

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.24453 of 2012

S.Sumathi

....Petitioner

.Vs.

1. The Government of Tamil Nadu,
represented by the Secretary to Government,
Secretary to Government Department,
Secretariat, Chennai- 600 009.
 2. The Director of Public Health & Preventive Medicine,
Chennai - 6000 006.
 3. The Deputy Director of Health Services,
Krishnagiri.
 4. The Deputy Director of Health Services,
Krishnagiri.
-Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records on the file of the 3rd respondent herein in her proceedings R.No.171/A4/2011 dated 07.08.2012 and to quash the same and to consequently direct the respondents herein to allow the petitioner to continue the service as Health Inspector Grade II with all consequential benefits.

For Petitioner : Mr.M.S.Ravi

For Respondents: Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

O R D E R

The writ petitioner, S. Sumathi had acquired M.A.,M.Phil., B.Ed and Diploma in Sanitary Inspector (DSI) and had registered

with District Employment Exchange, Krishnagiri with Registration No.W/9317/05. In pursuance to a notification published in The Hindu daily, dated 29.06.2010, wherein candidates with necessary qualification and age for appointment as Sanitary Inspector Grade-II, were asked to contact the District Employment Officer, Krishnagiri on or before 30.06.2010, she contacted the said officer.

2. She was informed that several candidates were being considered for appointments to the post of Health Inspector Grade-II in the Tamil Nadu Public Health Services. The petitioner was called upon to submit her original certificates for verification. The petitioner claims that she had requisite qualification for the said post. She was also called for an oral interview. The petitioner claims that she had performed to utmost satisfaction in the oral interview. The petitioner further claims that since she possesses the necessary eligibility and suitable qualifications, the same was accepted and she was appointed as Health Inspector Grade-II, under Rule 10 (a)(i) of the Tamil Nadu State and Subordinate Service rules by the 3rd respondent.

3. The 3rd respondent, namely the Deputy Director of Health Services, Kallkurichi, by proceedings dated 13.01.2001 in R.No.171/A4/2011 appointed the petitioner to the said post in the Primary Health Centre, Elavansurkottai, Kallakurichi. On 07.08.2012, the petitioner received a copy of the proceedings of the 3rd respondent referring to a Government Order stating that the Government has cancelled the appointment orders, since, the petitioner was allegedly not sponsored by the Employment Exchange. The petitioner submitted her representation on 16.08.2012. As on the date of the filing of the writ petition the respondents have not answered to the said representation. Fearing that her appointment order would be cancelled the petitioner filed the present petition seeking necessary relief in the nature of Certiorari Mandamus to call for the proceedings of the 3rd respondent in R.N.171/A4/2011 dated 07.08.2012 and to quash the same.

4. Initially at the time of filing the writ petition, this Court, by an order dated 10.09.2012 in M.P.No.2 of 2012, had granted interim protection to the petitioner and has observed as follows:

2. The learned counsel for the petitioner, submits that the petitioner was appointed as per G.O.M.S.No.305, Health and Family Welfare Department dated 22.09.2009 by relaxing the rule requiring sponsorship of the names of the candidates from the Employment Exchange. The

learned counsel would further submit that now the Government by a letter has instructed the respondents directing to cancel these appointments. The learned counsel pointed out that the Government order relaxing the Rule has not been cancelled. Even otherwise the learned counsel for the petitioner would submit that the accrued right of the petitioner cannot be disturbed by a subsequent policy change.

3. In view of the same, there will be an interim stay for a period of two weeks.

5. Heard Mr.M.Ravi, learned counsel appearing for the writ petitioner and Mr.P.S.Sivashanmuga Sundaram, Special Government Pleader for the respondents.

6. The respondents also have filed M.P.No.3 of 2012 seeking to vacate the stay granted by the order mentioned above. In the affidavit filed in support of the said applications, it had been stated by Dr. R.T.Porkaipandian, Director of Public Health and Preventive Medicine, Chennai, that it was found that the name of the petitioner was not sponsored by the Employment Exchange. It was stated that the petitioner was granted appointment only on temporary basis under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. It was mentioned that she can be terminated at any point of time. The only aspect raised in the said affidavit was that the petitioner was not sponsored by the employment exchange. Even in the notice which is impugned before this Court, namely the show cause notice, the 3rd respondent had stated that the reason why the petitioner's appointment order has to be cancelled is because she was not sponsored by the Employment Exchange.

7. This stand of the respondents is very seriously disputed by Mr.M.S.Ravi, learned counsel for the petitioner, who pointed out that the proceedings in Na.No.171/A2/2011 dated 13.01.2011 had a specific reference to the appointment order issued by the 3rd respondent, namely the Deputy Director of Health Services, Kallakurichi, in which the name of the petitioner with address and the date of birth and the Employment Exchange No.W9317 of 2005 were referred and the petitioner was appointed to the Primary Health Centre, Kallkurichi.

8. It is also seen that even earlier, the 2nd respondent, who was the Director of Public Health & Preventive Medicine had called upon the petitioner, to submit all the original certificates for verification for appointment to the post of Health Inspector Grade-II.

