



W.P.(MD)No.2933 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2933 of 2020

W.M.P(MD).Nos.2488 and 2489 of 2020, 10723 of 2021

P.Arumugam

... Petitioner

Vs.

- 1.The Secretary to Government,
Department of Higher Education,
State of Tamil Nadu,
St.George Fort, Chennai.
- 2.The Director of College Education,
College Road, DPI Compound,
Chennai.
- 3.The Joint Director of College Education,
Madurai Region,
Madurai.
- 4.The Principal,
Mannar Duraisingam Government Arts College,
Sivagangai,
Sivagangai District.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the 4th respondent in Na.Ka.No.1241/A/2018, dated 07.02.2020, and quash the same and consequently, direct the fourth respondent to reinstate the petitioner in service at the fourth respondent College as marker with all attendant benefits.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

Challenging the order passed by the fourth respondent in Na.Ka.No.1241/A/2018, dated 07.02.2020 and for a consequential direction to the fourth respondent College to reinstate the petitioner in service as Marker with all attendant benefits, the present Writ Petition has been filed.



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2. The case of the petitioner is that the petitioner was appointed as Marker on temporary basis in the year 2011 at the fourth respondent College in the place of one Nagarajan, who was promoted to the post of Lab Assistant. The second respondent, vide proceedings dated 24.07.2018, has authorized the fourth respondent College to fill up the sanctioned post of Marker from the temporary employees working in the College, based on G.O.Ms.No.460, Higher Education (G2) Department, dated 09.08.2004. Pursuant to the same, the fourth respondent College has called for applications from the eligible temporary employees working in the College. The petitioner had also applied to the said post. After conducting the selection process, the fourth respondent has regularised the service of the petitioner in the sanctioned post and fixed his scale of pay as Rs.15,700/-. While so, without issuing notice to the petitioner, the fourth respondent has passed the impugned order dated 07.02.2020 terminating the petitioner from service. Challenging the same, the present writ petition has been filed.



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3. The learned counsel appearing for the petitioner would submit that initially, the petitioner was appointed as Marker in the place of the said Nagarajan in the fourth respondent College vide the order dated 14.08.2018, as per the permission granted by the Director of College Education and the Joint Director of College Education vide letters dated 24.07.2018 and 30.07.2018, based on the resolution of the College Committee. Subsequently, the petitioner was terminated on the ground that the Director of Collegiate Education has issued a letter dated 30.01.2020, in terms of the Government letter dated 07.12.2011, stating that the post of Marker has to be filled through Outsourcing Agency which is contrary to the Adhoc Rules. Further, based on G.O.Ms.No.460, Higher Education (G2) Department, dated 09.08.2004, the petitioner was appointed as Marker on temporary basis. A Government letter cannot override the Government Order issued under Article 309 of the Constitution of India. Hence, the impugned order issued by the fourth respondent is illegal and without jurisdiction.



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4. The learned Government Advocate appearing for the respondents would submit that the second respondent vide proceedings dated 30.01.2020, has stated that the other posts than the post of Office Assistant in Group 'D' Category should be filled up only through outsourcing Agency and hence, the fourth respondent was instructed by the second respondent to terminate the service of the petitioner as his appointment was temporary and against the prevailing Rules in-force. Hence, the impugned order passed by the fourth respondent need not be interfered with.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Marker in the year 2011 in the place of one Nagarajan, who was promoted to the post of Lab Assistant at the fourth respondent College, based on G.O.Ms.No.460, Higher Education (G2) Department, dated 09.08.2004. The petitioner is working right from the



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year 2011 without any break and the service of the petitioner was regularized in the sanctioned post. The said Government Order was passed on 09.08.2004 under the Article 309 of the Constitution of India by framing the Adhoc Rules. However, without issuing notice to the petitioner and contrary to the said Government Order, the present impugned order has been passed on the ground that the Director of Collegiate Education has issued a letter dated 30.01.2020, in terms of the Government letter dated 07.12.2011, stating that the post of Marker should be filled up through Outsourcing Agency. Admittedly, a letter cannot override the Government order issued under Article 309 of the Constitution of India. Further, without issuing notice to the petitioner, the present impugned order has been passed, which is clearly in violation of the principles of natural justice and is contrary to the Government Order in G.O.Ms.No.460, Higher Education (G2) Department, dated 09.08.2004.



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7. Accordingly, this Writ Petition is allowed and the impugned order issued by the fourth respondent in Na.Ka.No.1241/A/2018 dated 07.02.2020 is quashed. No costs. Consequently, the connected miscellaneous petitions in W.M.P(MD).Nos.2488 and 2489 of 2020 are closed and W.M.P(MD).No.10723 of 2021 is dismissed.

23.01.2023

ssb

NCC:Yes/No

Index:Yes/No

Internet:Yes/No



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