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W.P.No.32200 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.02.2024

PRONOUNCED ON : 20.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.32200 of 2023
and W.M.P.No.31805 & 31806 of 2023

Pandiammal

...Petitioner

-Vs-

1. The Director/Commissioner,
Social Welfare and Women
Empowerment Department,
Lady Wellington College,
Kamarajar Salai,
Chennai – 600 005.
2. The District Social Welfare Officer,
Thiruvallur District.
3. The District Collector,
Thiruvallur District.
4. The Government of Tamil Nadu
Represented by its Principal Secretary,
Social Welfare and Womens'
Empowerment Department,
Namakkal Kavingnar Maligai,
State Head Quarters, Secretariat,
Chennai – 600 001.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in Order No.Se.Mu.Na.Ka.No.7681/Neer1(3)/2019 dated 31.10.2022 passed by the first Respondent in terminating my service as confirmed by order in No. 5179626/SW3(2)/2023-4 dated 11.09.2023 passed by the fourth respondent in rejecting my reinstatement in service and to quash the same and consequently direct the respondents to reinstate the petitioner as Protection Officer in any of the district of Tamilnadu with all consequential benefits including pay arrears of Salary, backwages, allowances with all other emoluments from the date of termination to the date of her reinstatement and seniority.

For Petitioner : Mr.P.V.S.Giridhar
Senior Counsel
For Mr.K.G.Krishnaraj
and Ms.S.Shanthakumari

For Respondents : Mrs.R.L.Karthika
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 31.10.2022 thereby terminating the service of the petitioner and the order dated 11.09.2023 passed by the fourth respondent thereby confirmed the order passed by the first respondent and to reinstate the petitioner as Protection Officer.



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The case of the petitioner is that the petitioner was appointed as Protection Officer by an order dated 26.08.2009, for the period of one year on consolidate salary, based on the notification issued in G.O.Ms.No.13 dated 13.02.2008. She is qualified with Master degree, M.Phil, Diploma in Nursing and Diploma in counselling conducted by the Netherlands Stitching Gestalt Foundations-2000. Her appointment was made under the provisions of Section 8 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “PWDV Act”). She was initially appointed at Pudukottai and subsequently she got transfer to Chennai. Though she was appointed for one year subsequently, her services were renewed from time to time, till 22.11.2022.

3. From the year 2016 onwards, the petitioner was paid a sum Rs.30,000/- as consolidated salary per month. She had performed her duties and responsibilities in a sincere and dedicated manner. In fact, her service were appreciated by various officers including the judicial officers. She was awarded with several awards as follows :-



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(i) Best service award from Dr.Abdul Kalam Education and Green Trust in 2020.

(ii) Outstanding Social Service Award from International Tamil University in 2020.

(iii) Best Social Service Award from Kalvi Chudar.

(iv) IWR Versatile Award for appreciation and motivation, namely Best Kalpana Chawla Award in 2021.

(v) Life-time Achievement Award from Dr.Abdul Kalam Education and Green Trust in 2021.

(vi) Appreciation for outstanding work from the District Collector of Tiruvallur District on 15th August 2022 (recommended by District Social Welfare Officer)

4. While being so, some complaints were received as against the petitioner and in pursuant to the said complaints she was directed to submit explanation. On receipt of the detailed explanation submitted by the petitioner, all the complaints were closed. Even then, without any notice and without conducting any enquiry, she was terminated from service by the impugned order dated 31.10.2022, by the first respondent.



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Thereafter, the petitioner submitted representation to reconsider the order of termination. However, it was not considered as such the petitioner approached this Court in W.P.No.7289 of 2023 and this Court directed the fourth respondent herein to consider the representation of the petitioner and pass orders after giving opportunity of hearing in accordance with law, within a period of eight weeks. However, the fourth respondent without giving any opportunity of personal hearing to the petitioner mechanically rejected the representation and thereby confirmed the order passed by the first respondent.

