

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/10/2019

C O R A M

The Honourable Mr.Justice SUBRAMONIUM PRASAD

Writ Petition No.33211 of 2013

M. Chinnapaiyan

...Petitioner

Vs

1. The Director General of Employment
and Training
Ministry of Labour
Government of India
Sharam Shakthi Bhavan
Rafi Marg
New Delhi 110 001.
2. The Director
Department of Employment & Training
Government of Tamil Nadu
Guindy
Chennai 600 032.
3. The Chairman
P.T.LEE Chengalvaraya Naicker Trust
No.2-3 EVK Sampath Salai
Vepery
Chennai 600 007.
4. P.T.LEE Chengalvaraya Naicker Trust
rep. By its Secretary
No.2-3 E.V.K.Sampath Salai
Vepery
Chennai 600 007.
5. The Principal
P.T.Lee Chengalvaraya Naicker
Industrial Training Institute
Ooverly Chatiram
Veliyur Post
Kancheepuram Taluk & District.

...Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents, particularly third and fourth respondents to reinstatement of the petitioner's service with all attendant benefits in compliance of the second respondent's order dated 11/7/2013, vide proceeding Reference in R.C.No.4873/CT/2012, particularly in compliance of the first respondent's guidance in respect of salary and emoluments such as 2/3 salary as per the Government Staff's status and to grant all consequential benefits.

For petitioner ... Mr.X.Selvam Soundar

For respondents ... Mr.J.Madanagopal Rao
SCGSC
for R.R.1 and 2

Mr.M.R.Jothimanium
for R.R.3 to 5

O R D E R

Instant writ petition is to direct the respondents, particularly third and fourth respondents, to reinstate the petitioner in service, with all attendant benefits, in compliance of the second respondent's order, dated 11/7/2013, vide proceeding, in R.C.No.4873/CT/2012, particularly, in compliance with the first respondent's guidance, in respect of salary and emoluments, such as 2/3 salary, as per the Government Staff's status and to grant all consequential benefits.

2. Petitioner was working as Principal in P.T.LEE Chengalvaraya Naicker Industrial Training Institute, Ooverly Chatiram, Veliyur Post, Kanchipuram Taluk and District purely on temporary basis, by an order, dated 17/10/2001. His services were terminated, on 29/10/2001. Order of termination was challenged, in W.P.No.23506 of 2001. This Court, by an order, dated 16/8/2004, ordered as under:-

"12. In the event of the petitioner being aggrieved by the non-employment, it is open to him to approach the appropriate forum either for regularisation or for claiming any compensation, if he is so entitled. He cannot be permitted to approach this Court under Article 226 against a private institution."

3. Review Application No.52 of 2004, was filed against the abovesaid order. By an order, dated 7/6/2005, this Court, ordered as hereunder:-

"17. Though I have held that the observation of this Court that Article 226 of the Constitution will not apply to the second respondent institution may not be correct, yet, with reference to the rights of the petitioner only as a temporary employee and the views expressed by this Court in the said context are not shown to be erroneous in any manner. Therefore, I do not find any reason to review the order passed in W.P.No.23506 of 2001."

4. Order made in W.P.No.23506 of 2001 was challenged in Writ Appeal No.393 of 2008. A Hon'ble Division Bench of this Court, by an order, dated 17/6/2008, directed the petitioner, to file an appeal against the order of termination, before the appellate authority and further stated that appellate authority should entertain the appeal, even though it is barred by limitation. Petitioner preferred an appeal, before the appellate authority, challenging the order of termination. Since the appeal was not disposed of, Writ Petition No.27592 of 2011, was filed for a mandamus directing the Commissioner of Employment and Training, Chennai, to dispose of the appeal. Vide, order, dated 13/12/2011, the Court directed to dispose of the appeal filed, as against the termination order, dated 29/10/2001, in accordance with the rules and regulations, within a period of eight weeks from the date of receipt of a copy of the said order.

5. Directorate of Employment and Training, Guindy, Chennai, vide, order, dated 11/7/2013, ordered as hereunder:-

"In the present case, Thiru.M.Chinnapaiyan was appointed as principal at P.T.Lee, ITI through interview with effect from 7/8/2000 and served in the institute for about 15 months. Then he was terminated from the post of Principal on the afternoon of 29/10/2001. He was not issued with any show cause notice before issuing termination orders. No charges were framed against him regarding any allegations. Though it is mentioned in the appointment order that his service will be terminated without giving any prior notice, once a person served in the establishment for about 15 months, a simple termination order given to him is not a justifiable

action on the part of the management. Further, the appointment was approved by the Hon'ble High Court of Madras and there is no record in place that his termination was approved by the Hon'ble High Court of Madras. Hence, the termination of the individual is not in order.

Hence, you are directed to dispose the case considering all the prayers of the petitioner and inform the action taken to this office before 14/8/2013.

Acknowledge the receipt of this order."

6. Aggrieved by the abovesaid order, instant writ petition has been filed by the petitioner, claiming that he should be reinstated, in service with all attendant benefits. The petitioner states that the order, dated 11/7/2013, should be complied with.

7. The Secretary, P.T.Lee Chengavaraya Naicker Trust, Chennai, fourth respondent has filed counter. In the counter, they have stated that appointment of the petitioner is purely temporary in nature. It is also stated that there are special Service Rules, which govern the institution and that the petitioner does not have requisite qualification, for being appointed as a Principal.

8. Heard Mr.X.Selvam Soundar, learned counsel for the petitioner, Mr.J.Madanagopal Rao, Senior Central Government Standing Counsel, for the respondents 1 and 2 and Mr.M.R.Jothimaniyam, learned counsel for the respondents 3 to 5.

9. Second respondent, by his order, dated 11/7/2013, has set aside the termination, only on the ground that petitioner was not issued with any show cause notice, before issuing termination orders; no charges were framed and no enquiry was held. Directorate of Employment and Training, Chennai, therefore, found fault with order, terminating the petitioner, on the ground that same is vitiated by not following the principles of natural justice. Order directs the third respondent, to dispose of the case of the petitioner, in accordance with law. There is no positive mandate by the second respondent, to reinstate the petitioner, and it is for the third respondent, to consider all the facts and take a decision, in accordance with law.

10. The writ petition is disposed of, directing the third respondent, to pass appropriate orders, in the light of the order, dated 11/7/2013, passed by the second respondent, within

a period of twelve weeks, from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director General of Employment and Training
Ministry of Labour
Government of India
Sharam Shakthi Bhavan
Rafi Marg
New Delhi 110 001.
2. The Director
Department of Employment & Training
Government of Tamil Nadu
Guindy
Chennai 600 032.
3. The Chairman
P.T.LEE Chengalvaraya Naicker Trust
No.2-3 EVK Sampath Salai
Vepery
Chennai 600 007.

+2cc to M/s.X.Selvam Sounder, Advocate Sr.No.88617
+1 cc to M/s.R.Jothimanian, Advocate Sr.No. 88815

AKM/04.12.19/5P-7C /

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