

(2011) 11 MAD CK 0093

Madras High Court

Case No: Writ Petition No. 4563 of 2007 and O.A. No. 8094 of 2001

A. Gunasekar

APPELLANT

Vs

Additional Director of Medical
Education The Selection
Committee and The Directorate
of Medical Education

RESPONDENT

Date of Decision: Nov. 9, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 21

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: G. Elanchezhiyan, for the Appellant; V. Subbiah, Spl. Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman

1. The petitioner was appointed by the first respondent as temporary Tabulator on daily wage basis from 07.02.1997. He filed O.A.No.8094 of 2001(W.P.No.4563/2007) for regularisation of his service. The Tribunal, while admitting the Original Application, granted an interim order on 21.12.2001 to the effect that the petitioner shall be retained in service if the work performed by him continues to be available. According to the petitioner, in violation of the aforesaid interim order, he was terminated from service by the first respondent by an order dated 31.12.2001. He made a request to the first respondent to cancel the order terminating him from service as it was against the interim order of the Tribunal. But, his request was rejected by the first respondent by an order dated 04.08.2004. The petitioner filed Writ Petition in W.P.No.35996 of 2004 to quash the above said orders of the first respondent dated 31.12.2001 and 04.08.2004 and for consequential direction to

re-instate the petitioner with all benefits. This Court by an order dated 21.03.2005, quashed those orders and directed the second respondent to call the petitioner, when the need to fill up the post of Tabulators comes up in future.

2. According to the petitioner, while similarly situated persons are continuing as Tabulators, the petitioner alone was not provided employment inspite of the order dated 21.03.2005 in W.P.Nos.35996 and 35997 of 2004. Hence, the petitioner filed Contempt Petition No.922 of 2005 and the same was dismissed by this Court on 02.12.2005, giving liberty to the petitioner to work out his remedy. Thereafter, the petitioner filed Writ Petition in W.P.No.7661 of 2006 seeking direction to re-instate him in service. The said Writ Petition was allowed by this Court on 21.10.2008 and positive direction was issued to reinstate the petitioner in service.

3. Based on the order dated 21.10.2008 made in W.P.No.7661 of 2006, on 15.12.2008, the first respondent had issued the posting order reinstating him in service. Under the said circumstances, the petitioner sought to regularise his service from the non employment period i.e. from 01.01.2002 to 21.12.2008.

4. Since no order was passed by the respondents, the petitioner has filed a writ petition in W.P.No.15077 of 2009 to regularise his service from the non employment period i.e. from 01.01.2002 to 21.12.2008. This Court by an order dated 03.08.2009, directed the respondents to consider the petitioner's representations dated 23.02.2009 and 01.06.2009 and pass appropriate orders on merits and in accordance with law.

5. Pursuant to the order dated 03.08.2009 made in W.P.No.15077 of 2009, the first respondent passed an order dated 20.10.2009, rejecting the request of the petitioner for regularization of his service from the non employment period i.e. from 01.01.2002 to 21.12.2008.

6. While so, the petitioner was denied the employment with effect from 20.10.2009. The petitioner has filed a petition in M.P.No.1 of 2011 in W.P.No.4563 of 2007 to amend the prayer so as to declare the termination order dated 23.10.2009 as null and void and consequently to direct the respondents to regularize the service of the petitioner in any one of the post with all consequential benefits. The petition was allowed and prayer amended.

7. Counter affidavit has been filed refuting the allegations made by the petitioner. It is stated that the petitioner was appointed in a temporary post on daily wage basis and the work was seasonal in nature. Hence, the petitioner could not seek regularization.

8. Heard both sides.

9. The petitioner was appointed as temporary Tabulator on daily wage basis from 07.02.1997. He filed O.A.No.8094 of 2001(W.P.No.4563/2007) for regularisation of his service. The Tribunal has passed an interim order dated 21.12.2001 to the effect that

the petitioner shall be retained in service if the work performed by him continues to be available. The interim order of the Tribunal dated 21.12.2001 is extracted here under:

Admit. Notice returnable by four weeks. Private notice permitted. The petitioner shall be retained in service if the work performed by them continues to be available.

10. However, the petitioner was terminated from service by an order dated 31.12.2001. The petitioner complained that the order of termination is in violation of the interim order dated 21.12.2001 passed by the Tribunal in O.A.No.8094 of 2001 and requested for reinstatement. The request of the petitioner was rejected by the first respondent by an order dated 04.08.2004. Hence, the petitioner has filed a writ petition in W.P.No.35996 of 2004 to quash the above said orders dated 31.12.2001 and 04.08.2004 and for a direction to reinstate him in service. This Court by an order dated 21.03.2005 quashed those orders and directed the second respondent to call the petitioner, when the need to fill up the post of Tabulators comes up in future. The said order of this Court dated 21.03.2005 in W.P.No.35996 of 2004 is extracted here under:

In view of the order passed by this Court in W.P.Nos.32380 & 32381 of 2002, the impugned order in these writ petitions are quashed and a direction as in the above writ petitions is given. Accordingly, there shall be a direction as hereunder.

The second respondent is directed to call the petitioner in each writ petition, along with fresh candidates, when the need to fill up the post of Tabulators comes up in future. However, while filling up the post of Tabulators comes up in future. However, while filling up the said post, due regard shall be had to the past services rendered by the petitioner in each case as Tabulators.

