

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 14-09-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

WRIT PETITION No.31384 of 2012

and
M.P.No.1 of 2012

Union of India
Represented by
The Air Officer Commanding
Air Force Station, Sular
Coimbatore 641 401 ... Petitioner

-vs-

1.The Central Administrative Tribunal
Rep. by its Registrar
High Court, Chennai 600 104

2.P.Gnanakumari ... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, to issue a writ of certiorari, calling
for the records of the 1st respondent pertaining to the impugned
order in OA 189 of 2011 dated 4.1.2012 and quash the same.

For appellant : Mr.V.T.Balaji
Central Govt Standing Counsel

For respondent-2 : Mr.V.Vijay Shankar
R1 Tribunal

ORDER

(delivered by S.MANIKUMAR, J.)

Challenge in this writ petition, is to the order of the
Central Administrative Tribunal, Madras Bench, dated 4.1.2012
made in O.A.No.189/2011, by which, the Tribunal has directed the
writ petitioner, to regularise the services of the second
respondent, in the post of Ayah, in Maternity and Child Welfare

Centre, and to grant all the benefits applicable to a regularly appointed Ayah, in the said centre.

2. Facts leading to the writ petition are that, pursuant to publication, the second respondent, applied to the post of Ayah in Maternity and Child Welfare Centre, under the control of the Air Force Commanding, Air Force Station, Sulur, Coimbatore. The petitioner, by call letter dated 26.8.1997, directed the second respondent to appear for an interview on 1.9.1997, along with original certificates. Other eligible candidates who applied, also appeared for the interview. The second respondent was selected and issued with an appointment letter, dated 12.9.1997, directing her to join duty on 1.10.1997. Accordingly, she joined the duty on 1.10.1997. She was paid a sum of Rs.2,000/- per month as salary.

3. It is the case of the second respondent that she was fully qualified to the post and also underwent training, as multi-purpose health worker, at MAC Institute of Community Health. According to 2nd respondent, she was given artificial break of one day, and continued to serve without break. She made representations to the writ petitioner to regularise her services, as 'Group D' employee, and to grant increment.

4. The second respondent has further submitted that her salary was increased to Rs.3,025/-. The writ petitioner, called for particulars from the Medical Superintendent. All the details called for, for regularisation, were furnished. But no orders were passed and therefore, she was constrained to file O.A.No.1009/2009, before the Central Administrative Tribunal, for a direction to regularise her services. The Tribunal, directed the writ petitioner to pass orders on the representation of the second respondent dated 1.12.2008, within four weeks.

5. Pursuant to the same, the writ petitioner, Air Officer Commanding, Air Force Station, Sulur, Coimbatore, vide letter dated 25.2.2010, rejected the request of the respondent, and consequently, the 2nd respondent filed the second original application No.189/2011, challenging the letter of the petitioner dated 25.2.2010, with a prayer to set aside the same and she has sought for a consequential prayer, to direct the writ petitioner, to regularise her services, as Group D employee/Ayah, in Maternity and Child Welfare Centre, from the date of her initial appointment viz. 1.10.1997 and to pay all arrears of salary, and other benefits.

6. Opposing the prayer sought for, the writ petitioner has admitted that, pursuant to a selection process, the second

respondent was directed to join duty as a Non-Public Fund employee, in Maternity and Child Welfare Centre, as per the terms applicable to a Non-Public Fund employee. The writ petitioner has contended that Air Force Non-Public Fund comprises of all funds other than public fund maintained locally by the Air Force Stations and Units, through subscription by the uniformed personnel, including civilians, for the welfare of the troops. These funds are established to organise, administer and account for various welfare/service activities unconnected with public funds on Air Force Stations and Units. According to the writ petitioner, the terms and conditions of Non-Public Fund employees are governed by DACL, dated 30.11.1999.

