

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

Date of Reserving the Order	Date of Pronouncing the Order
28.09.2016	03.11.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.27075 of 2016
and
W.M.P.Nos.23248 and 26350 of 2016

M.Ratnakumari ... Petitioner

vs

- 1.The Union of India Represented by the
Chief Secretary to Government,
Government of Union Territory of Puducherry,
Puducherry.
- 2.The Secretary to Government,
Department of Health & Family Welfare,
Puducherry.
- 3.The Director of Health & Family Welfare Services
Government of Union Territory of Puducherry,
Puducherry.
- 4.Puducherry AIDS Control Society,
Represented by its Project Director,
Ground Floor, Old Maternity Hospital Building,
Victor Simonel Street,
Puducherry - 605 002.
- 5.The Medical Superintendent,
Indira Gandhi Government General Hospital,
Government of Union Territory of Puducherry,
Puducherry.
- 6.The National AIDS Control Organization,
Represented by its Director General,
9th Floor, Chandralok Building,

NO.36, Janapath, New Delhi - 110 001.

7.Dr.Jayanthi Gurumurthy,
Project Director,
Pondicherry AIDS Control Society,
Ground Floor, Old Maternity Hospital Building,
Victor Simonel Street,
Puducherry - 605 001.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration, declaring the action of the respondents 1 to 6 in dispensing with the services of the petitioner as computer literate Steno under the 4th respondent society as illegal and consequently continue the services of the petitioner with all service, seniority and monetary benefits.

For Petitioner : Mr.Bharathachakravarthy
for M/s.Sai Bharath and Ilan
For Respondents : M/s.R.Rathna Thara (For R4 t& R7)

ORDER

The petitioner who was employed as a Computer Literate Steno on a fixed monthly emoluments in the Puducherry AIDS Control Society has filed this writ petition for a writ of Declaration, to declare the action of the respondents 1 to 6 in dispensing with her services as illegal and consequently continue her services with all service, seniority and monetary benefits.

2.Mr.Bharathachakravarthy, learned counsel for the petitioner submitted that the petitioner was appointed to the said Post on 28.11.2015 on a fixed monthly emolument on a contract basis and has been continuing to function in the said post for all these years till 31.03.2016. It is submitted that no written communication was given to the petitioner, no notice was issued to the petitioner and orally the petitioner's services were dispensed with on 25.07.2016. It is further submitted that though the petitioner had been termed as contract employee she continued for all these years till 2016 and there is no valid reason for non-renewal of her contract in terms of the office order dated 15.10.2007. The incumbent in the contractual post may be retained after assessment of their individual performance and a new contract entered into by a Committee chaired by the Project Director and in the case of unsatisfactory work, post may be re-advertised and all such contracts should be made for one year and new contracts entered into every year based on assessment of the candidate's

performance. Therefore, it is submitted that the non-renewal of the contract can be broadly under two grounds, viz., when performance of the incumbent is not satisfactory or when there are complaints. In both the contingencies, the incumbent is entitled to notice before the services are dispensed with. It is submitted that from the typed set of documents filed by the 4th respondent Society in this writ petition, it is clearly seen that the impugned termination is tainted with mala fide and for certain other reasons.

3.It is further submitted that an anonymous complaint is said to have been received by the Director of Health and Family Welfare Services forwarded by the Secretariat of the President of India in the name of the affected staff of Puducherry AIDS Control Society pointing out certain issues against the activities and administration of the society and some of the officials working in the society. Based on such complaint, the Director of Health and Family Welfare Services called upon all the officials and staff of the respondent society to give their comments as to whether they are affected or not affected with regard to the allegation made in the said complaint. So far as the petitioner is concerned, at the relevant point of time, she was on deputation and the concerned authority under whom she was working had refused to relieve her to attend the office of the respondent society to give response to the communication sent by the Director of Health and Family Welfare Services. Consequently, the officials of the Society in the relevant column filled up the words "not willing to give comments" and similar entry was made in respect of one Theresa Mandju. It is submitted that except for the petitioner and other staff, contract of employment of all other 25 employees have been renewed which will clearly show that the action of the respondent society is tainted with mala fide. Further, it is submitted that the project is an on-going project funded by the Government of India and therefore the contention raised by the respondent society that the contract of employment cannot be renewed is wholly unsustainable. Further by referring to the earlier charge memo issued to the petitioner would clearly show that the refusal to renew the contract of employment is for the reasons prejudicial to the interest of the petitioner and therefore the respondent Society could not have dispensed with the services of the petitioner, that too, orally.

