

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.17314 of 2011

Ex.N.K.A.Benzamin

.. Petitioner

-vs-

- 1.Union of India,
Rep., by its Secretary,
Ministry of Defence,
New Delhi-110 011.
- 2.Adam Commandant,
The Station Head Quarters,
Fort St. George, Chennai-600 009.
- 3.The Station Commander,
The Station Head Quarters,
Fort St. George, Chennai-600 009.
- 4.The Officer-in-Charge,
ECHS-Poly Clinic,
No.53, Old No.15, 10th Street,
Gandhi Nagar, Tiruvannamalai-02.
- 5.Venbalgu Systems & Manpower,
Rep., by its Managing Director,
Mr.D.Venkatesiah,
No.25/1 Big Street, Nallanpattarai,
Vellore-632 001.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the Termination Order dated 09.09.2006 vide No.1125/Venbalgu/ECHS, issued by the third respondent and the second termination order dated 04.10.2006, vide No.1130/07/Emp/Staff/102, issued by the fourth respondent herein and quash the same and direct the third and fourth respondents to continue the services of the petitioner as a Driver in the fourth respondent hospital and provide back wages from the date of termination.

For Petitioner : No appearance

For Respondents: RR1 to 4 - Mr.M.Aravind Kumar

: R5 - Mr.T.Sundaranathan

ORDER

This writ petition is to quash the order of termination dated 09.09.2006 issued by the 3rd respondent and the consequential order dated 04.10.2006 issued by the 4th respondent.

2.The petitioner states that he was engaged by the 5th respondent, Service Provider as Driver to provide service to the Indian Army.

3.The grievance of the writ petitioner is that he was employed as Driver in the 4th respondent hospital/Poly Clinic in order to provide service under the 'Ex-Servicemen Contributory Health Scheme'. The petitioner states that the scheme is implemented by the Ministry of Defence and controlled by the Station Head Quarters, Chennai. The scheme of 'Ex-Servicemen Contributory Health Scheme' is meant exclusively for the persons retired from the Indian Army and enable them to obtain job after their retirement from the Indian Army. The 5th respondent is the outsourcing agency, which had been authorised by the Board of Officers at the office of the 3rd respondent to provide Non-Medical Staff to Poly Clinic under Chennai region. On account of this arrangement, the 5th respondent appointed the writ petitioner as a driver to provide services in the 4th respondent hospital. The Station Commander was of the opinion that the service of the writ petitioner was not satisfactory and accordingly, requested the 5th respondent, Service Provider to terminate the services of the writ petitioner. Though the request is made to terminate, ultimately, the 5th respondent is the person, who appointed the writ petitioner and therefore, it is the discretion of the 5th respondent either to terminate or to engage the writ petitioner elsewhere to perform his duties and responsibilities.

4.At the outset, the officer, who represented the case on behalf of the Union of India viz., Maj. Steve Barrito, OIC Legal Cell, Chennai H & DBA, Chennai, with reference to the files made a submission that at no point of time the Indian Army appointed the writ petitioner as a driver. Contrarily, the Indian Army utilized the services of the 5th respondent, which is an outsourcing agency for the purpose of implementing the scheme.

Thus, the writ petitioner is not an employee of the Indian Army, nor appointed by the competent authority of the Ministry of Defence. This being the status of the writ petitioner, the very engagement of the writ petitioner is totally unconnected with the administration of respondents 1 to 4.

5. The letter sent by the Station Head Quarters is to change the driver and they meant to change in view of the fact that the duties and responsibilities performed by the writ petitioner under the Scheme was not satisfactory. Therefore, this Court is of an opinion that the letter communicated by the Officials of the Head Quarters of the 5th respondent cannot be challenged by the writ petitioner. It is an internal communication shared between the Station Head Quarters and the service provider, which may not provide any cause of action for the purpose of filing a writ petition. In fact, the letter impugned is a privileged communication shared between the service provider and the Station Head Quarters and if at all the 5th respondent terminated the services of the writ petitioner, it is left open to the petitioner to redress his grievances in the manner known to law by approaching the Labour Court by raising an industrial dispute or otherwise. Contrarily, the letter now under challenge cannot be construed as a cause for the purpose of entertaining a writ petition.

