



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.8029 of 2019

and

W.M.P. (MD) No.6342 of 2019

WEB COPY

M.Saranya

... Petitioner

vs.

- 1.The State of Tamil Nadu
rep.by its Principal Secretary
Differently Abled Welfare Department
(Formerly Social Welfare and Nutritious Meal
Programme Department)
Fort St.George, Chennai-600 009
- 2.The State Commissioner for the Differently Abled
Commissionerate for the Welfare of the Differently Abled
No.5, Kamarajar Salai
Lady Wellington College Campus
Chennai-600 005
- 3.The District Collector
Tirunelveli District
Tirunelveli
- 4.Thiruppathi
Tahsildar
(Diaster Management)
Tirunelveli

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of declaration declaring the termination of petitioner from the post of Data Entry Operator by third respondent without notice and without passing any order as illegal and consequently for a direction directing the third respondent to reinstate petitioner in the post of Data Entry Operator with consequential benefits and fix time scale of wages as per G.O.No.151, dated 16.10.2006, issued by the first respondent, within the time stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
for Mr.T.Lajapathi Roy

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader
for R1 to R3
Mr.G.Thiruvarutselvan for R4



O R D E R

A writ of declaration has been instituted to declare the termination of the petitioner from the post of Data Entry Operator by the third respondent without notice and without passing any order as illegal and to direct the third respondent to reinstate her in the post of Data Entry Operator with consequential benefits and fix time scale of pay as per G.O.No.151, dated 16.10.2006, issued by the first respondent, within a time stipulated by this Court.

2. The petitioner states that she was appointed as Data Entry Operator on 14.03.2015 by the third respondent in the Disaster Management Section on temporary basis. The appointment was on consolidated pay. The petitioner further states that she was subjected to sexual abuse by an official. Therefore, she was forced to prefer a complaint against the said official on 09.10.2018 to the third respondent. By taking vengeance against the petitioner, the fourth respondent cancelled her appointment abruptly without furnishing any reason. The third respondent directed the petitioner to receive salary for the period from 01.09.2018 to 21.09.2018 and the services of the petitioner were dispensed with from 22.09.2018.

3. The learned counsel for the petitioner reiterated that no show cause notice was issued to the petitioner before ousting her from the post of Data Entry Operator and therefore, the order of ousting is in violation of principles of natural justice. In the place of the petitioner, two other temporary Data Entry Operators were posted and therefore, the very action of the third respondent ousting the petitioner from service is untenable.

4. The learned counsel for the petitioner further contended that a temporary employee should not be replaced by another temporary employee and such temporary employment is to be dispensed with only in the event of making a regular appointment, but not otherwise. The petitioner, who is differently abled, was appointed on consolidated pay and served for about 3 years. Therefore, the petitioner is entitled for regular time scale of pay.

5. The District Collector / third respondent has filed a counter affidavit. Relying on the said affidavit, the learned Additional Government Pleader appearing for the respondents 1 to 3 contended that the petitioner has suppressed the real facts and approached this Court. The petitioner was appointed as temporary Typist / Data Entry Operator in the Tamil Nadu Disaster Management Agency renamed as Tamil Nadu Risk Reduction Agency, which was constituted under the Coastal Disaster Risk Reduction Production through a Disaster Management Agency with funds sourcing from the World Bank. The said Agency is a separate entity not belonging to any State / Central Government or Quasi Government. The petitioner,



who worked as temporary Typist on consolidated pay, was terminated from her temporary appointment by duly following the proper formalities and after issuance of a prior notice by the competent authority for dereliction of duty with information to submit her explanation within the time stipulated about the unauthorized absence from duty with effect from 21.09.2018 A.N. As per letter No.E5/18067/2013, dated 22.09.2018. As no explanation was received from the incumbent either through written submission or over email / phone and it was found necessary to appoint another suitable person to handle the essential 24X7 hours duty in order to handle the Disaster Risk Reduction Agency, termination orders were issued by the Competent Authority vide proceedings No.E5/18067/2013, dated 27.09.2018 against the incumbent and another eligible person was engaged to continue the essential disaster risk management duty.

