

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.3092 of 2019
and C.M.P.No.19676 of 2019

1.R.Karthikeyan
2.S.Malathi

..Appellants/Petitioner

Vs

1.The Director of Medical & Rural Health Services
Chennai-600 005

2.The Joint Director of Health Services
Nagapattinam

..Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent,
against the order of this Court dated 03.04.2019 made in
W.P.No.31516 of 2018.

WP.No.31516 of 2018 : Writ Petition filed under Article 226 of
the Constitution of India praying to issue a Writ of
Certiorarified Mandamus, Calling for the impugned order of
termination passed by the 2nd respondent in RC No.4099/E3/99
dated 14.05.2001 quash the same and consequently direct the
respondents herein to regularize the petitioners herein as
Pharmacist with consequential service benefits including
conferment of Selection Grade on par with their juniors working
as regular Pharmacist under the respondents.

For Appellants : Mr.M.Devaraj for Mr.K.Appadurai
For respondents : Mr.P.S.Sivashanmuga Sundaram,
Spl.Government Pleader

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR,J.)

Instant Writ Appeal is filed against the order made in
W.P.No.31516 of 2018 dated 03.04.2019, by which the writ court
has declined to quash the order of termination dated 14.05.2001
passed by the Joint Director of Health Services, Nagapattinam,

respondent No.2 and to regularise the appellants as pharmacist with consequential service benefits including conferment of selection grade on par with their juniors working as regular pharmacist.

2. Brief facts leading to the Writ Petition are that by order dated 14.05.2001, services of the appellants were terminated due to administrative reasons. Challenging the same, the appellants have filed O.A.No.3398 of 2001 before the Tamil Nadu Administrative Tribunal [hereinafter called as "TNAT"]. According to the appellants/writ petitioners, on 22.05.2001, TNAT granted interim stay of the order of termination which was extended on 21.06.2001. The Joint Director of Health Services, Nagapattinam, respondent No.2, passed an order, permitting the appellants to join duty on the basis of stay orders issued by the TNAT. Subsequently, the appellants/writ petitioners were informed by letter dated 07.04.2015, calling upon them to inform the final order of the case, failing which, they would be terminated from service. Thereafter, the appellants moved the Registrar, High Court, Madras, to do the needful. Contending inter alia that the High Court has not taken any action, Writ Petitioners filed W.P.No.31516 of 2018 for writ of Certiorarified Mandamus, calling for the impugned order of termination passed by the 2nd respondent in RC.No.4099/E3/99 dated 14.05.2001 and to quash the same and consequently to direct the respondents herein to regularise the writ petitioners as pharmacist with consequential service benefits including conferment of selection grade on par with their juniors working as regular pharmacists under the respondents.

3. Before the writ court, though a contention was raised that Original Application No.3398 of 2001 filed before the TNAT was transferred to the High Court and that the same was misplaced, by observing that even on such case, writ petitioners ought to have taken steps to reconstruct the papers and argued the matter, writ court, vide order dated 03.04.2019 in W.P.No.31516 of 2018, did not accept the said contention. Writ Court further observed that the present writ petition cannot be entertained.

4. Writ court further pointed out that the order of termination issued on 14.05.2001 is challenged, after a lapse of 18 years on 12.10.2018 and if the bundles were misplaced, writ petitioners ought to have taken appropriate steps by approaching the Registrar, High Court, Madras and therefore, was of the view that the present writ petition after a lapse of 18 years deserves no consideration.

5. Writ Court, vide order dated 03.04.2019 in W.P.No.31516 of 2018 also observed that appointment of the writ petitioners was under Rule 10(a)(i) of the Tamil Nadu Medical Subordinate Services and such appointment can be terminated any time without giving prior notice. Being aggrieved, instant appeal is filed on the following grounds:-

"9. Article 311 of the Constitution confers certain safeguards upon persons employed in civil capacities under the State service and he/she should not be terminated from the sanctioned post appointed on a substantial regular vacancy without notice or enquiry or denying any reasonable opportunity to him. In the instant case, the appellants have been appointed in a sanctioned post in a substantial regular vacancy. Hence the order of termination even without notice or any reasoned order is not only cryptic in nature but violative of principles of natural justice, besides being abuse of process of law, misuse of power, irregular, against legitimate expectation and colourable exercise of power.