5. The learned Senior Counsel appearing for the petitioner submitted that the petitioner was terminated from her servicer without even issuance of any notice and without even conducting any enquiry. It is clear violation of principles of natural justice. The fourth respondent passed vague order without any reasoning. The fourth respondent failed to consider any of the grounds raised by the petitioner. Further, the first respondent has no jurisdiction to terminate the petitioner. The government has the power to appoint the Protection Officer as contemplated under Section 8 of the PWDV Act. Therefore, the



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government only has the power to terminate the service of the Protection Officer. The petitioner had been working as Protection Officer from the year 2009, and she had unblemished service records and she was also awarded various awards.

5.1. He further submitted that though the petitioner was appointed on contractual basis on consolidated salary, her tenure should be three years. However, her appointment order was periodically renewed every year for the period of one year. The Rule 3(3) of the PWDV Rules clearly says that the tenure of the Protection Officer should be three years. Therefore, prior completion of three years, the petitioner should not be terminated and it is violation of Rules. He further submitted that the petitioner belongs to SC community and inter-caste marriage. Therefore, the orders impugned are illegal and arbitrary in nature and also completely tarnishing the name of the petitioner among the general public. In fact, four complaints which were referred by the fourth respondent were enquired and closed as false. Even then, the petitioner was terminated from service.



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5.2. In support of his contention, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble High Court of Culcutta reported in **(2001) 0 AIR (Cal) 102** in the case of **A.K.Ganguly Vs. Rajasthan State Electricity Board**, which held as follows :-

“50. This Court, with great respect to the learned Judge, cannot accept the aforesaid proposition. The proposition that a contract between the parties will prevail over an overriding statutory provision is contrary to basic norms of jurisprudence. A statutory provision is the sovereign will of the legislature and the same binds every one and certainly the parties who are coming under it unless the provision is made subject to contract or the law is repealed or declared unconstitutional by a competent court. If the proposition laid down in Ganpatrai (supra) is followed the same will lead to disastrous consequences. Any two individuals would be allowed to contract out of a statutory liability. It is well settled that there can be no contract which could defeat the provision of any law. This is one of the important facets of Section 23 of the Contract Act. So this Court, with respect to the learned Judge, holds that the interpretation given by the



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learned Single Judge is opposed to all cardinal principles of construction. Therefore, this court is of the view that the decision in Ganpatrai (supra) case was not correct and it was wrongly decided and this court is unable to follow the same.”

Therefore, he contended that when the statutory Rule is clear about the tenure is three years, the appointment of the petitioner for one year can be no contract which could defeat the provision of any law. Hence he prayed to allow this writ petition.

6. The learned Government Advocate appearing for the respondents would submit that the petitioner was appointed temporarily that too for the period of one year on contractual basis. Further, she was terminated after the period of one year of her service. Due to various complaints received from the general public, her service was terminated by an order dated 31.10.2022. On receipt of the complaints, a detailed enquiry was conducted and the explanation submitted by the petitioner for the said complaints was not satisfactory. Therefore, after due enquiry the service of the petitioner was terminated. In fact, the petitioner was



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appointed on contractual basis that too for one year on consolidated salary. Therefore, it doesn't require any show cause notice and there is no violation of principles of natural justice.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. Admittedly, the petitioner was appointed as Protection Officer at Pudukottai by the Director of Social Welfare and Women's Empowerment, Chennai on 26.08.2009, for a period of one year on consolidated salary of Rs.15,000/-, based on the notification issued in G.O.Ms.No.13 dated 13.02.2008. Subsequently, her service was renewed from time to time. Thereafter, the petitioner was posted to Chennai as Protection Officer. Further, she was posted to Thiruvallur District and finally on 23.11.2021, she was appointed to the post of Protection Officer under the Domestic Violence Act, 2005 in District Social Welfare Office, Thiruvallur District, on contract basic for the monthly consolidated salary of Rs. 30,000/- with effect from 26.11.2021, for the period of one year. The petitioner was also directed to submit the



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Contract Bond from the date on which, she joined in the said post.

