



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.02.2018
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD) No.251 of 2018
and
W.M.P (MD) No.266 of 2018

P.Lakshmi

.. Petitioner

Vs.

1.The Registrar General,
Madras High Court,
Chennai - 600 104.

2.The District and Sessions Judge,
Kanyakumari District at Nagercoil.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, to declare the termination of the petitioner working as typist in the District Court, Nagercoil, as per the proceedings in Order ROC.No.208/2012-A, dated 03.07.2017 as illegal and consequently to allow the petitioner to continue her duty as typist within the time period stipulated by this Court.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.N.Tamilmani

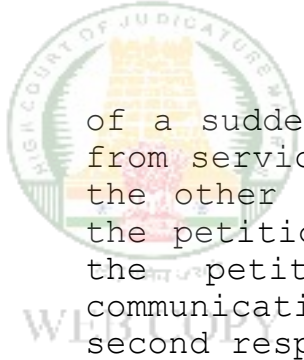
ORDER

[Order of the Court was made by T.S.SIVAGNANAM, J.]

The petitioner has filed this writ petition praying for issuance of a writ of declaration, to declare her termination from the post of typist in the District Court, Nagercoil, vide proceedings of the second respondent, dated 03.07.2017, as illegal and consequently to allow her to continue as typist.

2.The petitioner was appointed as a typist during the year 2009 on temporary basis, for a period of one year. After which, she was ousted from service on 05.07.2010. Subsequently, a temporary appointment order was issued to her on 07.07.2010, permitting her to work as a temporary typist for one year. This process was continuing till 2012.

3.The petitioner would state that since 2012, she has been continuously working as typist in the District Court, Nagercoil, all



of a sudden, the impugned proceedings were issued, discharging her from service and subsequently, the second respondent has reappointed the other temporary typists, without extending the same benefit to the petitioner. In this regard, the learned counsel appearing for the petitioner has drawn our attention to the impugned communication, dated 03.07.2017 and subsequent proceedings of the second respondent, dated 04.07.2017.

4.It is further submitted that the petitioner's neighbour is an Advocate, who is practicing in the District Court, Nagercoil and there was a dispute with regard to the boundary wall and on account of the said dispute, the neighbour had lodged a complaint against the petitioner's husband and due to such reason, the petitioner has been ousted from service.

5.The learned counsel appearing for the petitioner would submit that in respect of one another typist, by name, Kavitha, there is a case pending before the Fast Track Mahila Court, Nagercoil, in a family dispute and in the case of one S.Shanthi, Typist, working in the District Munsif cum Judicial Magistrate Court, Boothapandi, charge memo was issued by the Judicial Magistrate No.II, Nagercoil, however, she is permitted to continue as a typist. Thus, it is submitted that the petitioner should be permitted to continue as a typist along with other persons, whose names find place in the proceedings of the second respondent, dated 04.07.2017.

6.The learned counsel appearing for the respondents submitted that in terms of Rule 16(e)(i) of the Tamil Nadu Judicial Ministerial Service Rules, a person appointed under sub-rule (a), (b) or (d) to a post borne on the cadre of the service, shall not be regarded as a probationer or be entitled by reason only of such appointment to any preferential claim to future appointment and the services of such a person in the post shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned. Further it is submitted that in terms of Rule 10(a)(v) of the Tamil Nadu Judicial Ministerial Service Rules, a person appointed under clause (i), (ii) or (iv) shall not be regarded as a probationer in service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category and the services of such persons are liable to be terminated by the appointing authority at any time without notice and without any reason, being assigned. It is submitted that the above referred rules have been mentioned in the appointment order issued to the petitioner, dated 05.07.2016. It is further submitted that the petitioner and two others filed W.P.No.3498 of 2013 to regularise their services in the Tamil Nadu Judicial Ministerial Service with all attendant benefits and the said writ petition was dismissed by order, dated 27.11.2014 on the ground that the petitioner, while accepting the appointment on temporary basis, was conscious of the fact that her appointment was only till regularly



appointed incumbents are available. Further, it is submitted that a complaint was given by Tmt.P.Rajam, W/o.Late.N.Sreekandan, making some allegations. The statements of the petitioner-Tmt.P.Rajam and the Sub Inspector of Police, Kottar Police Station, were recorded by the then District Judge, Nagercoil. It is submitted that the appointment being temporary, the petitioner has been relieved from services.

7.Heard the learned counsel appearing for the parties and perused the materials placed on record.

8.As noticed above, the petitioner sought for being regularly absorbed in the Tamil Nadu Judicial Ministerial Service and filed writ petition for the said relief. The prayer was rejected by the Division Bench, by order, dated 27.11.2014. The effect of the Judgment is that temporary appointees like that of the petitioner have no right to continue in the post and the arrangement itself was till regularly selected candidates are appointed to the posts. Thus, there is no vested right for the petitioner to continue in the temporary post. The learned counsel appearing for the petitioner would submit that the petitioner may be considered for appointment on temporary basis in any future vacancy and merely, because a complaint was given against her husband and that was enquired into, shall not be put against her. We are not inclined to agree with the said submission for more than one reason. Firstly, the impugned order relieving the petitioner, is a termination simpliciter. The said order does not cast any stigma on the petitioner. Secondly, it is the discretion of the employer to terminate the services of a temporary hand and it is well open to the employer to weigh all factors before engaging the services of the temporary employee. The test to be applied before engaging the service of a temporary employee is more greater and stringent than in a case of a permanent employee, as there is no control over a temporary employee. Therefore, in our view, there can be no vested right for the petitioner to insist that she should be employed temporarily and for such reason, we find that there is no error in the impugned proceedings.

9.For the above reasons, the relief sought for by the petitioner, cannot be granted and accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar



To

WEB COPY

1.The Registrar General,
Madras High Court,
Chennai - 600 104.

2.The District and Sessions Judge,
Kanyakumari District at Nagercoil.

Copy to:-

The Section Officer,
Legal Cell,
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.T.Lajapathi Roy, Advocate, SR.No.51201

smn

RL/5C/4P/KK/SAR4/8/3/2018

ORDER MADE IN
W.P (MD) No.251 of 2018
and
W.M.P (MD) No.266 of 2018

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