



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) .No.1444 of 2013

and

M.P. (MD) .Nos.1 & 2 of 2013

S.Manimegalai

...Petitioner

-vs-

1.The State of Tamil Nadu represented by
Secretary to Government,
Health and Family Welfare Department,
Fort. St.George, Chennai-600 009.

2.The Director of Medical Education,
Kilpauk, Chennai-600 010.

3.The Chairman,
Medical Service Recruitment Board,
7th Floor, DMS Building, 359, Anna Salai,
Teynampet, Chennai-600 006.

4.The Dean,
Kanyakumari Government Medical College,
Asaripallam, Kanyakumari District.

...Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the fourth respondent in letter No.4891/N6/2008 dated 21.09.2012, quash the same and consequently direct the fourth respondent forbearing from terminating the services of the petitioner till the candidates selected by the third respondent are appointed to the post held by the petitioner.

For Petitioner

: Mr.B.Brijesh Kishore

For Respondents

: Mr.R.Sethuraman

Special Government Pleader

O R D E R

This Writ Petition has been filed to quash the order passed by the fourth respondent in letter No.4891/N6/2008 dated 21.09.2012 and consequently forbear the fourth respondent from terminating the services of the petitioner till the selection of candidates by the third respondent to the very same post held by the petitioner.



2. The case of the petitioner is as follows:-

i) The petitioner has been appointed as a Lab Technician Grade II in the Kanyakumari Medical College on 09.05.2005 on contract basis and from the date of appointment, she has been working in the same post as on date. The Dean, Kanyakumari Medical College, passed an impugned order vide letter No.4891/N6/2008 dated 21.09.2012 and terminated the petitioner from service. Aggrieved by the said impugned order, she had filed this Writ Petition and obtained an interim order on 29.01.2013 in M.P.(MD).No.2 of 2013 in W.P.(MD).No.1444 of 2013.

3. Due to non compliance of the said order, a contempt petition in Cont.P.(MD)No.298 of 2013 has been filed and this Court, by order dated 27.06.2013, directed the Dean, Kanyakumari District to permit the petitioner to discharge the duties as Lab Technician till the disposal of this Writ Petition.

4.The learned counsel appearing for the petitioner relied upon the order passed by this Court in W.P.(MD).No.6239 of 2008, dated 13.09.2011, wherein the petitioner is also a party. He drew the attention of this Court to Paragraph 5 in which it has been held as follows:-

4.At this stage, it would be useful to refer to the order of this Court in W.P.No.23.10.2009 dated 23.10.2009, which reads as follows:-

The petitioners were employed by the orders of the second respondent Director of Public Health and Preventive Medicine. They were engaged by various agencies for allotment in the hospital and outsourcing jobs. The petitioner challenges against order of termination and consequently for a direction to register his certificates in the Employment Exchange for giving preference in appointment. They also sought for a direction to reinstate and absorb as Lab Assistant, Drivers and Sanitary Works from the date of their original appointment.

2.Notice was issued in the batch of Writ Petitions. Mr.A.C.Manibharathi takes notice for respondents.

3.Mr.Ajay Ghosh, learned counsel for the petitioner brought to the notice of this Court in respect of other identically placed Writ Petitions disposed of granting certain directions. The learned counsel for the petitioner relied upon the judgment of this Court in (P.Sithan and others Vs. State of Tamil Nadu and others made in W.P.No.28761 in batch cases dated 04.12.2008), In disposing of those cases, this Court followed the earlier order obtained by similarly placed workman. In para-4 of the order, this Court observed as follows:-

"In view of the earlier orders there will be



similar order in these cases also.

