

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2021

PRONOUNCED ON : 06.05.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.27439 OF 2017

AND

WMP.NOS.29328 & 36136 OF 2017

Dr.S.Ravindran

... Petitioner

Vs.

1. State rep. by
The Secretary to Government,
Government of Tamil Nadu,
Department of Higher Education,
Secretariat, Chennai-600 009.

2. The University of Madras,
University Centenary Building,
Chepauk, Chennai,
Tamil Nadu-600 005.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the relevant records relating to the termination of the petitioner's appointment as a Medical Officer vide second respondent's official Communication No.F.1(B)/ESTT/2017/R-51 dated 22.08.2017 and to quash the same and reinstate the petitioner with back wages.

For Petitioner : Mr.Thomas T.Jacob

For Respondent : Mr.S.Thangavel, SGP
No.1

For Respondent : Mr.Manisundar Gopal
No.2 Standing counsel

O R D E R

The present Writ Petition is heard through Video Conferencing on 30.04.2021.

2. Heard Mr.Thomas T.Jacob, learned counsel appearing for the petitioner and Mr.S.Thangavel, learned Special Government Advocate appearing on behalf of the first respondent State, as well as Mr.Manisundar Gopal, learned Standing counsel for the second respondent University.

3. The brief facts of the case are as follows:-

3.1. The University of Madras, established in the year 1857, is one of the oldest and reputed University in India. The organizational structure of the University, insofar as the appointments of its staffs and faculties are concerned, is by the Syndicate of the University.

3.2. Pursuant to the decision of the Syndicate, the University had called for applications for the post of a Medical Officer in the University, through an advertisement in the Newspaper. Subsequently, the petitioner herein, who is a registered Medical Practitioner, was appointed to the post of a Medical Officer at the Medical Care Centre at the University of Madras, on 26.12.2006, on a consolidated pay of Rs.12,000/- per month for a period of one year, on contract basis. His contractual services was thereafter periodically extended and the petitioner's services, as a Medical Officer at the Medical Care Centre, were confirmed through an order dated 25.11.2015 and the petitioner was brought in the pay band of Rs.15600-39100 with GP of Rs.6600/-. On 25.07.2016, an Agreement of Service Contract between the petitioner and Syndicate of the University was entered into.

3.3. On 22.08.2017, the petitioner's services were abruptly terminated through the impugned order of the second respondent herein, on the sole ground that the post of Medical Officer, as well as six other paramedical posts were not sanctioned posts by the Government of Tamil Nadu and in view of the Audit objections, the termination was effected. There was no prior notice or opportunity given to the petitioner to put-forth his objections to the termination. Aggrieved against the order of termination, the present Writ Petition has been filed.

4. The one and only ground on which the petitioner's services as a Medical Officer was terminated is that, his post was not sanctioned by the Government of Tamil Nadu, which was brought to the notice of the University through the Audit objections.

5. Mr.Manisundar Gopal, learned Standing counsel for the University would submit that, though the Syndicate had appointed the petitioner to a non sanctioned post, they are unable to continue his services, ever since the factum of non sanction of post was brought to their notice in the Audit objections.

6. This Court, while admitting the Writ Petition, had granted an order of interim stay of the termination letter, pending disposal of the Writ Petition on 26.10.2017. However, the petitioner's services were not retained.

7. In normal circumstances, continuation of services of any Government employee, in a non sanctioned post, would not be permissible in law. Likewise, the High Court exercising its powers under Article 226 of the Constitution of India, will not also be justified in directing the State for creation and sanction of a post, which is the prerogative of the executive powers. This proposition of law has been well settled by the Hon'ble Supreme Court in various decisions.

