

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 16.02.2018****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.8705 of 2013 and MP(MD) Nos.1 & 2 of 2013****WEB COPY**

Dr.P.Sudarsen

... Petitioner

Vs.

1.The Director of Public Health
& Preventive Medicine,
Public Health Service Office,
Chennai 600 006.

2.The Deputy Director of Health Services,
Palani,
Dindigul District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent passed in his proceedings R.No.24981/E5/A3/2013 dated 18.04.2013 and quash the same as illegal and directing the 1st respondent to reinstate and regularize the service of the petitioner according to his seniority with continuity of service and all other attendant benefits.

For Petitioner : Mr.C.Venkatesh Kumar for
M/s.Ajmal Associates
For Respondents : Mr.M.Muthu
Additional Government Pleader

ORDER

The order of termination simpliciter, dated 18.04.2013 issued by the first respondent is under challenge in this writ petition and further direction is sought for to reinstate the petitioner into service and regularize him in the post of Medical Officer.

2.The writ petitioner was appointed as Assistant Surgeon on contract basis on 18.03.2005 on consolidated pay. Initially, the contract period was from 19.03.2005 to 31.10.2006. Subsequently, the contract period was extended from 01.11.2006 to 13.12.2007. Again the same was extended to a further period from 14.12.2007 and when the period was extended lastly, the time scale was paid to the writ petitioner. The petitioner was employed in Senthurai Primary Health Centre. The first respondent transferred the writ petitioner from Senthurai to Midapatti Primary Health Centre.

3.The petitioner's claim is that he was serving in the Department without any blemish and the services of similarly placed contract employee were regularized by conducting a Special Qualifying Examination. The petitioner states that he had also

participated in the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission and therefore, he would be eligible for regularization of service.

4.The learned counsel appearing on behalf of the petitioner states that the writ petitioner has also appeared for the said examination along with his colleagues and when others were selected, the benefit of regularization also to be extended to the writ petitioner.

5.The learned Additional Government Pleader appearing on behalf of the respondents states that the writ petitioner was appointed as a contract Medical Officer in Dindigul Health Unit during 2005, based on the instructions given by the authorities. The initial appointment of the writ petitioner was under Rule 10 (a)(i) of the Tamil Nadu State and Subordinate Services Rules (hereinafter referred to as 'Rules') and the salary for the contract Medical Officer was Rs.8,000/- per month. Pursuant to G.O.Ms.No.302, dated 20.11.2006, the contract Medical Officers were appointed an consolidated pay and thereafter, they had been brought into regular time scale of pay with effect from 01.11.2006. But the contract employees were allowed to participate in the Special qualifying Examination conducted by the Tamil Nadu Public Service Commission and thereafter, their services were regularized. Further, the writ petitioner was appointed as temporary Medical Officer under 10(a)(i) Rules and on account of certain grave mistakes committed by him viz., harassing his wife and a complaint was also received from the wife of the writ petitioner. This being the fact that the competent authority invoked Rule 10(a)(v) of the General Rule for State and Subordinate Services and terminated the services of the writ petitioner without any notice and without assigning any reason.

6.The counter affidavit filed by the first respondent states that the writ petitioner was arrested on 16.03.2013 and he was remanded upto 22.03.2013 under judicial custody in connection with the crime No.5 of 2013 for the offences under Sections 498(A) and 506(ii) IPC. The defacto complainant was none other than his wife viz., Tmt.Indumathi. He was released on conditional bail by the Inspector of Police, All Women Police Station, Palani. In view of the over all assessment made by the competent authority, Rule 10 (a)(v) was invoked for the purpose of terminating the writ petitioner.

7.Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules states as follows:

"10.Temporary Appointment.-Sub-rule(a)(i)(1) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, in a post or category and there would be undue delay in making such appointment in accordance with these rules



and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules."

