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W.P.(MD) No.16748 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.16748 of 2021

and

W.M.P. (MD) Nos.13639, 13640 & 18148 of 2021

P.Laxmi

... Petitioner

vs.

The Station Commander
Station Head Quarters
(ECHCELL)
ECHSL, Garadines
Trichy-620 001

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order terminating the contract under Letter No.3021/Discp/292/ECHS, dated 26.08.2021, on the file of the respondent and quash the same and further directing the respondent to permit the petitioner to attend the interview for the post of Safaiwallah under Ex-serviceman Contributory Health Scheme Hospital in pursuant to the employment notice dated 14.07.2021.

For Petitioner : Mr.Prabhu Rajadurai.G.

For Respondent : Mrs.S.Ragaventhre

Central Government Standing Counsel

O R D E R

The termination of contractual employment in proceedings dated 26.08.2021, issued by the respondent, is under challenge in this writ petition.

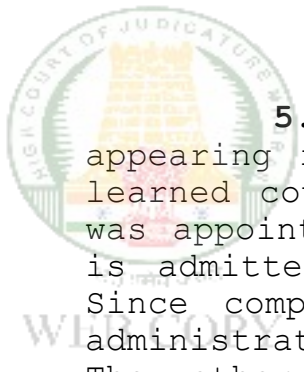
2. The petitioner is the contract employee appointed through public advertisement. She joined as Peon in the Ex-Servicemen Contributory Health Scheme Polyclinic (hereinafter, referred to as "ECHS Polyclinic") at Tiruchirappalli on 01.08.2013 on contract basis with the fixed monthly salary of Rs.6,500/-. She worked in such capacity till 31.03.2018. Subsequently, the Government took a policy decision to employ only ex-servicemen in ECHS Polyclinic and accordingly, the contract employees were ousted from service. However, ex-servicemen did not come forward to take



up the conservancy work (Safaiwallah). Therefore, the respondent once again called for applications from the eligible candidates and the petitioner was selected and appointed on 08.06.2020 as Safaiwallah on contract basis for a period of eleven months and the monthly salary of the petitioner was Rs.16,800/-. Though the period of contract was eleven months from 08.06.2020, she was continued in service as the contract was renewed on expiry of eleven months upto 10.04.2022.

3. The petitioner states that the conservancy staffs are being supervised by the Officer in-charge, who is a high ranking Ex-serviceman. The said officer harassed the petitioner sexually and she made a complaint to the respondent. The said complaint was enquired by the internal mechanism, which submitted a report and on the basis of the report, the said officer was given a warning. The petitioner further states that even thereafter, the said officer harassed her one way or the other. A criminal case was registered against the said officer in Crime No.408 of 2021 on 09.07.2021 in Town Police Station, Sivagangai. Pursuant to the police complaint, the said officer was ousted from the service and the criminal case is under investigation. Under those circumstances, the petitioner herself has submitted in the sworn affidavit that she spoke all these incidents of harassment in public media and the officials from the office of the respondent came to the office and informed the petitioner that she should have avoided speaking to media and they took an apology letter from her. Thereafter, a show cause notice was issued to the petitioner on 27.07.2021 stating that the other employees have given complaints against her and thereafter, the petitioner submitted a detailed reply on 13.08.2021 through registered post. However, the respondent issued the impugned order of termination from service on 26.08.2021 terminating the contract services of the petitioner.

4. The learned counsel appearing for the petitioner mainly contended that the petitioner was mentally harassed by the officials and she registered a Police complaint also. Instead of pursuing the complaint and initiating action against the concerned persons, the respondent has terminated the contract service of the petitioner. The petitioner states that she is from a poor family and has to take care of her two children as her husband has abandoned her and her children. Therefore, the respondent should have shown sympathy upon the petitioner in imposing such a harsh punishment. The petitioner was in a distressed state of mind and therefore, she had spoken to the public media about the sexual harassment allegations. The said incident cannot be a ground to terminate the contract service of the petitioner. All other mitigating circumstances ought to have been considered by the respondent before taking a decision to terminate the contract service of the petitioner.

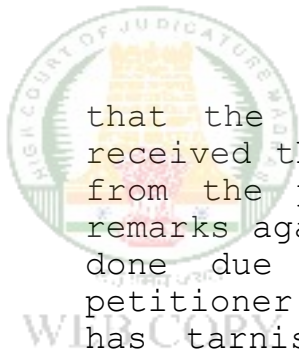


5. The learned Central Government Standing Counsel appearing for the respondent objected the above contentions of the learned counsel for the petitioner by stating that the petitioner was appointed only as a contract employee. The period of contract is admittedly eleven months and it was extended till 10.04.2022. Since complaints were received against the petitioner also, the administration took a decision to terminate the petitioner also. The other ex-serviceman, against whom the petitioner filed a complaint, was also ousted from service and in order to protect the interest of the administration, the contract services of the petitioner was terminated.