9. The only ground which has been raised is that the petitioner was not sponsored by the Employment Exchange. Admittedly the petitioner registered herself with the Employment Exchange and her Registration Number in the Employment Exchange is also referred in the appointment order. Naturally therefore, the ground raised by the respondents cannot stand scrutiny of this Court. In (1996) 6 SCC Excise Superintendent.V. K.B.N. Visweshwara Rao, a three-Judge Bench of the Hon'ble Supreme Court observed at para 6 as follows:

"It is common knowledge that many a candidate is unable to have the names sponsored, through their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates. The equality of opportunity in the matter of employment would be available to all eligible candidates."

10. By applying the ratio in the above decision, I held that the respondent have issued the Show Cause Notice without verifying the fact that the petitioner was actually sponsored by the Employment Exchange . I am conscious of the fact that this Court is interfering with the Show Cause Notice issued to the petitioner at a stage where the petitioner had also given a representation to the same. But, when the show cause notice is

issued with non application of the mind and particularly by over looking a fact writ large on the appointment order itself since with the Registration No. with the Employment Exchange, has been given, I hold that it would only be just and fair on the part of this Court, after 9 years from the date of filing of the writ petition, to strike it down, I further hold that to once again direct the respondents to examine the representation given by the writ petitioner, would be a futile exercise considering the fact that the petitioner had actually registered herself with the Employment Exchange and this fact cannot be disputed by the respondents.

11. Consequently, I hold that the Court, should interfere and set at naught, the notice issued to the petitioner.

12. Consequently, the proceedings in Na.Ka.No.171/A4/2011 dated 07.08.2012 issued by the 3rd respondent, Deputy Director of Health Services, Kallakurichi is set aside. This effect of this order would also mean that the petitioner is deemed to have continued to work without any blemish and she is entitled for all the benefits which are available to an employee who had worked with continuity in service, with the respondent department. The respondent is directed to extend in the proper perspective all consequential benefits to the petitioner as similarly placed persons, within a period of 6 months from this date.

With these observations this writ petition is disposed of.
No Costs.
smn

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

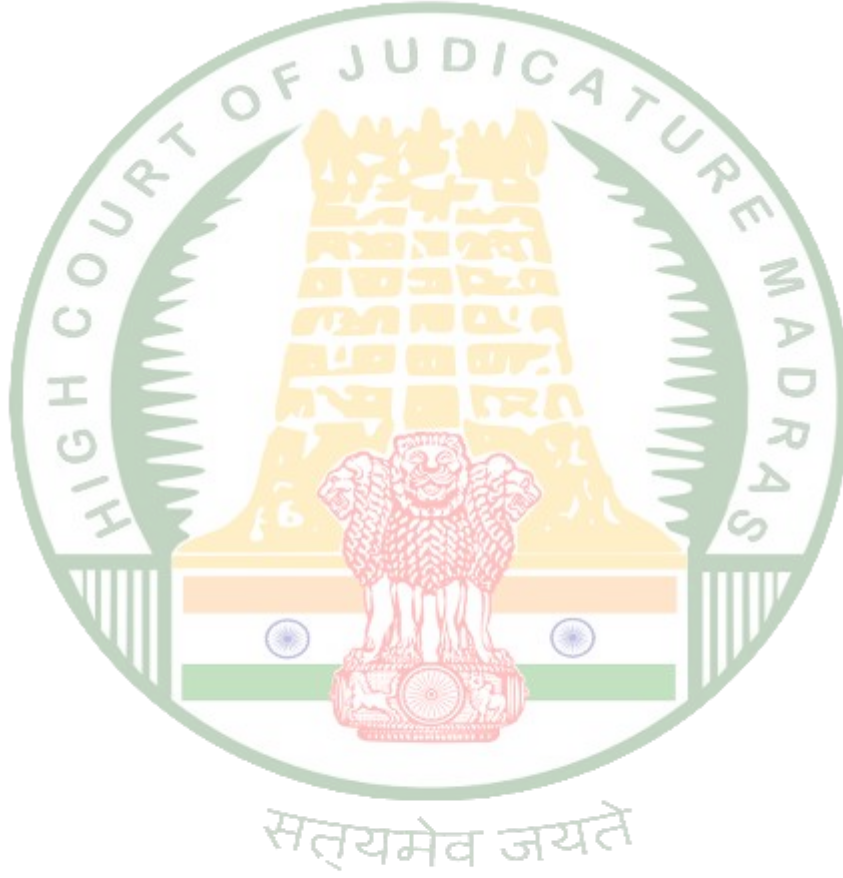
1. The Government of Tamil Nadu,
represented by the Secretary to Government,
Secretary to Government Department,
Secretariat, Chennai- 600 009.
2. The Director of Public Health & Preventive Medicine,
Chennai - 6000 006.
3. The Deputy Director of Health Services,
Krishnagiri.

4. The Deputy Director of Health Services,
Krishnagiri.

+1cc to Mr.M.Ravi, Advocate, SR.No.4282 8/19

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GP (CO)
Kak(08/07/2019)
Kak(26/07/2019)



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