



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.01.2017

Delivered on : 03.02.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.A. (MD) No.980 of 2015
and
M.P. (MD) No.2 of 2015**

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

2.The Project Director,
State Health Society - Tamil Nadu,
DMS Complex,
Chennai-600 006.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Deputy Director of Health Services,
Virudhunagar District,
Virudhunagar.

5.The Medical Officer,
Government Primary Health Centre,
Narikudi,
Thiruchuli Taluk,
Virudhunagar District.

: Appellants / Respondents

Vs.

K.Mohammed Rabeek

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of a learned Single Judge of this Court dated 10.07.2015, made in W.P. (MD) No.7432 of 2013.



of India, for the issuance of a Writ of Certiorari calling for the entire records pertaining to the impugned resolution dated 24.01.2013 passed by the 5th respondent and the subsequent impugned proceedings in Na.Ka.No.1156/A3/2013 dated 04.04.2013 passed by the 4th respondent and quash the same as illegal.

For Appellants : Mr.N.S.Karthikeyan,
Additional Government Pleader

For Respondent : Mr.K.N.Thampi

JUDGMENT

R. SUBBIAH, J

This Writ Appeal is directed against the order dated 10.07.2015 made in W.P.(MD)No.7432 of 2013, whereby and whereunder, the learned Single Judge has allowed the Writ Petition, by quashing the impugned resolution dated 24.01.2013 passed by the fifth appellant and the subsequent impugned proceedings dated 04.04.2013 passed by the fourth appellant and consequently, directed the appellants herein to allow the respondent/writ petitioner to continue in service with all benefits.

2. The case of the respondent before the learned Single Judge was that the second appellant, vide proceedings in Ref.No.3998/P4SHS/08, dated 22.06.2009, directed the fourth appellant to recruit drivers and cleaner -cum- attender through Employment Exchange on consolidated pay of Rs.3,500/- and Rs.2,500/- per month respectively. The further instruction of the second appellant in the said proceedings is that in case of non-availability of drivers, the said posts can be hired locally, pursuant to which, the fourth appellant instructed the fifth appellant to act as per the guidelines issued by the second appellant.

3. It is the further case of the respondent that since lesser number of persons were willing to work as drivers on consolidated pay of Rs.3,500/- per month, to fill up the remaining vacancies, the fifth appellant passed a resolution dated 14.07.2009, appointing the respondent as driver on daily wages in Primary Health Centre, Narikudi. The fifth appellant also issued an order of appointment vide proceedings dated 02.09.2009. The consolidated pay is the only source of the respondent's income. The respondent worked as driver without any break for four years. While so, he was prevented from signing in the attendance register and he was not assigned any duty from 24.01.2013 in the fifth appellant's service. The respondent was not able to get any valid reason from the fifth appellant for not allowing him to sign in the attendance



register and discharge his duty. Hence, the respondent applied for medical leave. In order to retain his continuity of service, the fifth appellant also sanctioned medical leave from 27.01.2013 to 31.03.2013 with some periodical breaks. The respondent also sent representations to the third appellant and others, on the basis of which, the third appellant directed the fourth appellant to conduct an enquiry and submit a report immediately, who, in turn, directed the fifth appellant to forward a report on the matter. In pursuance of the same, the fifth appellant sent a communication to the fourth appellant stating that owing to existence of surplus drivers, the respondent was terminated from service, vide resolution dated 24.01.2013. Based on the resolution, the fourth appellant passed the impugned proceedings dated 04.04.2013. Since the fifth appellant has terminated the respondent from service without assigning any valid reason, he had challenged the resolution as well as the consequential proceedings of the fourth appellant in the Writ Petition.

4. In the Writ Petition, the fifth appellant herein filed a counter stating that there is a Scheme in the National Level by name and style as "National Rural Health Mission" to improve the health of the rural people and the said project has been implemented by the State, namely State Health Society/Tamil Nadu under the control of the Director of Public Health and Preventive Medicine. Hence, the first and second appellants issued the proceedings to appoint the driver on temporary daily wages basis, which is not permanent. The above said project is only for a period of five years i.e., from 2007 to 2012. Hence, the authority has directed to terminate the temporary daily wage drivers, based on which, the respondent was not allowed to work from 25.01.2013 as per the resolution dated 24.01.2013. However, in the counter-affidavit, it has been admitted that there is a vacancy for driver in the fifth appellant's office for the project vehicles.