4.Ms.Rathna Thara, learned counsel for the respondents 4 and 7 raised a preliminary objection to the maintainability of the writ petition. It is submitted that the respondent Society was formed by the Government Order dated 20.04.1994 with several aims and objectives and to ensure smooth implementation of the AIDS Control Programme. In order to ensure expeditious

sanctions, better co-ordination and to minimize procedural delays, it was formed and registered as a Society. Thus the purpose of forming the respondent Society is to keep it as an independent autonomous body so as to implement its objects without any procedural delay. It is submitted that there is no share capital of the Government in the Society. It is not included in the Annual Budget of the State Government. NACO, the Apex body disburses the global funds for the Society according to the approved action plan and the Government Officials are the members of the Governing body and an IAS Officer was appointed as Project Director only to review and monitor that the global funds received are spent towards the objects for which the society was formed and hence the control is only regulatory and not deep or pervasive. Thus, it is submitted that there is no functional, financial or administrative control over the society by the Government and it will not fall within the definition of the Article 12 of the Constitution of India to be construed as an authority of the State.

5.To support her contention reliance was placed on the Larger Bench Decision of this Court in the case of K.Marappan vs. The Registrar of Co-operative Societies and another reported in 2006 (4) CC 689 and in the case of Ramana vs. I.A. Authority of India reported in AIR 1979 SC 1628. It is submitted that even though it is assumed that one or the other test as provided in the case of Ajay Hasia may be attracted that by itself would not be sufficient to hold that it is an agency of the State carrying on the function of public nature. It is further stated that the test formulated in Ajay Hasia are not rigid set of principles so that if a body falls within any one of them, it must ex-hypothesis be considered to be a State within the meaning of Article 12 of the Constitution of India.

6.The learned counsel referred to another decision in the case of Lieutenant Governor of Delhi and others vs. V.K.Sodhi and others reported in 2007 (15) SCC 136 and submitted that the respondent Society cannot be subjected to the writ jurisdiction of this Court. Alternatively, it was submitted that if the respondent Society is to be brought within the definition of "Other authorities" of the State, this Court exercising the jurisdiction under Article 226 of the Constitution of India will interfere only if there is any violation of the bye law or the contract service agreement or if there is any allegation of violation of the certain Labour Welfare Legislations. Further, in the instant case, the contract service agreement entered between the petitioner and the Society provides for termination without notice. The respondent society has not issued any punitive or stigmatic termination order on the petitioner though

there were several grave misconduct and lapses on her part in the past and she was continued to work on humanitarian ground. Further, the 15 years of service is not an unblemished service and the contract was entered in 2015 only subject to certain conditions and there is no vested right for the petitioner to continue in contract. Furthermore, it is submitted that merely because the AIDS Control Programme has been in operation for several decades or the petitioner has continued on adhoc basis for considerable length of time, that by itself will not entitle the petitioner for permanency or regularization. Further it is submitted that the other candidate Mrs. Theresa Mandju had filed a writ petition, however, there is no interim order in the writ petition and she is not functioning.

7. In reply, the learned counsel for the petitioner elaborately referred to the documents filed in their typed set of papers, especially the notification issued by the Government of India dated 01.11.1999 to demonstrate that there is a deep and pervasive control by the Government of India and therefore, the respondent Society is amenable to the writ jurisdiction of this Court. Referring to the averments in the counter affidavit, it is submitted that the stand taken in the counter affidavit will clearly reveal that there is mala fide action on the part of the respondent in dispensing with the services of the petitioner. In this regard, the learned counsel elaborately referred to the reply affidavit filed by the petitioner to the counter affidavit filed by the respondent Society.

8. At the first instance, this Court has to decide as to the maintainability of the writ petition as it is the preliminary objection raised by the learned counsel for the respondents 4 and 7. To arrive at a decision on this point, much labour is not required as this issue has come up for consideration earlier pertaining to the Tamil Nadu State AIDS Control Society, which constitution and functioning is akin to the respondent society. In W.P.No.11672 of 2009, the petitioners therein, viz., S. Francis and 15 others, sought for quashing the resolution passed by the Project Director by the Tamil Nadu State AIDS Control Society dated 09.02.2009. The services of the petitioners were utilized by the Tamil Nadu State AIDS Control Society in the post of District Programming Manager (DPM) from the year 2006 and they were posted to various Districts in the State of Tamil Nadu and they were continuing in employment for more than four years. But all of a sudden by the impugned Agenda, the Society resolved to approve the proposal of setting up of District AIDS Prevention and control Units and to get a list of Doctors from the Director of Public Health and Preventive Medicine for the post of DPM and to withdraw the existing DPM and utilize their services in other programme

activities. This action was put to challenge stating that for four years they have continued in service and they cannot be withdrawn after such long period and they will not get any employment elsewhere. The writ petition was resisted by the Society both on the question of maintainability as well as on merits. This Court after considering the submissions made on either side noted that the appointment of the petitioners therein are not governed by any statutory rules and appointed purely on contractual basis and by referring to the decision in the case of T.K.Ananda Sayanan vs. The Joint Registrar, Co-operative Societies, Vellore reported in 2007 (5) CTC 1, it was held that the writ petition is not maintainable. Accordingly by order dated 25.11.2009 the writ petition was dismissed giving liberty to the petitioner to approach the appropriate authority to challenge the impugned resolution therein.

