

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P.Nos.24466 and 24475 of 2019
and
W.M.P.Nos.24209 and 24210 of 2019

R.Devendran .. Petitioner in W.P.No.24466 of 2019
M.Tamilselvi .. Petitioner in W.P.No.24475 of 2019
Vs.
The Principal District Judge,
Namakkal. .. Respondent in both the Writ Petitions

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorarified Mandamus to call for the entire records relating to ROC.No.859/A/2019, dated 18.01.2019 and ROC.No.4804/A/2019, dated 02.04.2019 on the file of the respondent and quash the same and consequently direct the respondent to reinstate the petitioners with all attendant benefits.

For petitioners : Mr.R.Ezhilarasan

For respondents : Mr.K.Elango

COMMON ORDER

(The Common Order of the Court was made by R.Subbiah, J)

The petitioners have filed these Writ Petitions praying for issuance of Writs of Certiorarified Mandamus to call for the entire records relating to ROC.No.859/A/2019, dated 18.01.2019 and ROC.No.4804/A/2019, dated 02.04.2019 on the file of the respondent and quash the same and consequently direct the respondent to reinstate the petitioners with all attendant benefits.

2. The respondent called for applications to fill up the post of Record Clerk through direct recruitment. The petitioners have applied for the same through e-Court web-site. They have participated in the written test and after passing the written test, interview was held on 23.04.2018 and after that, the petitioners have been provisionally selected in the rotation of MBC & DC (Priority)/GT (priority) respectively and Certificate verification was conducted on 08.05.2019. Thereafter, the petitioners have been appointed as Record Clerks temporarily under Tamil Nadu Judicial Ministerial Service (TNJMS) by the respondent by proceedings in R.O.C.No.6584/A/2018, dated 24.05.2018. The petitioners have joined the service on 25.05.2018 as Record Clerks in the Principal District Court, Namakkal.

3. The petitioners have been working as Record Clerks without any blemish. While they were working as Record Clerks, suddenly the respondent issued proceedings in R.O.C.No.859/A/2019, dated 18.01.2019 stating that their appointment made by direct recruitment, was modified and be considered temporary as per Section 17(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which according to the petitioners is erroneous and they have been ousted from regular service on 21.01.2019 with break in service for one day on 22.01.2019 and re-appointed in the same post as Record Clerk (temporarily) on 23.01.2019. Thereafter, the respondent, by proceedings in R.O.C.No.4804/A/2019, dated 02.04.2019, ousted the petitioners from service without assigning any reasons, which according to the petitioner is wrong. Challenging both the above proceedings dated 18.01.2019 and 02.04.2019, the petitioners have preferred the present Writ Petitions for the relief stated supra.

4. When the Writ Petitions were taken up for consideration, the learned counsel for the petitioners adverted to the averments made in the Writ Petitions. He has specifically stated that the petitioners were selected pursuant to the Notification issued by the respondent and after attending the interview, the petitioners were selected to the post of Record Clerk in the regular course. Thereafter, without issuing any notice, the process of the direct recruitment of the petitioners was modified as temporary one as per Section 17(1) of the said Act. Thereafter, within approximately three months, without assigning any valid reason and without even issuing notice, the respondent straightaway ousted the petitioners from service, which is not legally sustainable. Therefore, the learned counsel for the petitioners prayed that the impugned orders are liable to be quashed.

5. Per contra, the learned counsel appearing for the respondent, by filing counter affidavits, submitted that in the orders issued to the writ petitioners in R.O.C.No.859/A/2019, dated 18.01.2019 and in R.O.C.No.4804/A/2019, dated 02.04.2019, it has been clearly mentioned that as per Rule 2(b) of Class XXII of the Tamil Nadu General Subordinate Service Rules, the appointment to the post of Record Clerk shall be made by direct recruitment only through compassionate grounds. Further, the post of Record Clerk in the Judicial Department is governed by Special Rules in Class XXII of the Tamil Nadu General Subordinate Service Rules. Rule 2(b) of Class XXII of the said Rules reads as follows:

"Rule 2: Appointment:
(b) Appointment to the category of Record Clerks shall be made by recruitment by transfer from the Tamil Nadu Basic Service or by direct recruitment on Compassionate grounds."

The petitioners were appointed only on temporary basis by direct recruitment. The direct recruitment should be only on compassionate grounds. The petitioners cannot be allowed to serve in the said category due to the above said Rule, and hence, their service was temporary and were therefore terminated.