6. These being the facts and circumstances, the petitioner is at liberty to redress his grievances against the 5th respondent, who engaged the services of the writ petitioner by approaching the competent forum under the provisions of the Industrial Disputes Act, 1947. Contrarily, the present writ petition cannot be entertained, as the respondents 1 to 4 are not the appointing authority and therefore, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

abr
To

1. The Secretary,
Union of India,
Ministry of Defence,
New Delhi-110 011.

2.The Adam Commandant,
The Station Head Quarters,
Fort St. George, Chennai-600 009.

3.The Station Commander,
The Station Head Quarters,
Fort St. George, Chennai-600 009.

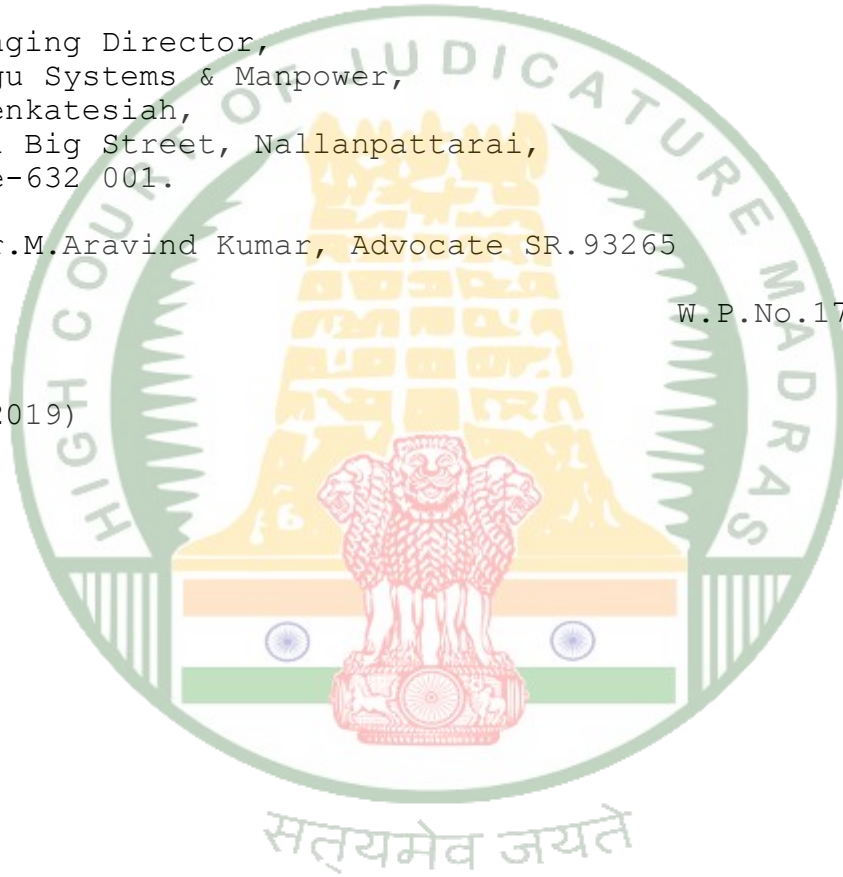
4.The Officer-in-Charge,
ECHS-Poly Clinic,
No.53, Old No.15, 10th Street,
Gandhi Nagar, Tiruvannamalai-02.

5.The Managing Director,
Venbalgu Systems & Manpower,
Mr.D.Venkatesiah,
No.25/1 Big Street, Nallanpattarai,
Vellore-632 001.

+2cc to Mr.M.Aravind Kumar, Advocate SR.93265

W.P.No.17314 of 2011

AD(CO)
CB(13/12/2019)



WEB COPY