6. It is further contended that the name of the petitioner was not considered for appointment already made in her favour either on the basis of her physical disability or on compassionate grounds. More over, considering the purely temporary nature of the post as such rule or reservation was not adopted as such the copy of the differently abled person's identity card submitted by the petitioner during the time of appointment with her application like supporting document to prove her disability, is not an essential or required documents for her appointment and the same was not considered as an additional supporting document for her appointment.

7. Further, it is contended that the Government has issued conditions for appointing personnel through consolidated pay to the newly created posts of supporting staff in the District Disaster Management Units as per G.O.Ms.No.578, dated 30.12.2014 and the petitioner was appointed subject to the following conditions:

- "i. Break in service has to be given every year before completion of one year service to the persons appointed / to be appointed in the above project on temporary / contract / consolidated pay / out sourcing basis.*
- ii. the claims for permanent absorption form the candidates after appointment in the above project should not be considered.*
- iii. assurance in writing has to be obtained from the candidates during the time of appointment that they should not claim for permanent absorption."*

The above conditions were also mentioned in the temporary appointment order issued to the petitioner. Therefore, the petitioner has not stated the entire facts in the affidavit filed in support of the writ petition.

8. It is further contended that the appointment of the petitioner was further made as temporary Typist / Data Entry



Operator with the following conditions:

- i. The appointment is purely temporary in nature.
- ii. The Temporary Junior Assistant and Data Entry Operator should be paid Rs.10,000/- and office Assistant be paid Rs.7,000/-.
- iii. Without any prior notice reason or intimation, the employee may be terminated from the service.
- Iii. Without any prior reason or intimation, the employee may be terminated from the service.
- iv. The employees are not entitled for any priority to other posts on the basis of this employment.
- v. The employees should give a written undertaking that in future, the employee should not made any claim for permanent retention in the post on the strength of the post held in that temporary position."

As per the above conditions, the petitioner has also given an undertaking in compliance with Condition No.5. Hence, it is very clear that the petitioner is barred from making any claim over the above said post. As per Condition No.5 read with Condition No.3, it is not necessary to issue prior notice, reasons or intimation to the petitioner before terminating her temporary service. However, the petitioner was issued with prior notice before passing the order of termination.

9. Further, it is contended that the petitioner lodged a false complaint against Thiru.D.Thirupathi, who was the then Tahsildar of Disaster Management Unit stating that she was subjected to harassment by him. On the basis of the said complaint the District Collector constituted an Internal Complaints Committee vide proceedings dated 20.10.2018. The said Committee conducted a discreet enquiry from 25.10.2018 to 29.10.2018 and inquired seven witnesses including the said Thiru.D.Thirupathi and the petitioner was also inquired and statements were recorded. The Committee framed points for determination and after enquiry they submitted a report dated 14.11.2018 concluding that that the charges framed against the then Tahsildar are false. Further, the Committee categorically held that the petitioner made false and vexatious allegations against the then Tahsildar.

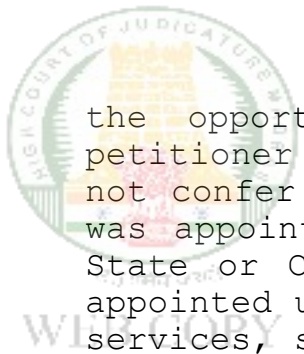
10. It is further contended that the petitioner filed a complaint before the All Women Police Station, Tirunelveli against the said Thirupathi. The Inspector of Police, All Women Police Station, Tirunelveli, conducted enquiries including the alleged accused on 09.10.2018, 31.10.2018 and 04.11.2018. The Inspector of Police, after elaborate enquiry, concluded that the complaint lodged by the petitioner is false and closed the matter. In respect of the



same matter, the District Collector also conducted enquiry and found that the complaint lodged by the petitioner is false and submitted a report before the Registrar (Law) (FAC), Tamil Nadu State Human Rights Commission on 27.11.2018. The Commissioner of Police, Tirunelveli Corporation, also submitted a report before the Registrar (Law) (FAC), Tamil Nadu State Human Rights Commission, Chennai, by mentioning as follows:

"It is respectfully submitted that the enquiry done on the petition of Tmt.M.Saranya has disclosed that the allegation of sexual harassment at working place leveled by the petitioner against the counter petitioner is totally a false and baseless allegation. The witness, being the co-employees by name Tmt.Puvaneswari, Tvl.Thangadurai, Senthilkumar categorically denied the allegations against the counter petitioner. The witness, even went to the extent of enlightening his good character that the counter petitioner is a respectful man who behaved respectfully towards his subordinate workers. The petitioner seems to have brought this baseless allegation of sexual harassment against the counter petitioner on motivation, much less only for the purpose to get her reinstated in the job at Disaster Management Emergency Operational Center again. As neither any violation of human rights is committed towards the petitioner Tmt.Saranya nor any negligence by the Police has been committed towards the enquiry in respect of the petition submitted by Tmt.Saranya on 09.10.2018 and that the petition was properly enquired and disposed of, no further action need be warranted on this reference. Hence, no further action is warranted on this petition."

11. Considering the submissions made on behalf of the petitioner and the respondents, this Court is of the considered opinion that the petitioner was admittedly appointed as temporary Typist / Data Entry Operator on consolidated pay. The terms and conditions of the appointment are unambiguous. The petitioner has given an undertaking that she will not claim any priority for the said post. She remained absent unauthorizedly and having found that the services are provided to the public for 24X7, the District Collector engaged other persons in the place of the petitioner. The petitioner though stated that principles of natural justice have been violated by the respondents, the said contention was rebutted by categorically stating that notice was issued on 22.09.2018 and the petitioner has not given any explanation in writing or through email / phone. Therefore, the respondents have not violated the principles of natural justice, but the petitioner has not availed



the opportunity. Such facts were not clearly stated by the petitioner in her affidavit. Further, temporary appointments would not confer any right to claim permanent absorption. The petitioner was appointed under a Scheme funded by the World Bank, not by the State or Central Government. When the petitioner was temporarily appointed under a Scheme funded by the World Bank to perform certain services, she cannot seek for permanent absorption as the conditions imposed at the time of appointment are unambiguous. Accepting such conditions, the petitioner given an undertaking and therefore, she was very much aware of those conditions. Thus, the petitioner now cannot turn around and file a writ petition seeking for permanent absorption. The petitioner's conduct regarding unauthorized absence was considered by the Competent Authority. Further, the sexual harassment complaint given by the petitioner against the then Tahsildar was enquired into by various Authorities, including the Internal Complaints Committee and the State Human Rights Commission also made a finding. Thus, the nature of enquiry need not be doubted by this Court. When the petitioner has given a false complaint, she is liable for further action. This being the factum, this Court do not find any infirmity or perversity in respect of the action of the respondents ousting the petitioner from the post of Typist / Data Entry Operator. Further, the appointment itself is relating to a Scheme and temporary in nature. Therefore, there is no scope for further engagement or continuance of employment.

12. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Principal Secretary,
Differently Abled Welfare Department,
(Formerly Social Welfare and Nutritious Meal,
Programme Department),
State of Tamil Nadu
Fort St.George, Chennai-600 009.
- 2.The State Commissioner for the Differently Abled,
Commissionerate for the Welfare of the Differently Abled,
No.5, Kamarajar Salai,
Lady Wellington College Campus, Chennai-600 005.



3.The District Collector,
Tirunelveli District,
Tirunelveli.

+1 CC to M/s.SPL.GP. (SR-18987[F] dated 18/04/2022)

W.P. (MD) No.8029 of 2019

and

W.M.P. (MD) No.6342 of 2019

13.04.2022

ARK (CO)

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