6. The learned counsel appearing for the respondent further submitted that as on 30.10.2017, 133 posts were vacant both in the Civil and Criminal Units of Namakkal District including three posts of Record Clerk. Considering the acute shortage of staff members and as lot of work is pending in the Record Rooms in the Namakkal District, the Notification was issued to fill up the post of Record Clerks by direct recruitment. Further, due to shortage of eligible persons for appointment to the post of Record Clerk by recruitment by transfer from the Tamil Nadu Basic Service and that as dispute arose in fixing the seniority while promoting the staff members of the Tamil Nadu Basic Service to the post of Record Clerk and also considering the exigency, in order to fill up the post of Record Clerk immediately, the Notification was issued to fill up the vacant post of Record Clerk by direct recruitment on temporary basis. Based on the order of this Court in W.P.No.22612 of 2010, dated 02.08.2012 and W.A.No.1027 of 2013, dated 09.06.2014 and as per the directions issued in G.O.(Ms).No.44, Labour and Employment (T2) Department, dated 11.03.2015, advertisement for recruitment to fill up certain vacancies in the various posts in the Civil Unit of Namakkal Judicial District, was published on 30.10.2017

in the e-Courts web-site of Namakkal District and in the said advertisement, three posts of Record Clerks had also been called for, subsequent to which, the petitioners had applied for the vacant post of Record Clerk in the Civil Unit of Namakkal District pursuant to the Notification published in the e-Courts web-site of Namakkal District and after conducting written test and personal interview, the petitioners were provisionally selected and have been temporarily appointed as Record Clerk as per this Court's proceedings in R.O.C.No.6584/A/2018, dated 24.05.2018 and they have joined duty on 25.05.2018 FN at the Principal District Court, Namakkal.

7. It is the further submission of the learned counsel appearing for the respondent that the petitioners were appointed only on temporary basis and were holding the post of Record Clerk for the period from 25.05.2018 to 02.04.2019, i.e. only for about 10 months and their temporary service was not regularised. The petitioners are only probationers. In this regard, the learned counsel relied on Section 31(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows:

"Section 31: Termination or Extension of Probation:

(1) Where the special rules of any service prescribe a period of probation for appointment as a full member of the service, or where such period of probation has been extended under section 33, the appointing authority may, at any time before the expiry of the prescribed period of probation or the extended period of probation, as the case may be:

(i) discharge a probationer from the service for want of vacancy; or

(ii) at its discretion, by order, either extend the period of probation of the probationer in case the probation has been extended under section 33, or terminate his probation and discharge him from service after giving him a reasonable opportunity of showing cause against the proposed termination of probation."

8. The learned counsel appearing for the respondent also submitted that from the above extracted Section 31(1) of the said Act, it is clear that a Government servant who has been originally appointed on temporary basis, may be ousted from

service at any time. Further, Rule 5 of the Tamil Nadu General Subordinate Service Rules, which speaks about the declaration of probation of a Government servant, who was appointed to any category of service, which is governed by Clause XXII of the Tamil Nadu General Subordinate Service Rules, reads as follows:

"Rule 5: Probation: Every person appointed to any category by direct recruitment, shall from the date on which he joins duty be on probation for a total period of two years on duty within a continuous period of three years."

9. It is further submitted by the learned counsel appearing for the respondents that on a reading of the above Rule 5, it is seen that the post of Record Clerk which was filled up by direct recruitment, has the probation period of two years within a continuous period of three years. On a conjoint reading of Rule 5 of the said Rules and Section 31(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, it is evident that the writ petitioners were ousted from service within their probation period, i.e. they have rendered only nearly ten months of service and even before regularisation of their temporary service, they were ousted from service. Further, as per Rule 2 (b) of the said Rules under Clause XXII of the Tamil Nadu General Subordinate Service Rules, the post of Record Clerk is to be appointed by direct recruitment only on compassionate grounds and hence, the temporary service of the writ petitioners was ordered to be treated as temporary appointment as per Section 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, within their probation period. In the appointment orders issued to the petitioners, it has been stated that they were appointed only on temporary basis and the relevant portion of the appointment order is extracted hereunder:

"2. The above individuals are informed that they are appointed as Record Clerk temporarily in the revised pay matrix level No.2 (Rs.15900 - 50400/-) corresponding to the pre-revised scale of pay Rs.4800-10000+Gr.Pay Rs.1400/- and other allowances admissible as per Rules in force."

10. The learned counsel appearing for the respondent further brought to the notice of this Court Section 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 regarding the temporary appointment, relevant portion of which reads as

follows:

"Section 17: Temporary Appointments: (1) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with the provisions of this Act and the special rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with this Act and the said rules.

.. ..

(3) A person appointed under sub-section (1) shall be replaced as soon as possible by a member of service or an approved candidate qualified to hold the post under this Act and in any case, he shall not be continued for a period of more than one year from the date of his temporary appointment."

11. The learned counsel appearing for the respondent therefore submitted that since the appointment of the writ petitioners was only temporary, their appointment was treated as temporary appointment as per Section 17(1) of the said Act and the petitioners were ousted from the temporary service as on 21.01.2019 AN with break in service for one day on 22.01.2019 and were re-appointed temporarily as Record Clerk on 23.01.2019 FN as per the proceedings in R.O.C.No.859/A/2019, dated 18.01.2019.