7. The writ petitioner, has further contended that regular vacancies of Ayah, are notified by the Government of India, from time to time, and eligible candidates are selected against the vacancies. It is also their contention that whenever such vacancies are notified, the respondent is at liberty to apply and compete with others, subject to the fulfillment of eligibility criteria. According to the petitioner, her representation was duly considered and replied, vide letter dated 3.1.2007, in which, she was intimated that her case would be considered, as and when regular vacancies are declared and sought to be filled up, as per the Government of India guidelines. For the above said reasons, the writ petitioner has contended that, as a Non-Public Fund employee, the 2nd respondent cannot be permanently absorbed, against the regular post and therefore, submitted that the question of regularisation of her services, does not arise. According to the petitioner, all Non-Public Fund employees, whether under probation or temporary or permanent, do not get the status of Government Employee, at any stage and that they would remain till superannuation or resignation/ termination of service, as the case may be. Citing the above said reasons, before the Tribunal, writ petitioner has prayed for dismissal of O.A.No.189/2011.

8. Considering the rival submissions, material record, contents of letter dated 3.1.2007 of the petitioner, wherein, it has been stated that the request of the respondent had been taken up at the appropriate level and the intimation that her case would be considered, as and when vacancy of Ayah is released for filling up through direct recruitment, if it is otherwise in order", the Tribunal found that the fact of continuous employment of the second respondent from 1997, as Ayah in Maternity and Child Care Centre, Air Force Station, has not been disputed. There was no dispute, regarding the

qualification or suitability of the second respondent to be appointed permanently to the post of Ayah in the said centre and that the letter dated 30.11.1999 and the Annexure, relied on by the petitioner cannot be made applicable to the case of the second respondent, who had joined the post of Ayah in 1997, prior to the issuance of the letter dated 30.11.1999, which can have only prospective application and by further observing that substantial justice should be done to the second respondent, the Tribunal, directed her services to be regularised in the post of Ayah in Maternity and Child Welfare Centre and accordingly, directed the petitioner to pass appropriate orders, and to grant all the benefits, within a period of three months, from the date of receipt of the order. The Tribunal has further held that the order passed in O.A.No.189/2011 dated 4.1.2012 should not be cited, as a precedent for other cases.

9. Being aggrieved, Air Officer Commanding, Air Force Station, Sulur, Coimbatore has filed the present writ petition. Assailing the correctness of the order made in O.A.No.189/2011 and inviting the attention of this court to the terms and conditions of Non-Public Fund employees governed by DACL 29/1999, Mr.V.T.Balaji, learned Central Government Standing Counsel appearing for the writ petitioner, submitted that the second respondent, appointed as a Non-Public Fund employee, though kept under probation, will not get the status of a government employee, at no stage and at best, she can be treated only as a permanent Non-Public Fund employee, upto the age of superannuation or resignation or termination, as the case may be.

10. On the above said aspect, he referred to Rule 2 of the terms and conditions of service of Non-Public Fund employees other than Canteen and AFND, issued in the year 1999. Referring to the terms and conditions of the appointment order dated 12.9.1997, Mr.V.T.Balaji, learned Central Government Standing Counsel, submitted that even at the time of appointment, it was made clear that the appointment was temporary for 180 days, and payment, whatsoever made was out of Non-Public Fund.

11. Learned Central Govt Standing Counsel for the writ petitioner further submitted that any appointment made under Non-Public Fund, would not confer any right to the second respondent to seek for a mandamus, directing regularisation, and on that aspect, drew the attention of this court, was invited to paragraph No.43 of the judgment in State of Karnataka vs. Umadevi and others reported in AIR 2006 SC 1806.

12. Learned counsel for the petitioner further submitted that the Tribunal has erred in observing that the second respondent was appointed, in a regular vacancy, in Maternity and Child Welfare Centre, whereas, her appointment was only under

the terms and conditions of the service of Non-Public Fund employee other than the AF Canteen and AF School.

13. He further added that, at the time of her appointment as Ayah, in Maternity and Child Welfare Centre, she was 30 years and six months old, whereas, as per the Recruitment Rules, for the post of Ayah, as Government employee, the maximum age limit is 25 years relaxable by three years for OBC and five years for SC/ST candidates. The respondent belongs to OBC category. According to him, there cannot be a case for regularisation, at this juncture, contrary to the prescription of age, provided in the Recruitment Rules. For the above said reasons, prayed to set aside the order made in O.A.No.189/2011.

