



WEB COPY

W.A.(MD) No.876 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2021

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM

and

THE HON'BLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.876 of 2021
and C.M.P. (MD) No.3927 of 2021

1.The Director of Medical and Rural Health
Services,
DMS Compound,
Teynampet, Chennai - 6.

2.The Deputy Director of Health Services,
Old Police Station Road,
Samadhanapuram,
Palayamkottai,
Tirunelveli.

3.The Medical Officer,
Government Primary Health Centre,
Ukkirankottai,
Tirunelveli District.

...Appellants/Respondents

-Vs-

T.Blessie

...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letter Patent against
the order dated 24.01.2020 made in W.P. (MD) No.8753 of 2011.

Prayer in WP(MD). 8753/ 2011 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a WRIT OF
CERTIORARIIFIED MANDAMUS, to call for the records on the files of
the 1st Respondent pertaining to its order in
Ref.No.38741/N1/2/2011 dated 23-07-2011 and quash the same and
consequently direct the Respondents to reinstate the Petitioner
with continuity of service with all other attendant benefits.

For Appellants : Mr.R.Baskaran,
Standing Counsel for Govt.

For Respondent : Mr.Kannan



JUDGMENT

[Judgment of the Court was made by **T. S. SIVAGNANAM, J.,**]

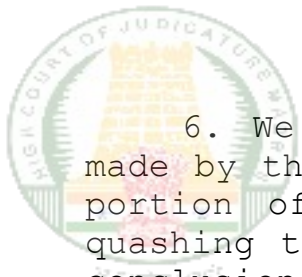
WEB COPY This Writ Appeal by the Director of Medical and Rural Health Services and two others is directed against the order dated 24.01.2020 made in W.P.(MD)No.8753 of 2011.

2. The said Writ Petition was filed by the respondent herein praying for issuance of Writ of Certiorarified Manadamus to quash the order passed by the first appellant, dated 23.07.2011 and to direct the appellants to reinstate the respondent with continuity of service with all other attendant benefits.

3. We have heard Mr.R.Baskaran, learned Standing Counsel for the Government appearing for the Appellants, Mr.Kannan, learned counsel appearing for the respondent.

4. The undisputed facts are that the respondent was appointed as Staff Nurse on contract basis for a period of two years to work in a Primary Health Centre. The order of appointment was issued by the first appellant dated 16.11.2007, which stipulates the terms and conditions of appointment. The respondent was paid fixed remuneration of Rs.3,500/- (Rupees Three Thousand Five Hundred only) per month for the first year, Rs.4,000/- per month (Rupees Four Thousand only) for the second year and Rs.5,000/- (Rupees Five Thousand only) for the third year, till they are regularly absorbed into regular vacancies, whichever is later, as per the seniority assigned in the order. Further, the appointment order clearly states that the respondent will not be eligible for any kind of leave as applicable to the regular Government Servants, except for the casual leave of one day a month and day off.

5. Respondent was terminated from service by order, dated 23.07.2011, which states that the appointment of the respondent stands terminated with immediate effect. The reason stated in the order is that one Tmt.K.Kannuthai was admitted for delivering a child in the Government Primary Health Centre, Ukkirankottai, Tirunelveli District on 25.04.2009 and she died due to the dereliction of duty on the part of the respondent. Accordingly, the contract has been terminated. This was put to challenge in the Writ Petition. The appellants, who were respondents, restrained the prayer. The learned Writ Court has allowed the Writ Petition, quashed the order of termination and directed reinstatement along with continuity of service. Aggrieved by the same, the appellants are before us by way of this appeal.



6. We do not subscribe to certain findings and observations made by the learned Writ Court, but we are in agreement with that portion of the relief, which was granted to the respondent by quashing the order of termination alone. We seek to support such conclusion with the following reasons. As pointed out earlier, the respondent was appointed on contract basis for a period of two years, but there was a possibility of her being regularised, because the order of appointment itself states that they may be absorbed in regular vacancies. However, on the date when the order of termination, dated 23.07.2011 was passed, the respondent was only a contract employee. Under normal circumstances, no notice is required for terminating the contract employment as the contract itself will provide for the same. However, in the instant case, very serious charge has been imputed on the respondent stating that on account of her dereliction in duty, resulted in the death of a patient. Thus, if the respondent service ought to be dispensed/terminated on this ground, it goes without saying that unless a charge was issued and a full-fledged enquiry was conducted, such an order of termination could not have been passed. This, as have not been followed by the appellants, the order of termination cannot be sustained. Having come to such a conclusion, under normal circumstances, the Court will remand the matter back to the authority for framing of charges and conducting enquiry and then for passing final orders. However, we are of the view that such procedure need not be adopted in this case on account of long lapse of time.

7. We also note the submission of the learned Government that the Doctors and others, who are in charge of the Primary Health Centre, have not been left scot-free, but proceedings were initiated, charge memos were issued, enquiry was conducted and punishment has been imposed. It appears that in respect of one of the delinquents, the proceedings have been dropped. In any event, it is not as if the appellants Department has victimized the respondent alone.

8. Apart from that, this Court also took note of the fact that the respondent was a Staff Nurse, whereas, the Doctors, who attended on the patient, who were also issued with charge memo have been imposed with stoppage of increment with cumulative effect. Therefore, this Court is of the view that the matter need not be remanded back to the appellants for fresh consideration and the order of termination should be quashed.

9. The next issue is as to what is the consequent relief, the respondent is entitled to. The learned Writ Court has directed reinstatement with continuity of service. This could not have been done because the respondent was only a contract staff. The



along with respondent, 1200 Staff Nurses were appointed on contract basis and in September 2011, two months after the respondent was terminated, all other Staff Nurses have been regularised. All that we can do is to note the submission and only sympathise with the respondent, but cannot give any relief of regularisation. Equally so, there cannot be any reinstatement with continuity of service and all that can be done is to put her back in the same position as on date when her contract was terminated viz., 23.07.2011. Furthermore, we note that there are certain other observations made by the learned Judge to the effect that respondent has been made a scapegoat. We are of the view that such observations need not be made and also those observations stands deleted.

10. In the result, this Writ Appeal is partly allowed and that portion of the order passed by the learned Writ Court quashing the order of termination of contract is confirmed and the direction issued for reinstatement with continuity of service and other attendant benefits is set aside and there will be a direction to the appellant to reinstate the respondent as a Staff Nurse on contract basis and accommodate her in any one of the Primary Health Centre under the control of the second appellant. This direction be complied with within a period of six weeks from the date of receipt of a copy of this order. We leave it open to the respondent to work out the other rights in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

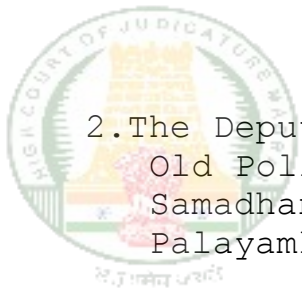
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Director of Medical and Rural Health
Services, DMS Compound,
Teynampet, Chennai - 6.



2.The Deputy Director of Health Services,
Old Police Station Road,
Samadhanapuram,
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3.The Medical Officer,
Government Primary Health Centre,
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Tirunelveli District.

+1 CC to M/s.S.RAMASUNDAR VIJAY RAJ, Advocate (SR-22005[F] dated
09/07/2021)

W.A. (MD) No. 876 of 2021
and C.M.P. (MD) No. 3927 of 2021
08.07.2021

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