Accordingly, the petitioner executed Contract Bond for the period of one year.

9. On perusal of initial appointment order dated 26.08.2009, revealed that the petitioner was appointed as Protection Officer in the Pudukottai District. Further it is clear that the said post was temporary in nature and if any complaints and for any other reasons without any prior notice, she will be terminated from her service. While the petitioner was serving as Protection Officer in Thiruvallur District, there were so many complaints received as against her as such, she was issued with show cause notice for calling her to submit explanation. Since the explanation submitted by the petitioner was not satisfactory, she was terminated from service by an order dated 31.10.2022, thereby relieving the petitioner from 31.10.2022.

10. The said order was challenged before this Court in W.P.No.7289 of 2023 and this Court by an order dated 09.06.2023, directed the fourth respondent herein to consider the representation



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submitted by the petitioner and pass appropriate orders within a period of eight weeks after affording a fair hearing to the petitioner including granting her the opportunity of personal hearing. As directed by this Court, the fourth respondent conducted enquiry and passed order dated 11.09.2023, thereby rejected the request made by the petitioner to reinstate her into service.

11. On perusal of the order dated 11.09.2023 revealed that, the petitioner was given opportunity of hearing on 11.08.2023 and the petitioner also submitted written explanation on 11.08.2023 and 23.05.2023. After considering the explanation submitted by the petitioner, the fourth respondent rejected the request made by the petitioner seeking reinstatement into service. Further it revealed that the fourth respondent while passing the order of rejection, had also taken into consideration about the complaints received against the petitioner and also explanation submitted by her. When the petitioner was acted as Protection Officer under the Domestic Violence Act, if any complaints received against the Protection Officer, normally it will not be appropriate to continue as Protection Officer to enquire the complaints



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received from the aggrieved persons.

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12. The learned Senior Counsel appearing for the petitioner vehemently contended that sub-rule (3) of Rule 3 of the PWDV Rules 2006, provides that the tenure of the Protection Officer shall be for a minimum period of three years. Therefore, the first respondent ought not to have terminated the service of the petitioner before completion of three years.

13. It is seen that, the petitioner was appointed as Protection Officer for the period of one year on temporary basis that too on consolidated salary. The post of Protection Officers have been created on consolidated pay and delegated the powers to the first respondent to fill up the posts of Protection Officers. That apart, the said posts are not governed by any service rules of the Government and governed as per the terms of contractual agreement entered by the incumbents and the contract could be terminated before the completion of one year on the ground of unsatisfactory service on the candidate selected or on the administrative grounds or when it is felt that continued employment is



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found unnecessary.

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14. Further, the petitioner was not appointed under Rule 3(3) of the PWDV Rules 2006. She was appointed only on contract basic as temporarily that too on consolidated salary. In fact, the petitioner agreed for the said terms and conditions and had executed Contract Bond for the period of one year. It is also pertinent to note that the petitioner was appointed for the period of one year on contract basis under the consolidated salary by an order dated 26.08.2009. Thereafter she was permitted to continue her service after completion of one year. Merely permitted the petitioner to continue her service after completion of one year, doesn't amount to 'her appointment was made as per Rule 3(3) of the Protection of Women from Domestic Violence Rules 2006'. As per contract, at any time without any notice, she will be terminated from her service. Therefore, the judgment cited by the learned Senior Counsel appearing for the petitioner is not helpful to the case on hand.

15. In view of the above discussions, this Court finds no infirmity or illegality in the order passed by the first and fourth



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respondents, and the writ petition itself devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.03.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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2. The District Social Welfare Officer,
Thiruvallur District.
3. The District Collector,
Thiruvallur District.
4. The Principal Secretary
Government of Tamil Nadu
Social Welfare and Womens'
Empowerment Department,
Namakkal Kavingnar Maligai,
State Head Quarters, Secretariat,
Chennai – 600 001.



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G.K.ILANTHIRAIYAN. J.

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ORDER IN
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