8. But the peculiar circumstances of this case in hand warranted this Court to explore the possibility of having a Medical Care Centre, within the University Campus. The reason being, the University had terminated the entire Medical Care Centre team consisting of the petitioner, who is a Medical Officer, along with Nursing Staff, Lab Technician [Grade-II], Attender [Grade-II], Physiotherapist [Grade-I], Pharmacist [Grade-II] and a Psychological counsellor, all on the ground that these seven posts were non sanctioned posts. After the order of termination, the unprecedented Pandemic of COVID 19 Virus stuck the entire Country, while this Writ Petition was pending. However, the University seems to be helpless to either retrieve the services of the petitioner and rest of the Medical Care Centre team for the benefit of the University faculties, staff and students, without the sanction for the posts from the Government of Tamil Nadu. Hence, this Court had called upon the learned Special Government Pleader to obtain instructions from the Government with regard to the feasibility of sanctioning of the posts, in order to restore the Medical Care Centre team in the University Campus, at this time of unprecedented epidemic. It is a common knowledge that the University had resumed its normal work in the University Campus and the faculties, staffs and students have resumed their physical attendance to the University and it is in this background, such instructions were given to the learned Special Government Pleader.

9. In this background, when the Writ Petition was listed on 30.04.2021, the learned Special Government Pleader made a fair submission that though the petitioner's post along with other entire Medical Care Centre team were not sanctioned posts, the

Government of Tamil Nadu had instructed him to submit that in case, any directions are issued to them for sanctioning the Medical Care Centre team including the post of Medical Officer to the petitioner, the same would be considered favourably. The learned Standing counsel for the University also did not object to the same, apparently since such a Medical Care Centre would be beneficial to the University of Madras as a whole and their only handicap was that they are unable to retain the services of the petitioner and the Medical Care Centre team, since they are non sanctioned posts.

10. As on date, the impact of the COVID-19 Virus and the Pandemic is spreading at an alarming rate and also in view of the submissions made on behalf of the Government of Tamil Nadu that, they are willing to sanction the posts of the Medical Officer, as well as the entire Medical Care Centre team that existed earlier, this Court is of the view that an exception could be made to the general principle of law and consequently, the Government could be directed to sanction the post of a Medical Officer and such other posts that may be required for having effective Medical Care Centre in the University Campus.

11. This apart, the termination order, cannot be legally sustained on two other grounds also. Firstly, the petitioner herein, who had put in services as a Medical Officer for almost 11 years, was served with the termination letter without any prior show cause notice, calling for his objections or giving him a due opportunity. Secondly, as per the Agreement of Service Contract dated 25.07.2016, the Syndicate of the University was required to terminate the staffs of the Medical Care Centre with one month prior notice or one month salary in lieu of the notice period, as referred to in Clause 19 therein. The said conditions also prescribes that the Syndicate shall inform the staffs of the Medical Care Centre of their intention to terminate their services and give reasonable opportunities for making any representation in writing. These conditions were also violated. As such, the impugned order of termination itself, is deemed to be in violation of the principles of Natural Justice and hence cannot be sustained.

12. Furthermore, when the petitioner herein had challenged the termination order before this Court, the termination order itself came to be stayed by this Court. However, the University had not permitted the petitioner to join the services as a Medical Officer. In this given scenario, the petitioner would be eligible for the service benefits from the date of termination.

13. This Court also realizes that some time could be consumed for considering the University's requisition for

sanction of post of Medical Officer and the supporting paramedical posts and staff and by taking into account of the ongoing pandemic, along with the welfare of the faculty, staff and students of the University, it would be appropriate to permit the University to forthwith continue the services of the petitioner herein as a Medical Officer as well as the supporting paramedical team/staff of the Medical Care Centre, without awaiting for the order of sanction from the Government of Tamilnadu.

