



WEB COPY



W.P No.18633 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.18633 of 2021

N.Indira

... Petitioner

Vs.

- 1.The Principal Secretary/State Commissioner
for the Disabled,
O/o the State Commissioner for the Disabled,
15/1, Model School Road,
Thousand Lights, Chennai 600 006.
- 2.The Director of Public Health and Preventive Medicine,
No.359, Anna Salai, DMS Complex,
Teynampet, Chennai 600 006.
- 3.The Deputy Director of Health Service,
Thiru Vi Ka Street, Villupuram,
Tamil Nadu 605 602.
4. The District Collector,
Collector office Road, Moovendar Nagar,
Villupuram 605 602.
- 5.The Block Medical Officer,
Government Primary Health Centre,
Kallakurichi 606 202.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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to issue a Writ of Mandamus, to direct the 2nd Respondent to reinstate the petitioner into service to the post of Lab Technician Grade III to work in Urban Primary Health Centre Kallakurichi, Villupuram District with full back wages along with all consequential benefits and to direct the 5th respondent to produce the termination order before this Court pending disposal of the writ petition.

For Petitioner : Ms. Balamuki for M/s.R.Prabhakaran

For Respondents : Mr.T.Chezhian, Government Advocate

ORDER

This Writ Petition has been filed seeking issuance of Writ of Mandamus to direct the 2nd Respondent to reinstate the petitioner into service to the post of Lab Technician Grade III to work in Urban Primary Health Centre Kallakurichi, Villupuram District with full back wages along with all consequential benefits and to direct the 5th respondent to produce the termination order before this Court pending disposal of the writ petition.

2. The petitioner, who is a physically handicapped person with orthopedic disability, has been initially appointed as Laboratory Assistant on contract basis with effect from 14.02.2005 at the Primary Health Centre (PHC), Rishivandiyam, for a monthly salary of Rs.1,530/-. She



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has been rendering her service in that capacity for 7 years and 10 months and her service is continuous. In the year 2008, the government introduced a regularisation scheme for the regularisation of services for persons who are physically handicapped and who have held the post on consolidated pay for more than two years. This scheme was announced by the government of Tamil Nadu vide Government Order in G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008.

2.1.Based on the said G.O., the petitioner made a representation dated 24.05.2010 to the Secretary of Government, Backward Classes, to regularize her service and to provide a regular scale of pay. However, the said representation was kept in cold storage. One person by the name S.Rasu who is also similarly placed and working in the same Primary Health Centre as Lab Technician on a contract basis, has been issued a letter vide No.34082/C2/2009-1 dated 17.08.2009 and the same was considered for regularization of service and accordingly, his services were regularized. Vide letter dated 13.12.2012 in Na.Ka.No.7121/A3/2004. The petitioner was terminated along with similarly placed employees



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from the other departments for no reasons and without giving any show cause or conducting any enquiry by the 2nd respondent, the termination was made with reference to G.O.Ms.No.(2D) No.56 dated 09.07.2012 Health and Family Department and Na.Ka.No.6439/Aa Su Ni.7/A3/2012 dated 13.08.2012.

2.2. The petitioner made further representation to the Chief Minister cell on 05.02.2013. On 17.04.2017 the petitioner was appointed for the post of Lab Technician Grade III at Urban Primary Health Centre Kallakurichi, Villupuram District and joined duty on 24.04.2017. Again, she was informed through the telephone that she was terminated from service. The only reason stated was that she was on leave for six days and had not been served with any termination letter so far.

2.3. The grievance of the petitioner is that, though a series of representations were sent by the petitioner from the year 2017 to the 5th respondent for reinstatement, so far he did not receive any reply from the 5th respondent. Hence the petitioner has filed this writ petition for directing the 2nd respondent to reinstate the petitioner in service for the post of Lab Technician Grade III for working in Urban Primary Health



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Centre Kallakurichi, Villupuram District, with full back wages along with all consequential benefits and also to direct the 5th respondent to produce the termination order.

3. The learned counsel for the petitioner submitted that G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008 is squarely applicable to the case of the petitioner, in which the government itself has announced a scheme for the welfare of the physically challenged persons who have already been in service in various departments by getting consolidated pay. It is further noted that similarly placed candidates have already been observed in time-scale pay by way of regularization, but the said benefit was not extended to the petitioner.

4. The learned Government Advocate for the respondents has filed his counter by stating that G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008 is applicable only to those persons who are working in the various departments of the State of Tamil Nadu and not to persons whose services were utilized through the outsourcing of agencies. According to the respondents, the petitioner was



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engaged by an outsourcing agency, namely GRAM VIKAS TRUST. It is the will of the government to terminate the service of the GRAM VIKAS TRUST and hence the respondents cannot be expected to serve any termination order. The petitioner has already filed a writ petition in WP.No.5450 of 2021 wherein an order was passed on 08.04.2021, 2021. The following order has been passed:

“5. In view of the submissions made by either counsel, this Court is of the view that direction sought for by the petitioner cannot be granted. However, it is open to the petitioner to challenge the order of termination, in accordance with law. The Writ Petition is dismissed accordingly. No costs.”

5. The respondent has taken a stand that the petitioner is not directly employed by the government, but she was employed through an outsourcing agency, and the termination of service has been issued by the outsourcing agency. As per the contention of the respondents, the petitioner is not directly engaged with the government; hence, there is no necessity to issue any show cause, conduct any inquiry, or furnish any order of termination to the petitioner. But in that case, it is strange that such a point has not been made before the court in WP.No.5450/2021 by



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the respondents. So far as this petitioner is concerned has given various representation to the government , till date it has not been considered. It might be up to the government to consider or not consider the representations of the petitioner for whatever reasons.

6. Having accepted the order dated 08.04.2021 in WP.No.5450/2021 the respondents took a different stand before this court, and hence the petitioner is not a direct employee of the State and they cannot be given any termination order. For the reasons best known to the respondents, they did not clarify to the court during the writ petition WP.No.5450/2021 that a termination order cannot be issued directly to the petitioner.

7. In view of the above-stated reasons, I feel it is appropriate to direct the respondents to consider the petitioner's representation, take a decision in accordance with the law and intimate the same to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

8. In the result, this Writ Petition is **disposed** and the respondents are directed to consider the petitioner's representations, take a decision in accordance with the law and intimate the same to the petitioner within a



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period of four weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes

Internet : Yes/No

jrs



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R.N.MANJULA, J.

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