

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1701 of 2014
and
M.P.No.1 of 2014

Tamil Nadu State Aids Control Society,
Rep. by its Project Director,
No.417, Pantheon Road,
Egmore, Chennai - 600 008. ... Appellant/Respondents

.. Vs ..

1. M.Fathima Begum ...1st Respondent/Petitioner
2. The Director,
Department of Public Health & Medicine,
DMS Campus, Teynampet,
Chennai - 600 018. ...2nd Respondent/II Respondent
3. The Deputy Director,
Department of Family & Health Welfare,
Perambalur District. ...3rd Respondent/III Respondent
4. The District Collector,
Perambalur District. ... 4th Respondent/IVth Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
against the order dated 07.11.2014 passed by this Court in
W.P.No.34097 of 2013.

W.P.No.34097 of 2013:

This Writ Petition is filed under Article 226 of the constitution of India, with a prayer to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent issued in his proceedings No. 02541/STD/AB/TANSACS/2010 dated 14.12.2010 and the consequential review order issued in his letter R.C. No. 2541.STD/AB/TANSACS/2011 dated 20.7.2011 and quash the termination order and direct the respondents to reinstate the petitioner with continuity of service back wages and all service benefits etc.

For Appellant : Mr.M.Loganathan
For R-1 : Mr.V.Krishnamurthy
For RR-2 to 4 : Mr.P.S.Sivashanmugha Sundaram,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.,)

Challenging the correctness of the order passed by the learned single Judge in W.P.No.34097 of 2013, dated 07.11.2014, the first respondent in the writ petition viz., Tamil Nadu State Aids Control Society has preferred this writ appeal.

2. The first respondent herein has filed the above writ petition seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the appellant issued in his proceedings No.02541/STD/A8/TANSACS/2010, dated 14.12.2010 and the consequential review order issued in his letter R.C.No.2541.STD/A8/TANSACS/2011 dated 20.07.2011 and quash the termination order and direct the respondents therein to reinstate the writ petitioner with continuity of service, back wages and all service benefits.

3. The brief facts of the case is that the first respondent herein has passed M.A. degree and she was selected and appointed by the fourth respondent/District Collector, Perambalur, on 15.09.2008, in Government Headquarters Hospital, Perambalur, as Counselor in STD Clinic, with consolidated salary of Rs.6,500/- per month on temporary basis. The first respondent reported duty and served in the said post without any complaint for over two years.

3(i) On 26.10.2010, the appellant has issued a charge memo to the first respondent stating that when surprise inspection of the Perambalur Government Hospital was made by the Project Director on 07.10.2010, it was noticed from the evidence that the first respondent was not attending the clients properly; documents are not properly maintained; she was absent on 07.10.2010 without getting prior permission of the Medical Officer; as a counselor, the first respondent failed to maintain STD colour coded drug stock register on daily basis and tried to influence the senior and superior officer at the District Headquarters Hospital, Perambalur, with external pressures.

3(ii). An explanation was called for from the first respondent within three days and the first respondent submitted her explanation on 30.10.2010 denying all the allegations. It

is the case of the first respondent that in spite of denying the allegations, the appellant has passed an order on 14.12.2010 terminating the service of the first respondent as Counselor. Since the said order was passed without conducting any enquiry, the first respondent has filed a review petition seeking to revoke the order of termination dated 14.12.2010 and the said request was rejected by the appellant without stating any reason by an order dated 20.07.2011.

3(iii). Challenging the said orders, the first respondent has filed the above writ petition on the ground that she having been appointed by the District Collector as Project Counselor and having performed her service for over 2 years without any blemish, which was certified by the Medical Officer, the termination of the first respondent's service on the basis of mere allegations, which were not proved, is in violation of the principles of natural justice and the request to revoke the order having been rejected without any reason, the appellant has arbitrarily acted, which is in violation of Article 14 of the Constitution of India.

3(iv). The learned single Judge, after hearing the learned counsel on either side and after considering the materials placed before the Court, had allowed the said writ petition on 07.11.2014 by setting aside the termination order dated 14.12.2010 and directed the appellant to reinstate the first respondent as STD Clinic Counselor in the District Government Head Quarters Hospital, Perambalur, with continuity of service with all other benefits, except backwages, within a period of two weeks from the date of receipt of a copy of that order. Aggrieved by the said order, the Tamil Nadu State AIDS Control Society has preferred the present writ appeal.

4. Heard Mr.M.Loganathan, learned counsel appearing for the appellant; Mr.V.Krishnamurthy, learned counsel appearing for the first respondent and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for respondents 2 to 4.

5. At the outset, it is to be noted that a Division Bench of this Court in W.A.No.1895 of 2009 by judgment dated 19.10.2010 (S.Francis and others Vs. The State of Tamil Nadu), wherein "the Tamil Nadu AIDS Control Society" was arrayed as second respondent categorically held that writ petition is not maintainable against the said Society. When such view has been expressed by a Division Bench of Co-ordinate strength, judicial discipline demands that the learned single Judge ought to have followed the said decision of the Division Bench.

6. On this score, we allow the writ appeal and set aside the order dated 07.11.2014 passed by the learned single Judge in W.P.No.34097 of 2013. If any grievance still subsists, it can

be proceeded with in accordance with law. The connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

Jrl

To

1. The Director,
Department of Public Health & Medicine,
DMS Campus, Teynampet,
Chennai - 600 018.
2. The Deputy Director,
Department of Family & Health Welfare,
Perambalur District.
3. The District Collector,
Perambalur District.
4. The Project Director,
Tamil Nadu State Aids Control Society
No.417, Pantheon Road,
Egmore, Chennai - 600 008.

+1 CC to Mr.M. Loganathan, Advocate sr 88442.

+1 CC to Mr.V. Krishnamurthy, Advocate sr 88402.

+1 CC to Spl. Govt. Pleader sr 89055.

सत्यमेव जयते

W.A.No.1701 of 2014

MR (CO)
SP (02/02/2018)

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