



W.P(MD)No.24047 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24047 of 2022

and

W.M.P.(MD)No.18144 of 2022

M.Prasanna

... Petitioner

Vs.

- 1.The Agriculture Production Commissioner
Cum Principal Secretary to the Government,
Agriculture Department,
Fort St. George, Chennai - 9.
- 2.The Director of Agriculture,
Office of the Director of Agriculture,
Chepauk, Chennai - 5.
- 3.The Project Director,
ATMA / Joint Director of Agriculture,
Office of the Joint Director of Agriculture,
Madurai.
- 4.New Life Placements Pvt. Ltd.,
Represented by its Authorized Signatory,
Registered Office - 41-42,
Kailash Arcade, Heber Road,
Beema Nagar, Trichy - 620 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the



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records pertaining to the undated impugned order issued by the respondent No.4 dated NIL and the consequential impugned order in Ka.No. ATMA/18169/2021 dated 08.09.2022 on the file of the respondent No.3 and quash the same as illegal and consequently for a direction, directing the respondent No.1 to 3 to reinstate the petitioner in the post of Assistant Technology Manager at Kottampatti Block, Madurai District or in any other vacant place within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy.

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader for R1 to R3.

ORDER

Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the respondents 1 to 3.

2.The writ petitioner has been engaged as a contract employee by the third respondent to implement certain schemes. The third respondent had originally entered into an agreement with an outsourcing agency namely, the fourth respondent who identified a set of persons including the writ petitioner to work as contractual employee for the third respondent. When such persons filed a batch of writ petitions before me in (W.P.(MD)No.1627 of 2018 etc.), vide order dated 22.03.2018, I had issued the following directions:-



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“7.This Court finds considerable force in the aforesaid submission of the learned Special Government Pleader for the State Government. This is not a Public Interest Litigation. The petitioners rights have not been shown to be infringed in any manner by issuance of the impugned Government order made in these Writ Petitions. The order impugned in these Writ Petitions are therefore, sustained. But then the Writ Petitions cannot be closed with this. During the course of arguments, the learned Special Government Pleader supported the artificial break in the services of the writ petitioners. Hence this Court issues the following directions:-

(i).It is made clear that the scheme appointees could have no claim for regularisation. But then so long as the scheme continues, subject to one being fit and not found guilty of any misconduct, the scheme appointee can continue in the said post so long as the scheme is in force.

*(ii).The Hon'ble Supreme Court in the decision reported in **1985 4 SCC 43-(Rattan Lal & Others Vs. State of Haryana & Others)**, deplored the practice of giving artificial break in service. The state Government is expected to function as a model employer. This proposition continues to hold good even in this age of liberalisation and globalisation. The aforesaid judgment was relied on in the subsequent Full Bench decision of the Hon'ble Supreme Court reported in **(1991) 2 SCC 599-(Sri Rabinarayan Mohapatra Vs. State of Orissa and others)**. The very same principle has been reiterated in yet another decision of the Hon'ble Supreme Court reported in **(2009) 6 SCC 611-***



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(MD.Abdul Kadir & Another Vs. Director General of Police, Assam & others). Therefore, it cannot lie in the mouth of the State Government to now contend that they are entitled to terminate the services of the contractual employee on the expiry of the 11th month and give artificial break after which engage them again. This Court makes it clear that the practice of giving artificial breaks shall be discontinued henceforth. The benefits payable to the petitioners/Scheme appointees in terms of the scheme norms, shall be disbursed. In view of the comprehensive nature of the relief given to the petitioners herein, there shall be of no claim for payment of past arrears. However, as regards the future, it is undertaken by the Government that the periodical/annual increment will be given effect in terms of the scheme regulations.

3.The learned counsel for the petitioner would contend that contrary to the said directions, the petitioner has been ousted. The fourth respondent had issued communication terminating the writ petitioner's services as Assistant Technology Manager in ATMA Scheme under the Agriculture Department, Madurai. Following the same, the third respondent had also issued the impugned communication dated 08.09.2022 informing the petitioner that he can no longer be engaged. Challenging the said communication, the present writ petition has been filed.



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4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pointed out that the role of the fourth respondent/outsourcing agency ended at the moment it identified the writ petitioner for engagement as a contract employee to the third respondent. The fourth respondent has not right or jurisdiction to terminate the writ petitioner and the petitioner is even entitled to ignore the same. He pointed out that the third respondent could not have thrown out the writ petitioner without holding an enquiry and without finding him guilty. He therefore called upon this Court to set aside the impugned communication issued by the third respondent and direct the third respondent to continue to engage the writ petitioner.

5.I am not persuaded by the submissions advanced by the learned counsel for the writ petitioner. The learned Special Government Pleader, on instructions, fairly admitted that the writ petitioner is being directly paid by the third respondent. But the third respondent had not arbitrarily terminated the petitioner's engagement. A major scam involving a few crores of rupees and misappropriation of the scheme funds was noticed leading to registration of criminal case by CBCID (Crime No.5 of 20202 on the file of CBCID, Madurai). Though the petitioner's name does not figure in the FIR, during investigation,



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CBCID had concluded that the petitioner is also involved. He was arrested and he was in custody for over 21 days. The learned Special Government Pleader would point out that even though the criminal case was registered way back in the year 2020, the impugned communication came to be issued only on 08.09.2022. In other words, only by taking note of the petitioner's involvement in CBCID case, a decision was taken not to engage the writ petitioner. It is true that I have directed that ATMA scheme employees should not be thrown out unless they are found guilty of misconduct. This can only be understood by me that there cannot be any arbitrary disengagement. When the petitioner is figuring as an accused in a case of misappropriation of funds, the employer cannot be expected to continue to engage the writ petitioner. If the writ petitioner is a regular government servant, then the position will be different. He will have to be suspended from service and enquiry will have to be held. But such elaborate procedure need not be followed in the case of scheme employees who are engaged purely on contract basis. I, therefore, do not fault the impugned communication issued by the third respondent. If the petitioner's name is deleted from the final report or if he is discharged and if he otherwise comes clean in the criminal case, then his earlier status will be restored.



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6. With these observations, the writ petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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