

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 01.08.2019

Orders Pronounced on : 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8431 of 2019

C.K.Premkumar ... Petitioner

Vs.

1. The Registrar General,
High Court of Judicature at Madras,
Chennai-600 104.

2. The Principal Judge,
City Civil Court,
Chennai-600 104.

3. The Special Judge,
Special Court under TNPID Act,
City Civil Court,
Chennai-600 104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the order bearing R.O.C.No.21390/2018/C1, dated 21.02.2019 passed by the first respondent and quash the same and direct the respondents to reinstate the petitioner in service as Sanitary Worker in the third respondent-Special Court, with all consequential service benefits.

For petitioner : Mr.M.Radhakrishnan
For respondents : Mr.D.Kanagasundarm

ORDER

R.SUBBIAH, J

The petitioner has come forward with the present Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the order bearing R.O.C.No.21390/2018/C1, dated 21.02.2019 passed by the first respondent and quash the same and direct the respondents to reinstate the petitioner in service as Sanitary Worker in the third respondent-Special Court, with all consequential service benefits.

2. The petitioner herein was appointed as Sanitary Worker on daily wage basis at the rate of Rs.74 per day, by proceedings dated 13.02.1998 of the second respondent. After a period of 15 years of his service, he was granted Special Time Scale of Pay of Rs.1300-3000+GP 300 with effect from 06.08.2013, vide proceedings dated 14.11.2013 of the third respondent. Therefore, according to the petitioner, he was a regular employee of the third respondent-Special Court with effect from 06.08.2013. Though he was a regular employee from 06.08.2013, he was treated as a member of contingent staff and ultimately, he was terminated from service, vide proceedings dated 08.08.2017 of the second respondent on the ground that he had remained unauthorisedly absent from 13.05.2017 to 22.05.2017 and also from 23.05.2017 to 03.07.2017. In the said proceedings, dated 08.08.2017, it has been mentioned that the petitioner had earlier remained unauthorisedly absent from 10.08.2015 to 08.09.2015 and also from 11.09.2015 to 30.11.2015. Hence, he was terminated from service in public interest on the ground that he had remained unauthorisedly absent from 13.05.2017.

3. It is the further case of the petitioner that without conducting any enquiry, he was terminated from service by the said proceedings, dated 08.08.2017. Further, in the said proceedings, it has also been stated that as the petitioner was absent, two Memos, one dated 24.05.2017 issued by the third respondent, and another Memo, dated 04.07.2017 addressed to the petitioner, of which, the former Memo was refused to be received by the petitioner and the latter Memo was returned to the third respondent with an endorsement of Court Amin that the addressee not found at the address. Hence, on receipt of the termination order, dated 08.08.2017, sent through post, the same was

delivered to the petitioner's neighbour, who had given the envelope somewhere in the month of September 2017. On receipt of the said termination order, the petitioner preferred an appeal dated 03.01.2018 to the first respondent, which was returned with the remark that the same should be forwarded through proper channel, and hence, again he sent the appeal with relevant documents on 02.03.2018 to the first respondent. Since the said appeal was pending consideration for a long time, the petitioner withdrew the appeal on 24.07.2018, which was however not accepted by the first respondent and ultimately, the appeal was rejected by the impugned order dated 21.02.2019 passed by the first respondent. Challenging the same, the petitioner has filed the present Writ Petition for the relief stated supra.

4. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner mainly submitted that the petitioner had joined the service on 18.02.1998 and after a period of 15 years, he was granted Time Scale of Pay with effect from 06.08.2013. Hence, he was a regular employee under the third respondent from 06.08.2013. While so, on the allegation of unauthorised absence and without conducting any enquiry, he was terminated from service, and as such, the termination without conducting any enquiry is patently illegal and therefore, the learned counsel for the petitioner prayed to quash the impugned order with consequential direction for his reinstatement.

5. Per contra, by filing counter affidavits of the respondents, the learned Standing Counsel appearing for the respondents pointed out that the petitioner was appointed as Sanitary Worker only on contingent basis and posted in the third respondent-Special Court and he was working as such as contingent staff till 05.08.2013 with Rs.263/- as the then daily wages for him. Based on G.O.Ms.No.576, Home (Courts-V) Department, dated 06.08.2013, he was granted Special Time Scale of Pay in the pay band of Rs.1300-3000+G.P.Rs.300 and that the above order shall take effect from 15.09.2010 with monetary benefits from 06.08.2013. Further, the Government, vide letter dated 08.11.2016 in No.66615/Cts.V/2016-1, had clarified that the Sanitary Workers who have been absorbed in Special Time Scale of Pay by the said G.O., are purely temporary workers and any post sanctioned by the G.O. are purely temporary basis, unless it is specifically mentioned that the posts are sanctioned on "permanent basis". Though he was granted Special Time

Scale of Pay, he is not a regular employee as claimed by him in his affidavit.

