



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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Orders Reserved On 18.04.2022	Orders Pronounced On 21.04.2022
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W.P.(MD) No.1470 of 2021

and

W.M.P.(MD) No.1262 of 2021

Dr.R.Gayathri

.. Petitioner

-vs-

1. The Secretary to Government of Tamilnadu,
Department of Health and Family Welfare,
Secretariat, Fort St. George, Chennai.

2. The Director,
Directorate of Public Health and Preventive Medicines,
Chennai - 06.

3. The Medical Services Recruitment Board,
Rep., by its Member Secretary,
Medical Services Recruitment Board,
DMS Building, 359, Anna Salai,
Chennai - 06.

4. The Deputy Director of Health, Service,
Kovilpatti, Thoothukudi District.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 2nd respondent bearing R.No.93929/E5/A3/2019-4, dated 28.08.2020 and quash the same and consequently direct the respondents to pass necessary order granting maternity leave to the petitioner for period of 270 days and treat the period from 29.06.2020 to 13.12.2020 as maternity leave for remaining period along with continuity of service.

For Petitioner	:	Mr.S.Siva Ilayaraja
For RR1, 2 & 4	:	Mr.A.K.Manikkam
		Special Government Pleader
For R3	:	No appearance



O R D E R

The order dated 28.08.2020 terminating the services of the writ petitioner from the post of Assistant Surgeon is sought to be quashed. Further directions to the respondents are sought for to grant maternity leave to the writ petitioner for a period of 270 days to treat the period from 29.06.2020 to 13.12.2020 as maternity leave period and pay the maternity leave salary and grant maternity leave for remaining period along with continuity of service.

2. The case of the petitioner is that she is possessing post graduate degree in Anaesthesiology. The petitioner has participated in the process of selection for direct recruitment to the post of Assistant Surgeon (General), pursuant to the notification dated 25.09.2018. When the process of selection was in progress, COVID-19 pandemic intervened and at that point of time, an order of appointment and posting was issued to writ petitioner in proceeding dated 30.03.2020. The petitioner joined in the post of Assistant Surgeon. Meanwhile, she has to avail the maternity leave. The 2nd respondent without considering the maternity leave as per the Government Policy, terminated the services of the writ petitioner. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the writ petitioner reiterated that even the temporary employees are eligible for maternity leave and therefore, the order of termination is illegal and it is to be set aside and consequently, the period of maternity leave is to be regulated as duty and salary is to be paid.

4. The learned counsel for the petitioner drew the attention of this Court with reference to the order passed in W.P.No.380 of 2016, dated 01.06.2016 and the Government Policy for grant of maternity leave to the employees. Relying on the above, the learned counsel for the petitioner reiterated that the order of termination itself is untenable and the petitioner is eligible for maternity leave. However, the petitioner was subsequently provisionally selected by the Medical Services Recruitment Board and appointed as Assistant Surgeon (General) in proceeding dated 11.12.2020 and at present, is working as Assistant Surgeon.

5. The learned Special Government Pleader appearing on behalf of respondents 1, 2 and 4 objected the said contention by stating that the petitioner was initially appointed in view of urgency due to COVID-19 pandemic and the Government took a decision to make emergency appointments to the post of Assistant Surgeon by invoking the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as "the Act" for brevity). Such temporary appointees cannot claim any right. The temporary appointments were made in order to mitigate the COVID-19



pandemic with terms and conditions. Therefore, the initial appointment of the writ petitioner in proceeding dated 30.03.2020 cannot be construed as regular appointment and it was an emergency appointment made under Section 17(1) of the Act and such emergency appointment was terminated by invoking Section 17(5) of the Act. Thus, the question of granting the benefit of maternity leave during the emergency period would not arise at all. The appointment itself was made to meet out the COVID-19 situation and if emergency appointments are made and such appointees are provided with maternity leave for 270 days, the very purpose and object of such emergency appointment to provide treatment for COVID-19 infected cases would be defeated. The terms and conditions of the appointment of the petitioner have been stipulated in the order of appointment dated 30.03.2020 and therefore, the writ petition is to be rejected.

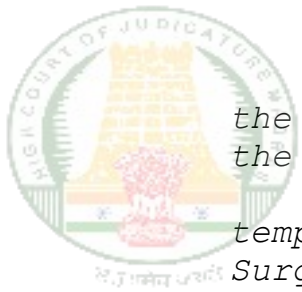
6. This Court is of the considered opinion that no doubt, the petitioner participated in the process of selection pursuant to the notification issued in the year 2018. When the selection process was under progress, COVID-19 pandemic intervened and the Government took a policy to make emergency appointment of Doctors to deal with the pandemic situation. Therefore, they have issued an order of appointment and posting by invoking the emergency provision under Section 17(1) of the Act. The order of appointment dated 30.03.2020 unambiguously stipulates that the Government of India has declared the communicable disease of COVID-19 as National Disaster. Thus, in view of urgency, the Government of Tamil Nadu decided to appoint Assistant Surgeons temporarily in vacant places from the reserve list maintained by the Medical Services Recruitment Board under Section 4(u) of the Act. Accordingly, the petitioner was appointed temporarily as Assistant Surgeon (General).

