

**(2009) 03 MAD CK 0173**  
**In the Madras High Court**  
**Case No : Writ Appeal No. 1194 of 2006**

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|------------------------------------------------|------------|
| The Secretary, Tamil Nadu Legislative Assembly | APPELLANT  |
| Vs                                             |            |
| A. Sivasankaran                                | RESPONDENT |

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**Date of Decision :** 23-03-2009

**Acts Referred:**

Constitution of India, 1950 — Article 187, 226  
Tamil Nadu Legislative Assembly Secretariat Service Rules — Rule 17, 2(1), 2(3), 2(6), 6

**Citation :** (2009) 03 MAD CK 0173

**Hon'ble Judges :** S. Nagamuthu, J;D. Murugesan, J

**Bench :** Division Bench

**Advocate :** S. Gopinathan, Addl. Govt. Pleader, for the Appellant; No Appearance, for the Respondent

**Final Decision :** Allowed

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## Judgement

D. Murugesan, J.—The sole respondent by name A. Sivasankaran though was served and the name is printed in the cause list, there is no appearance either in person or through his Counsel.

2. It appears that the respondent has made an application on 10.01.2005 to the Secretary, Tamil Nadu Legislative Assembly, Secretariat for appointment as Office Assistant. The said application was considered in terms of Rule 17(a)(i) of the Tamil Nadu Legislative Assembly Secretariat Service Rules and by order dated 12.01.2005, he was appointed temporarily as Office Assistant. For better appreciation of the order of appointment, we are inclined to extract the said order:

LEGISLATIVE ASSEMBLY SECRETARIAT OFFICE ORDER No. 85/2005-1 TNLAS (OP.I) Dated 12.01.2005

Sub: Establishment - Legislative Assembly Secretariat - appointment of Temporary Office Assistant -orders - Issued.

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Under Rule 17(a)(i) of Tamil Nadu Legislative Assembly Secretariat Service Rules, Thiru. A. Sivasankaran is appointed temporarily as Office Assistant in this Secretariat.

(2) His appointment is subject to verification of original certificates regarding educational qualification, community and age. He is eligible to draw pay and allowances in the scale of pay of Rs. 2550-55-60-3200.

(3) He is instructed to join duty immediately. He is also instructed that at the time of joining duty he should bring the original certificates regarding educational qualification, community and age.

(4) He is also informed that his appointment is purely temporary and will be terminated from service, under Rule 17(f) of the said Rules, at any time without any notice and without assigning any reason and he cannot claim any service right by virtue of this temporary appointment.

Sd/- V.Rajaraman Secretary

3. By a subsequent order dated 30.06.2006, he was terminated from service in exercise of the power conferred under the very same rule. The said order of termination was put in issue in the writ petition and by the order under the appeal dated 13.07.2006, the writ petition was allowed. Hence, the Secretary, Tamil Nadu Legislative Assembly, Secretariat, Chennai has filed the present writ appeal.

4. In exercise of Clause (3) of Article 187 of the Constitution of India, the Governor of Tamil Nadu, after consultation with the Speaker of the Legislative Assembly is entitled to make the Secretariat Service Rules. Accordingly, the Tamil Nadu Legislative Assembly Secretariat Service Rules (hereinafter referred to as "the Rules") were framed and came into force on 24.03.1955 subject to certain subsequent amendments. In terms of Rule 2(1) of the Rules, a person appointed to service means, "a person is said to be "appointed to the service" when, in accordance with these rules or in accordance with the rules applicable at the time as the case may be. Such appointee is also put on probation or training for a prescribed period. Sub rule (3) of Rule 2 of the Rules defines "approved probationer" in the service, class or category, as a member of the service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of service, class or category. Even in case, the services of the candidate under probation could be dispensed with under the Sub-rule (6) of Rule 2 of the Rules. The appointment in question is, the office Assistant and the appointing authority is, the Deputy Secretary of the Tamil Nadu Legislative Assembly, Secretariat, Chennai as could be seen from Appendix-I of the Rules.

5. In terms of Rule 6 of the Rules, all appointments should be made strictly in accordance with Clause (IV) of Appendix-II of the Rules. In terms of Rule 7A of

the Rules, rule of reservation should be followed and in terms of Rule 17 of the Rules, temporary appointments could be made and the Rule 17(a) (i) of the Rules reads as under:

7. Temporary appointments and promotions:- (a) (i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of the service and there would be undue delay or administrative inconvenience in making an appointment in accordance with these rules to fill up the vacancy, the appointing authority may appoint or promote temporarily any person, otherwise than in accordance with these rules.

6. A perusal of the appointment order dated 12.01.2005 would show that the respondent was appointed not in terms of the Rule 6, but only under the Rule 17(a) (i) which relates to the temporary appointments. The said rule empowers the appointing authority to make such temporary appointments in the public interest owing to an emergency which has arisen to fill immediately a vacancy. In terms of Rule 17(f), the services of a person appointed under sub rule (a) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned. As long as the respondent, who secured an appointment in terms of Rule 17(a)(i), is also bound by Rule 17(f) whereby he cannot claim the permanency over the appointment as a matter of right and consequently he cannot question the order of termination made in exercise of the powers under Rule 17(f) of the Rules.

7. The question of entitlement of such appointments made not strictly in accordance with the general rule for such appointments, came up for consideration before the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In Para 43 of the said judgement the Apex Court has held as under:

3. ...it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as

"litigious employment" in the earlier part of the judgement, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

8. In the above judgement, the Apex Court had quoted with approval the earlier judgement reported in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, .

9. We may also quote the following judgements of the Apex Court in support of the aforesaid preposition

(i) *Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others*,

(ii) *Municipal Corporation Jabalpur v. Om Prakash Dubey* 2007 (1) SCC 373

(iii) *National Fertilizers Ltd. and Others Vs. Somvir Singh*,

10. The respondent had approached this Court questioning the authority of the Secretary, Tamil Nadu Legislative Assembly in terminating the services on the ground that such order of termination is bad on the ground that no opportunity was given. The principles of natural justice cannot be pressed into service, in case, the appointment was made without following the rules for regular appointments. On the facts of this case, it could be seen that the application was made on 10.01.2005 and the appointment was made on 12.01.2005. Such appointment, in our considered view is nothing but a back door entry by-passing the other eligible candidates for the post in accordance with the rules. Hence, the grievance of the respondent that his services cannot be terminated without following de hors of law cannot be accepted. The orders of termination of such appointments which are ex facie innocuous and that they did not cast any stigma on the government servant or visits him with penal consequences must be regarded as effecting a termination simpliciter. This law has been laid down by the Apex Court in *Nepal Singh Vs. State of Uttar Pradesh and Others*, .

11. It is brought to our notice that similar orders of termination were set aside by this Court in a batch of writ petitions and the said order was questioned in W.A. No. 2201 of 2003 and batch cases and the writ appeals were dismissed as not pressed. In our opinion, merely because the appellant under similar circumstances had not prosecuted the appeals and had not pressed those

appeals would not by itself disentitle the appellant from raising the same issue in a subsequent appeals as the appeals are to be considered independently on the basis of the law laid down by the Apex Court.

12. Inasmuch as the respondent who was appointed without following the rules, as a temporary Office Assistant with a clear understanding that his services could be terminated without any further notice and without assigning any reasons, he cannot after accepting such conditions, question such appointment on the ground that he has not been given any opportunity. Hence, in our considered view, the appeal must succeed.

13. In the result, the writ appeal is allowed and the order dated 13.07.2006 made in W.P. No. 22318 of 2006 is set aside. No costs. Consequently, M.P. No. 1 of 2006 is closed.