14. Per contra, inviting the attention of this court to the letter of appointment dated 12.9.1997, Mr.V.Vijay Shankar, learned counsel for the second respondent submitted that after a selection process, the second respondent was appointed as Ayah, in Maternity and Child Welfare Centre, Air Force Station, Sulur, on a monthly pay of Rs.2,000/-. She was placed on probation and periodically orders were issued, continuing her services at the centre. He also submitted that the second respondent has studied S.S.L.C. and underwent training as multi-purpose health worker and she is fully qualified for the post of Ayah in Maternity and Child Welfare Centre.

15. Refuting the contention of the writ petitioner, that the second respondent does not have any right to seek for a mandamus for regularisation of the services of the second respondent in the post of Ayah at Maternity and Child Welfare Centre and on reliance of paragraph No.43 to the judgment of the Hon'ble Apex Court in State of Karnataka vs. Umadevi reported in AIR 2006 SC 1806, learned counsel for the second respondent submitted that at the time of filing the Original Application, before the Tribunal, she was working for nearly, 14 years continuously, without any blemish and therefore, she has every right, to seek for regularisation of her services.

16. By inviting attention of this court to an order made in O.A.No.647/2013 dated 24.2.2015 of the Central Administrative Tribunal Madras Bench, Mr.V.Vijay Shankar, learned counsel for the second respondent submitted that when a Notification No.30/2013 dated 4.4.2013 was issued by the writ petitioner, for filling up the post of Ayah in Maternity and Child Welfare Centre, the second respondent was constrained to file O.A.No.647/2013, to quash the said notification and consequently, prayed for an order to restrain the writ petitioner from filling up the post of Ayah, pursuant to the Notification No.30/2013 dated 4.4.2013.

17. Opposing the prayer, the writ petitioner once again reiterated that the second respondent was selected only as a Non-Public Fund employee. Further contention has been made in O.A.No.647/2013 that the services of the second respondent has been converted into permanent Non-Public Fund employee, with effect from 20.4.2000 and that she can continue in the said service, under the terms and conditions of Non-Public Fund employee, till her superannuation. After hearing the parties, and taking note of the pendency of W.P.No.31384/2012, now listed before us, the Tribunal vide order 24.2.2015, in O.A.No.647/2013, has directed the writ petitioner to maintain status quo with regard to the notification, dated 04.04.2013, to the post of Ayah, till the outcome of the present writ petition No.31384/2012. Reiterating that the second respondent was fully qualified to the post of Ayah, discharging her duties, from 1997 onwards without any adverse remarks, he prayed to sustain the order impugned.

Heard the learned counsel for the parties and perused the material available on record.

18. Fact that the writ petitioner has issued a Notification No.30/2013 dated 4.4.2013, itself makes it clear that a post of Ayah exists, in the cadre strength of Maternity and Child Welfare Centre. From the material on record, it could be deduced that the second respondent has been appointed on 12.9.1997 in Maternity and Child Welfare Centre as Ayah, on a monthly salary of Rs.2,000/-. She has to work on all working days. Her leave entitlement, as per the order of appointment dated 12.9.1997, is as follows:

- | | |
|--|---------------------|
| (a) Annual leave - one day per month | = 12 days per annum |
| (b) Casual leave | = 3 days per annum |
| (c) Sick leave | = Maximum 7 days |
| (d) Maximum absent from duty at a time | = 7 days |

19. Perusal of the Secondary School Leaving Certificate shows that the respondent was born on 7.3.1967, and she has studied up to S.S.L.C. Letters dated 26.8.97 and the appointment order dated 12.9.1997 show that after a process of selection, the second respondent has been appointed.

20. Admittedly, the second respondent is working as Ayah in the Centre, since 1997 for nearly 19 years. The competent authority has also certified that she is sincere and hard working, and her further extension has been strongly recommended. As per the letter dated 18.8.2016 of the Squadron Leader, OIC Legal Cell, the second respondent is being paid a

sum of Rs.6,468/- per month, from SI Funds. As regards the contention of the petitioner that a person appointed under the terms and conditions of service of Non-Public Fund employees other than canteen and AFND, it is relevant to consider Rule 2 of the terms and conditions, issued on November 1999.

" Rule-2 - Classification of employees

(1) All employees shall be classified as under probation during first Year of service on successful completion of one year of probation they shall be termed as temporary employees till five years of service (including the period of probation). On completion of five years of qualifying service, they shall be treated as permanent employee up to the age of superannuation or up to the date of resignation/termination.

