

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

CORAM :

The Hon'ble Mr.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4295 of 2019

S.Murugan

... Appellant

-vs-

- 1.State of Tamil Nadu,
Represented by Secretary to Government,
Health and Family Welfare,
Secretariat, Fort St.George,
Chennai - 600009.
- 2.Director,
Department of Public Health & Preventive Medicine,
Chennai - 600006.
- 3.Mrs. Poongodi
Deputy Director,
Health Services,
Salem - 636001.
- 4.Dr.R.Shanthi
Principal Civil Medical Officer,
Govt. Primary Health Centre,
Malliyakarai,
Salem District.
- 5.Block Medical Officer,
Govt. Primary Health Centre,
Elampillai - 637502. Salem District.
- 6.Block Medical Officer,
Govt. Primary Health Centre,
Chittoor,
Salem District.
- 7.Medical Officer,
Govt. Primary Health Centre,

Pakkanadu, (BLOCK - GPHC, CHITTOOR)
Salem District.

... Respondents

Appeal filed under Clause 15 of the Letters Patent Act against the order dated 10.04.2019 passed in W.P.No.31295 of 2018.

PRAYER IN W.P.No.31295 of 2018

Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari and Mandamus call for records of the 3rd respondent Deputy Director Health Service Salem 636 001 pertaining to the impugned order of termination NA.KA.No.12324/E5/2018 dated 17.10.2018 and quash the same with the consequential direction to the 3rd respondent herein to grant continuity of service along with reimbursement of the entire back wages till reinstatement of the petitioner as multipurpose Hospital Worker at Ellampillai PHC Salem District

For Appellant : Mr.C.V.Vijaykumar

For Respondents : Mr.V.Kadhirvelu
Special Government Pleader
(Education) [RR1, 2, 5, 6
&7]

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The appellant was a multipurpose health worker at Elampillai Primary Health Centre on daily wages sponsored through the Employment Exchange. He had worked there for almost five years and on a complaint that the appellant had misbehaved with a female patient, he has been terminated, but after holding of an enquiry.

2. We fail to understand that if the appellant was a daily wager, where was the occasion to have conducted an enquiry. But the contention of the learned counsel for the appellant is that the enquiry came to be concluded in a hurried fashion, the allegation being on 15.10.2018, the enquiry being concluded on 16.10.2018 behind the back of the petitioner and he being terminated on 17.10.2018. His further submission is that as a

matter of fact, after having discharged his duties on 15.10.2018, he had applied leave for three days but the enquiry was malafidely conducted behind his back, as a result whereof, the audi alteram partem rule was violated and consequently, the termination being arbitrary, the same deserves to be struck down.

3. The learned Single Judge has opined that in view of the allegation made and the fact that the appellant was a daily wager, he has no right to contest his termination, keeping in view the nature of the complaints and the termination being based on a report submitted by an Enquiry Officer.

4. Having considered the submissions raised, there is hardly any scope for interference by this Court under Article 226 of the Constitution of India, in the background aforesaid, more so, keeping in view the status of employment of the appellant. But, keeping in view the hurried nature of the decision making process and also the fact that the appellant was only a daily wager, it would have been more appropriate to have taken a considerate view instead of making him depart from the hospital itself. However, we should not be construed to be in any way either contending or diluting the impact of the allegation which, if correct, does not entitle the appellant for any such continuance. But, if otherwise the appellant cannot be put to blame for an allegation on the basis of an enquiry that was conducted behind his back, he can be still considered for being engaged on daily wages once again.

5. We are not issuing a Mandamus but it shall be open to the authorities concerned to consider his claim sympathetically.

The Writ Appeal is consigned to records with the said observations. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare,
Secretariat, Fort St.George,
Chennai - 600009.

2. Director,
Department of Public Health & Preventive Medicine,
Chennai - 600006.

3. The Block Medical Officer,
Govt. Primary Health Centre,
Elampillai - 637502. Salem District.

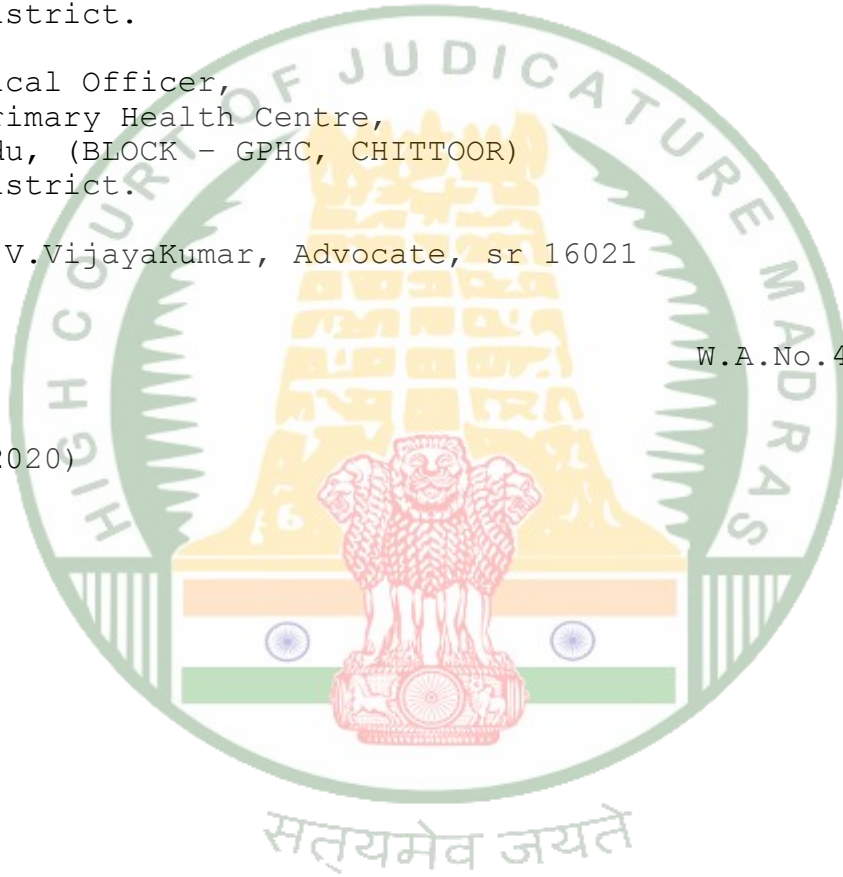
4. The Block Medical Officer,
Govt. Primary Health Centre,
Chittoor,
Salem District.

5. The Medical Officer,
Govt. Primary Health Centre,
Pakkanadu, (BLOCK - GPHC, CHITTOOR)
Salem District.

+1cc to C.V.VijayaKumar, Advocate, sr 16021

W.A.No.4295 of 2019

MP (CO)
GS (21/05/2020)



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