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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5197 of 2012

A.Murugan

S/o.N.Annamalai

...Petitioner

-Vs-

1. State of Tamil Nadu,
by its Secretary, Health,
Secretariat, Chennai - 9.
2. The Project Director & Member Secretary,
T.N.State Aids Control Society,
417, Pantheon Road,
Egmore, Chennai - 8.
3. The Deputy Director of Health Services,
Kallakuruchi.
4. The District Collector,
Villupuram District,
Villupuram.
5. The Medical Officer,
Govt. Primary Health Centre,
Mugaiyur, Tirukoyulur Taluk,
Villupuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records in Proceedings No.8953/A.19/Estt/TANSACS/2011, Dated 11.01.2012. On the file of the 2nd respondent and quash the same, consequently grant an Order or direction, directing the Respondent 2 to reinstate the petitioner as Counselor under the Medical Officer, Government Primary Health Centre Mugaiyur, Tirukoyulur Taluk, Villupuram District being Respondent No.5.

For Petitioner : Mr.S.R.Sundaram

For R1 to R5 : Msr.P.Ananda Kumar
Government Advocate



ORDER

The writ petitioner was appointed temporarily as Counselor in the Government Primary Health Centre at Mugaiyur and subsequent to which an Contractual Service Agreement was entered into between the petitioner and the 2nd respondent herein on 01.04.2009 and the terms and conditions of the Agreement have been agreed by both the parties. Therefore, the petitioner was appointed as a Counsellor only on a temporary basis. Clause 6 of the Service Agreement states that the contract shall be for a period of one year from the date of commencement of the agreement and bound by the articles mentioned in the Agreement and any deviation from the articles mentioned shall immediately render in cancellation of the Contract Service Agreement and result in termination of service without any prior notice and any compensation thereof.

2. When such being the contract, the petitioner is alleged to have organised unauthorised Regional Level observation of World AIDS Day 2011 at Hosur. Hence, a show cause notice dated 27.12.2011 was issued to the petitioner calling him for an explanation as to why the service of the petitioner should not be terminated for the act of insubordination and acting independently without any authority / permission of TANSACS / superior officers, placed above at District Level. The petitioner had also submitted his written explanation dated 04.01.2012 to the 2nd respondent. Thereafter, when the activities of the petitioner are found to be violative of terms of reference to the contract, the 2nd respondent had terminated the temporary service of the petitioner on 11.01.2012. Challenging the said impugned termination order dated 11.01.2012, the petitioner has preferred the present writ petition.

3. According to the learned counsel for the petitioner, the impugned order passed by the 2nd respondent is against the principle of natural justice and the impugned punishment and the termination order of service amount to stigma on the petitioner and no reasons have been stated in the impugned order about the written explanation submitted by the petitioner on 04.01.2012. He would further submit that on these grounds the impugned order passed by the 2nd respondent dated 11.01.2012 is liable to be set aside and in the event of setting aside the impugned order, the petitioner is entitled for continuation of service in the 2nd respondent Society.

4. Despite several opportunities given to the respondents to file their counter, no counter has been filed by the respondents till date. The writ petition is filed in the year 2012. Hence, this Court has taken up this petition for final disposal.



5. Heard both sides. Perused the materials placed on record.

6. On a perusal of the impugned order and considering the facts of the case, it is seen that the Service Agreement was entered into between the petitioner and the District Program Manager on 28.07.2009 and as per the Agreement, the contractual period started in the year 2009 but there is no renewal of Agreements have been enclosed in the typed set of papers. The 2nd respondent has served a show cause notice on the petitioner, directing the petitioner to explain as to why his service should not be terminated for the act of insubordination and acting independently without any authority / permission of the superior officers placed at District Level within a period of seven days from the date of receipt of a copy of the notice. The petitioner has also submitted a written explanation on 04.01.2012 in detail and the aforesaid explanations were not considered by the respondent and the impugned order of termination came to be passed.

7. On the fact that the petitioner was appointed temporarily on a contractual basis and the period of Agreement entered into between the petitioner and the 2nd respondent got expired and there is no legal right for the petitioner to claim continuous service as prayed for in the writ petition. It is for the respondent to consider the said request if the petitioner is otherwise eligible. Therefore, the said contention is liable to be rejected. The next contention of the petitioner that there was no charge memorandum issued, no enquiry was held and opportunity whatsoever was given to the petitioner to defend the charges. Thus, there is gross violation of principles of natural justice and that the impugned termination order is liable to be set aside. The learned counsel also relied on the order of this Court passed in W.P.No.5245 of 2011 dated 27.06.201. The relevant portions reads as follows:

"4. The next contention of the learned counsel for the first respondent, is that the writ petition will not lie against the third respondent, which is a Society. I am unable to accept even to this ground, since as stated already, the impugned order came to be passed without affording an opportunity to the petitioner, thereby by violating the principles of natural justice. The same view was taken by the Principal Bench of this Court in W.P.No.11079 of 2009 (V.C.Baskar v. The Project Director) and it would be useful to extract the operative portion of the order, which reads as follows:-

20.... the very fact that the above proceedings, like transfer, show cause notice, enquiry and a termination order, were issued by the respondent would



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go to show that the petitioner was an employee of the respondent society only. If the petitioner was not an employee of the respondent, there would not have been any occasion for the respondent to terminate the petitioner from service.

21.The main contention of the petitioner is that before issuing the termination order, no charge memorandum was issued and no opportunity was given to him. I find every force in the said argument. Admittedly, there was no charge memorandum issued, no enquiry was held and opportunity whatsoever was given to the petitioner to defend the charges. Thus, there is gross violation of principles of natural justice. It has been well settled by the Hon'ble Supreme Court (vide 1991 Supp (1) SCC : 600) that the principles of natural justice forms part of the fundamental right guaranteed under the Constitution of India more particularly under Article 14 of the constitution of the India. When there is violation, certainly, it is for this Court to interference and to extend its arm to the aggrieved under Article 226 of the Constitution of India.

22. In view of all the above, the writ petition is allowed and the impugned order is set aside. However, liberty is given to the respondent to initiate appropriate disciplinary proceedings and then pass final order after affording sufficient opportunity to the petitioner."

8.In view of the above, the impugned order passed by the 2nd respondent dated 11.01.2012 is hereby quashed and the matter is remitted back to the 2nd respondent viz. the Project Director & Member Secretary, T.N.State Aids Control Society. The 2nd respondent shall conduct enquiry afresh and then pass a final order after affording sufficient opportunity to the petitioner in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kas/dk



To

1. Health Secretary
State of Tamil Nadu,
Secretariat,
Chennai - 600 009.
2. The Project Director & Member Secretary,
T.N.State Aids Control Society,
417, Pantheon Road,
Egmore, Chennai - 600 008.
3. The Deputy Director of Health Services,
Kallakuruchi.
4. The District Collector,
Villupuram District,
Villupuram.
5. The Medical Officer,
Govt. Primary Health Centre,
Mugaiyur, Tirukoyulur Taluk,
Villupuram District.

+lcc to Dr.S.R.Sundaram, Advocate, S.R.No.66790

W.P.No.5197 of 2012

RGN(CO)
RGA(17/12/2021)