7. The terms and conditions stipulated in the appointment order read as under:-

"i. If the individual fails to join duty within the stipulated time, it will be presumed that the candidate is not interested to join duty, and the appointment will be cancelled without any further notice. No representation regarding change of place of posting, etc., will be entertained. No further extension of joining time will be given.

ii. The individual is directed to appear before the reporting officer concerned for verification of the original certificates and then to join duty in the Institution to which he / she is posted and send a report intimating the date of joining duty to the Director of Public Health and Preventive Medicine, Chennai-6 immediately.

iii. The service rolls of the Assistant Surgeon will be kept separately, though he / she had qualified



the examination conducted and the list is in order of the rank secured based on merit and communal roaster.

iv. The appointment of the individual is purely temporary only. His / her service of the Assistant Surgeons cannot be regularized at any cost in future. No representation to regularize the services based on this appointment cannot be entertained.

v. He / She is informed that the current appointment does not confer any right for selection / regular appointment / seniority.

vi. Pending verification of the document to be done by Medical Services Recruitment Board as per the details furnished in their online application.

vii. His / Her certificates will be verified and cleared once the crisis situation passed over.

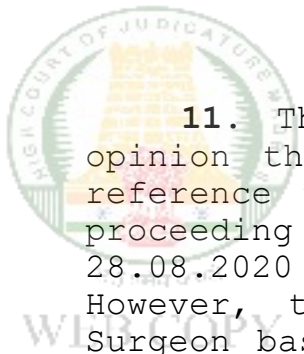
viii. If He / She does not fulfill of any conditions enlisted in the Notification during the certificate verification in due course, the candidature will be cancelled at that point of time.

ix. The candidates must compulsorily reside in the Headquarters of the Institution in which he / she is posted."

8. Though the petitioner has joined on 11.04.2020, she has subsequently went on maternity leave from 29.06.2020. Therefore, the authorities competent issued the impugned order of termination on 28.08.2020 clearly stating that the petitioner was appointed as Assistant Surgeon temporarily under Section 17(1) of the Act and her services are terminated under Section 17(5) of the Act.

9. When the Government of India has declared the communicable disease of COVID-19 as National Disaster, and the Government of Tamil Nadu appointed Assistant Surgeons temporarily in the vacant places to control the COVID-19 pandemic, the question of availing maternity leave by the petitioner would not arise at all, as the situation was declared by the Government of India as National Disaster.

10. The order of appointment dated 30.03.2020 in unambiguous terms clarifies that the Government of India has declared the communicable disease of COVID-19 as National Disaster and to control COVID-19 pandemic, emergency appointments were made on temporary basis. The terms and conditions are also stipulated in clear terms. The order of termination, which is impugned also contemplates that the Government has invoked Section 17(5) of the Act and accordingly, terminated the services of the writ petitioner. Thereafter, pursuant to the provisional selection, the petitioner was appointed as Assistant Surgeon, vide order dated 11.12.2020 and the petitioner is now working as Assistant Surgeon.



11. This being the factum, this Court is of the considered opinion that the petitioner is not entitled for any relief with reference to the terms and conditions of the appointment made in proceeding dated 30.03.2020 and the termination order dated 28.08.2020 is in consonance with the provisions of the Act. However, the petitioner was subsequently appointed as Assistant Surgeon based on her provisional selection by the Medical Services Recruitment Board and an order of appointment was issued on 11.12.2020 and is working as of now. Thus, the petitioner is not entitled for any relief and accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
The State of Tamilnadu,
Department of Health and Family Welfare,
Secretariat, Fort St. George, Chennai.

2. The Director,
Directorate of Public Health and Preventive Medicines,
Chennai - 06.

3. The Member Secretary,
Medical Services Recruitment Board,
DMS Building, 359, Anna Salai,
Chennai - 06.

4. The Deputy Director of Health, Service,
Kovilpatti, Thoothukudi District.

+1 CC to M/s.S. SIVA ILAYARAJA, Advocate (SR-20248[F] dated 21/04/2022)

+1 CC to M/s.SPL.GP. (SR-20543[F] dated 22/04/2022)

W.P.(MD) No.1470 of 2021
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