5. The learned Single Judge, after hearing both sides and after analyzing the documents produced before the Writ Court, has come to the conclusion that in the place of the respondent, another person, by name Balamurugan has been inducted into service as driver during the pendency of the Writ Petition. Therefore, divesting of the duty of the respondent is wholly illegal. Moreover, there is no misconduct on the part of the respondent. Finding that removal of a person without any enquiry and accommodating some other person in his place is arbitrary, the learned Single Judge has allowed the Writ Petition and directed the appellants to allow the respondent to continue in service with all benefits. While allowing the respondent to continue in service, the learned Single Judge has also directed the appellants to pay 50% of the wages from the date of the disengagement of the respondent from service till the date of his reinstatement in the post based on his last drawn pay. Challenging the same, the appellants are before this Court with the present Writ Appeal.



6. The learned Additional Government Pleader submitted that the respondent is only a daily wager and he worked only for a period of four years under the project viz., National Rural Health Mission and the said project is for a period of five years i.e., from 2007 to 2012. The salary was paid from the Mobile Medical Unit Fund in the National Rural Health Mission Scheme and hence, he cannot claim any permanent status or regularization. The fifth appellant is having every right to engage or disengage the daily wages employees. Further, since the respondent has not rendered any service after the period of disengagement, he is not entitled to the wages for the non- working period. The learned Single Judge, by ignoring the said fact, has ordered for reinstatement along with 50% wages. The said order is not legally sustainable and hence, the same is liable to be set aside.

7. However, the learned counsel for the respondent replied that after disengagement of the respondent from service, the appellants have engaged one Balamurugan in his place. Even in the counter-affidavit filed by the appellants, they have admitted that there is a vacancy for driver in the fifth appellant's office. Therefore, the learned Single Judge, by considering all the factual aspects, has allowed the Writ Petition with 50% wages, which is not liable to be interfered with.

8. Adding further, the learned counsel for the respondent submits that after allowing the Writ Petition, now, the respondent was permitted to continue in service, but, the wages, as directed by the Writ Court, was not granted. Further, the learned counsel submits that though it is the case of the appellants that since the respondent is a daily wager, he is not entitled for backwages, the same is not legally sustainable. In support of the contention relating to entitlement of backwages, the learned counsel for the respondent has also produced number of judgments for perusal of this Court.

9. By way of reply, the learned Additional Government Pleader submitted that it is incorrect to state that in the place of the respondent, another person by name Balamurugan was appointed. The said person was appointed in accordance with the present Scheme, wherein the respondent was working.

10. Keeping in mind the submissions made by the learned counsel appearing on either side, we have carefully gone through the entire materials available on record.

11. There is no dispute that in the counter-affidavit, it has been admitted that there are vacancies for the post of driver in the fifth appellant's Office. Based on the said statement as well as considering the other factual aspects, the learned Single Judge directed the appellants to allow the respondent to continue in



service with all benefits and accordingly, he has also joined duty and at present, he is also working. Therefore, we do not find any valid ground to interfere with the direction given by the learned Single Judge to permit the respondent to continue in service.

12. However, in respect of 50% wages, we find that the respondent was a daily wages employee and as such, granting of 50% wages is not legally sustainable. Admittedly, the respondent was not working in the Scheme as daily wager for a period from 25.01.2013 to 22.07.2015. Furthermore, the judgments referred to by the learned counsel for the respondent are on different facts and hence, the same are not applicable to the case on hand. Therefore, the order of the learned Single Judge, on the said finding, is liable to be set aside and accordingly, set aside.

13. In the result, the Writ Appeal is allowed in part by setting aside the direction given by the learned Single Judge for payment of 50% wages to the respondent alone. In all other aspects, the order passed by the learned Single Judge is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

SML

TO

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Government Primary Health Centre,
Narikudi,
Thiruchuli Taluk,
Virudhunagar District.

+1cc to Mr.K.N.Thampi,Advocate Sr.No. 6060

Jam/17.02.17 /PM-PN/6p-7c

Judgment made in
W.A. (MD) No.980 of 2015

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