(2) All employees whether under probation if temporary or permanent do not get status of Government employee at any stage. All employees are employees of NPF and will remain so till the superannuation or till the date of resignation/termination of service."

21. No doubt, the order of appointment dated 12.9.1997 reads that the appointment is temporary for 180 days and payment whatsoever, is made out of Non-Public Fund. But, as rightly pointed out by the Tribunal, the terms and conditions of service of Non-Public Fund employees, other than canteen and AFND relied on by the petitioner, can be made applicable only to those appointments made after 30th November 1999, in places other than AF Canteen and AF School. Rule-1(1) of the terms and conditions of service of Non-Public Fund employees other than Canteen and AFND reads thus:

Rule-1(1) These rules shall be called "The Rules Regulating the Terms and Conditions of service of civilian Employees of Non-Public Funds (Welfare Fund) other than AF Canteen and AF School" and shall come into force with immediate effect.

22. When the language of the above said rules makes it clear that it comes into effect with immediate effect, it would not be appropriate to the petitioner to contend that the appointment of the second respondent on 12.9.1997, much earlier to the commencement of the Rules dated 30.11.1999, will also be governed under terms and conditions of service of Non-Public Fund employees other than canteen and AFND. We wish to place on record that other than the Rules dated 30.11.1999, no other rule has been placed neither before the Tribunal or before this court, to substantiate the contention that the second respondent is not entitled to seek for regularisation, on the basis of her selection and appointment, to the post of Ayah on 12.9.1997 and

continuation for nearly 14 years, when she filed O.A.No.189/2011 before the Central Administrative Tribunal. Material on record further discloses that when the second respondent sought for regularisation, a reply dated 3.1.2007 has been given, stating that her request has been taken up at the appropriate level and her case would be considered, as and when a vacancy of Ayah is released for filling up through direct recruitment, if otherwise in order. In the light of the reply, dated 03.01.2007, we are of the view that the case of the 2nd respondent for regularisation of her services, ought to have been taken up, by the writ petitioner. There are no details in the counter affidavit filed by the writ petitioner before the Tribunal, as to how many posts of Ayah, have been sanctioned, in the Maternity and Child Welfare Centre.

23. As stated supra, issuance of Notification No.30/2013 dated 4.4.2013, makes it clear that a post of Ayah was very much in existence, in Maternity and Child Welfare Centre, which the petitioner, wanted to fill it up. Having said that her case would be taken up for regularisation, when vacancy of Ayah is notified, the writ petitioner has not come out with any details, as to what prompted them to fill up the vacancy, ignoring the request of the second respondent to regularise her services from the date of appointment. Perusal of the order made in O.A.No.647/2013 dated 24.2.2015 of the Central Administrative Tribunal, Madras Bench, shows that the department made an attempt to justify the filling up of the vacancy of Ayah/Ward Sahayika on the grounds that it was lying vacant for quite a long time, and hampering the welfare of the troops in Air Force Station, Sulur, as well as welfare of their families. Thus, the above admission on the part of the writ petitioner makes it abundantly clear that, instead of regularising services of the second respondent from the date, when the post of Ayah/Ward Sahayika, fell vacant, the petitioner has attempted to fill up the vacancy, by issuing a Notification No.30/2013 dated 4.4.2013. At one stage, the writ petitioner has stated that the case of the second respondent would be taken up for regularisation and later on, issued a notification to fill up the vacancy, thus making it clear, the statement made on 03.01.2007, is not bona fide.

24. Admittedly, the second respondent has been working for nearly 19 years, on the date of hearing of this writ petition and it is also the admitted case of the writ petitioner that the post of Ayah/Ward Shayika has been kept vacant, for a quite long time and keeping it vacant, has hampered the welfare of the troops posted in Air Force Station, Sulur as well as the welfare of their families.

25. Though by referring to the judgment in Dr.Rai Shivendra Bahadu vs. The Governing Body of Nalanda College reported in AIR 1962 SC 1210, Mr.V.T.Balaji, learned Central Government Standing Counsel for the writ petitioner submitted that the second respondent has no legal right to seek for a mandamus to regularise her services, this court is not inclined to accept the said contentions, for the reason that the second respondent, appointed on 12.9.1997 and working for more than 10 years, is entitled to seek for regularisation, in a vacant post, notified by the petitioner.

