



W.P.No.19898 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	3/10/2023
Pronounced on	10/1/2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition No.19898 of 2013

K. Buvana ... Petitioner

Vs

1. The Additional Chief Secretary to Government
Environment & forest (FR 6) Department
Secretariat
Chennai 600 009.

2. The Additional Principal Chief
Conservator of Forests
(Afforestation) & Chief Project Director
Tamil Nadu Biodeversity Conservation and
Greening Project
Chennai.

3. The Forestry Extension Officer
Forestry Extension Division
Krishnagiri.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in G.O.Ms.No.276, Environment and Forests (F R - 6) Department,



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dated 13/12/2012 and quash the same as ultra vires and illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and consequently, forbear the respondents from terminating her services as Technical Assistant in Krishnagiri Divisional Management Unit.

For petitioner	...	Mr.C.K.Chandrasekar
For respondents	...	Mr.A.M.Ayyadurai Government Advocate

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O R D E R

This writ of certiorarified mandamus is filed to quash the orders, dated 13/12/2012 passed by the first respondent in G.O.Ms.No.276, Environment and Forests (F R - 6) Department, and consequently, forbear the respondents from terminating her services as Technical Assistant in Krishnagiri Divisional Management Unit.

2. The petitioner has completed B.Sc (Electronic Science) and M.Sc (I.T) in the year 2010 and B.Ed in the year 2011. As per G.O.Ms.No.17 Environment and Forests (FR 6) Department dated 28/1/2011 a High Level Committee was constituted for the project captioned as "Tamil Nadu



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Biodiversity Conservation and Greening Project" under the Chairmanship of the Chief Secretary to Government and Secretaries of various Department as members. Government has issued G.O.Ms.No.189, Environment and Forests (FR 6) Department dated 20/12/2011 and accorded administrative sanction for implementation of TBGP for a period of 8 years from 2011 - 2012 to 2018 - 2019.

3. After constitution of the Project G.O.Ms.No.190, Environment and Forests (FR 6) Department, dated 20/12/2011 was issued to adopt the "Operational Manual of the Project Management Unit" as approved by the High Level Empowered Committee. Clause 3.9.1 of the Operational Manual reads as follows:-

"3.9.1 Recruitment:

Contractual staff for the Project Management Unit / Divisional Management Units shall be recruited from two sources namely by engaging the eligible retired staff from Tamil Nadu Forest Department or from open market through



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Outsourcing.

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4. The Forest Extension Officer, Krishnagiri, third respondent had caused a Paper Publication on 11/3/2012 calling for applications for the post of Technical Assistant and Data Entry Operator in the Divisional Management Unit, Krishnagiri. After interview, third respondent appointed the petitioner as a Technical Assistant on 9/7/2012 in the Divisional Management Unit, Krishnagiri, after the selection list was approved by the Chief Conservator of Forest (Forestry Extension). In the appointment order, it is clearly mentioned that the petitioner was appointed for a period of one year and the same will be renewed on the performance review.

5. Thereafter, the Government issued another government order in G.O.Ms.No.276 Environment and Forest (FR6) Department, dated 13.12.2012, thereby amending the existing para 3.9.1 under Chapter 3 of the Annexure of the government order in G.O.Ms.No.190 Environment and Forest (FR 6) Department, dated 20.12.2011, as follows:-

"3.9.1 Recruitment:

Contractual staff for the Project Management Unit



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/ Divisional Management Units shall be recruited from two sources namely by engaging the eligible retired staff from Tamil Nadu Forest Department or from open market through Outsourcing.

"3.9.1.1 Engagement of retired Staff on

Contractual basis:

A notice inviting applications from retired staff shall be displayed in all Regional Offices and head office of the Tamil Nadu Forest Department indicating the essential and desirable qualifications.

The applications will be scrutinized by a Committee constituted by the Chief Project Director for the purpose, followed by interview of the short listed candidates by the committee. The candidates offered appointment should be subject to physical fitness as certified by a qualified doctor not below the rank of Civil Assistant Surgeon in Government Hospital.



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"3.9.1.2 Employment of Contractual staff

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through Outsourcing:

In the event of sufficient qualified candidates not available. from retired staff, the vacancies may be filled by outsourcing through manpower supply firms.

An advertisement is to be issued in one local daily newspaper inviting Expression of Interest (EOI) from reputed firms indicating the essential and desirable qualifications for each category and number of anticipated personnel requirement.

The Expression of Interest (EOI) received from the firms shall be evaluated by a Committee appointed by the Chief Project Director for this purpose and the Committee will short list at least three firms Sealed bids shall be invited from the short listed firms for contractual services and the same shall be evaluated by the committee.



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The highest ranked firm shall be approved by the Chief Project Director for providing contractual services for a period of one year, which is subject to extension for further period based on the delivery of services to the satisfaction of Chief Project Director.

The Chief Project Director shall delegate the powers for selection of firms for contractual services at Divisional Management Units level to an appropriate authority to follow the above procedures".

6. Based on the above, the third respondent, at the oral instruction of the second respondent, asking the petitioner not to attend duty as they are taking steps to fill up fresh candidates as per the procedure stated in the impugned G.O. Hence, the petitioner has come forward with the instant writ petition.

7. Heard the learned counsel appearing on either side and perused the



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material placed before this Court.

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8. The learned Government Advocate would submit that the project called Tamil Nadu Biodiversity Conservation and Greening Project itself with the assistance of Japan International Co-operative Agency for the during of eight years from the year 2011 – 2012 to the year 2018-19. In the formulation and approval of project itself, policy decision was taken to implement the project with a part of contractual staff, taking into various administrative and financial implications and objective and implementation of the project. Therefore, the petitioner cannot challenge the government authority in the mode of contractual appointment. The petitioners are not governed by any service rules and there is no post of Technical Assistant/Data Entry Operator governed by any rules in the forest department.

