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WP.Nos.1434 & 1435/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.Nos.1434 & 1435/2016

A.Sivasankaran

... Petitioner in
WP.No.1434/2016

G.Adhilakshmi

... Petitioner in
WP.No.1435/2016

Versus

The Secretary
Tamil Nadu Legislative Assembly
Secretariat, Chennai – 600 009.

... Respondent

Common Prayer :- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records culminating in the proceedings in Letter No.14881/2011-4, TNLAS [OP-I] dated 18.11.2015 and quash the same and direct the respondent to reinstate the petitioner in any post in Tamil Nadu Legislative Assembly.

For Petitioners in both
Writ Petitions : Mr.M.Vijay Amarnath

For Respondent in both
Writ Petitions : Mr. S.Ravikumar, Spl.GP



WP.Nos.1434 & 1435/2016

COMMON ORDER

- (1) Since the arguments are advanced in common in both the writ petitions, a common order is passed.
- (2) Let me as a test, the facts in WP.No.1434/2016. The writ petitioner, A.Sivasankaran, had been appointed as Office Assistant on an application filed by him on 10.1.2005, by an order 12.01.2005 along with 15 others. It must also be mentioned that the writ petitioner in WP.No.1435/2016, had also been similarly appointed as Office Assistant, however by an order dated 17.01.2005. They were both appointed as Office Assistants in the Tamil Nadu Legislative Assembly. They were both called for medical examination and finally, they were appointed as Office Assistants. They were both terminated from service on 30.06.2006, within a period of one year and five months. Questioning the order of termination, they filed WP.Nos.22318/2006 and 36650/2007 respectively.
- (3) WP.No.22318/2006, filed by the writ petitioner in WP.No.1434/2016 was allowed by an order on 13.07.2006. However, WP.No.36650/2007 filed by the petitioner in WP.No.1435/2016 was



WP.Nos.1434 & 1435/2016

dismissed by an order dated 10.12.2007. The respondent in WP.No.22318/2006 filed WA.No.1194/2006 questioning the order in WP.No.22318/2006. That writ appeal was allowed by a judgment dated 23.03.2009. In effect, WP.No.22318/2006 was dismissed. The petitioner in WP.No.36650/2007 filed WA.No.95/2009, against the order dated 10.12.2007. That writ appeal was dismissed by a judgment dated 19.03.2009. In effect, WP.No.36650/2007 was also dismissed.

- (4) The grievance of the petitioners was that though they had been appointed along with 14 others, some of the writ petitions filed by the other employees, who had been similarly appointed, had been allowed and the Writ Appeals have also ended in their favour. Claiming parity, both of them had given applications to the respondents on 16.09.1995. The order impugned is common in both the writ petitions and that is dated 18.11.2015.
- (5) It is contended by the respondents that since the Writ Appeals ended against the writ petitioners herein, effectively dismissing the writ petitions, they cannot override that particular order of the Division



WP.Nos.1434 & 1435/2016

WEB COPY

Bench and cannot accommodate the petitioners herein to continue as Office Assistants. It is also contended that the issue of parity would not arise since it is a judicial order and the judicial order has to be questioned in manner known to law. Neither of the two petitioners have approached the Hon'ble Supreme Court questioning the judgments passed by the Division Bench in the Writ Appeals.

- (6) Learned Special Government Pleader pointed out Rule 17[a][i] of the Tamil Nadu Legislative Assembly Secretariat Service Rules and Rule 17[f] of the said Rules. They are as follows:-

"17. Temporary appointments and promotions:-

[a][i]Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of the service and there would be undue delay or administrative inconvenience in making an appointment in accordance with these rules to fill up the vacancy, the appointing authority may appoint or promote temporarily any person, otherwise than in



WP.Nos.1434 & 1435/2016

accordance with these rules.

...

[f]The services of a person appointed under sub-rule[a] shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned."

- (7) It is thus seen that in an emergency and in public interest, a vacancy can be filled by the respondents/Tamil Nadu Legislative Assembly Secretariat. But, it is also seen that such post is not regular or permanent in nature and such services can always be terminated at any time without notice and without any reason being assigned. Neither of the writ petitioners have stated that there was an emergency or that there was public interest involved when they were initially appointed on the respective dates. They had forwarded their applications and the applications had been considered favourably by the respondents and they had been appointed to the post of Office Assistant. They cannot claim permanency in such post and the respondents always held the right to discharge their services, either



WP.Nos.1434 & 1435/2016

WEB COPY

without notice or even without reasons being assigned. There is also no record to show that appointments were initially made on the basis of publication being made and the petitioners herein had been screened out of other applications and had been found suitable and eligible to be so appointed and only after following due process, they were appointed. Even in the affidavit, it had been stated that they had suo motu given applications for being considered and those applications were considered in their favour and they were appointed as Office Assistants. But, any public appointment should be offered to the general public and there must be a screening test and there must be eligibility conditions fixed and only thereafter should appointments be made and it cannot be made at the whims and fancies of the public official or authority. The impugned order does not require any interference.

(8) The writ petitions stand **dismissed**. No costs.

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AP

Internet : Yes

To



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WP.Nos.1434 & 1435/2016

C.V.KARTHIKEYAN, J.,

AP

WP.Nos.1434 & 1435/2016

04.09.2023