



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:10.03.2015
CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

WEB COPY

W.P. (MD) No.14257 of 2004
and
M.P (MD) No.1 of 2014
and
M.P (MD) No.1 of 2015

A.Paulraj ... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Public Health and
Preventive Medicine,
DMS Compound, Teynampet,
Chennai - 600 006.
- 3.The Deputy Director of Health Service,
Virudhunagar. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings Na.Ka.No.3904/A3/2014, dated Nil.08.2014 issued by the third respondent and quash the same as illegal and direct the respondents to reinstate the petitioner as Driver with all monitory benefits.

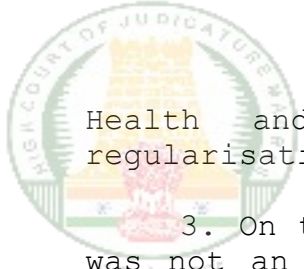
For Petitioner :Mr.R.Govindaraj

For Respondents :Mr.K.P.Krishnadoss
Government Advocate

O R D E R

The Writ Petition is filed challenging the proceedings Na.Ka.No.3904/A3/2014, dated Nil.08.2014 issued by the third respondent and to direct the respondents to reinstate the petitioner as Driver with all monitory benefits.

2. The petitioner is aggrieved against the proceedings of the third respondent terminating his service as Driver. Through the impugned proceedings, the third respondent terminated the service of the petitioner and another person on the ground that the appointment of the petitioner was through out sourcing and therefore, as per G.O.(2D) 56



Health and Family Welfare Health Department, dated 09.07.2012, regularisation of service of those persons cannot be made.

3. On the other hand, it is the contention of the petitioner that he was not an out sourced employee and on the other hand he was sponsored through employment exchange and attended the interview also, which is evident from the call letter issued dated 17.03.2008. Further, it is submitted by the petitioner that in an earlier petition filed by him in W.P(MD)No.10698 of 2010 seeking for a Mandamus directing the respondents to provide employment to the petitioner as Driver in pursuance to such call letter issued by the Deputy Director of Health Service, Virudhunagar, this Court issued a positive direction to the respondent to provide employment to the petitioner. It is further submitted that in pursuant to the said order, the petitioner was brought under the time scale of pay with effect from 10.08.2011. When that being the factual position, the present impugned order is passed solely relying on G.O.(2D) 56 Health and Family Welfare Health Department, dated 09.07.2012.

4. Counter affidavit is filed by the third respondent, wherein the respondents have supported the impugned order by contending that service of the petitioner being an out sourced one recruited through various agencies, the termination order was rightly issued by following the above said G.O.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

6. In this case, the respondents claimed that the petitioner is an out sourced employee. On the other hand, the call letter issued by the Deputy Director of Health Service, Virudhunagar, dated 17.03.2008 to the petitioner, would show that such contention of the respondents, is not correct and on the other hand, the petitioner was called upon to attend an interview to the post of Driver. That apart, the order passed by this Court in W.P(MD)No.10698 of 2010, dated 30.06.2011, would justify the contention of the petitioner as this Court has made a positive direction to the respondents to provide employment to the petitioner in pursuant to the proceedings, dated 17.03.2008 issued by the Deputy Director of Health Service, Virudhunagar.

7. Paragraph Nos.8 & 9 of the said order reads as follows:

8.While considering his submission, I am of the considered view that the petitioner has to be preferred over the others. The said view was taken by this Court in a batch of writ petitions in W.P.Nos.30105 to 30111 of 2008 dated 23.10.2009, the operative portion of the order viz., at paragraph 4 is usefully extracted hereunder:

"In view of the earlier orders, there will be similar order in these cases also. These writ petitions are disposed of giving direction to the fourth respondent to give preference to the petitioners based on their earlier engagement either as contract Drivers/Sanitary Workers/Hospital Workers/Lab Assistant while appointing any fresh candidate. The fourth respondent is directed to consider the claim of the petitioners

are found qualified, they should be given priority taking note of their experience. The learned counsel for the petitioners submitted that there are vacancies now available.



Hence, petitioners are directed to submit their application before the fourth respondent along with the experience certificate issued by the concerned medical officers to the fourth respondent, within a period of two weeks from the date of receipt of a copy of this order. The fourth respondent is directed to consider their claims even if their names are not sponsored by the petitioners are already engaged through out sourcing and performed the duties either as Drivers/Sanitary Workers/Hospital Workers/Lab Assistants, further sponsorship through employment exchange is not required to be made in so far as the petitioners are concerned.

Writ Petitions are disposed of on the above terms."

9. In view of the above stated position, the respondents are directed to provide employment to the petitioner in pursuant to the proceedings of the third respondent dated 17.03.2008 and the third respondent shall consider the claim of the petitioner to the post of Driver in the light of the orders referred to above. The said exercise has to be carried out within a period of ten weeks from the date of receipt of a copy of this order."

8. In compliance of the said order, the petitioner was given appointment order on 04.08.2011 with time scale. Once such appointment is made, that too bringing the petitioner under time scale, cancellation of such appointment once again by contending that the petitioner's appointment was an out sourced one, is undoubtedly against the order passed by this court in W.P(MD)No.10698 of 2010, dated 30.06.2011. In fact, the impugned order has not at all referred to the order passed by this Court earlier. Therefore, I am of the considered view that the same having been passed without application of mind also in violation of principles of natural justice, cannot be sustained any more.

9. Accordingly, the Writ Petition is allowed and the impugned proceedings Na.Ka.No.3904/A3/2014, dated Nil.08.2014, issued by the third respondent is set aside. Consequently, the petitioner shall be reinstated within a period of two weeks from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

\\True copy\\

Sub Assistant Registrar

To

1.The Secretary, State of Tamil Nadu Health and Family Welfare Department, Fort St. George, Chennai - 600 009.

2.The Director of Public Health and Preventive Medicine,
DMS Compound, Teynampet, Chennai - 600 006.

3.The Deputy Director of Health Service, Virudhunagar.

+1cc TO MR.R.GOVINDARAJ, ADVOCATE SR.NO.11466

+1cc TO THE SPL.GOV.T.PLEADER SR.NO.12066

W.P. (MD)No.14257 of 2014 and
M.P(MD)No.1 of 2014 and M.P(MD)No.1 of 2015

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