6. The respondent states that the petitioner has violated Para 1(C) of the ECHS Code of Conduct, which she has signed on 11.05.2021 of not sharing any information of ECHS with any outside person. The petitioner made false allegations against the Polyclinic female staff. In spite of the same and even after action was taken against the officer in-charge, ECHS Polyclinic, Sivagangai, the petitioner given a complaint to the Sivagangai Police Station and FIR was registered against the officer in-charge. Thereafter, the officer in-charge resigned his post on 20.07.2021.

7. The petitioner herself made scathing personal remarks and allegations in respect of certain employees of ECHS Polyclinic, Sivagangai, especially, the female staff in writing and through audio visual media through social media. Those remarks / allegations are not only verified, but also later accepted by the petitioner as assumptions of her own and apologized in writing on 29.06.2021 and the same has been accepted by the petitioner also. All staff of Polyclinic, Sivagangai, requested for removal of the petitioner and post a suitable replacement at the earliest to continue their job without interference. Keeping all these allegations and complaints against the petitioner, the respondent issued a show cause notice to the petitioner on 27.07.2021, stating that why not her contractual employment be terminated as submitted in Para 3 of the agreement.

8. The office of the respondent was constrained to provide the show cause notice to the petitioner since the letter, dated 22.06.2021 was forwarded by all the staff of ECHS Polyclinic, Sivagangai, against the petitioner as her past history of providing official letters to social media without consent of the originator and instructed the petitioner to forward suitable reply within seven days of receipt of the show cause notice dated 07.08.2021. During the said period from 11.08.2021 to 25.08.2021, the respondent instructed the Postal Department to return all envelopes containing application for Selection Board held on 17-20.08.2021, since the last date of submission of applications was 10.08.2021. Thus, the letter in question was returned by the Postal Department assuming



that the envelop contains application. However, the respondent received the reply to the show cause notice on 18.08.2021 in person from the petitioner. The petitioner accepted that the scathing remarks against the female staff were made by her on assumptions and done due to her mind being disturbed and not steady. The petitioner's conduct were demeaning towards the staff modesty and has tarnished their image as well as that of the Polyclinic, Sivagangai. Therefore, in accordance with Para 3, 13 and 14 of the contractual agreement of the petitioner, her contractual agreement was terminated with effect from 26.09.2021 under disciplinary grounds.

9. The respondent further states that the petitioner had already involved in disciplinary grounds which was inquired by a Committee of Officers at Polyclinic, Sivagangai, on 29.06.2021 and the petitioner accepted her fault in writing that the allegations made by her against the female staff of Polyclinic were wrong and accordingly, the Committee concluded that the petitioner was guilty and hence, her application for the same post was rejected.

10. As per the advertisement given by the Headquarters in national newspapers, only eligible candidates would be intimated the exact date of interview and called for the interview. As per Para 3 of the Memorandum of Agreement, the ECHS reserves the right to terminate the appointees by giving thirty days notice any time during the tenure even without assigning any reason or misconduct or failure to perform the assigned duties to the satisfaction of the respondent. Hence, the impugned order of termination issued to the petitioner is as per the policy governed by the Central Organization and there is no illegality in terminating the contractual employee.

11. Considering the facts and circumstances as well as the arguments advanced by the learned counsel on either side, the terms and conditions of the agreement unambiguously stipulate in Para 3 as follows:

"3.The ECHS reserves the right to terminate the appointee by giving 30 days notice or by paying remuneration for 30 days in lieu of notice any time during the tenure even without assigning any reason or misconduct of failure to perform assigned duties to the satisfaction of the Station Commander, Tiruchirapalli, acting through the Nominated Officer."

12. Para 13 and 14 of the agreement read as follows:

"13.An individual removed on ground of indiscipline/inefficiency/any inadequacy from any ECHS establishment at any time will not be eligible for employment at any stage in ECHS



organisation.

14. The Engaged Person shall indemnify ECHS against all third party claims or proceedings in respect of his professional negligence, misconduct or deficiency in service. The engaged person declares and acknowledges that the engagement under this contract is temporary and contractual in nature and that he/she will, therefore, have no right to approach any court of law for extension of his/her service in ECHS beyond the contractual period stipulated in this agreement. This agreement constitutes the entire agreement between the ECHS and the Engaged Person and supersedes all prior agreements, understandings, negotiations, correspondence of discussions whether written or oral relative to the subject matter hereof."

13. It is not in dispute that the appointment of the petitioner was on contract basis for a period of eleven months. She was initially appointed on 08.06.2020 as Safaiwallah for a period of eleven months and on expiry of eleven months, the further period of eleven months was extended upto 10.04.2022. Thus, the contract employees governed under the terms and conditions of the agreement are bound by the same.