8. Rule 10(a)(i) provides temporary appointments. The temporary appointments are made based on the timely needs and in the interest of public and on emergency circumstances. Thus the appointment made on 10(a)(i) is purely temporary and the candidate cannot claim any right over such appointment. The petitioner is liable to be terminated in view of the fact that under Rule 10(a)(i), the appointments are not made in accordance with the regular recruitment Rules in force. Under the Rule 10(a)(i) appointments are made during emergency circumstances and in the interest of public and the regular recruitment rules were not followed.

9. Conducting of Special Qualifying Examination by the Government through Tamil Nadu Public Service Commission itself is in violation of the regular regularization Rules in force. Appointing a person under 10(a)(i) Rules and granting regularization by conducting Special Qualifying Examination itself is to be construed as violation of the constitutional mandates. All appointments are to be made strictly in accordance with the recruitment Rules in force. Moreover, equal opportunity in public employment is a constitutional mandate. Every eligible candidate must be provided with an opportunity to participate in the recruitment process. Of course, the rule of reservation as per policy to be strictly adhered to. This being the legal principles to be followed, appointing a person under 10(a)(i) Rules on temporary contract basis and absorb them on permanent basis by conducting Special qualifying Examination itself is against the principles enunciated in the constitution.

10. It is a method adopted by the Government to accommodate those persons by allowing them to continue in service beyond a reasonable period without any valid reason. If any emergency circumstances arise, undoubtedly the Government can appoint a person on temporary basis. However, such appointment made on contract basis for a specific period is to be terminated on expiry of the said period. Therefore, the person appointed on contract basis under 10(a)(i) Rules should not be allowed to work beyond the period specified in the appointment order or in the terms and conditions of the appointment.

11. This being the principles to be followed and there is no other reasons whatsoever to allow the employee to continue under 10(a)(i) Rules for a specific period. In the present writ petition, the writ petitioner was admittedly, appointed under 10(a)(i) Rules. Thus the writ petitioner cannot plead that the Rule 10(a)(v) cannot be applied to him. Rule 10(a)(v), reads as follows:



(v) A person appointed under clause (I), (ii) or (iv) shall not be regarded as a probationer in such 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. The services of a person appointed under clause (1) (ii) or (iv) shall be liable to be terminated by the appointing authority at any time without any reason being assigned."

12. The Rule ordinarily stipulates that the service of a person appointed under Clause (1)(2)(4) shall be liable to be terminated by the appointing authority at any point of time without any reason being assigned, thus the appointment made under Rule 10(a)(i) shall be terminated by the appointing authority at any time without assigning any reason.

13. There cannot be any termination of service without any reason. The reasons are implied or expressed. If the reasons are expressed in the impugned order, then it is to be construed that a stigma is attached against the employee, if no reason is cited then it is to be construed as an order of termination is of one of simpliciter. It is the normal presumption that without any reason, the appointing authority will not issue order of termination. In the present case, there was a criminal case registered against the writ petitioner on account of the complaint given by his wife. However, the appointing authority was of the opinion that the continuance of writ petitioner as a permanent employee, cannot be conducive and also not advisable. Since the writ petitioner is a Medical Officer and his duty is to treat the general public in the Government Hospital. Therefore, the competent authority was of an opinion that termination simpliciter is sufficient. Considering the facts and circumstances of the case, this Court has to go by the order passed against the writ petitioner. The impugned order is of one of simpliciter and no reason has been assigned. The appointing authority has power to terminate the services of an employee contemplated under 10(a)(i) Rules, without assigning any reason. Such being the scope of the rules, there is no irregularity or illegality in respect of the order impugned passed by the appointing authority in the case of the writ petitioner. In this view of the matter, no further adjudication is required in this writ petition.

14. Hence, this writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar (RTI)



To

1.The Director of Public Health
& Preventive Medicine,
Public Health Service Office,
Chennai 600 006.

2.The Deputy Director of Health Services,
Palani,
Dindigul District.

+1cc to Spl.Government Pleader Sr.No.49838

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VB/JC/SAR4/05/04/2018/5P/4C

W.P. (MD) No.8705 of 2013
16.02.2018