12. The learned counsel appearing for the respondent further invited the attention of this Court to the High Court's Official Memorandum in R.O.C.No.77636-A/2018/C3, dated 11.01.2019 and 08.02.2019, in which the Heads of Units in the State of Tamil Nadu were directed to take immediate steps to fill up the existing vacancies and arising/anticipated vacancies arrived up to 30.06.2019 and complete the recruitment process as expeditiously as possible, i.e. on or before 16.07.2019 without fail. Hence, for all the above reasons, the learned counsel appearing for the respondent prayed for dismissal of the Writ Petition.

13. Keeping the above submissions made on either side, we have carefully perused the materials available on record.

14. From a perusal of the entire records, we find that as per Rule 2(b) of the said Rules extracted above, direct recruitment to the post of Record Clerk should be only on appointment on compassionate grounds. That is the reason as to why the appointment of the petitioners was converted as one on temporary basis under Section 17 of the said Act. Subsequently, the petitioners were ousted from service and they were only probationers. As per Rule 5 of the said Rules extracted above, when a person is appointed to any category by direct recruitment, their appointment shall from the date on which he joins duty be on probation for a total period of two years on duty within a continuous period of three years. As per Section 31(1) of the said Act, the probationer shall be discharged from the service for want of a vacancy. Being probationers, there is no need to give any show cause notice to the petitioners before their ouster from employment. Only if misconduct is alleged against the petitioners, it is obligatory on the part of the appointing authority to conduct enquiry by framing charges before ousting them from service. Such a situation does not arise in this case. Hence, we do not find any infirmity in the impugned orders passed by the respondent.

15. At this juncture, the learned counsel appearing for the respondent submitted that as the petitioners have been ousted from service, an intimation would be sent to the Employment Exchange to restore the seniority of the petitioners in the Employment Exchange. This statement of the learned counsel appearing for the respondent is recorded.

16. With the above observations, both the Writ Petitions are dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge, Namakkal.

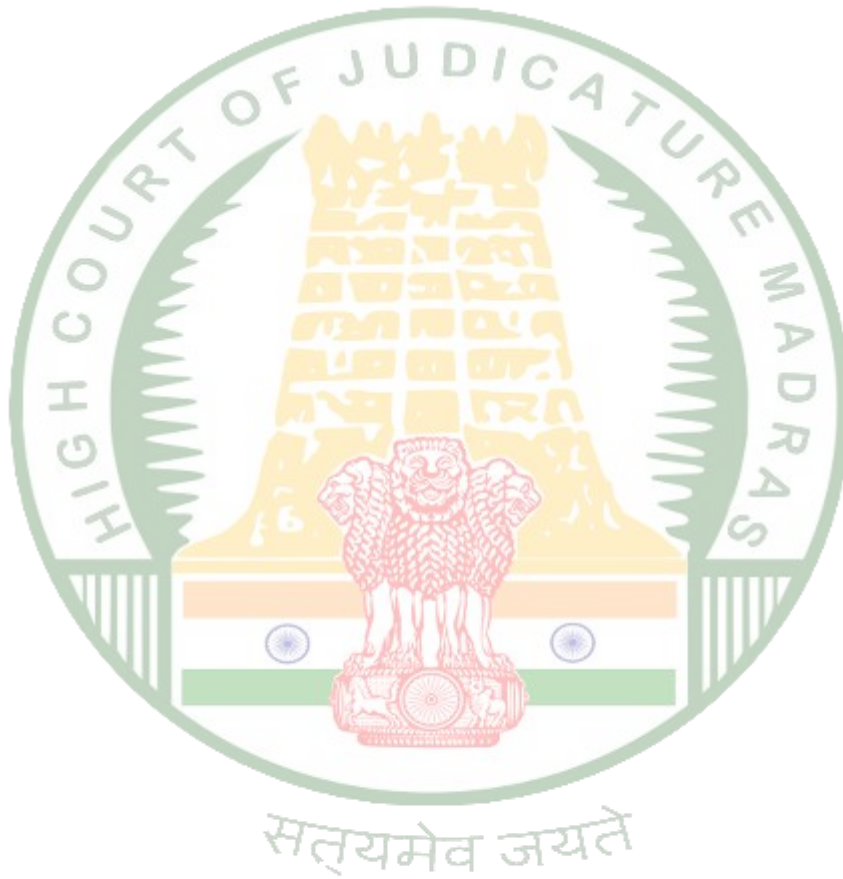
CC: 1.The Registrar General,
High Court, Madras.

2.The Section Officer, Legal Cell Section,
High court, Madras.

+2cc to Mr.R.Ezhilarasan, Advocate SR.87835

W.P.Nos.24466 and 24475 of 2019

NMI (CO)
CB(26/11/2019)



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