



W.P.(MD)No.20566 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2024

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.20566 of 2021

and

W.M.P.(MD)No.17200 of 2021

Dr.Muthulakshmi

: Petitioner

Vs.

1.The Director,

Indian Medical Association of Homeopathy,

Arumbakkam,

Chennai.

2.The District Collector,

Sivagangai District,

Sivagangai.

3.The Dean,

Government Medical College and Hospital,

Sivagangai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the first and third respondents to permit the petitioner to join duty with all attendant benefits, on the basis of the petitioner's representation dated 24.10.2021.



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W.P.(MD)No.20566 of 2021

For Petitioner : Mr.R.Murugan
For Respondents : Mr.S.Kameswaran,
Government Advocate

ORDER

This Writ Petition has been filed for a Mandamus seeking for a direction to the first and third respondents to permit the petitioners to join duty with all attendant benefits based on the petitioner's representation dated 24.10.2021.

2.The petitioner was appointed as an Ayush Doctor on consolidated basis through a work allotment letter dated 24.07.2020. Pursuant to the work allotment letter, the petitioner also joined duty as an Ayush Doctor. The said appointment was made during the Covid-19 period and the petitioner was admittedly appointed on consolidated salary. The petitioner's service has been terminated by the respondent and the petitioner had given a representation on 24.10.2021, to the first and third respondents, seeking for reappointment and for payment of attendant benefits due to her. According to the petitioner, since she availed maternity leave, she was unable to attend work and only due to the said reason, she was absent from duty. Therefore, the termination order issued by the respondent is erroneous and under those circumstances, she had



W.P.(MD)No.20566 of 2021

given the aforesaid representation seeking permission to re-join duty and for payment of all attendant benefits.

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3.It is brought to the notice of this Court by the learned Government Advocate appearing for the respondents that the petitioner was appointed only on temporary basis and only on payment of consolidated salary. Learned Government Advocate also placed a work allotment letter dated 24.07.2020 issued in favour of the petitioner by Five Star Man Power and Infra Services, Chennai, an agent outsourced by the official respondents for the purpose of employing Ayush Doctors during the Covid-19 period.

4.As seen from the said work allotment letter, it is clear that the petitioner was appointed as an Ayush Doctor only on temporary employment and was paid only a consolidated salary. It is also made clear in the work allotment letter that the services of the petitioner can be terminated by the respondents, if the petitioner is found guilty of dishonest, disobedient, negligent or absent from the duty, without any notice.

5.In the case on hand, the respondents have terminated the services of the petitioner only on the ground that without seeking permission of the official respondents, the petitioner had availed leave. Learned Government Advocate also placed on record the



W.P.(MD)No.20566 of 2021

judgment of the Division Bench of this Court dated 21.01.2021 passed in **W.P.(MD)No.19565 of 2020** in the case of **G.V.Vairam Santhosh Vs. Principal Secretary and another**, relating to the very same issue.

6.In the said case, a termination of similar appointment was challenged and the Division Bench has held that the respondents shall ensure that the recruitments are made only through the District Societies. Admittedly, when the appointment of the petitioner is only on temporary basis and only on payment of consolidated salary and was made only during the Covid-19 period, on account of emergency, the question of regularisation of the petitioner's services does not arise. Further, since the Covid-19 period has already come to an end, the petitioner cannot seek regularisation based on the work allotment letter issued to her by a private agency, which made it clear that the petitioner's appointment is only a temporary appointment and the salary paid to him is only on a consolidated basis. The Division Bench of this Court has also observed in a decision relied upon by the learned Government Advocate appearing for the respondents as referred to supra that appointment can be made by the respondents only through the District Societies and not through private agencies as was the case of the petitioner in the instant case.



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7.Learned Counsel for the petitioner would submit that for the period of the petitioner's absence, her salary was not paid by the respondents.

8.For the foregoing reasons, there is no merit in this writ petition with regard to the prayer of the petitioner for rejoining duty as an Ayush Doctor, since her appointment was only on temporary basis on payment of consolidated salary. But however, no prejudice will be caused if the petitioner is allowed to give a representation to the respondents seeking for payment of her salary which the petitioner claims was not paid during her maternity period and a direction is issued to the third respondent to consider the petitioner's representation seeking for payment of her salary during the period of her leave [maternity leave] on merits and in accordance with law within a time frame to be fixed by this Court.

9.In the result, the Writ Petition is disposed of, by holding that the petitioner is not entitled to rejoin duty as Ayush Doctor as her appointment is only temporary and on consolidated payment. But however, the petitioner is granted liberty to give representation to the third respondent with regard to the alleged non-payment of her salary and other benefits during the period of her maternity leave when she was in employment within a period of one [1] week



W.P.(MD)No.20566 of 2021

from the date of receipt of a copy of this order. On receipt of the said representation, the third respondent is directed to consider the same and pass orders on merits and in accordance with law within a period of eight [8] weeks thereafter. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

16.08.2024

Index :Yes / No
Internet : Yes / No
NCC : Yes/No
MR



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W.P.(MD)No.20566 of 2021

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W.P.(MD)No.20566 of 2021

ABDUL QUDDHOSE, J.

MR

W.P.(MD)No.20566 of 2021

16.08.2024