26. When the post of Ayah is kept vacant, for a long time, there is no need to create any new post. To start the work of Ayah in the Maternity and Child Welfare Centre at 7.00 a.m., the 2nd respondent she has to start, early from her house. The second respondent has been doing this work, for nearly 19 years, and also certified to be a sincere and hardworking person and that her extension has been strongly recommended by the Squadron Leader. Existence of vacancy in the Maternity and Child Welfare Centre and not filling up of the same, for quite a long time has been admitted. The reaction as to why the said vacancy, has not been filled up, has not been explained. The year in which, the vacancy has arisen, has not been specifically mentioned in the order made in O.A.No.647/2013 dated 24.2.2015. When there is a sanctioned post of Ayah, remaining vacant, and when the second respondent, by virtue of her long and continuous work, certified as a sincere and hard working, we are of the considered view that, the 2nd respondent, ought to have been regularised in the vacancy, as per the reply, dated 03.01.2007.

27. Alternative contention of the learned Central Government Standing Counsel for the petitioner is that, even if this court is inclined to sustain the order made in O.A.No.189/2011 dated 4.1.2012, regularisation cannot be made, in the light of the recruitment rules, fixing the age for appointment to the post of Ayah, as 25 years, relaxable by three years for OBC and five years for SC/ST candidate. Knowing fully well, the age prescription and having considered her application, selected and appointed, on inter se merits of the candidates, we are of the view that it would be inappropriate, on the part of the petitioner, at this length of time, to contend that regularisation of the second respondent cannot be made.

28. Considering the facts and circumstances of the case on hand, yet another factor taken note of by this court for rejecting the above contention, is that though the Tribunal has passed an order in O.A.No.649/2013, dated 24.02.2015, directing

the petitioner to maintain status-quo, with regard to the notification, dated 04.04.2013, to the post of Ayah, till the outcome of the present W.P.No.31384 of 2012, the said order, has not been challenged by the petitioner, thereby, making it clear that the petitioner, has intended not to fill up the post, until the present petition (W.P.No.31384/2012) is disposed of. If the intention of the petitioner was to fill up the post, by any other candidate, other than the second respondent, as per the employment rules and that inter se merits of those qualified, it is the writ petitioner would have challenged the order. But that has not been done. Considering the above, the contention of the petitioner that the second respondent cannot be regularised, cannot be countenanced.

29. In the light of the discussion, this Court is of the view that the 2nd respondent is entitled to regularisation from the date, when regular vacancy has arisen, for the purpose of continuity in service. The petitioner has not raised any rule of law. The writ petitioner cannot raise the same. Accordingly, a direction is issued to the petitioner to regularise her services, by relaxing the age, if required. It is made clear that the question of suitability not raised at any point of time, should not be raised, as there is no dispute, and all along, she has been discharging her duties. This court directs the writ petitioner, to fix the scale of pay of the 2nd respondent in the post of Ayah in Maternity and Child Welfare Centre, from the date of vacancy and accordingly, compute the arrears of salary and other allowances, attached to the said post of Ayah, from 4.4.2013. Regularisation, fixation in the time scale of pay, payment of differential and arrears of salary, and other allowances, should be made, within a period of twelve weeks, from the date of receipt of a copy of this order.

30. Before parting with the case, this Court deems it fit to consider the Constitutional objectives, which we have solemnly resolved, to secure to all its citizens,

"Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

and to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;"

31. We wish to state that, unless and until, the

authorities, at the helm of office, take a pragmatic and compassionate, approach to redress the grievance of the lower rung in the society in achieving the constitutional goals, the applicants, beofre the authorities, or the Tribunal, as the case may be, would never get equality of status. A hard and sincere ayah, who had taken care of the babies and the welfare of the family of the military personnel, had to approach the Tribunal thrice and to litigate for seven years, from 2009 onwards. Considering the litigation expenses and the status of the second respodnent, orders made in this writ petition, we are of the view that the order has to be complied with, in letter and spirit.

32. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Registrar
The Central Administrative
Tribunal, High Court, Chennai 104

+1cc to Mr.V. Vijay Shankar, Advocate, S.R.No.52207
+1cc to Mr.V.T. Balaji, Advocate, S.R.No.51870

MR(CO)
md (9/11/2016)

W.P.No.31384 of 2016

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