



W.P.No.4947 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.01.2024
Pronounced on : 12.03.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.4947 of 2021 and
W.M.P.No.5529 of 2021

R.S.Narayana Babu

...

Petitioner

Vs.

1. Institute of Chartered Accountants of India,
Represented by the Secretary,
Institute of Charged Accountants of India,
P.O.Box.No.7100 - ICAI Bhawan,
I.P.Marg, New Delhi - 110 002.
2. Secretary,
Institute of Chartered accountant of India,
P.O.Box.No.7100 - ICAI Bhawan,
I.P.Marg, New Delhi - 110 002.
3. Deputy Secretary - Regional Head,
Southern India Regional Office,
Institute of Chartered accountants of India,
122, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
Tamil Nadu.



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4. Director,
Board of Studies,
Institute of Chartered accountant of India,
“ICAI BHAWAN”- A-29, Sector - 62,
NOIDA - 201309.

5. Joint Director - Administrative Head,
Southern India Regional Office,
Institute of Chartered accountants of India,
122, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034,
Tamil Nadu.

6. Sabarigireesan,
Assistant Secretary - EDP & ICT Training,
Southern India Regional Office,
Institute of Chartered accountants of India,
122, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034,
Tamiil Nadu.

7. CRUX Management Services (P) Ltd.,
410, Lifestyle Building, 4th Floor,
My Home Tycoon,
Kundanbagh, Begampet,
Hyderabad - 5000016.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing Respondents 1 to 6 to regularize the Services of the Petitioner in cadre of Executive officer or section officer as the Case may be at their discretion based on the recruitment process initiated under the Advertisement No.03/2014 of Respondents 1 and 2 encompassing the invitation Letter dated 02.10.2014 for Written test



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followed by an Interview invitation Letter, dated 21.11.2014 again followed by a direction for Medical Examination letter dated 12.03.2015 culminating in the compliance of the petitioner thereof vide mail dated 18.03.2015 addressed to Respondents 1 and 2 enclosing therein the Medical Report of the Superintendent of Rajiv Gandhi Government Hospital Chennai. Thus effectively completing the recruitment process in March, 2015 itself albeit withholding issue of the appointment letter by Respondent 1 and 2 to the petitioner for reasons unknown despite availability of vacancies in cadre of Executive Officer or Section Officer for Faculty position in the Information Technology Training Centre in the office of Respondents 3 and 5 from the year 2015 till now by taking into account the continuous service of the petitioner for more than 11 years period from 07.12.2009 to 24.12.2020 as faculty the office of Respondents 3 and 5 by declaring that the oral order of termination dated 24.12.2020 of the petitioner by Respondent 3, is void, inoperative, arbitrary, unfair, unjust, arbitrary, malafide, discriminatory, without any lawful authority and denial of natural justice, which is in violation of Articles 14 and 16 of the Constitution of India.

For Petitioner : Mr.A.Irundayam

For Respondents

For R1 to R6 : Mr.M.Rajesh Ramanathan



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ORDER

This petition has been filed for issuance of Writ of Mandamus to regularize the service of the petitioner in the category of Executive Officer or Section Officer based on the recruitment process initiated vide advertisement No.03/2014 and consider the petitioner's continuous 11 years service between the period from 07.12.2009 to 24.12.2020 as faculty in the office of the respondents 3 to 5 and to declare the oral order of termination dated 24.12.2020 as void.

2. Mr.A.Irundayam, learned counsel for the petitioner submitted that the petitioner was initially engaged through M/s.Ma foi Ranstad for the period from 07.12.2009 to 31.08.2013 as a contract faculty under a contract. The contract was terminated on 31.08.2013. However, at the instance of the 3rd respondent, the petitioner continued as a faculty from 01.09.2013 through the 7th respondent. The petitioner was never interviewed by the 7th respondent. The alleged contract was sham and nominal one. Actually the petitioner is the direct employee of the respondents 1 to 6. On seeing the Advertisement No:03/2014 for recruitment to the post of Assistant Secretary / Section Officer etc., the



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petitioner participated in the Selection process and engaged with the 3rd respondent. However, the respondents withheld the appointment order for the reasons best known to them. Hence, the respondents cannot treat the petitioner like a contractual employee and terminate his service through the impugned order.

