



W.P.(MD)No.10310 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.10310 of 2020
W.M.P(MD).Nos.9181 to 9183 of 2020**

K.Sivanathan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep.by its Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai-600 009.
- 2.The Director of Public Health and
Preventive Medicine,
Chennai-600 006.
- 3.The District Collector/Chairperson
The District Health Society,
Nagercoil, Kanyakumari District.
- 4.The Deputy Director of Health Service,
Nagercoil, Kanyakumari District.
- 5.The Block Medical Officer,
Primary Health Centre,



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Kuttakuzhi, Nagercoil,
Kanyakumari District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandmaus, calling for the records relating to the impugned order passed by the second respondent vide proceedings Na.Ka.No.39974/va.pa./Aa3/2015 dated 25.06.2020, quash the same and direct the respondents to reinstate the petitioner in service as Driver in the office of the fifth respondent with all other consequential benefits.

For Petitioner	:	Mr.Ragatheesh Kumar for Mr.T.Cibi Chakkraborthy
For Respondents	:	Mr.S.P.Maharajan Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order passed by the second respondent vide proceedings Na.Ka.No.39974/va.pa./Aa3/2015 dated 25.06.2020, quash the same and direct the respondents to reinstate the petitioner in service as Driver in the office of the fifth respondent with all other consequential benefits.



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2. The case of the petitioner is that the petitioner has not completed SSLC and he registered himself in the District Employment Office, Kanyakumari on 13.06.2005. He is also the holder of Indian Driving Licence for Heavy Transport Vehicle. Pursuant to the directions of the first respondent, the third respondent has sought for list of eligible candidates from the District Employment Officer to the post of Driver and the District Employment Officer has referred the name of the petitioner to the District Collector. The District Collector has appointed the petitioner as Driver to Mobile Medical Unit on consolidated pay. After completion of 10 years of service, the petitioner and similarly placed persons made a request to regularize their services to the first respondent. However, there was no response. Hence, they filed a writ petition in W.P(MD).No.4162 of 2019 seeking for a direction to regularize their services. This Court, vide order dated 22.03.2019, directed the respondents to consider the request and pass appropriate orders. Thereafter, the first respondent issued G.O.Ms.No.69, Health and Family Welfare (AB1) Department dated 25.02.2020 directing to absorb 58 drivers including the petitioner permanently in the time scale of pay. Thereafter, the second respondent on 25.06.2020 absorbed the



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petitioner in the time scale of pay.

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3. In the meantime, based on the wrong information given by some of the enemies in his village, the Prohibition Enforcement Wing registered a case in Crime No.851 of 2019 on 14.12.2019 implicating the petitioner as accused and arrested the petitioner and remanded him to judicial custody from 14.12.2019 to 07.01.2020. Thereafter, the petitioner was released on bail on 07.01.2020. Since the petitioner was physically and psychologically affected with the above incident, he could not join duty immediately and when he went to join duty on 19.03.2020, the fifth respondent instructed the petitioner to submit a detailed representation explaining the reason for not attending the duty from 14.02.2020. Accordingly, he submitted a detailed representation on 19.03.2020. However, there was no response and when he approached the fifth respondent in this regard, he was informed that his representation was communicated to the fourth respondent. While so, the second respondent has passed the impugned order on 25.06.2020 cancelling his regular appointment to the post of Driver in the time scale of pay as per G.O.Ms.No.69 dated 25.02.2020. Challenging the same, the present writ



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petition has been filed.

4. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Driver on consolidated pay and till the criminal case registered against him, the petitioner has continued in the employment. The petitioner was absorbed in terms of G.O.Ms.No.69, Health and Family Welfare (AB1) Department dated 25.02.2020 issued by the first respondent. However, without initiating disciplinary proceedings, cancelling the regular appointment of the petitioner by the second respondent is not sustainable one. Hence, he prays for allowing the present writ petition.

5. The learned Special Government Pleader appearing for the respondents would submit that the petitioner has suppressed the fact about the criminal case registered against him and he could not be eligible for the regular appointment. He has not turned up for duty for the above reason. Hence, the second respondent has passed the impugned order cancelling the regular employment of the petitioner.



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6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

7. Admittedly, the petitioner was appointed as Driver on contractual basis on 04.08.2009. The period of contract shall be for a period of one year from the date of joining and the period may be extended as per the order of the Government. Admittedly, the petitioner has received the appointment order. However, no subsequent extension order was placed before this Court. Even assuming that the petitioner was continuously in the employment upto 2019, the undisputed fact is that the petitioner was involved in a criminal case for preparation of illicit arrack for which he was arrested and remanded to judicial custody. He was in judicial custody for 25 days and thereafter, he was released on bail. The petitioner has not disputed the above fact. While he was in judicial custody, there is no provision available to the respondents for taking disciplinary action against him, since the petitioner is not a regular employee and his appointment is only contractual basis. Hence, the grievance expressed by the petitioner is not sustainable one. Further, the benefit of G.O.Ms.No.69, Health and Family



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Welfare (AB1) Department dated 25.02.2020 is not available to the petitioner, since at the time of issuance of the said Government order, he was not in employment. Hence, the cancellation order passed by the second respondent is perfectly in order and cannot be interfered by this Court. However, liberty is granted to the petitioner to make a representation after he comes out from acquittal of the criminal case.

8. Accordingly, this Writ Petition is dismissed. No costs.
Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

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To

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2.The Director of Public Health and
Preventive Medicine,



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- 3.The District Collector/Chairperson
The District Health Society,
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- 4.The Deputy Director of Health Service,
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M.DHANDAPANI,J.

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