

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.17783 of 2017

W.M.P.Nos.19293 and 27463 of 2017

R.Satish Kanna,
S/o.C.N.Ramanujam,
Special Educator,
Early Intervention Centre,
Tambaram Sanatorium,
Chennai-600 047. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Welfare of Differently Abled Persons
(DAP-1) Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Principal Secretary/State Commissioner
for the Differently Abled,
Lady Willington Campus,
Kamarajar Salai, Chennai-600 005.
3. The Project Officer (GIMR),
District Disabled Rehabilitation Centre,
Tambaram Sanatorium,
Chennai-600 047. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the third respondent in Na.Ka.No.47/2017, dated 06.06.2017 (served on the petitioner on 16.06.2017) and to quash the same and consequently directing the third respondent to permit the petitioner to continue in service in the Early Intervention Centre for Mentally Retarded at Tambaram Sanatorium, Chennai-600 047, run by the Department directly.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.V.Shanmugasundar
Special Government Pleader

O R D E R

The petitioner, who is trained in educating special children, has filed the instant writ petition challenging the orders of the third respondent dated 06.06.2017 and also a consequential direction.

2. The Government Order in G.O.Ms.No.53, Welfare of Differently Abled Persons [DAP(2)] Department, dated 25.10.2011 was passed for establishing and running an Early Intervention Centre (EIC) for Mentally Retarded (MR) in the Government Institute for Mentally Retarded (MR), Tambaram Sanatorium, Chennai - 600 047. The Government also issued a ratification order vide G.O.Ms.No.112, Welfare of Differently Abled Persons [DAP-1(2)] Department, dated 19.11.2012 for conducting Early Intervention Centre for Mentally Retarded through an NGO, namely, SRM Medical University, Kattankulathur. There were two posts of Special Educators and one post of Therapist sanctioned on a consolidated pay of Rs.10,000/- each. In addition to that, two posts of Caretakers and two posts of Ayah were also sanctioned on a consolidated pay of Rs.2,000/- each for running the EIC for MR.

3. The petitioner herein, who was originally appointed on a consolidated pay as a Caretaker by the NGO, was later appointed as Special Educator with effect from 01.01.2014 vide proceedings of the SRM University dated 04.09.2014. Accordingly, he has been continuing in the said institution as Special Educator in EIC for MR, Tambaram Sanatorium, Chennai, through the NGO - SRM University. The salary of the above staff members were sanctioned by the State Government and the petitioner was paid with the salary from the date of appointment upto March 2013. However, later when the SRM University did not submit the Utility Certificate properly, the funds were not sanctioned by the respondents. It is claimed that the first respondent had introduced the scheme of Early Intervention Centre (EIC) for the Mentally Retarded (MR) through an NGO only for avoiding future financial constraint and also to avoid conversion of consolidated pay posts into permanent one in the future.

4. While so, the Early Intervention Centre (EIC) for Mentally Retarded (MR) implemented by the SRM Medical University, Kattankulathur, was suddenly cancelled and

terminated the MOU on 19.09.2014, whereas, the actual MOU expired on 20.12.2014. Secondly, the Registrar of SRM Medical University issued a Termination Notice vide SRMU/So(P)/EIC-T/Termination/2014/3321, dated 07.11.2014 to its staff members, namely, the petitioner and other persons employed therein stating that they were terminated with effect from 20.12.2014 and they are advised to secure alternative employment. However, even after the termination, the petitioner and other staff members continued there and approached the second respondent and submitted representation on 19.01.2015 informing them that their salary were not paid from 01.04.2013 onwards and that they have been working there without payment of salary.

5. The second respondent had forwarded a proposal to the first responding informing about the non-payment of salary to the petitioner and others and a proposal was also sent in consultation with another NGO by name "Maithree" on 16.02.2015 in proceedings Na.Ka.No.3285/C.pa/2014. Even in the said proposal, it was indicated that the petitioner and others were not paid salary. After the termination of the MOU with SRM Medical University, the functioning of the EIC by the staff members was monitored and regulated by the second respondent through the third respondent-the Project Officer. However, when the new Project Officer assumed the office, the Attendance Register was not counter-signed by the said officer and it was informed by the third respondent that unless the EIC is taken over by any other NGO, the staff members there will not be allowed to continue in service.

6. In that backdrop, the petitioner and others there had filed writ petitions in W.P.Nos.1795 to 1797 of 2017 seeking a direction to the first respondent to pass orders sanctioning salary to the petitioners from April 2013 onwards. The said writ petitions were disposed of by this court on 25.01.2017 directing the first respondent to pass final orders, by taking note of the fact that the proposal sent by the second respondent dated 16.12.2015, on merits.

7. While so, the first respondent had issued orders in G.O (1D) No.33, Welfare of Differently Abled Persons Department dated 21.04.2017 sanctioning salary for the staff working in the EIC for MR for the period from 2013-14, 2014-15 and 2015-16. In the same GO, it was stated that for the year 2017-18, a proposal to be forwarded for sanctioning expenditure, in which, the amount already sanctioned for the previous year would also be included. Therefore, it is the case of the petitioner that the first respondent was clear in its order that it wanted the EIC for MR to be continued even after the Academic Year 2017-18, for which, revised estimate/final revised estimate for expenditure to be submitted.

