



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2018

CORAM:

THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD) No.19175 of 2014

and

M.P (MD) Nos.1 to 3 of 2014

N.R.Amalraj

... Petitioner

Vs.

1. The District Collector,
District Child Protection Society,
District Collectorate Campus,
Nagercoil,
Kanyakumari District.
2. The District Child Protection Officer,
District Child Protection Society,
96, Narayanan Street,
Christober Nagar,
Nagercoil-629 001,
Kanyakumari District.
3. Prabin
The Protection Officer (Institutional Care)
District Child Protection Society
District Collectorate Campus,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the record relating to the impugned Notification issued by the first respondent District Collector as published in the newspaper 'Dinakaran' dated 12.11.2014 quash the same and further direct the first respondent to give forthwith renewal of appointment to the petitioner as Protection Officer in the second respondent District Child Protection Society.

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mr.J.Gunaseelanmuthiah AGP
for R1 and R2
Mr.L.Jeen Felix for R3

**O R D E R**

The petitioner was appointed as Protection Officer by the first respondent for the Central Government Sponsored Scheme known as "The Integrated Child Protection Scheme". The petitioner was originally appointed on 21.08.2012 for a period of one year, which was renewed on 23.08.2013 and he was reappointed again on contractual basis from the said date onwards. Thereafter, on 22.08.2014, the petitioner was relieved from service. In his place, one Prabin was again appointed on contractual basis on 26.12.2017. In the meanwhile, the petitioner herein had filed the present writ petition. In fact, the said Prabin was appointed following the impugned notification dated 12.11.2014.

2.The facts are not in dispute. The petitioner was appointed on contractual basis as Protection Officer under the Central Government Sponsored Scheme known as "The Integrated Child Protection Scheme". It is not in dispute that the scheme is very much in force as on date. In all such cases relating to appointment on *ad hoc* basis under the scheme, the appointees will continue to hold their post till the scheme is in operation. The Honourable Supreme Court has held in **(2009)6 SCC 611 [Mohd. Abdul Kadir vs. Director General of Police]** that continuance in a temporary scheme will not confer any right to continuance of service in perpetuity or seek regularization in some other project. But then an *ad hoc* employee cannot be replaced by another *ad hoc* employee. In the present case, it is no doubt true that the writ petitioner was an *ad hoc* employee. But after relieving him from service, he has been replaced by another *ad hoc* employee. This is clearly an unfair practice.

3.As already pointed out, even when the first year of contractual agreement ended, the writ petitioner was relieved on 20.08.2013 and again reappointed on contractual basis on 23.08.2013. This shows that the intention of the authority was to create an artificial break. When service in a scheme will not confer any right to regularization, there was no need to give such artificial break.

4.In the counter affidavit filed by the official respondents, some allegations have been made against the writ petitioner. If really the petitioner was disengaged only on grounds of misconduct, certainly the principles of natural justice ought to have been complied with. In this case, it is admitted that the petitioner was not issued with any show cause notice. Not even a summary enquiry was held and no charge memo was issued. Therefore, this Court cannot look into the allegations now projected in the counter affidavit.



5.This Court is inclined to interfere with the matter on the sole ground that the order relieving the petitioner from service is non-speaking and that he has been replaced by another ad hoc employee, when the scheme under which the petitioner was appointed, was continuously in force.

6.For all these reasons, the notification impugned in this writ petition is quashed. Since the appointment of the third respondent took place during the pendency of the writ petition, needless to say that in this writ petition, no opinion is rendered regarding the appointment of the third respondent and it is open to the authority to accommodate the third respondent elsewhere. However, it is made clear that since the writ petition is allowed, the third respondent has to be necessarily ousted from service so as to accommodate the petitioner in the post, which was originally held by him.

7.With these observations, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

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2. The District Child Protection Officer,
District Child Protection Society,
96, Narayanan Street,
Christober Nagar,
Nagercoil-629 001,
Kanyakumari District.

+1cc to Mr.T.Cibi Chakraborty, Advocate SR.No.53252

+1cc to Mr.S.C.Herold Singh, Advocate Sr.No.52834

+1cc to The Spl. Government Pleader Sr.No.53629

SKN

VB/SKN/RSK/SAR1/31.05.2018/3P/6C

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