6. The learned Standing Counsel appearing for the respondents also stated that the Madras High Court had forwarded proposals to the Government for further continuance of 13 individuals beyond 08.11.2016, who were getting Special Time Scale of Pay including the petitioner. The Government, vide Letter No.56387/Cts.V/2017-1, dated 11.09.2017, issued pay authorisation for the above said 13 individuals and requested to ensure as to whether the salary for the month of February 2017 to August 2017 had been drawn and disbursed to the said persons. The High Court, in turn requested the Presiding Officers concerned to send the particulars. The Special Judge, Special Court under TNPID Act, Chennai, while furnishing reply in this regard, had stated that the petitioner herein was terminated from service on 13.05.2017, as he was absent from May 2017. The said reply was also furnished to the Government and the Government, in G.O.(D).No.11, Home (Cts.V) Department, dated 03.01.2018, had issued orders for further continuance of 12 persons, except the petitioner.

7. The learned Standing Counsel appearing for the respondents further contended that the petitioner remained unauthorisedly absent on the following dates:

Sl. No.	Dates	Remarks
1	From 10.08.2015 to 08.09.2015	30 days Medical Leave (which is not eligible to him)
2	From 11.09.2015 to 30.11.2015	81 days (unauthorised absence)
3	From 14.02.2017 to 22.02.2017	9 days (unauthorised absence) (Pay with-held)
4	From 13.05.2017 to 07.08.2017	87 days (unauthorised absence) (termination from service ordered on 08.08.2017 with effect from 13.05.2017)
Further, he had availed Earned Leave (sanctioned) for the following periods:		
1	From 25.10.2016 to 13.11.2016	20 days

Sl. No.	Dates	Remarks
2	From 30.01.2017 to 04.02.2017	6 days

8. Thus, the learned Standing Counsel appearing for the respondents submitted that the petitioner was unauthorisedly absent for two sets of periods, namely from 10.08.2015 to 08.09.2015 and 11.09.2015 to 30.11.2015, and in consequence thereto, Official Memorandum was issued by the third respondent and he was warned severely. Subsequently, from 14.02.2017 to 22.02.2017 and from 13.05.2017 to 22.05.2017, he was unauthorisedly absent and for his absence from 13.05.2017 to 22.05.2017, another Memo dated 24.05.2017 was issued to the petitioner by RPAD, which was refused by the petitioner. Again, another Memo dated 04.07.2017 was issued to the petitioner by RPAD, which returned with endorsement "Door Locked", but the same was served to him through Junior Bailiff on 05.07.2017 by affixing on the door, as his father and relatives also refused to receive the said Memo. Until 30.07.2017, the petitioner did not turn up to duty. On 31.07.2017, the third respondent forwarded the entire file to the second respondent for further necessary action.

9. The learned Standing Counsel appearing for the respondents further submitted that on a perusal of records, the petitioner was found to be habitual absentee and did not properly respond to the Memorandums issued to him. A notice dated 4.07.2017 was issued to him through Court and post. The postal notice returned as "Door Locked". The endorsement of the Bailiff in the Court notice is that, "Door Locked and on enquiry of the neighbours, father and other relatives of the delinquent had refused to receive the notice". Hence, on 08.08.2017, the petitioner was terminated from service with effect from 13.05.2017 by the order of the second respondent. It is further stated by the learned Standing Counsel that the petitioner preferred an appeal against the termination order, dated 08.08.2017 of the second respondent and submitted his appeal petition dated 03.01.2018 directly to the High Court and the High Court, in R.O.C.No.2363/2018/C1, dated 14.02.2018 returned the appeal petition of the petitioner, dated 03.01.2018 informing him to submit the same to the Appellate Authority of this Court through proper channel as mandated in the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

Thereafter, the appeal petition dated 02.03.2018 was submitted by the petitioner, which was received by the High Court, and the same was submitted to the High Court, vide High Court's letter, dated 20.03.2018 in Dis.No.4685/2018/E1. Subsequently, the petitioner submitted an application dated 24.07.2018 addressed to the High Court, requesting to withdraw his appeal petition pending before the High Court as against the termination order passed by the second respondent.