10. The appellants have not yet been regularized even after 19 years of service despite specific directions of this Hon'ble Court dated 19.3.2015 in WP (MD) No.30758 of 2014 and we have been drawing only a minimum pay scale which was fixed in the initial stage of appointment in 2000 and 2001 respectively and being discriminated for the past 19 years without any service benefits.

11. The finding and conclusion of the Hon'ble Judge that there is no illegality in the order of termination of appellants in view of the condition of appointment of appellants being temporary in nature that they can be terminated at any time even without notice are unjust, untenable and against the object of G.O.MS No.105 dated 3.5.2000.

12. It is submitted that even in the order of termination there is no reference of any order or proceedings which formed the basis for the 2nd respondent to terminate the appellants whose appointments were after following the due process of law as per the G.O MS No.105 dated 3.5.2000.

13. It is submitted that one of the reasons assigned by the Hon'ble Judge is that if the case bundle is misplaced the appellants would have taken steps only to reconstruct the case bundle and cannot file a fresh writ petition. It is submitted that the

case bundle is not traceable in the court office of this Hon'ble Court itself. In view of abolition of the Tamil Nadu Administrative Tribunal and in the absence of entry of transfer of cases of appellants to this Hon'ble Court, re-construction of their case bundle is beyond the control and reach of court office and cannot be made as held by the Hon'ble Judge.

14. In any event, there is no irregularity or illegality in the manner and procedure followed in the appointment of the appellants as per G.O MS No.105 dated 3.5.2000 and in the absence of any other government order or order from court annulling or setting aside the said G.O MS No.105 dated 3.5.2000 the appointment of the appellants in a sanctioned post on substantial regular vacancy is in order and cannot be terminated by 2nd respondent without any legally sustainable reason.

15. In any event, the Hon'ble Judge ought to have seen that the power to 'regularise' even a temporary appointee can be exercised where such appointment was made in a sanctioned post on substantial regular vacancy within the competence of the appointing authority and non-compliance with the procedure or manner which does not go to the root of the appointment."

6. Though Mr.M.Devaraj, learned counsel appearing for the petitioner reiterated the grounds stated supra, and further submitted that Registry of the High Court, Madras, ought to have assigned Writ Petition number and posted the matter for hearing, we are not inclined to accept the said contention for the reason that TNAT was abolished in the year 2006 and thereafter, case bundles have been transferred to the High Court, Madras, and assigned Writ Petition numbers; Writ Petitioners have been terminated in the year 2001; in the year 2001, O.A.No.3398 of 2001 was filed by the appellants and interim stay order was obtained on 22.05.2001, which was extended and by virtue of the same, they were also allowed to continue as Pharmacists. No sooner, the Tribunal was abolished, it is the duty of the appellants/writ petitioners to pursue the litigation. Blaming the Registry cannot be accepted. Though material record indicates that Registrar, High Court, Madras, has been requested to assign Writ Petition number to the Original Application filed before the TNAT, as rightly observed by the writ court, appellants/writ petitioners ought to have filed Writ Petition immediately and they cannot wait for such a long time to approach this court to file a writ petition.

7. Going through the material record and the reasons assigned by the writ court, we are of the view that the order impugned before us does not call for any interference. Writ Appeal is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director of Medical & Rural Health Services
Chennai-600 005

2.The Joint Director of Health Services
Nagapattinam

+1cc to Mr.K.Appadurai, Advocate SR.No.79157

+1cc to The Government Pleader SR.No.80225

AKM/31.10.19 /5P-5C/

W.A.No.3092 of 2019

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