



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD) No.17403 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

R.Prabu

... Petitioner

Vs

1.The State of Tamilnadu

represented by its Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The Director of Public Health

and Preventive Medicine
DMS Complex,
Chennai-600 006.

3.The Executive Secretary, District Health Society/

Deputy Director of Health Services,
Viswanathapuram,
Madurai- 625 014.

4.The Block Medical Officer,

Government Primary Health Centre,
Karungalakudi,
Melur Taluk,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to continue the services of the petitioner in the post of Dental Surgeon at Government Primary Health Centre, Karungalagudi from 08.10.2013 with all service, monetary and other attendant benefits.

For Petitioner

: Mr.R.Venkatesan
for M/s.Right Law Associates

For Respondents

: Mr.D.Muruganantham
Additional Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the respondents to continue the services of the petitioner in the post of Dental Surgeon at Government Primary Health Centre, Karungalagudi from 08.10.2013 with all service, monetary and other



attendant benefits.

2.The learned counsel for the writ petitioner states that the writ petitioner had completed B.D.S.Course during the year 2000 and registered his name in the District Employment Exchange, Madurai. The petitioner's name was sponsored by the District Employment Exchange and the petitioner was appointed as Dental Surgeon in the Government Primary Health Centre vide proceedings dated 17.05.2010 on contract basis. The order of appointment issued by the Executive Secretary, District Health Society / Deputy Director of Health Service, Madurai, is enclosed at Page No.3 of the typed set of papers filed along with this writ petition.

3.The writ petitioner was appointed by the Executive Secretary of the District Health Society / Deputy Director of Health Service, Madurai, under a scheme. The appointment of the writ petitioner was on contract basis for a period of one year at the rate of Rs.500/- per session (3 hours per session) for six sessions per week and posted to the upgraded PHC, Karungalakudi. The terms and conditions of the appointment is enumerated in the order of appointment, which is extracted hereunder:

"1.This is only a contractual appointment for hiring of services and not a creation / sanction of post.

2.The Dental Surgeon will not be designated as Dental Assistant Surgeon as they are hired.

3.The Dental Surgeon appointed should bring his own assistant with a qualification of 10th Pass and experience in assisting in dental Hygiene.

4.The Dental Surgeons hired on contract basis for a period of one year will be paid Rs.500/- per session (Three Hours per session) for Six session per week.

5.The Dental Assistants brought by the Dental Surgeons shall also work for one year on contract basis, will be paid Rs.250/- per session for Six sessions per week.

6.The names and other particulars of Dental Assistant brought by the Dental Surgeons should be submitted to the UNDERSIGNED immediately.

7.The remuneration to the Dental Surgeon and Dental Assistant should be disbursed through the patient welfare Society of the upgraded PHC concerned.

8.The Dental Surgeon and Dental Assistant shall conduct the dental clinic in the upgraded PHC concerned from Monday to Thursday during the morning OP and on Friday and Saturday between 2.00 PM to 5.00 PM timely to attend to children referred from the School Health Programme.

9.The project will be monitored every month by the Deputy Director of Health Services, Madurai and evaluated by a team of senior Dental Surgeon.

10.They are not entitled for a permanent posting



under this scheme."

4.The writ petitioner on receipt of order of appointment accepted the terms and conditions and joined the service as Dental Surgeon for a period of one year. The period was subsequently accepted and during the year 2013, the writ petitioner inadequately remained absent and not attended the duty. Thus, the writ petitioner was relieved from service and thereafter he was not permitted to joint duty.

5.The learned counsel for the petitioner states that the writ petitioner had gone on Medical Leave. Such contentions are irrelevant in view of the fact that the initial appointment of the writ petitioner was on contract basis. In respect of such contract employees no such Medical Leave facility was extended. This apart, the writ petitioner was allowed to work from 08.10.2013 itself. The period of contract was one year and the conditions imposed at the time of appointment was also unambiguous that the writ petitioner cannot claim regularization or permanent absorption.

6.This being the factum, the relief sought for in the present writ petition, to direct the respondents to continue the petitioner in the post of Dental Surgeon cannot be granted and accordingly the writ petitioner has to secure the appointment to the post of Dental Surgeon only by participating in the process of selection if any recruitment notification is issued in accordance with the recruitment Rules in force.

7.With this observation, this writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I)

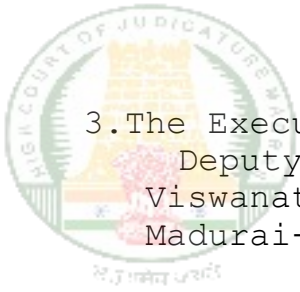
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Sub Assistant Registrar(CS)

To

1.The State of Tamilnadu
represented by its Secretary to Government,
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Chennai-600 009.

2.The Director of Public Health
and Preventive Medicine
DMS Complex,
Chennai-600 006.



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4.The Block Medical Officer,
Government Primary Health Centre,
Karungalakudi,
Melur Taluk,
Madurai District.

+1cc to M/s.RIGHT LAW ASSOCIATES, Advocate, SR.No. 66946
+1cc to M/s.Special Government Pleader, SR.No. 67059

W.P. (MD) No.17403 of 2013
and
M.P. (MD) Nos.1 and 2 of 2013

PNN

KK/SAR/24.06.2019/4P-7C