by the whimsical, arbitrary and illegal actions of the 1st respondent.

7. In reply, Mr.K.P.Krishnadoss, the learned Government Advocate for the respondents would contend that the petitioner was appointed only by the Directors and it is true that at the time of his appointment, the Governing council has approved. As per Rule 30 of the Irrigation Management Training Institute, Service and other Rules, Director is the competent person to appoint a person and to take a decision. Eventhough without reference to the governing council, a person can be appointed by



Directors, Rule 30 of the Irrigation Management Training Institute, Service and Other Rules, is extracted hereunder:-

"30 Contract Basis:

The Institute shall employ experienced personnel who have aptitude for work, for imparting the aims of the Institute. For this purpose officers like visiting faculties, part time employees, contract officials and other personnel who have retired from the Government or quasi Government and others can be employed by direct recruitment without reference to employment exchange and without reference to age limit. Such persons employed will be purely on temporary basis and for stipulated periods and for such fixed salary as the Director decides. Their appointment will be on contract basis and shall be governed by the terms and conditions of the contract.

The conditions of the contract are in the form of agreement reproduced in annexure I and annexure II for adoption for the type of persons engaged on contract."

8. Even the decision taken by the Director could be ratified by the governing council. A glance of Rule 30, which is extracted supra, and the rule that has been produced before this Court is silent about the outsourcing and the Rule produced is of the year 1989 and at that time, the concept of outsourcing is not there. However, taking note of the words in the said Rule,

"Others" can be appointed by means of direct recruitment and it will be covered and the services of such persons, purely on temporary basis and fixed salary, for a stipulated period, as Director decides. The appointment would be on contract basis and shall be governed by the terms and conditions of the contract.

Clearly empowers outsourcing without reference to the Governing Council.

9. In this case, the contract clause No.3, in terms of the appointment order as well as extension order, the contract clearly stipulates that the petitioner will have to serve on contract basis and that the relinquishment of post, if become necessary, can be denied only with three months prior notice on either side. Based on the above contract clause, the petitioner's service has been dis-engaged.

10. The contention of the petitioner that 3 months prior notice is must and that payment of three months pay in view of notice not contemplated in the contract and hence, is bad and therefore, he should be allowed to continue till the contract clause is completed. Hence, the order impugned is got to be set aside and the relief has to be granted.

11. I have heard the learned counsel appearing on either side and perused the materials available on records.

12. It is not in dispute that the petitioner was appointed as outsourcing person, in terms of Rule 30 of the Service Rules, which is extracted supra. It is true that the governing council has approved his appointment, as could be seen from page No.1. From the reference to the second extension order, dated 5.4.2013, it is clear that the governing council has approved for engaging the outsource persons, as early as in 2008. The rule is very clear that Director can take a decision with regard to appointment of a person and also period / tenure. There is no hard and fast rule that appointment already made cannot be ratified.



13. The contention of the petitioner that three months notice is mandatory and that there is no clause containing three months payment. In lieu of such notice, now the petitioner has been paid wages, without being given any work. It is not as if he was asked to work without any pay. Now, he got wages without work. When the petitioner, who is a literate, has signed an agreement / contract with open eyes, he cannot contend that he shall not be dis-engaged, as there is lack of three months' notice and only payment has been made and that it has no approval of governing council. The contention of the petitioner that he will not be in a position to get accommodation, if he is asked to go out and that his child is studying, for which, the respondents fairly submitted that the respondents have no objection in petitioner retaining the quarters till 11.09.2015.

14. This Court makes it very clear that the petitioner has no authority to continue to stay in the place beyond that date. If there is any problem in vacating the premises, the respondents are permitted to request the police to evict him from the place. Till the petitioner stays in the quarters viz., upto 11.09.2015, it is mandatory that he shall pay the rent, in terms of the agreement i.e., house rent at the rate of 4% of his monthly pay. If the three months pay has not been paid, as per the notice, it is open to the respondents to pay the same, after adjusting the rental amount, in terms of agreement, till 11.09.2015. This Court is also of the view that, if any amount to be paid by the petitioner to the respondents, the same shall also be paid.

15. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Director, Irrigation Management Training Institute,
Thiruchirappalli - 620 015.
2. The Secretary (Ex-Officio), Governing Council of IMTI and
Director, Irrigation Management Training Institute,
Thiruchirappalli - 620 015.
3. The President (Ex-Officio), Governing Council of IMTI and
Secretary to Govt. of Tamil Nadu, Public Works Department,
Secretariat, Fort St. George, Chennai - 600 009.

+1cc to M/S. K.Mu.Muthu, Advocate in SR.No 34844

+1cc to Special Government Pleader in SR.No. 34375.