

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	24.07.2019
DELIVERED ON	31.07.2019

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU
and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY
W.A. (MD) No.193 of 2019

and

C.M.P. (MD) No.1550 of 2019

1) The District Collector,
District Child Protection Society,
District Collectorate Campus,
Nagercoil, Kanyakumari District.

2) The District Child Protection Officer,
District Child Protection Society,
No.96, Narayanan Street,
Christober Nagar, Nagercoil - 629 001
Kanyakumari District.

... Appellants/ 1st and 2nd
Respondents in W.P. (MD)
No.19175/2014

Vs.

1) N.R.Amalraj

... 1st Respondent / Petitioner
in W.P. (MD) No.19175/2014

2) Prabin

... 2nd Respondent/ 3rd
Respondent in W.P. (MD)
No.19175/2014

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order made in W.P.(MD) No.19175 of 2014 dated 05.03.2018.

Prayer in WP(MD) . 19175/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Notification issued by the 1st Respondent District Collector as published in the newspaper Dinakaran dated 12.11.2014, QUASH THE SAME and further DIRECT the 1st respondent to give forthwith renewal of appointment to the petitioner as Protection Officer in the 2nd Respondent District Child Protection Society.

For Appellants/	:	Mr.VR.Shanmuganthan,
Respondents	:	Special Government Pleader
For 1 st Respondent/	:	Mr.Isaac Mohanlal
Petitioner	:	Senior Counsel for Isaac Chamber
For 2 nd Respondent	:	No appearance

**J U D G M E N T**

(Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**)

1. This Writ Appeal is filed by the first and second Respondents in the Writ Petition. The first Respondent herein filed W.P. (MD) No. 19175 of 2014 and challenged the notification dated 12.11.2014 issued by the first Appellant herein and prayed for a further direction to the first Appellant to forthwith renew the appointment of the first Respondent herein as Protection Officer in the District Child Protection Society.

2. The facts that are relevant for purposes of disposal of the present Writ Appeal are as follows:

The Central Government introduced a scheme called the Integrated Child Protection Scheme (ICPS). The ICPS envisages the establishment of State and District child protection societies. In order to carry out the work of the societies, guidelines were framed with regard to various aspects, including the selection and appointment of personnel. In this regard, it was decided that the creation of permanent government structures would not be able to deliver effective child friendly protection services at the state, district or local levels. Accordingly, the said guidelines specified as follows, with regard to the selection and appointment process:

"3. Selection and Appointment Process:

A Programme of this magnitude and nature requires a team of dedicated professionals to establish and run ICPS successfully. It is felt that creation of permanent government structures will not be able to deliver effectively child friendly protection services at the State, district or local levels. **Therefore, it has been consciously decided to constitute State and District level Societies which will have personnel on a contractual basis** (emphasis added). All the personnel hired by these Societies will be employees of the Society and not the government and shall be engaged on the terms and conditions of services laid down in the implementation manual of the ICPS developed by the Ministry of Women and Child Development.

In order to appoint competent and professionally qualified personnel, the contractual posts would be advertised through national/local dailies and personnel recruited on the basis of qualifications, experience, high degree of motivation and commitment to children's causes. Individual terms of reference (TOR) will be drawn up for each post by the State Government. This will give State Government the flexibility to appoint people with State specific requirements. For example, if child marriage is a specific problem of a State/ District then such a requirement could be built into the TOR of personnel appointed at that State/ District. **Every personnel shall have a contract of 3 years, extendable by**



2 years on the basis of performance appraisal reports (emphasis added). A review of the performance of each personnel shall be undertaken every year at the state level by the State Secretary dealing with the ICPS and at district level by the District Magistrate.

WEB COPY

A Selection Committee constituted by the State Principal Secretary/Secretary dealing with ICPS shall recruit the technical and support staff of the State Child Protection Society and State Adoption Resource Agency.