These Writ Petitions are disposed of giving direction to the fourth respondent to give preference to the petitioners based on their earlier engagement either as Contract Drivers/Sanitary Workers/Hospital Workers/Lab Assistants while appointing any fresh candidate. The fourth respondent is directed to consider the claim of the petitioners and if they are found qualified, they should be given priority taking note of their experience. The learned counsel for the petitioners submitted that there are vacancies now available. Hence, petitioners are directed to submit their application before the fourth respondent, along with the experience certificate issued by the concerned medical officers to the fourth respondent, within a period of two weeks from the date of receipt of a copy of this order. The fourth respondent is directed to consider their claims even if their names are not sponsored by the employment exchange. It is made clear that since the petitioners are already engaged through outsourcing and performed the duties either as Drivers/Sanitary Workers / Hospital Workers / Lab Assistants, further sponsorship through employment exchange is not required to be made in so far as the petitioners are concerned.

Writ Petitions are disposed of on the above terms"

2. In the light of the above, a similar direction is issued in the Writ Petition also. Accordingly, the Writ Petition is disposed of on the above terms. No costs.

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents in both the Writ Petitions.

6. When the matter is taken up for hearing, the learned counsel appearing for the petitioner would submit that the issue on hand is squarely covered by the judgment of this Court in the case of Tamil Nadu Arasu Paniyalar Sangam, rep. by its President vs. State and others [W.P.Nos.13001 of 2018 and 3742 to 3748 of 2009] decided on 17.08.2011.

"19. Whether employees who are engaged through contractors (outsourcing agencies) can claim as a matter of right absorption against the principal employer came to be considered by the Supreme Court in its judgment in Steel Authority of India Limited and Others Vs. National Union Waterfront Workers and Others, (2201) 7 SCC 1. It was held by the constitutional Bench of the Supreme Court



that the High Court under Article 226 of the Constitution of India cannot grant such direction and directed the parties to move the appropriate Labour Court either for the abolition of the contract labour or for contending that the employment was sham and nominal and therefore, they can make a claim directly against the principal employer.

20. In any event, the contention raised by the petitioner/ association cannot be considered in a Writ Petition of this nature and hence, W.P.No.13001 of 2008 stands dismissed and the interim order stands vacated.

21. In W.P.Nos.3742 to 3748 of 2009, the petitioners were directly recruited by sponsorship through employment exchange under Rule 10(a)(i) of the General Rules. The present impugned order came to be passed because the department was faced with a peculiar situation of employing two sets of drivers against the same post and because of the order of status-quo they were sought to be terminated. Even though it is contended that their appointment was only under Rule 10(a)(i) of the General Rules and liable to be terminated at any time, in the present case their termination was occasioned only because of the pendency of w.P.No.13001 of 2008 and the petitioners also contended that while terminating from the service, they were not given any notice.

22. In normal circumstances, such a notice is required if there is any want of vacancy. But, in the present case, they were sought to be ousted only because this Court passed orders against the department. Hence, the impugned orders passed against the petitioners in W.P.Nos.3742 to 3748 of 2009 are set aside and liberty is given to the respondents to pass appropriate orders in case their services are not required for any reason other than the reason which prompted them from terminating the services which gave rise to the present batch of Writ Petitions."

7. Learned Special Government Pleader appearing for the respondents has also fairly submitted that both the issues are identical and covered.

8. In view of the submissions made on either side and considering the fact that the issue on hand is covered by the aforesaid decision, this Court is of the view that the impugned order in this Writ Petition is liable to be quashed. Accordingly, the impugned order passed by the Dean, Kanyakumari Government Medical College, Asaripallam, Kanyakumari District, vide letter No.4891/N6/2008 dated 21.09.2012 is quashed.



9. In fine, this Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

- 1.The Secretary to Government,
Health and Family Welfare Department,
Fort. St.George, Chennai-600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai-600 010.
- 3.The Chairman,
Medical Service Recruitment Board,
7th Floor, DMS Building, 359, Anna Salai,
Teynampet, Chennai-600 006.
- 4.The Dean,
Kanyakumari Government Medical College,
Asaripallam, Kanyakumari District.

+1cc to Mr.B.Brijesh Kishore Advocate in sr.no.79536.
+1cc to Special Government Pleader in sr.no.79837.

TSG

DS VR/SAR-2:25.09.2018: 5P/7C

W.P. (MD) .No.1444 of 2013
21.08.2018