8. In the above circumstances, the third respondent - the District Differently Abled Welfare Officer, Chengalpattu, Kanchipuram District, who is also the Project Officer in charge of G.I.M.R., inspected the Early Intervention Centre for MR on 04.01.2017 and reported in his letter addressed to the second respondent dated 20.02.2017 intimating that only 17 students names were enrolled in the attendance register and also out of this 17 names, the names of 7 students also figured in the Government Institute for the Mentally Retarded attendance list and thus, this shows the duplication of names in the attendance register of the EIC for MR. As this was an unlawful act, the third respondent had stopped the 7 students, who were enrolled in the GIMR, from being sent to the EIC for MR from 06.01.2017. The third respondent, who is also the District Differently Abled Welfare Officer, Chengalpattu, had instructed the Warden of the G.I.M.R. to watch and note the number of MR children attending the EIC for MR from 11.01.2017 to 31.01.2017. Accordingly, the Warden had reported that the average number of students attending the EIC for MR daily was only 3 in numbers. It was also further noted that the number of students attending the EIC for MR is very less and their attendance was also not regular. Therefore, based on the Inspection Report of the third respondent, the three students, who were attending the EIC for MR in Tambaram Sanatorium, were shifted and taken to the nearest EIC for MR functioning in the State Resource cum Training Centre (SRTC) in K.K.Nagar, Chennai, for training at free of cost. The parents of the students were also issued with the bus passes to enable them to take the children to the EIC for MR functioning in K.K.Nagar, Chennai. Hence, the third respondent recommended for the closure of the EIC for MR in Tambaram Sanatorium, due to inadequate number of students attending the EIC. The said closure of the EIC is now challenged by the petitioner.

9. According to the petitioner, the closure order of the EIC for MR was passed in violation of the orders dated 21.04.2017 passed by the first respondent, which permitted the second respondent to continue the Special School, namely, EIC for MR, at Tambaram Sanatorium, Chennai. The petitioner also claimed that from the Academic Year 2014-2018, the EIC for MR was directly monitored and regulated by the second respondent through the third respondent and for the further period also, it was under consideration with the government.

10. However, the respondents would submit that as there were no enrollment of students in the EIC for MR in Tambaram Sanatorium, considering the purpose of implementing the scheme and also taking into consideration the fact that no other NGO

has come forward to implement the scheme, it was decided by the second respondent not to continue the scheme of EIC for MR at Tambaram Sanatorium, Chennai-600 047.

11. It is also stated that a communication dated 27.02.2017 in Rc.No.2822/SS/2016 was sent to the Government by the second respondent informing that the scheme of EIC for MR at Government Institute for the Mentally Retarded, Chennai-600 047, may not be continued and implemented from the year 2017-2018. In the very same communication, sanction of funds for payment of salary grants to the staff members, who had worked in the EIC for MR for the years 2013-14, 2014-15, 2015-16 and 2016-17 was recommended. As there were only three students enrolled, alternative arrangements were made to send them to SRTC, K.K.Nagar, for training. In the counter-affidavit filed in August, 2017, it is stated that the salary grant for the period from 2013-14 to 2015-16 have been paid to the petitioner and other staff members and for the period 2016-17 alone the same are yet to be received from the Government and once the same is received, it will be paid to them, based on the number of working days and attendance of the staff.

12. It is specifically stated that EIC for MR at Tambaram Sanatorium has not been functioning from 01.02.2017 and the keys of the Auditorium, in which, the Centre was functioning has not been handed over by the petitioner, who is having the keys in his custody. Despite the request made by the third respondent calling upon the petitioner to handover the keys, the same were not yet handed over and the petitioner sought for further time to handover the keys. As the petitioner is occupying the Auditorium belonging to the Government, he has to handover the keys immediately to the respondents. But the petitioner had approached this Court and obtained an interim order.

13. As stated earlier, the petitioner is neither appointed by the Government nor by the second or third respondents and on the other hand, he was appointed by the NGO, namely, SRM Medical University, Kattankulathur. Even after the termination of the MOU by the NGO, the petitioner and other staff were permitted to work in the Centre hoping that any other NGO will come forward to implement the project. Considering the situation in which the petitioner and other staff were put to, the Government had sanctioned the salary grants till 31.03.2016 and also recommended till March, 2017.

14. The State Government introduced the Scheme for EIC for MR to be implemented by NGOs to avoid future financial constraints and also creation of permanent posts. In this regard, this Court also had allowed sufficient time for the petitioner to find out any other NGO, which is willing to run

the EIC for MR at the Government institute. Till such time, the writ petition was heard finally, there was no such NGO volunteering to run the EIC for MR. In fact, the Government also had filed a status report, wherein, it is stated that each of the District of State of Tamil Nadu listing out the Special Schools run by the Government and Government Aided Special Schools run by the NGOs for the Mentally Retarded (Intellectually Disabled), where, 14 and above aged male and female children are admitted and also the Government Homes with Vocational Training Centre for Adult Mentally Retarded (Intellectually Disabled) children aged 14 and above.

15. The respondents further stated that the decision for closure the EIC for MR at GIMR was the policy decision of the Government and the closure of the Scheme cannot be questioned by the petitioner. As stated earlier, the petitioner was only an employee of the NGO - SRM Medical University and he was not appointed by second or third respondents and it was only on the directions by this Court, he was paid salary till March, 2017, even after the termination by the MOU. Since the scheme itself has been discontinued and the Centre has been closed, the petitioner, who was only provided with consolidated pay, cannot be continued in the work. Therefore, it is not open to the petitioner to challenge the impugned order, which has called upon him to handover the keys of the Auditorium in which, the EIC was earlier housed.

16. As there is no merit in the writ petition, the same is dismissed as devoid of merits. The petitioner is directed to vacate the Auditorium belonging to the Government and handover the possession of the same and also the keys with the third respondent within a period of three weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Welfare of Differently Abled Persons
(DAP-1) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Principal Secretary/State Commissioner
for the Differently Abled,
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3. The Project Officer (GIMR),
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Chennai-600 047.

+1cc to the Public Prosecutor Sr.35637

+1cc to Mr.G.Sankaran, Advocate Sr.35811

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