14. In the present case, no doubt, there are certain allegations by the petitioner regarding sexual harassment by the officer in-charge. But, the respondent has immediately taken action against the officer in-charge and he was ousted from service. That was the prompt action taken by the respondent. The said media publication was admitted by the petitioner. Beyond the allegation of speaking the above incident in the public media, the respondent has clearly stated that there are several other allegations against the petitioner even by the female staff members of the Institution. The counter filed by the respondent reveals that there are allegations especially from the female staff of the Polyclinic and subsequently, on verification, the petitioner was unable to establish such allegations and she accepted the same by stating that it was made in the social media on assumptions and thereafter, submitted a letter of apology in writing on 29.06.2021. It is contended by the respondent that all the staff of Polyclinic have given written complaints against the petitioner stating that the activities of the petitioner disturbed their daily routine works and badly affected the image of the Institution. All the staff requested for removal of the petitioner and post a suitable replacement at the earliest continue their job without interference. Considering all these incidents and the happenings in the Institution, the respondent issued the show cause notice. There are

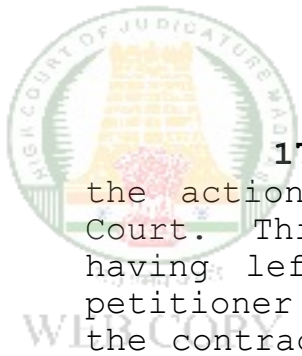


several allegations against the contract employee and the respondent took a decision and issued a show cause notice for terminating the contract service of the petitioner and an opportunity was provided to the petitioner and on receipt of her reply, the contract appointment was terminated.

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15. Contract appointees have no right to continue in service beyond the scope of the contract. The contract is only for a period of eleven months and during the period of contract, if there is any violation of the terms and conditions of the agreement, then the employer is empowered to initiate all actions in terms of the said contract. In the present case, Para 3 unambiguously stipulates that the ECHS reserves the right to terminate the appointee by giving 30 days notice or by paying remuneration for 30 days in lieu of notice any time during the tenure even without assigning any reason or misconduct. Para 13 states that an individual removed on ground of indiscipline/inefficiency/any inadequacy from any ECHS establishment at any time will not be eligible for employment at any stage in ECHS organisation.

16. In the present case, undoubtedly, the petitioner was provided with an opportunity to work in the Institution as a contract employee. No doubt, her family circumstances deserve consideration. The family circumstances narrated by the petitioner may be true and deserve to be considered. However, the mitigating factors and the nature of allegations against the petitioner play a pivotal role in taking a decision in such contractual employment. At no circumstances, the discipline, public interest of the Institutions be compromised either by the administration or by the Courts. The Institution in this case is a Paraclinic for ex-servicemen. Therefore, noble duties are to be performed. Under those circumstances, when there are certain allegations made by the petitioner against the officer in-charge regarding sexual harassment, immediately action was taken by the Management and he was ousted from service. Thereafter, the petitioner registered a case and not stopping with that, she had gone to the extent of speaking to the public media, which caused damage to the image to the reputation. Even one can form an opinion that the petitioner in a distressed state of conditions would have said something before the media. But, when all the female staff members gave complaints against the petitioner regarding her conduct in the clinic and based on the written complaint of all the staff of the Institution, the Management took a decision to issue a show cause notice. Therefore, the allegations are not stopping with the sexual harassment caused to the petitioner by the officer in-charge. The allegation of misconduct against the petitioner is also serious and moreover, all the female staff have jointly given a complaint to the Management. That exactly are the factor, which played a dominant role in the matter of initiation of action by the respondent to terminate the contract service of the petitioner.



17. In such circumstances, the mitigating circumstances and the action taken by the Management are to be considered by the Court. This Court is of the considered opinion that the respondents having left with no other option, initiated action against the petitioner and terminated her from service. As already pointed out, the contract employees have no right for continuance in service and their continuance is only depending upon their performance and the conduct with reference to the terms and conditions of the agreement. In the present case, this Court do not find any infirmity or perversity in respect of the actions taken. When the Institution formed an opinion that continuance of the contract employees is not congenial to the interest of the Institution, then they are empowered to initiate action by invoking the terms and conditions of the agreement.

18. Accordingly, the writ petition is devoid of merits and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

The Station Commander,
Station Head Quarters,
(ECHCELL),
ECHSL, Garadines,
Trichy-620 001.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-9500[F] dated 02/03/2022)

order made in
W.P. (MD) No.16748 of 2021
and
W.M.P. (MD) Nos.13639, 13640 & 18148 of 2021
01.03.2022

PNK(12.03.2022) 7P 3C