For appointment of staff of the District Child Protection Society; the District Magistrate shall head the Selection Committee. The other members of this selection committee shall include:

- (i) Programme Manager (Child Protection), State Child Protection Society;
- (ii) Programme Manager (adoption, Foster Care & Sponsorship), State Adoption Resource Agency;
- (iii) Chairperson/Member, Juvenile Justice Board;
- (iv) Chairperson/Member, Child Welfare Committee;
- (v) One expert in the area of Child Protection/ Child Rights/ Social Welfare.

Once the DCPO is appointed, either by deputation or contract, he/she shall also be part of the selection committee for appointment of other personnel of the DCPS."

3. Based on the said guidelines, a Contractual Service Agreement dated 21.08.2012 (the First Contract) was entered into between the first Respondent herein and the District Child Protection Society (DCPS) on 21.08.2012. As per the First Contract, the first Respondent herein was appointed as Protection Officer of the DCPS with effect from 21.08.2012 for a period of one year from the date of commencement thereof. The remuneration payable to the first Respondent was fixed on a consolidated basis at Rs.12,000/- per month with permissible allowances, travel costs reimbursement and leave entitlement as specified in the said First Contract. Moreover, the First Contract provided, as follows, with regard to the status of the contract employee and his rights and obligations:

"2) **Duration of Agreement:** This agreement will be deemed to have come into effect on the 21st day of August 2012. The contract shall be for a period of one year from the date of commencement of the agreement and shall ordinarily subject to satisfactory performance of duties and also to the provisions of date and meet the commitments of DCPS from time to time. The Signatory is working since 21.08.2012 on yearly contractual basis."

4. Upon completion of the one-year contract period, the first Respondent was relieved from service on 20.08.2013 and a Contractual Service Agreement dated 23.08.2013 (the Second Contract) was entered



into with the said first Respondent for a period of one year commencing from 23.08.2013. In all other respects, the Second Contract was identical to the First Contract. Once again, upon expiry of the one year contract period, the first Respondent was relieved from the services of the DCPS on 22.08.2014. However, the DCPS did not enter into a new agreement with the first Respondent. Therefore, the first Respondent submitted representations requesting that his services be extended. However, the said request was not acceded to by the DCPS. Instead, a notification dated 12.11.2014 (the Notification) was issued by the DCPS whereby applications were invited for the post of Protection Officer. The Notification inviting applications for the post of Protection Officer of the DCPS was challenged by the first Respondent herein in the Writ Petition which culminated in the order dated 05.03.2018, whereby the Writ Petition was allowed.

5. During the pendency of the Writ Petition, the second Respondent herein was appointed on contractual basis on 26.12.2017 on the basis of applications received pursuant to the impugned Notification. In the order impugned in this Appeal, as stated earlier, the Writ Court allowed the Writ Petition by quashing the Notification. As a consequence thereof, the Writ Court directed the DCPS to extend the appointment of the first Respondent herein as Protection Officer of the DCPS.

6. At the hearing, the learned Special Government Pleader represented the Appellants. He pointed out that the appointment was purely on a contractual basis and that the Second Contract period ended on 22.08.2014. He further submitted that the performance of the first Respondent was not satisfactory and, therefore, a new contract was not executed with the first Respondent. He further submitted that the first Respondent did not challenge the order dated 22.08.2014 whereby the first Respondent was relieved from duty. Consequently, he submitted that the said first Respondent is not entitled to extension of the contract. He also submitted that there is nothing arbitrary or unreasonable about the Notification and that the Writ Court erred in quashing the Notification.

7. On the contrary, Mr. Isaac Mohanlal, learned senior counsel for the first Respondent, submitted that the appointment was made for the purposes of effectively carrying out the objects and purposes of the ICPS of the Central Government. By referring to the guidelines relating to the selection and appointment process for employees of the state and district level societies under the said Scheme, he pointed out that the methodology of hiring personnel on contract basis was formulated to ensure that a permanent government structure is not created. In specific, according to him, it was intended that such employees would be given contracts that would be renewed periodically as long as the the Scheme continues to be implemented. In sum, his submission was that the appointment of such employees was intended to be coterminous and, therefore, the first Respondent is entitled to renewal as long as this Scheme is under implementation.



