



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.10017 of 2022
and
W.M.P.No.9717 of 2022

Dr.S.Navasakthi

... Petitioner

-vs-

1. Union of India represented by the
Director General of Health Services,
New Delhi.
2. The Director, Jawaharlal Institute
of Post Graduate Medical
Education & Research,
Puducherry.
3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Madras - 600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records of the third respondent in respect of order passed in the file in M.A.No.183 of 2020 in O.A.No.508 of 2018 dated 21.2.2022 and to quash the same and consequently to direct the second respondent to extend the benefit of the order in M.A.No.183 of 2020 in O.A.No.508/18 dated 16.03.2020 passed by the Hon'ble Central Administrative Tribunal.

For Petitioner : Mr.V.Ajay Kumar

For Respondent : Mr.M.T.Arunan



O R D E R

S.VAIDYANATHAN, J.,
and
N.MALA, J.,

This Writ Petition has been filed, challenging the order passed by the 3rd Respondent in respect of the order passed in M.A.No.183 of 2020 in O.A.No.508 of 2018 dated 21.2.2022 and to quash the same and consequently to direct the second respondent to extend the benefit of the order in M.A.No.183 of 2020 in O.A.No.508/18 dated 16.03.2020 passed by the Central Administrative Tribunal.

2. According to the Petitioner, he has been working as Yoga instructor for more than 15 years on contract basis. The Petitioner has submitted various representations to the Second Respondent for absorbing him on regular basis in the newly sanctioned post. As there was no response on his representations and the 2nd Respondent had taken steps to induct new persons in his post, the Writ Petitioner moved Central Administrative Tribunal in O.A.No.508 of 2018, seeking regularization of his services from the date on which he was appointed against the regular vacancy. He also filed a Miscellaneous Application along with it not to terminate the service of the Petitioner. The Tribunal, by an order dated 16.03.2020 in O.A.No.508 of 2018, passed the following order:

"Counsel for the MA applicant submits that the respondents are going to take another contract employees for the post of Yoga Instructor as per notification dated 05.05.2018.

It is already a settled position that a contractual employee cannot be replaced by an other contractual employee.

Since the applicant has a prima facie case, the respondents are directed to maintain status quo till the filing of reply in M.A.

Post the matter to 03.04.2020 for filing of objection in M.A."

3. During lock down, a reply was filed in the Miscellaneous Application and thereafter, the Petitioner was not permitted to enter the institution from 03.02.2022 and when the matter was



WEB COPY

taken up before the Tribunal on 21.02.2022, the Tribunal passed the following order:

"Both sides Present. Counsel for respondent submits that he has filed reply. Pleadings are complete. Hence post the matter for final hearing on 12.04.2022. Counsel for applicant is permitted to file MA for interim order if necessary."

4. Being aggrieved over the same, the Present Writ Petition has been filed.

5. The learned counsel appearing for the Petitioner submitted that the Petitioner has been working as Yoga Instructor for the past 15 years, without break and he was prevented from performing his duties, despite the interim order of status quo granted by the Tribunal, which is arbitrary and illegal. He further submitted that the Tribunal ought to have extended the interim order, which was granted on 16.03.2020 instead of directing him to file a fresh Miscellaneous Application for getting yet another interim order is illegal.

6. Mr.M.T.Arunan, learned counsel appearing for the Respondents submitted that though the services of the Writ Petitioner could have been discontinued much earlier, due to lock down, he has been permitted to continue and after lifting of the lock down, the services of the Petitioner was disengaged from March 2022. He further submitted that it is not as if that another contract employee has been replaced in the place of the present Writ Petitioner, as other persons have been selected and appointed against regular vacancies and that the Petitioner has no right to claim any relief, that too after disengagement of his services. He also submitted that questioning the interim order, which has already attained finality, cannot be entertained by this Court.

7. In reply, the learned counsel appearing for the Petitioner submitted that there is no order of termination and the act of the 2nd Respondent in denying employment after extracting work from him all these years, is illegal. The grant of interim order of status quo till filing of M.A. is not correct order and the Tribunal has given up its powers and thereby , allowed the employer to disengage any person after filing of the reply, which means that the Tribunal becomes powerless.

8. Heard both sides. Perused the records.

9. It is seen that the Writ Petitioner was appointed as Yoga Instructor on contract basis and he, after rendering services



for more than a decade, sought for regularization of his services against the sanctioned post. The interim order of the Tribunal, inasmuch it transmits its power indirectly to the employer is really shocking, due to which the Writ Petitioner has been deprived employment unfortunately. The sentence in the interim order 'till the filing of reply in M.A.' in our opinion is not at all warranted, as it converts the administration of Tribunal as powerless.

10. As of now, the Petitioner has been divested of his duties and therefore, this Court is of the view that once the employee has been terminated, the remedy is to challenge the termination order. In case the plea of the applicant for demand of regularisation is justified, automatically the employee would become permanent employee and the consequential disengagement of the Writ Petitioner from the service will become non-est in the eye of law.

11. In fine, this Writ Petition is disposed of, with a direction to the Central Administrative Tribunal to decide the matter in O.A.No.508 of 2018 on merits, after hearing both parties on merits and pass orders on or before 30.06.2022. We are of the view that there is no necessity to file a separate M.A. for interim order (as directed by the Tribunal), as the parties can adjudicate and resolve the issue in the main O.A. itself without filing M.A. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arr

To:

1. Union of India represented by the
Director General of Health Services,
New Delhi.
2. The Director, Jawaharlal Institute
of Post Graduate Medical
Education & Research,
Puducherry.



3. The Registrar,
Central Administrative Tribunal,
Madras Bench, Madras - 600 104.

WEB COPY

+1cc to Mr.V.Ajaya Kumar, Advocate, S.R.No.30197

+1cc to Mr.M.T.Arunan, Advocate, S.R.No.30267

W.P.No. 10017 of 2022

CA(CO)
SU(19/05/2022)