

(2011) 07 MAD CK 0225

In the Madras High Court

Case No : Writ Petition No. 48448 of 2006 (O.A. No. 3791 of 2001)

C. Muniammal

APPELLANT

Vs

District Collector, District Project Nutrition Officer and
Community Nutrition Instructor

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 309, 311(2)

Citation : (2011) 07 MAD CK 0225

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Mani, for the Appellant; R. Ravichandran, AGP, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner filed O.A. No. 3791 of 2001 before the Tamil Nadu State Administrative Tribunal, challenging an order dated 21.08.2000 passed by the second Respondent District Project Nutrition Officer, terminating her services.

2. In the original application, notice of motion was ordered on 19.06.2001. Pending the original application, though the Petitioner sought for an interim order, no interim order was granted by the Tribunal.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 48448 of 2006.

4. It is seen from the records that the Petitioner was working as a Community Nutrition Worker under the third Respondent Community Nutrition Instructor, Natrampalli, Vellore District. She had absented herself from 02.06.1998 without any prior intimation. This fact was also intimated to the District Collector, Vellore and a note was put up by his office on 21.02.2000. On the basis of the existing orders of the Government covering the nature of employment, the second Respondent terminated the services of the Petitioner, who by then was not attending to work for more than one year and two months.

5. The contention raised by the Petitioner was that no prior notice was given to her and the termination was done without any opportunity. It was stated that she was having a chronic liver problem and that was the reason why she could not attend for work. Subsequently, she had produced a medical certificate which was not considered by the Respondents.

6. Mr. S. Mani, learned Counsel for the Petitioner in support of his contention produced a judgment of this Court in *G. Periannan v. Government of Tamil Nadu*, rep. By the Secretary to Government reported in (2007) 5 MLJ 291, for the purpose of contending that in that case, a noon meal organiser was held to be holding a civil post in terms of Article 309 of the Constitution and therefore, such appointees are entitled for protection under Article 311(2) of the Constitution. The learned Judge of this Court held that since Noon Meal Organiser was appointed in terms of the Government order and the posting and transfers are also given by the officials of the State and the salaries are met out of the funds allocated under the budget allocation, he was of the opinion that a Noon Meal Organiser will have protection under Article 311(2) of the Constitution. Even in the absence of any service Rules framed for the said Service, the post of Noon Meal Organiser was created under the Government Order, which was issued in exercise of powers conferred under Article 162 of the Constitution, such persons must be held to be holding a substantive post.

7. Before proceeding with the legal issue raised by the Petitioner, it must be noted that the Community Nutrition worker is not a constituted service in terms of Article 309 of the Constitution and the persons are appointed on the basis of the Government Order in force. The very nature of work involves that a nutrition worker attached to the particular centre is in charge of preparing nutritious food substitute to be supplied to the beneficiaries. If the person was absent for more than 1 = years without any prior intimation, then the question of retaining such person in service is doubtful.

8. The Supreme Court vide its judgment in *Dipitimayee Parida Vs. State of Orissa and Others*, dealt with the nature of employment of the Anganwadi Workers. In Paragraph 11, it was held as follows:

11. The matter relating to recruitment of Anganwadi workers is not governed by any statute. Recruitments are made pursuant to a scheme framed by the Central Government. The State, therefore, while making recruitments in such projects in exercise of its jurisdiction under Article 162 of the Constitution of India, may issue such guidelines and/or circulars as it may deem fit and proper. The said guidelines are ordinarily binding on all the functionaries working in terms of the #scheme#

including the Selection Committees constituted for the recruitment of Anganwadi workers.

9. The Supreme Court also in *State of Karnataka and Ors. v. Ameerbi and Ors.* reported in (2007) 11 SCC 681, held that Anganwadi workers are not holders of

civil post. In paragraphs 13,14,20,28,29,31 and 38, the Supreme Court held as follows:

13. The posts of anganwadi workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and anganwadi workers but it is another thing to say that they are holders of civil post.

14. We are not oblivious to the fact that their presence in their respective villages is extremely important. They are supposed to make significant contribution to the society. They, we understand, are required to carry out a large number of activities, primary amongst them being the welfare of the children.

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20. Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists. We do not think that the said decision has any application in the instant case.

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28. However, rules framed under proviso to Article 309 of the Constitution of India are not attracted in the case of the Respondents. They are appointed under a scheme which is not of a permanent nature, although might have continued for a long time.

29. Appointments made under a scheme and recruitment process being carried out through a committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment....

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31. One of the questions which was raised before us was in regard to the right of an anganwadi worker to contest an election. They are indisputably free to do so. A holder of a civil post may not be entitled thereto.

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38... We are concerned herein with only one question viz. whether the Respondents are holders of any civil post. We are, having regard to the materials on record, of the view that they are not.

10. Obviously, the learned Judge who rendered the judgment in G. Periannan's case (cited supra) did not have the benefit of these two rulings of the Supreme

Court. Therefore, this Court is not inclined to accept the reasoning found in the said judgment. Further, the Petitioner had not given any valid explanation as to why her absence was not even intimated to the Respondents.

11. The Petitioner has not made out any case. Hence, the writ petition stands dismissed. No costs.