11. Since there was no positive direction to reinstate the petitioner, the petitioner was not reinstated. His complaint was that other similarly placed persons are still continuing in service. Hence, he filed a Contempt Petition No.922 of 2005 and the same was dismissed by this Court on 02.12.2005, giving liberty to the petitioner to work out his remedy.

12. Thereafter, he filed W.P.No.7661 of 2006 seeking direction to re-instate him in service. The said Writ Petition was allowed by this Court on 21.10.2008 and gave a positive direction to reinstate the petitioner in service as temporary Tabulator. Paragraphs 8 & 9 of the said order dated 21.10.2008 in W.P.No.7661 of 2006 is extracted here under:

8. Though, the work relating to Tabulators is stated to be seasonal one, at the time of receiving applications to MBBS/PG Degree/Diploma courses and para-medical courses, it is stated that as many as 40 temporary Tabulators are said to be in continuous employment. In fact, other petitioners in W.P.No.32380 & 32381 of 2002, are said to have been reinstated on temporary basis. While so, it would be unfair to

refuse reinstatement only to those two writ petitioners.

9. In the result, the Writ Petitions are allowed. There is no order as to costs. The Respondents are directed to reinstate the petitioners as temporary Tabulators within four months from the date of receipt of a copy of this order.

13. Based on the said order dated 21.10.2008 made in W.P.No.7661 of 2006, on 15.12.2008, the first respondent had issued the posting order reinstating in service the petitioner as temporary Tabulator. The petitioner joined duty on 20.12.2008. Under the said circumstances, he made a representation seeking to regularise his service from the non employment period i.e. from 01.01.2002 to 21.12.2008. In the said representation, no order was passed by the respondents. Hence, he filed a writ petition in W.P.No.15077 of 2009 to regularise his service from the non employment period i.e. from 01.01.2002 to 21.12.2008. This Court by an order dated 03.08.2009 directed the respondents to consider the petitioner's representations dated 23.02.2009 and 01.06.2009 and pass appropriate orders on merits and in accordance with law. Paragraphs 7 to 9 of the said order of this Court dated 03.08.2009 in W.P.No.15077 of 2009 is extracted here under:

7. The fact remains that the petitioner was originally appointed on 07.02.1997 as temporary Tabulator and he was in continuous service and subsequently on 31.12.2001, he was terminated from service and such termination order was challenged before this Court in W.P.Nos.7661 and 7662 of 2006 and this Court by its order dated 21.10.2008, directed the respondents to reinstate the petitioner. The main grievance of the petitioner is to the effect that the petitioner is not yet regularised inspite of his eligibility and inspite G.O.Ms.No.22 P & AR Department dated 28.02.2006. It is pertinent to note that the petitioner was preferred two representations on 23.02.2009 and 01.06.2009; But till date no order is passed on such representations.

8. Therefore, this Court, without going into the merits of the representations dated 23.02.2009 and 01.06.2009, is constrained to direct the 3rd respondent to consider the petitioner's representations dated 23.02.2009 and 01.06.2009 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of this order.

9. It is made clear that till the disposal of the representations dated 23.02.2009 and 01.06.2009, the second respondent shall not terminate the petitioner herein.

14. Pursuant to the order dated 03.08.2009 in W.P.No.15077 of 2009, the first respondent passed an order dated 20.10.2009, rejecting the request of the petitioner for regularization of his service from the non employment period from 01.01.2002 to 21.12.2008. This Court passed an order dated 03.08.2009 not to terminate the service of the petitioner until the representations dated 23.02.2009 and 01.06.2009 were disposed of. Since the representations were disposed of on 20.10.2009, the petitioner was denied employment from 23.10.2009. Thus, the

action of the respondents in denying the employment to the petitioner is mala fide.

15. The above said narration of facts makes it clear that the petitioner was made to suffer for one reason or other though he has been agitating for long time by filing one proceeding or other proceedings before this Court. The Government issued G.O.Ms.No.22 P & AR Department dated 28.02.2006 regularising the service of daily wage workers on completion of 10 years of service. This Court has also referred the said G.O.Ms.No.22 P & AR Department in its order dated 03.08.2009 in W.P.No.15077 of 2009 and the paragraphs 7 to 9 of the said order of this Court were extracted above.

16. Taking into account the entirety of the facts of the case, I am of the view that the termination of the petitioner from 23.10.2009 is per se, illegal and arbitrary and in violation of Articles 14 and 21 of the Constitution of India. Hence, I have no hesitation to declare the termination of the petitioner from 23.10.2009 as null and void.

17. In the said circumstances, it is relevant to note that the Government issued various Government Orders besides G.O.Ms.No.22, P & AR Department, dated 28.02.2006 referred to above, periodically regularising the service of temporary workmen employed on daily wage basis. The learned counsel appearing for the petitioner states that the petitioner would be satisfied if regularisation on completion of 10 years of service is made on notional basis and he is not interested in monetary benefits. The said submissions of the learned counsel for the petitioner is recorded. The policy of the Government is to regularise the service of daily wage workmen, who have rendered 10 years of service. I am inclined to apply the principle of G.O.Ms.No.22, P & AR Department dated 28.02.2006 and the first respondent is directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order and to regularise the service of the petitioner on completion of 10 years of service from the date of his initial appointment i.e., 07.02.1997 on notional basis.

18. With the above observations, the Writ Petition is disposed of. There is no order as to costs.