3. Mr.M.Rajesh Ramanathan, learned counsel appearing for the respondents 1 to 6 submitted that the petitioner was only engaged as a contractual employee through the contractor with whom the 1st respondent institute has a separate contract; the appointment order of the petitioner was issued by the contractor of the petitioner; the monthly pay slips were issued by the Contractor and attendance was maintained by the Contractor through Biometric system placed in the Institute; the contractor can terminate the petitioner at any time; the petitioner was initially appointed as a contract faculty in the year 2009. The contract ended in the year 2013. The Recruitment for the post of Assistant Secretary, Executive Officer and Section Officer is of the year 2014 and the same has not been concluded and it was withdrawn subsequently; the petitioner cannot be considered as



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a regular employee as he was engaged through a third party; the 3rd respondent never insisted the petitioner to continue as an out source faculty; the petitioner was appointed by the 7th respondent Man Power Agency with the desire to continue his service; however, the contract has been terminated by the 7th respondent and hence no relief can be sought against the respondents 1 to 6; it is pertinent to note that the petitioner was not a direct employee of the 1st respondent and deployed at the office of the 3rd respondent; the 3rd respondent cannot retain the petitioner as an out sourced faculty and hence he prayed for dismissal of the Writ petition.

4. It is seen from the records that the petitioner was appointed through M/s.Ma Foi Rastad which is a recruitment agency to work with the 1st respondent with effect from 07.12.2009. The job role of the petitioner has been detailed in the letter issued to the petitioner by the employment consultant on 27.11.2009. The contract of employment also issued by the very same consulting agency in which the conditions of service and other terms in respect of the employment have been stipulated. It is stated that the petitioner's services were terminated by giving 15 days notice in



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writing. The petitioner has served upto 19.09.2011 through M/s.Ma Foi Ranstad Consultation Limited and a relieving letter was also issued on 28.10.2011 by the same agency. Even though the petitioner is said to be working with the 1st respondent at the 3rd respondent Office, as a faculty in information Technology, he was not directly recruited by the 1st respondent. The petitioner was engaged through a Man Power Agency M/s.Ma Foi Ranstad between the period 07.12.2009 to 31.08.2013 with the 1st respondent in the same condition.

5. Thereafter the petitioner was engaged through the 7th respondent which is another Human Resource Agency from 1st September 2013 and the terms of employment have also been stated therein the employment contract. The petitioner had resigned his job by submitting his resignation letter and that was also accepted and then he was relieved from service on 19.09.2013.

6. Thereafter, a notification was issued by the 1st respondent on 17.07.2014 for recruiting certain posts. The petitioner had applied for the post of Executive Officer on 02.10.2014 and he got a communication that the written test would be held on 12.10.2014. Subsequently an interview



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was conducted on 21.10.2014. The petitioner candidature was in consideration for the post of Section Officer and he was asked to furnish a Medical Fitness Certificate on 12.03.2015. As required, the petitioner has obtained the Medical Fitness Certificate and produced. But he was not appointed subsequently.

7. The recruitment notified vide the notification dated 02.10.2014 was stopped by the 1st respondent at the stage of releasing the appointment order. The petitioner on his own violation has chosen to apply for the job in the 1st respondent Institution in response to the notification dated 02.10.2014. The appointment order has not been given subsequent to the production of the medical fitness as required by the 1st respondent. The 1st respondent had chosen to treat the petitioner as a contractual employee engaged through the 7th respondent. Later, the petitioner's services were terminated by the impugned order, dated 24.12.2020.



