

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.08.2018	Delivered on 21 .08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.380 of 2016
and
C.M.P.No.5577 of 2016

- 1.The State of Tamil Nadu,
Rep. by Secretary,
Education Department,
Chennai - 9.
- 2.The Director of School Education,
Education Department,
Chennai - 6.
- 3.The Chief Educational Officer,
Virudhunagar,
Virudhunagar District. ..Appellants/Respondents

Vs.

P.S.Gunasekaran .. Respondent/Petitioner

PRAYER: Appeal filed against the order passed by this Court dated 09.02.2015 passed in W.P.No.28747 of 2004. Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified or any other appropriate writ by calling for the records of the 2nd respondent in his proceedings Na.Ka.No.132883/G2/2001 dated 30.06.2003 and quash the same and consequently direct the respondents to regularize the service of the petitioner with all consequently benefits including retirement of the period of leave.

For Appellants : Mr.K.Karthikeyan, Government Advocate

For Respondent : Mr.V.Vijayshankar

J U D G M E N T

R.SUBRAMANIAN, J.

1. The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 09.02.2015 made in W.P.No.28747 of 2004, in and by which, the learned Single Judge

while quashing the impugned order of the 2nd respondent dated 30.06.2003 directed the appellants to regularize the services of the respondent and to pay pensionary as well as terminal benefits from 01.01.1999 as applicable to the post of Junior Assistant with reference to the entries made in the Service Register.

2. The respondent herein had joined as a Medical Attendant on 05.06.1982 in the Medical Assistance Schemes in Ramnathapuram District, the appointment was made by the Chief Educational Officer, Ramanathapuram in his capacity as the Chairman of the Medical Assistance Scheme. Thereafter, the respondent was promoted as Junior Assistant in the Scheme and he has served in the said post till his retirement. The respondent claimed pension and made a representation to the Authorities. The Director of School Education by his proceedings dated 30.06.2003 rejected the request of the respondent on the ground that the employees working under the Medical Assistance Scheme are not permanent Government employees. They are only employed under a particular Scheme and they are paid out of the fees collected from the students for the said purpose. Therefore, they cannot be deemed to be Government employees entitled to pension and other benefits. The claim made by the Association of such employees was rejected by the Government even on 08.08.1989. It is also pointed out by the Director of School Education that these employees were not recruited through a recruitment process, they were appointed by the District Heads in their capacity as Presidents of the Medical Assistance Scheme of the particular District.

3. Aggrieved, the respondent approached this Court by way of the above Writ Petition, W.P.No.28747 of 2004, contending that he was appointed in 1982 as a Medical Attendant and he has been working in such capacity and subsequently he was also promoted as a Junior Assistant under the very same Scheme and the Service Register was also opened by the Chief Educational Officer, therefore, according to the petitioner, he is actually a Government servant and the Director of School Education was not justified in rejecting his claim.

4. This claim was resisted by the Government mainly contending that the respondent was not appointed into the Government Service. No doubt, he was appointed by the Chief Educational officer of the District but the said appointment was in his capacity as the President of the Medical Assistance Scheme. Therefore, the respondent was not a Government servant and he was only working under the Scheme. The appellants also pointed out that a similar request made by the Association was rejected by the Government as early as on 08.08.1989. during the pendency of the Writ Petition it appears that the Government had taken certain steps to absorb these employees in the Health and Family Welfare Department and the said request was also rejected

by the Secretary of Health and Family Welfare Department on 11.04.2014.

5. The learned Single Judge who heard the Writ Petition however allowed the same holding that since the respondent has rendered service for a long period without any brake, a service register has been opened for him, he has also been promoted as Junior Assistant in the Office of the Chief Educational Officer and he was doing Government work the respondent is entitled to regularization. Aggrieved the Government has come forward with this appeal.

6. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants and Mr.V.Vijayshankar, learned counsel appearing for the respondent.

7. Mr.K.Karthikeyan, learned Government Advocate appearing for the appellant would point out that initial appointment of the respondent was made by the President of the Medical Assistance Scheme which was in vogue pursuant to a Government order. The Government order viz., G.O.Ms.315 dated 03.04.1968 enables starting of Scheme for medical inspection of school children in Madurai and Trichirapalli Districts. The Scheme, as famed by the said Government order, makes it very clear that no expenditure shall be incurred from the State funds on the Scheme for any purposes what so ever.