10. It is further contended by the learned Standing Counsel appearing for the respondents that this Court, by proceedings dated 21.02.2019 dismissed the said appeal, as there was unauthorised absence, coupled with failure to participate in the disciplinary proceedings and there was no ground to interfere with the same. Thus, the learned Standing Counsel submitted that the petitioner had been habitual absentee and was warned many times in the past by the third respondent for his unauthorised absence. Though one of the Memos issued to him by the third respondent for his unauthorised absence, was affixed on the door of the house of the petitioner, he did not respond to it and had not turned up for duty till the termination of service. Hence, in the above facts and circumstances of the case, the second respondent could not frame any charge and conduct regular enquiry against the petitioner and ultimately, on 08.08.2017, the petitioner was terminated from service with effect from 13.05.2017. The petitioner was working as Sanitary Worker only on contingent basis till the date of termination and his services were not regularised. In the appointment order itself, it was clearly mentioned that his appointment was purely temporary on contingent basis and he will be terminated at any time without assigning any reason therefor. Hence, for these reasons, the respondents pray for dismissal of the Writ Petition.

11. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner submitted that the petitioner was working for more than 15 years and he was also granted Special Time Scale of Pay with effect from 06.08.2013. Therefore, at best, the petitioner should be treated as a regular employee. Under such circumstances, without conducting any enquiry, the petitioner was terminated from service.

12. Per contra, the learned Standing Counsel appearing for the respondents submitted that the petitioner was appointed as Sanitary Worker only on contingent basis as

per the proceedings dated 13.02.1998 and he was posted in the Special Court of the third respondent and he was working there only as contingent staff with daily wage at Rs.74 per day. Further, he was working as such as contingent staff till 05.08.2013 with Rs.263/- as the then daily wages for him. Since he was working only as contingent staff, no enquiry is necessary before-ever the order of termination is passed. The Court notice/Memo was issued to him, one of which returned as "Door Locked". Therefore, he was rightly terminated from service for his unauthorised absence. In support of his submissions, the learned Standing Counsel appearing for the respondents relied on the decisions of the Supreme Court reported in 1993 (1) SCC 553 (Oriental Insurance Co. Ltd. Vs. T.Mohammed Raisuli Hassan) and 1996 (4) SCC 548 (State of U.P. and others Vs. Kamla Devi (Smt) and another).

13. Keeping in mind the above submissions made on either side, we have gone through the materials available on record.

14. The records show that the petitioner was a contingent staff and was appointed on that basis on 13.02.1998. Since he is only a temporary employee, absolutely there is no need for conducting any departmental enquiry in respect of his alleged unauthorised absence from duty. The second respondent issued notice/Memos on two occasions, one of which returned as "Door Locked" and one was refused to be received by him. Therefore, rightly the impugned order of termination was passed by the respondent (s). Moreover, we are of the opinion that in the given facts and circumstances of the case, there is no legal impediment for the respondent(s) to pass the impugned order of termination, the petitioner being only temporary employee/contingent staff. Contingent staff are deployed on casual work or contract work basis, as the case may be and they will be in employer-employee relationship with limited job security, payment on a piece work basis (daily wage basis), and they are typically part time (typically with variable hours) that is considered non-permanent. Contingent work is usually not considered to be a career or part of a career, as they don't get any benefits and allowances that permanent employees would get. Further, the petitioner being contingent staff/temporary employee, the regular procedure for conducting departmental enquiry will not arise in his case. Further, the judgments relied on by the learned Standing Counsel appearing for the respondents are distinguishable on facts and the same are not applicable to the facts of the present case.

15. Hence, in view of the foregoing reasons, the Writ Petition has no merit and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

CS
To

1. The Registrar General,
High Court of Judicature at Madras,
Chennai-600 104.
2. The Principal Judge,
City Civil Court,
Chennai-600 104.
3. The Special Judge,
Special Court under TNPID Act,
City Civil Court,
Chennai-600 104.

+1cc to Mr.M.Radhakrishnan , Advocate SR.No. 67790

+1cc to Mr.D.Kanagasundarm , Advocate SR.No. 683201

W.P.No.8431 of 2019

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A.SK(10/09/2019)

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