14. For all the foregoing reasons, the impugned order of the second respondent dated 22.08.2017 is hereby quashed. Consequently, the following directions are issued:-

a)The second respondent University shall forthwith reinstate the petitioner back into the service as Medical Officer with all service and monetary benefits.

b)It would also be open to the second respondent University to retain the services of the other staffs of the Medical Care Centre, whose services were also terminated through the impugned order dated 22.08.2017.

c)The second respondent University shall forthwith submit a requisition to the first respondent herein, seeking for sanctioning of the post of Medical Officer in which the petitioner herein namely, Dr.S.Ravindran has already been appointed along with the required para medical team/staff for the Medical Care Centre and on receipt of such requisition, the first respondent shall favourably consider sanctioning of the posts, as a Special Case, in view of the COVID 19 Pandemic prevailing in the State of Tamil Nadu, as expeditiously as possible, in any event, within a period of three months from the date of the application from the University.

d)It is hereby clarified that the second respondent University will be at liberty to continue with the services of the petitioner herein as a Medical Officer along with the required para-medical team, with immediate effect, without awaiting for the order of sanction for the post(s) from the Government of Tamil Nadu.

15. The Writ Petition stands allowed accordingly.
Consequently, connected Miscellaneous Petitions are closed.
There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

DP

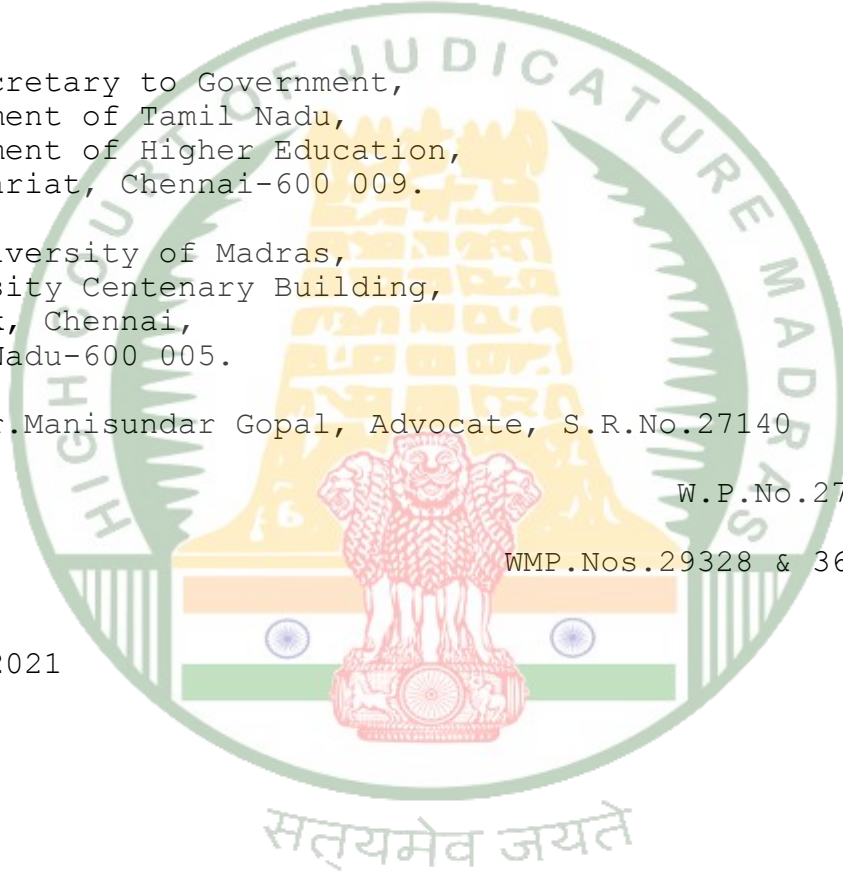
To

1. The Secretary to Government,
Government of Tamil Nadu,
Department of Higher Education,
Secretariat, Chennai-600 009.
2. The University of Madras,
University Centenary Building,
Chepauk, Chennai,
Tamil Nadu-600 005.

+1cc to Mr.Manisundar Gopal, Advocate, S.R.No.27140

W.P.No.27439 of 2017
and
WMP.Nos.29328 & 36136 of 2017

RR(CO)
CS/17/05/2021



WEB COPY