



W.P.(MD)No.98 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.04.2022

DELIVERED ON : 07.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.98 of 2017

and

W.M.P.(MD).No.70 of 2017

P.Madhavan

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Health,
St.George Fort,
Chennai – 600 009.
- 2.The Project Director,
Tamil Nadu State AIDS Control Society,
417, Pantheon Road,
Egmore,
Chennai – 600 008.
- 3.The District Collector,
Thanjavur District,
Thanjavur.
- 4.The District Superintendent,
Tamil Nadu State Aids Control Society,
Thanjavur.



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5.The Deputy Director of Health Services,
Gandhiji Road,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Proc.No.001901/DAPCU/TANSACS / 2016 dated 30.03.2016 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner with continuity of service back wages and all other service benefits.

For Petitioner : Mr.R.Murugaraj

For R-1, R-3,
R-4 and R-5 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

For R-2 : No Appearance

ORDER

This Writ Petition has been filed to quash the impugned order dated 30.03.2016 with a consequential prayer to direct the respondents to reinstate the petitioner with continuity of service and back wages and other service benefits.



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2. The brief facts of the case are that the petitioner was appointed on 22.10.2005 as Counselor by TANSACS at ICTC, Primary Health Centre, Thondarampattu, Thanjavur District. The contention of the petitioner is that he is the first counselor appointed at Block Level Health Center and he had struggled a lot in order to implement the ICTC structures and procedures. Subsequently, the petitioner was transferred on 22.08.2007 to Murukkankudy Primary Health Centre, Thanjavur. In the meantime, the first respondent called for applications to the post of District Programme Manager. Around 900 members applied for the said post and also appeared for written examination. Around 200 members were called for interview for 15 vacant post. The petitioner was selected by the Selection Committee and he joined duty on 24.07.2013 as District Programme Manager at the District Aids Prevention and Control Unit, Collectorate, Thanjavur. The Selection Committee comprises around 8 members including two IAS Officers. The service contract of the petitioner has been extended every year from 2005 to 2016. As a District Programme Manager, the petitioner was supervising overall the District including 14 blocks with 78 ICTC, 6 STI centers, 2 ART Centers, 5 LINK ART Centers, (in 14 Government Hospitals, 68 Primary Health Centers), 8 Private Blood Banks, 4 Government Hospital Blood Banks, 2 HRG NGOS, 2 CBO'S, 1 PPTCT NGO, 1 LWS NGO, 1 HIV positive Network and reporting to 7 components to the Head Quarters Chennai and the petitioner



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has served for the past 11 years.

3. On 29.03.2016, the petitioner has conducted training programme under the instructions of the respondents and he had spent Rs.22,137/- from his own fund and has applied for reimbursement and the same was not settled. The petitioner also claimed TA amount of Rs.54,000/- which was also not paid. On 29.03.2016 at about 10.30 p.m. the petitioner's father expired. Hence he was not able to present in the office on 30.03.2016. On that date, the fifth respondent visited the petitioner's office and due to unauthorized absence, the respondents had passed the impugned order stating that the petitioner's service contract was declared as end on 30.03.2016 and was not extended for further period. The contention of the petitioner is that he hails from the poor family and he has having two young daughters studying 10th and 7th Standard respectively and he take care of his aged mother who fell sick. Therefore, the petitioner submitted representations dated 05.04.2016 followed by yet another representation dated 07.04.2016. However, the respondents have not considered the petitioner's claim. Aggrieved over, the present Writ Petition has been filed.



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4. The second respondent had filed a counter stating that the National Aids Control Organization, New Delhi is a division of Ministry of Health and Family Welfare that provides leadership to HIV/AIDS control and prevention programme in India through State AIDS Control Societies at State level. The second respondent herein is the Society registered under the Tamil Nadu Societies Registration Act 1975 which is an autonomous body established with an object and aim to prevent and control HIV/AIDS. Once the object is accomplished or the funds received from the National AIDS Control Organization, New Delhi are stopped, the Society has to wind up their establishment. The Writ Petition in W.P.No.11672 of 2009 was filed against the respondent Society and this Court has held on 25.11.2009 that the Writ Petition against the Society is not maintainable and the same was upheld and confirmed by the Division Bench in W.A.No.1895 of 2009 by its order dated 19.10.2010. The Society implements HIV/AIDS prevention and control programme and welfare of the people living with HIV/AIDS through 1200 centers established by engaging 2500 employees on contractual basis with a consolidated monthly remuneration as envisaged specific staff structure by National Aids Control Organization, New Delhi. All contract posts should be made for one year on temporary basis and the performance assessment should be done to all the contractual personnel by the