9.The petitioners therein preferred an appeal before the Hon'ble Division Bench of this Court in W.A.No.1895 of 2009 and the Hon'ble Division Bench by judgment dated 19.10.2010 dismissed the appeal and confirmed the decision by dismissing the writ appeal as not maintainable. Thus the Hon'ble Division Bench concerning a similar society has been held a writ to be not maintainable. The learned counsel for the petitioner endeavoured to submit that the order passed by the Hon'ble Division Bench of this Court merely affirms the order passed in the writ petition and there are several decisions that have to be taken into consideration to hold that the writ petition is maintainable. The order passed by the Hon'ble Division Bench is a speaking order giving reasons as to why the appeal does not merit consideration. Therefore, applying the law of precedence, the decision of the Hon'ble Division Bench binds a single bench.

10.In the case of M.Fathima Begum vs. The Tamil Nadu State AIDS Control Society and others reported in 2014 (5) LW 425, the petitioner challenged the order of termination of service and to reinstate her with continuity of service and back wages. The Court interfered with the said order and allowed the writ petition holding that the order was stigmatic. As against the said order, the Tamil Nadu State AIDS Control Society has filed a writ appeal in W.A.No.1701 of 2014 and an order of stay has been granted by the Hon'ble Division Bench.

11.This Court had an occasion to consider the writ petitions filed by the persons employed by the Tamil Nadu State AIDS Control Society in W.P.Nos.14183 to 14185 of 2011 (K.R.Srinivasan and others vs. The Secretary to Government of India, Ministry of Health and Family Welfare, National AIDS Control Organization (Department of AIDS Control), New Delhi and another) praying for a direction to re-appoint them in the post

of District Programming manager. The Court after taking into consideration the decision of the Hon'ble Division Bench in the case of S.Francis and 15 others (supra) dismissed the writ petition by order dated 14.09.2011.

12.In the instant case also it is an internal decision of the Society. The Society, as could be seen, is an autonomous body and though it implements a programme for prevention and control of AIDS in India, the project is not only funded by the Government of India but there are funds from other sources. The Government Order in G.O.Ms.No.322 dated 22.04.1994 which pertains to the constitution of the State AIDS Prevention Society, the Government specifically noted that if it was a Government Department the State AIDS Cell has to follow all codal procedures in its implementation strategies and it involves a lot of time and as time is the central factor in AIDS Prevention Campaign ordered that the said authority will function in the Health and Family Welfare and will be an independent and autonomous authority vested with full executive and financial powers in this sphere of work. The objectives of the Society, composition of Executive Committee and Governing Body, Plan of Programme and activities, etc., were enumerated in the Memorandum of Association. Thus, this is a clear indicator that what was intended to be done was to retain the the Society as an independent and autonomous body.

13.In the light of the same, this Court is of the firm view that the writ petition is not maintainable and accordingly, the writ petition is dismissed. The dismissal of the writ petition shall not prejudice the petitioner from invoking other remedies available under law. The interim order granted in this writ petition is vacated and W.M.P.No.23248 of 2016 is dismissed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Secretary to Government,
Union of India Represented by the
Government of Union Territory of Puducherry,
Puducherry.
- 2.The Secretary to Government,
Department of Health & Family Welfare,
Puducherry.
- 3.The Director of Health & Family Welfare Services
Government of Union Territory of Puducherry,
Puducherry.
- 4.The Medical Superintendent,
Indira Gandhi Government General Hospital,
Government of Union Territory of Puducherry,
Puducherry.
- 5.The Director General
National AIDS Control Organization,
9th Floor, Chandralok Building,
NO.36, Janapath, New Delhi - 110 001.

+lcc to Mr.R. Rathnathara, Advocate, S.R.No.62577
+lcc to Mr.Sai Bharath and law, Advocate, S.R.No.62614

nrjk(CO)
md (8/11/2016)

W.P.No.27075 of 2016 and
W.M.P.Nos.23248 and 26350 of 2016

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