(2011) 08 MAD CK 0364

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 3617 of 2006 and WPMP (MD) No"s. 3873 and 3882 of 2006

S. Balamurugan	APPELLANT
Vs	
The Director of Medical and Rural Health Services, Teynampet, The District T.B. Control Authority/Chairman, The Joint Director of Medical and Rural Health Services, Government Headquarters Hospital and The Member Secretary, District T.B. Centre Society	RESPONDENT

Date of Decision: Aug. 22, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: J. Nisha Banu, in both WPs, for the Appellant; D. Muruganandam, A.G.P. in both WPs, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioners have approached this Court with a prayer, for issuance of a writ, in nature of certiorari, to quash the order, dated 16th February 2006, vide which, the

representations filed by the Petitioners, for renewal of contract was declined.

2. The Petitioners, in both the writ petitions, were appointed as "Lab Technicians" on 24.08.2002, at the District DTP Dispensary, Madurai Corporation and Government Primary Health Centre, T. Kallupatty, respectively, on contractual basis. The contract was renewed on execution of fresh agreement for one year. In view of the fact, that services of the Petitioners were not found to be satisfactory, their contract was not renewed any further.

3. The Petitioners approached this Court, by filing writ petition in W.P. No. 3387 of 2004 [S. Balamurugan] and W.P. No. 3388 of 2004 [Josuva Jebakumar], seeking regularization of their services. The writ petitions were dismissed, by observing that the Petitioners were appointed only on contractual basis, on fixed salary for a fixed period. That when, an employment was given in a particular scheme, the employee could not be said to have the right of regularization in service, as and when the contractual period is over, in-spite of the fact that the Petitioners put in more than 180 days or 240 days of service. The reliance in support of this finding was placed on the judgment of the Honourable Supreme Court, in the case of Executive Engineer ZP Engg. Div. and Anr. v. DigambaraRao etc.[2004 (7) Supr 302].

4. The Petitioners, being aggrieved by the order passed in the writ petitions, filed writ appeals, which were also dismissed. It was also observed that the contract was renewable on yearly basis, on good performance and mutual agreement.

5. In-spite of the fact that, after the dismissal of the earlier writ petitions and the writ appeals, there were no legal right with the Petitioners to continue on the job, or seek enforcement of contractual employment, by invoking the writ jurisdiction of this Court, as contractual employment can not be specifically enforced.

6. The Petitioners again filed W.P. Nos. 4730 of 2005 and 4711 of 2005. this Court directed the Respondents to dispose of the representations filed by the Petitioners. In pursuance to the order passed by this Court, in writ Petition Nos. 4730 of 2005 and 4711 of 2005, the representations for renewal of contract were rejected.

7. The Petitioners again filed another Writ petition Nos. 5771 of 2005 [Josuva Jebakumar] and W.P. No. 5783 of 2005 [S. Balamurugan]. In those writ petitions, this Court again ordered, holding of fresh enquiry, but it was observed that the order passed by this Court, will not be treated to confer any right to the Petitioners for seeking extension of contract.

8. In pursuance of the order passed by this Court, the impugned order has been passed. The reasons given for non-renewal of contract, reads as under:

i)LT Mrs. Balamurugan frequently absented himself from duty withoutanyintimationandifthedutypaywascutheusedtoquarrelwith theMedicalOfficerandgivepoliceintimationontheM.O. His behavour was irresponsible.

During JD''sinspection and STO''s visit, they pointed out his poorper formance. Fort his he gave legal notice to STO. Henever used to be present during duty time and in the work and in case if MO asked about his behaviour, he threaten him by saying that he has sent legal notice to the STO himself he his not bothered about anyone. Because of his behavour he was frequently transferred from one place to another and given warning orally many times. He was in the habit of giving police complaint and giving legal notice to anyone who pointed out his mistake. By this he was giving trouble for smooth administration.

ii)Mr.Josua Jeba kumar also shown poor performance. It was pointed out during WHO Consultant''s visit and also by the Medical Officer. Dr. Ismail Fathima,when asked about the theft of the microscope he was shirking away his responsibility by saying that he was not responsible for that and he was answering the higher authority carelessly. Because of his negligence, his contract was not renewed. More over when she was retiring on superannuation on 30.04.2005 these twits had given her a lawyer notice and publicly challenged that they would not lether to retire peacefully.

9. In the enquiry, the Enquiry Officer, reported that the appointment of the Petitioners was on the basis of guidelines and their, contractual appointments were renewed for two years. It was, in the 3rd year, that their performance was not found satisfactory and the behaviour of Petitioners was not also good, further they absented themselves without prior intimation, and disturbed the functioning of the hospital. The Petitioners were also guilty of insubordination.

10. The Enquiry Officer also found that the Petitioners were habitual litigant and filed false complaint with the police. The Enquiry Officer, held that non-renewal of the contract was fully justified. It was on the basis of the enquiry conducted that the Petitioners were not found fit for renewal of the contract.

11. The Learned Counsel for the Petitioners, vehemently contended that the Enquiry Officer, has failed to notice that the Petitioners were discriminated with the other employees, who were similarly situated, as their contract was renewed.

12. It is also the contention of the Learned Counsel for the Petitioners, that the Enquiry Officer did not consider the stand taken by the Petitioners, therefore, the findings recorded are based on conjuncture and surmises, and are not supported by any documentary evidence.

13. On consideration, I find no force in the contentions raised by the Learned Counsel for the Petitioners.

14. this Court recorded a positive finding that the Petitioners were not entitled to regularization of services, as their appointments was purely on contractual basis, in terms of the contract.

15. The findings were confirmed in the writ appeals, thereby, finally deciding that the Petitioners had no legal right to continue in the employment.

16. The appointment of the Petitioners, was held to be purely contractual, which could not be specifically enforced in the court of law.

17. Even though, no reasons were required, to be recorded for not entering into fresh contract, the contractual appointments is a bilateral contract between two parties, and nobody can enforce the contract of a personal service, as a remedy, in case of breach of contract or term thereof, can entitle the claim of damages for breach of contract.

18. It was, in view of the orders passed by this Court, the enquiry was conducted, wherein it was revealed that the conduct of the Petitioners was not good, and that, they were guilty of absence from duty.

19. The enquiry was not in the nature of statutory enquiry to prove the charges by way of positive evidence, as no legal right of the Petitioners was infringed. The Enquiry Officer was appointed to see, whether the claim of the Petitioners for appointment of contractual basis could be considered or not.

20. It cannot be said that the Petitioners were discriminated, as it is for the competent authority to select the person for appointment on contractual basis, to carry out the scheme, for a specified period.

21. It cannot, therefore, be said that the impugned order is violative of Article 14 and 16 of the Constitution of India.

22. No merit. "Dismissed".

23. Consequently, connected Miscellaneous Petitions are closed. No costs.