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Controlling Officer and the contract may be executed for a further period based on the individual performance. Accordingly, after assessment of performance their service is being renewed after giving one day break in their service. These contractual posts are only for the duration of the project tied and co-terminus with the project. The petitioner was initially appointed as Counsellor on contractual basis for one year till the scheme was extended by way of granting extension for another year based on performance appraisal report received from the District. In the year 2013, the petitioner was selected for to the post of District Programme Manager. Further extension of service was given based on the appraisal report. As per NACO guidelines, the contractual service of the petitioner was extended upto 31.03.2016. The service of the individual was completed on 31st March every year. If necessary, the services were extended after a break of one day that is from 2nd April onwards of the ensuring year. The petitioner's service was not extended beyond 31.03.2016 based on the performance appraisal report as per NACO guidelines, because of misappropriation of Government funds. The Government of Tamil Nadu deposited Rs.9.5 crore in the Power Finance Co-operation Private Limited for the Welfare of Orphan HIV Children. The interest amount was distributed every year to the children for their welfare. As a District Programme Manager, the individual was colluded with subordinates and misappropriated funds upto Rs.91,000/- from the Orphan Vulnerable Children



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Fund. The amount was not disbursed to the HIV/AIDS affected children. Hence the claim of the petitioner was not considered for the above reason. The petitioner is fully aware of the fact that his service is temporary on contractual basis. The petitioner's service is being a contract, the same was not extended because of the misappropriation allegation and the petitioner has also created false records and cheated the higher authority. The District Programme Manager has played a major role in the misappropriation of Government money with the help of his subordinates. As per the NACO guidelines, unsatisfactory performance in subordination and for misappropriation of funds creating forgery records, his services were not extended and the contract was terminated. The petitioner has submitted his explanation and accepted the misappropriation of funds vide letter dated 26.03.2016 addressed to the Project Director, TANSACS. Therefore, the claim of the petitioner is that the petitioner was terminated from service because of his unauthorized absence due to his father's death is not the reason. The petitioner has not stated true facts before this Court and hence the respondents prayed to dismiss the Writ Petition.

5. Heard Mr.R.Murugaraj, learned counsel for the petitioner and there is no appearance on behalf of the second respondent and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for respondents 1, 3, 4 and 5.



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6. The claim of the respondents is that the petitioner has committed misappropriation of funds, created false records and insubordination are the reasons for not extending the contract. But the claim of the petitioner is that he was unauthorizedly absented himself on 30.03.2016 due to his father's death. On that day, the fifth respondent visited the petitioner's office and on seeing the unauthorized absence of the petitioner, the further contract was not extended. But this plea of the petitioner was stoutly refuted by the respondents.

7. Admittedly, the service of the petitioner is on the contract basis and the respondents had given one day break artificially. There are several cases where it is stated artificial termination cannot be granted while employment is subsisting. As far as the allegation of misappropriation, the respondents had not conducted any proper enquiry or granted any opportunity to the petitioner to defend himself against the allegations. The claim of the petitioner is that the misappropriation allegation was not substantiated by any evidence.

8. Therefore, this Court is of the considered opinion that the respondents ought to reconsider the claim of the petitioner and grant an opportunity to defend the misappropriation allegation. Hence the case is remitted



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back to the respondents to reconsider the entire issue and pass a speaking order.

The respondents are directed to grant an opportunity to the petitioner to defend himself for the misappropriation and creating false records and thereafter pass an order. Until such time, the impugned order is kept under abeyance. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of the copy of the order.

9. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

07.07.2022

Index : Yes / No

Internet : Yes

Nsr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
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