8. He further pointed out that the said guidelines envisage three-year contracts which may be extended by two years, whereas the first Respondent was given a one-year contract on two occasions. In this regard, he also pointed out that an artificial break for one day was given in order to create the illusion that the contract had ended whereas the first Respondent continued to act as the Protection Officer over the entire period. In effect, he submitted that the appointment of the first Respondent was in the nature of an ad hoc appointment and that such an ad hoc employee should not have been replaced by another ad hoc employee.

9. In order to substantiate his submission, the learned senior counsel referred to the following judgments of the Hon'ble Supreme Court:

(i) **Dr.A.K.Jain vs. Union of India 1987 (Supp) SCC 497**, wherein the Hon'ble Supreme Court held, at page no.501, that no ad hoc Assistant Medical officer/ Assistant Divisional Medical Officer, who is working in the Railways, shall be replaced by any newly appointed Assistant Medical officer/ Assistant Divisional Medical Officer on ad hoc basis.

(ii) **State of Haryana Vs. Piara Singh (1992) 4 SCC 118**, wherein it was held, in paragraph 46, as follows:

"46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

(iii) **Mohammed Abdul Kadir vs. Director General of Police, Assam (2009) 6 SCC 611**, wherein, at paragraphs 17 & 18, the Hon'ble Supreme Court held, *inter alia*, as follows:-

"17. When the ad-hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally coterminous with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement)."

(iv) **Rattan Lal vs. State of Haryana (1985) 4 SCC 43**, wherein the Hon'ble Supreme Court deprecated the practice of 'hiring and firing' ad hoc teachers and held that it is bound to have serious repercussions on educational institutions and the children studying there.

10. By relying upon the aforesaid judgments, the learned senior counsel submitted that the appointment of the first Respondent was under the ICPS, which is still admittedly under implementation. Accordingly, in effect, the first Respondent's appointment is an ad hoc appointment for the duration of the Scheme. Consequently, the first Respondent is entitled to the remedy that was granted by the Writ Court.



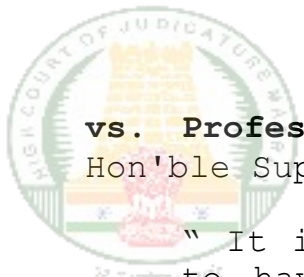
11. By way of rejoinder submissions, the learned Special Government Pleader submitted that the first Respondent was relieved from services on 20.08.2013 upon expiry of the First Contract and accepted the order relieving him from service. Likewise, upon expiry of the Second Contract, he was once again relieved from service on 22.08.2014. On this occasion also, he accepted the order by which he was relieved from service and did not challenge the same. As a result, the first Respondent consented to and acquiesced in the contractual appointment for a one year period and cannot assail the one year contracts on the basis that the guidelines for appointment provided for a three-year contract, which may be extended by two years.

12. He also relied upon paragraph 9 of the counter affidavit filed by the first Appellant before the Writ Court, wherein the poor performance of the first Respondent is detailed. He also pointed out that the second Respondent herein was appointed in 2017 and that, upon expiry of his contract, a new person was appointed for the year 2018-19 on contract basis.

13. With regard to the judgments that were relied upon by the learned senior counsel for the first Respondent, the learned Special Government Pleader contended that all the said judgments relate to ad hoc appointments and not contractual appointments. Accordingly, he submitted that the principles laid down in the said judgments would not apply to persons appointed on contract basis, such as the first Respondent herein.

14. The affidavits, documents and oral submissions of both sides were carefully considered. On examining the guidelines for selection and appointment of personnel for the state and district level societies under the ICPS, it is clear that a conscious decision was taken to make such appointments on contractual basis and to ensure that such appointees are employees of the society concerned and not of the Government. In this case, the documents disclose that the first Respondent was appointed twice as Protection Officer on a one-year contract. Each time, upon expiry of the contract period, he was relieved from service. In the first instance, a new contract, namely, the Second Contract was executed on 23.08.2013, whereas, upon expiry and not termination, of the Second Contract, the DCPS refused to execute a new contract with the first Respondent. It is also the admitted position that the said relieving order dated 22.08.2014 was not challenged by the first Respondent.

