

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.3333 of 2019

M.K.Baskar

.... Petitioner

Vs

1.The Principal Secretary to Government
Social Welfare & NMP Department
Secretariat, Chennai - 600 009.

2.The Director of Social Welfare, Guindy
Chennai 600 032.

3.The District Social Welfare Officer
Vellore District @ Vellore.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent herein to frame the rules of the posts of the Junior Assistant cum Typists created to perform the duties under the Statutory Act viz., The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005) as envisaged under the G.O.(D) No.13, Social Welfare and Nutritious Meal Programme (SW3) Department, dated 13.02.2008 and consequently to regularize the services of the petitioner as Junior Assistant cum Typist thereon with effect from 15/10/2008.

For Petitioner : Mr.R.S.Anandan

For Respondents: Mrs.P.Rajalakshmi,
Additional Government Pleader

O R D E R

The learned counsel for the writ petitioner made a submission that the petitioner has already submitted a representation to the first respondent to create the policy for the permanent post of District Protection Officer and Junior Assistant-cum-Typist, for dealing with the cases under the Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

2. Learned counsel for the petitioner further states that though the post was created by G.O.Ms.No.13, Social Welfare Department dated 13.02.2008 on a consolidated pay, the last

paragraph of the abovesaid Government Order states that appropriate actions will be taken under the Rules to create a permanent post of District Protection Officer and Junior Assistant-cum-Typist. It is contended that though the Government Order was passed in the year 2008, no actions are taken to create such a policy and issue rules governing the said posts. Thus, the petitioner is constrained to move the present writ petition.

3. Admittedly, G.O.Ms.No.13, Social Welfare Department dated 13.02.2008 was issued, creating the post of District Protection Officer and Junior Assistant-cum-Typist on a consolidated pay. For each district, one post of District Protection Officer was created and as far as Chennai District is concerned, two posts are created, considering the volume of cases. However, the Government Order was unambiguous that the posts are created on consolidated pay and the employees are to be appointed on temporary basis.

4. Additional Director, Office of the Commissioner of Social Welfare Department, Saidapet, Chennai 600 015, Smt.G.Jayalakshmi, appeared before this Court and confirmed that no permanent sanctioned posts are created and the employees are appointed only on a consolidated pay and they are continuing on a temporary basis. They are handling the cases registered under the Protection of Women from Domestic Violence Act, 2005 and also the other cases of women harrassment etc.,

5. The learned Additional Government Pleader appearing on behalf of the respondents also states that the writ petitioner was appointed on a temporary basis on consolidated pay and at no point of time, the services of the petitioner was regularised.

6. The learned counsel for the petitioner states that the post of District Protection Officer is contemplated under the provisions of the Protection of Women from Domestic Violence Act and therefore, the Government is bound to create permanent sanctioned posts and appoint employees on permanent basis. However, such a decision has to be taken at the administrative level and the Government has to consider the same and thereafter appoint the persons on permanent basis by following the recruitment rules in force. It is needless to state that while creating the sanctioned posts, rules are also required to be framed.

7. This Court is of an opinion that the creation of policy, creation of posts - permanent or temporary, are the administrative prerogative of the Government. The courts would not issue any direction to the Government to create a post or to sanction a post. It is the administrative function of the Government concerned and the Courts can test the validity of

creation or otherwise. However, the policy decision to be taken in respect of creation of posts as well as to frame rules cannot be considered for the purpose of issuing directions to the Government.

8. Let us now look into the legal right of the writ petitioner with reference to the facts and circumstances of the present writ petition is concerned. Admittedly, the petitioner was appointed on a temporary basis on a consolidated pay. Thus, his rights in respect of the temporary services are limited. The writ petitioner cannot seek the benefit of regularisation or permanent absorption. The employees who all are appointed under the constitutional schemes and by following the recruitment rules in force alone are entitled to claim regularisation and permanent absorption. If the initial appointment of the petitioner is not in accordance with the rules, then the writ petitioner would not be eligible to claim regularisation or permanent absorption by virtue of the long service rendered by him on a consolidated pay. The writ petitioner would be getting the service weightage, if any, provided under the rules to be framed by the Government. Otherwise, it is open to him to participate in the selection process for the purpose of securing appointment to permanent post. Undoubtedly, the post of District Protection Officer is of paramount importance to deal with the cases under the Domestic Violence Act. Thus, the Government cannot keep the same as temporary post for long years and the temporary employees working for long years to deal with such cases are not preferable. The question of accountability and responsibility also can be raised by the persons concerned. Thus, when the nature of the post is of paramount importance and contemplated under the provisions of the Protection of Women from Domestic Violence Act, the Government has to initiate steps to create permanent post. However, the post is to be filled up strictly by following the recruitment rules in force. The writ petitioner cannot claim any priority or advantage in respect of the permanent post of District Protection Officer. However, he is at liberty to participate in the process of selection, if he is otherwise qualified and eligible in accordance with the recruitment rules, which has to be framed.

9. In any event, the writ petitioner himself admits that no rules are framed and no permanent post is created. Thus, he being only a temporary employee on consolidated basis, is not entitled for regularisation or permanent absorption. Under these circumstances, the writ petitioner cannot have any locus standi to seek a direction to create a policy creating the permanent post of District Protection Officer and Junior Assistant-cum-Typist. In the event of creation of any such post by the Government, the writ petitioner is at liberty to participate in the selection process. Accordingly, the Government has to take necessary steps in this regard to avoid

all further complications in the matter of dealing with the cases registered under the Protection of Women from Domestic Violence Act. With these observations, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

KST

To

- 1.The Principal Secretary to Government
Social Welfare & NMP Department
Secretariat, Chennai - 600 009.
- 2.The Director of Social Welfare, Guindy
Chennai 600 032.
- 3.The District Social Welfare Officer
Vellore District @ Vellore.

+1cc to Mr.R.S.Anandan, Advocate sr.no.10159
+1cc to Government Pleader sr.no.10767

W.P.No.3333 of 2019

sr(co)
nr 28/02/2019

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