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8. The 1st Respondent continued to employ the petitioner even after the recruitment was cancelled. Until the impugned order passed to terminate the petitioner on 24.12.2020, the 1st respondent did not issue any fresh notification for recruiting to the job titles mentioned in the earlier notification. However, the service of the petitioner was utilized on the pretext that the petitioner was outsourced through the 7th respondent. That shows that the first respondent was very much in need of the post which was notified and for which the petitioner had applied. The service of the petitioner was also felt indispensable. However, to escape from the commitment of extending the service benefits of regular employees of the direct employment, the Institute of Chartered Accountants of India adopted a short cut method by allowing the petitioner to work through the 7th respondent. But in reality, the petitioner has been directly placed under the said Institute itself.

9. In fact, at some point of time, the Institute has also initiated action against the petitioner in pursuant to the complaint received from one Karthick making allegation of misuse of office position. No termination



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order was served to the petitioner by the 7th respondent. A mail appears to have been sent to the petitioner by the 7th Respondent on 14.04.2021 i.e., after three and a half months by stating that the petitioner's services are not required with effect from 24 December 2020. The said termination order has been sent by the 7th Respondent only because the petitioner has filed this Writ Petition in the month of February 2021. If the 7th respondent had really engaged the petitioner, he would have immediately issued the termination order and would not have waited for the petitioner to file this Writ Petition.

10. The petitioner was in continuous employment from 07.12.2009 to 24.12.2020, after participating in the recruitment process in response to the advertisement No.3/2014. In fact calling for the Medical Fitness Certificate from a selected person is a penultimate step for issuing the appointment order. Though the first Respondent can not be compelled to continue his recruitment process, he cannot be allowed to adopt unfair labour practice by tactfully stopping the process of recruitment at the point of issuing appointment order.

11. In this regard, it is worthwhile to cite the Judgment of the



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Supreme Court held in ***Ganesh Digamber Jambhrunkar and Ors. Vrs. the State of Maharashtra and Ors. reported in MANU/SCOR/116029/2023.***

In the said Judgment, the Hon'ble Full Bench has expressed its displeasure and disappointed for the unfair labour practice adopted by the employers.

The relevant paragraph of the Judgment is extracted below:

Thus, the time has come to stop the situation where Umadevi (3)4 can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3)4 laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3)4 ." The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.

12. In the instant case also, the Institute of Chartered Accountants of



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India had utilized the service of the petitioner at the first instance from 2009 to 2013. Thereafter selected him through its direct recruitment process vide its notification No.03/2014. But, the recruitment process was cancelled even though the services of the petitioner was utilised on the pretext of engaging him through the 7th Respondent. The above act of the employer in my opinion, is only to evade the benefits to be extended to its regular employees. The petitioner has served for more than 10 years in the Institute of Chartered Accountants of India. The petitioner may not be entitled to be treated as a direct employee of the Institute of Chartered Accountants of India from the year 2009. But from the date on which the Medical Fitness Certificate was obtained subsequent to the verification of his educational qualification, can be construed as his date of regular appointment with the Institute of Chartered Accountants of India. The Medical Fitness Certificate, dated 18.03.2015, certifies the physical fitness of the petitioner as on 18.03.2015 to undertake the job.

13. In view of the above stated reasons, the Writ Petition is allowed.



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The order dated 24.12.2020, terminating the petitioner from service is quashed. The respondents are directed to reinstate the petitioner into service in the cadre of Executive Officer / Section Officer by considering his date of appointment as the date of medical fitness certificate i.e, 18.03.2015 with continuity of service, all other attendant and consequential benefits but without backwages from 24.12.2020 till the date of reinstatement, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

12.03.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:

1. The Secretary,
Institute of Chartered Accountants of India,
P.O.Box.No.7100 - ICAI Bhawan,
I.P.Marg, New Delhi - 110 002.
2. The Secretary,
Institute of Chartered accountant of India,
P.O.Box.No.7100 - ICAI Bhawan,
I.P.Marg, New Delhi - 110 002.



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R.N.MANJULA ,J.

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3. The Deputy Secretary - Regional Head,
Southern India Regional Office,
Institute of Chartered accountants of India,
122, Mahatma Gandhi Road,
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