9. The said Operational Manual of the Project Management Unit contains complete guidelines for the implementation of the Project namely Tamil Nadu Biodiversity Conservation and Greening Project and clause 3.9, 3.9.1 and 3.9.2 of the said manual prescribes procedures for recruitment of permanent staff and contractual staff in the Project Management Unit/Divisional Management Unit. The Manual 3.9.1, with regard to recruitment reads as



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follows :-

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“3.9.1.RECRUITMENT

For contractual engagement by the Project Management Unit (PMU)/ Divisional Management (DMU) Unit, an advertisement is to be issued in one local daily newspaper inviting applications, indicating the qualification. essential and desirable.

The applications will be scrutinized by a committee constituted by the Chief Project Director for the purpose, followed by interview of the shortlisted candidate by the committee.

Candidates with knowledge of local language, topography of the area, local cultural background and professional experience will be preferred.

Weightage shall be given to those who have exposure in Forest Department activities commensurate with their qualification,



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professional experience and overall capability in relevant field.

The candidates, offered appointment should be subject to physical fitness as certified by qualified doctor not below the rank of Civil Assistant Surgeon in Government Hospital.

Offer letters are to be sent thereafter to the selected candidates through Registered post/Speed Post/Courier.

10. The terms and conditions provided in manual 3.9.2. reads as follows:-

“3.9.2. Terms and conditions of staff contractual deployment:-

Initially the appointment will be on provisional basis and the contract for a period of one year will be made subject to verification of:



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Medical Certificate issued by Medical officer not below the rank of Civil Assistant Surgeon in support of physical fitness.

Character certificate issued by two Group A or B officers.

Relief order, clearance certificate from previous employer, if employed.

The appointment will be on consolidated emoluments per month, which will comprise consolidated salary, inclusive of all allowances like H.R.A., conveyance allowance etc.

This appointment does not confer any right to a regular appointment at any time in the Project or any other State Government Organizations. The appointment temporary in nature and shall not invite any legal recourse now or in the future.

That in the event of unauthorised absence during the contract period or any other misconduct



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shall render the staff liable for termination. The expression misconduct would mean improper or unprofessional behaviour, bad management, misbehaviour etc. Whether an act is misconduct or not would be decided by the Chief Project Director and his/her decision will be final and binding.”

11. It is the policy of the Government to engage the persons either directly or on contract basis or on outsourcing. In the case on hand, the petitioner was appointed on contract basis, as per the Notification given in the local newspaper. The Government has later changed the policy and amended the relevant orders in respect of recruitment of the staff wherein instead of appointing on contract basis, decided to recruit by on outsourcing basis. A High Level Committee was appointed and basing on the recommendation of the said Committee, the decision was taken to change in the mode of recruitment from the contract basis to that of outsourcing. The petitioner was initially appointed on contract basis for a period of one year and in the appointment order, it is mentioned that the contract can be extended subject to performance of the petitioner.



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12. This writ petition was filed in the year 2013. The petitioner was appointed on contract basis initially in the year 2012. As on the date of filing of writ petition, she has been continuing in the same position. The petitioner was appointed in the Tamil Nadu Biodiversity Conservation and Greening Project (TBCGP) which is formed as per G.O.Ms.No.17 dated 28/1/2011. The said scheme was formulated for a limited period of 8 years with effect from 2011 – 2012 to 2018 – 19. However, it appears that the said scheme has been continued even beyond 2018 – 2019. Therefore, the appointment of the petitioner even as a contract basis is only for the limited period.

13. The amended Scheme which is now being questioned by the petitioner does not speak that the persons who have been working on contract basis will have to be terminated or continued. The petitioner though mentioned in the affidavit that the respondents have been asking her not to come to Office, there is no record to that extent. The petitioner though has filed an application for seeking interim direction along with the writ petition no interim orders have been passed. In the year 2023, the petitioner has pressed this Court to pass interim orders on the Interlocutory Application, which was originally filed in the year 2013 along with the writ petition. However, the same was declined. The



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very insisting for passing of interim orders in the year 2023, indicates that the petitioner has been working even in the year 2023 which means the petitioner has been working for the last more than 10 years in the said Scheme.

14. The petitioner was not terminated from the service. No show cause notice has been given to the petitioner indicating that she has to leave the office. When no such thing has been happened, it is only on the apprehension, the petitioner has approached this Court. Even otherwise, it is for the respondents to decide the mode of recruitment. The petitioner went on to say many things in her affidavit including the plight of unemployment in the Society as to how the Government can recruit the retired staff, etc.

15. As already observed, the position which is being offered to the petitioner is not a permanent one. It is only a temporary position for the temporary period. The petitioner cannot compel the Government not to recruit the retired staff because the retired staff of the same Department will have more experience than fresh candidates. For certain positions, experienced staff are required to be engaged than the fresh staff and further, in case, if the contract workers are allowed to work continuously, the contract staff may likely to agitate to make them permanent employees. Since the scheme is only for eight



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years, the Government perhaps has taken a conscious decision not to recruit the staff on contract basis.

16. As already observed, the petitioner cannot question the policy of the Government in respect of mode of recruitment. Further, the duration of the project, since completed, at this stage, the petitioner cannot question the policy of recruitment of the scheme, which may likely to be closed at any time.

17. Accordingly, there are no merits and the Writ Petition is dismissed. There shall be no order as to costs.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

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Dr.D.NAGARJUN,J

mvs.



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Pre-delivery order made in
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