8. It is also stated that the salaries payable to the staffs and other expenses should be met by the special fees for medical inspection collected in secondary schools in the area covered by the Scheme as well as voluntary donations and other sources including aids received from charities and other Institutions. Therefore, the Government order clearly contemplated a separate Scheme with a separate financial assistance which was not from the State funds, as per the Scheme. The Chief Educational Officer of the District will be a President and a Head Master is nominated as Secretary and Treasurer of the scheme by the Director of School Education. The Committee should also be registered as a Society. From G.O.315 dated 03.04.1968, it is clear that the Government never intended these employees working under Scheme to be taken as Government employees. Pointing out to the above Scheme and contents of the Government Order, Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants would contend that at no stretch of imagination could the respondent be treated as Government servant entitled to pension and other benefits which are payable to the Government servants.

9. Mr.V.Vijayshankar, learned counsel appearing for the respondent would contend that, a service register was opened for the respondent by the Authorities and he had also passed the relevant tests conducted by the TNPSC periodically. Pointing out

that he was also been promoted as a Junior Assistant from 05.06.1982 Mr.V.Vijayshankar would contend that he was a Government employee for all practical purpose. Mr.V.Vijayshankar, would also draw our attention to the judgment of the Hon'ble Supreme Court in Nihal Singh and others Vs. State of Punjab and others reported in AIR 2013 SC 3547, wherein, the Hon'ble Supreme Court had held that persons who had been employed through a recruitment procedure should be regularized.

10. We have considered the rival submissions. A perusal of G.O.Ms.No.315 dated 03.04.1968 would show that the Government had devised a scheme for conducting medical inspection in schools. The District Educational Officer of the District was made the President of the Scheme and a Head Master was to function as Secretary and Treasurer of the Scheme. The Government Order also makes it explicitly clear that no expenditure should be incurred from the State funds on the Scheme for whatever purpose whatsoever. Therefore, it is clear that the employees of the Scheme were not taken in as Government servants and they were working only under the Scheme.

11. Mr.V.Vijayshankar, learned counsel appearing for the respondent would submit that the respondent had been promoted as a Junior Assistant in the Office of the Chief Educational Officer, Ramnathapuram, therefore, he had become a Government Servant. The said promotion is pursuant to the Government letter in Mo.Mo.No.12363 G2/81 dated 19.05.1982, wherein, the Director of School Education had directed that one post of the Medical Attendants to be redesignated as a Junior Assistant and the District Educational Officer was directed to appoint Senior most Medical Attendant in the District as Junior Assistant under the Scheme. Therefore, the promotion of the respondent as a Junior Assistant was also under the Scheme.

12. Mr.V.Vijayshankar, would rely upon the fact that the service register was opened for the respondent and he had also passed the tests conducted by TNPSC periodically. We have gone through the entire service register, it is seen from the entire service register that it is maintained by the Secretary cum Treasurer, Ramanathapuram District Secondary Schools Medical Aid Scheme. Therefore, it is clear that the respondent was always treated as a member of the separate service under the Scheme and he was never treated as a Government Servant.

13. The judgment of the Hon'ble Supreme Court relied upon by Mr.V.Vijayshankar, relates to a recruitment of Ex-servicemen made by the Government and deputed various Banks as Security Staff. While those Security Staff demanded regularization, the Government took the stand that they were not in the employment of the State and they were deputed to the Banks and they were receiving salary from the Banks, therefore, there employment

cannot be regularized. On the facts of that case it was held that once a proper recruitment has been made and the individuals who have been appointed having been deputed to banks to work as Security staff, they will be entitled to regularization as Government Servants. But in the case on hand, we find that the very appointment was made under the special scheme and the respondent continued as such from the date of his appointment till the date of his retirement, therefore, we do not think he could be construed as a Government servant for any purpose whatsoever.

14. The learned Single Judge took note of the service register which is maintained and held that the respondent is a Government servant. Unfortunately, the fact that the service register was maintained only by the Secretary cum Treasurer of the Scheme and not by the Head Master in his capacity as a Head Master was not brought to the notice of the learned Single Judge. We are therefore, of the considered opinion that the learned Single Judge was not right in directing regularization of the services of the respondent as a Government servant and directing the payment of pension and other retirement benefits payable to the Government Servants.

15. For the foregoing reasons, this intra-Court appeal is allowed, the judgment of the learned Single Judge made in W.P.No.28747 of 2004 is set aside, the Writ Petition will stand dismissed. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Education Department, Chennai - 9.
 - 2.The Director of School Education,
Education Department, Chennai - 6.
 - 3.The Chief Educational Officer,
Virudhunagar, Virudhunagar District.
- + 1 cc to Mr. Government Pleader sr.57655
+ 1 cc to Mr. V.Vijay Shankar, Advocate Sr.57380

W.A.No.380 of 2016

AK (CO)
EU (10/09/2018)