15. In these facts and circumstances, the question that arises for consideration is whether the first Respondent is entitled to an extension of the contract by deeming it to be an ad hoc or coterminous appointment as contended by the learned senior counsel for the first Respondent. In this regard, it is relevant to examine the law on extension of contractual appointments. In **Yogesh Mahajan**



vs. Professor R.C. Deka, Director, AIIMS (2018) 3 SCC 218, the Hon'ble Supreme Court held, *inter alia*, as follows in paragraph 6:

" It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the Petitioner was unable to show any statutory or other right to have his contract extended beyond 30/06/2010...."

This leads to the question whether contractual employment can be equated with ad hoc appointment as contended by the learned senior counsel. On this issue, the Hon'ble Supreme Court in **K. Anbazhagan vs. Registrar General, High Court of Madras (2018) 9 SCC 293** (the Anbazhagan case), held, *inter alia*, as follows in paragraph 36:

" Although temporary, ad hoc and contractual appointments are used in contradiction to a regular and permanent appointment but between ad hoc appointment and contract appointment, distinction is there in service jurisprudence and both the expressions cannot be interchangeably used. When the advertisement against which the appellants were appointed and the appointment order mentions the appointment as ad hoc appointment, we cannot approve the view of the High Court that the nature of the appointment of the appellants was only a contractual appointment."

16. If the principles laid down in the Anbazhagan case are applied to this case, the guidelines of the ICPS and the First and Second Contract should be examined to determine if the appointment is contractual or ad hoc. As stated earlier, it is clear that the guidelines of the ICPS envisage contractual appointment and, more importantly, the appointments under the First Contract and Second Contract are undoubtedly contractual and not ad hoc. Consequently, unlike the fact situation in the Anbazhagan case, in our view, the appointment of the first Respondent is contractual and not ad hoc. Further, if the contentions of the learned counsel for the first Respondent are accepted, the one-year contractual appointment of the first Respondent would be converted into a coterminous employment that would continue as long as the ICPS is under implementation. On closely examining the guidelines for the said ICPS and, in particular, the selection and appointment process of personnel, we do not find any indication therein of the intention to make such appointments coterminous with the Scheme. On the contrary, it is categorically stated therein that the personnel would be employed on contractual basis.

17. As correctly contended by the Special Government Pleader, all the judgments that were relied upon by the learned senior counsel for the first Respondent are judgments relating to ad hoc employment wherein no specific employment period was stipulated. In



the said factual context, the Hon'ble Supreme Court held that an ad hoc employee cannot be replaced by another ad hoc employee. However, in this case, as stated earlier, the appointment was admittedly on a one-year contract basis.

18. In these facts and circumstances, we are of the considered view that the first Respondent is not entitled to the remedy of quashing of the Notification or extension of his services. In this connection, it is also the admitted position that upon expiry of the Second Contract of the first Respondent in the year 2014, the Notification was issued and pursuant thereto, the second Respondent herein was appointed as Protection Officer. Thereafter, one more person, who is a third party to the present litigation, was appointed and is said to be in service. Thus, upon taking into account the legal position and the facts and circumstances, the order of the Writ Court is liable to be set aside.

19. For the foregoing reasons, this Writ Appeal is allowed and the order of the Writ Court is set aside. However, there shall be no order as to costs. Consequently, connected C.M.P.(MD) No.1550 of 2019 is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

- 1) The District Collector, District Child Protection Society,
District Collectorate Campus, Nagercoil, Kanyakumari District.
- 2) The District Child Protection Officer,
District Child Protection Society, No.96, Narayanan Street,
Christober Nagar, Nagercoil - 629 001, Kanyakumari District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-79029[F] dated 01/08/2019)

+1 CC to M/s.SPL GP (SR-79285[F] dated 01/08/2019)

Judgment made in
W.A. (MD) No.193 of 2019
31.07.2019

AM/13.08.2019/8P/5C