

**Central Administrative Tribunal
Madras Bench**

MA/310/00354/2019 (in)(&) OA/310/00246/2016

Dated the 18th day of March Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

S.Stella Marry,
W/o A.Selvaraj,
No.37/19, North Yadav Street,
Puthur,
Trichy 620 017.
By Advocate **M/s.M.Gnanasekar**

.. Applicant

Vs.

1. Union of India, rep, by
Chief Post Master General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
2. The Post Master General,
Central Region,
Tamil Nadu Circle,
Trichy 620 001.
3. Senior Superintendent of Post Office,
Tirucharapalli Division,
Trichy 620 001.
4. Chief Medical Officer,
Postal Dispensary,
Trichy 620 001.
5. The Under Secretary,
CGHS-III/EHS,
M/o Health & Family Welfare,
Nirman Bhawan,
New Delhi-110 108.

6. The Regional Officer,
Central Govt. Health Services-C,
1st Floor, Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.

.. Respondents

By Advocate **Mr.C.Kulanthaivel**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief(s):-

“i. To set aside the order dated 18.1.2016 passed by the 1st respondent and direct the 4th respondent to reinstate the petitioner in service as Staff Nurse in Postal Dispensary w.e.f. 28.3.2013 with all consequential benefits.

ii. Pass such other orders as are necessary to meet the ends of justice.

iii. Award cost and render justice.”

2. The applicant was engaged as Staff Nurse against leave vacancy on 14.6.1991. When one Staff Nurse Marry retired, she was engaged as Staff Nurse in the said vacancy w.e.f. 17.3.03. She was regularly working in the said post without any break. She continued in the post till 28.3.13. The Medical Officer, on 28.3.13 had disengaged her stating that the post of Staff Nurse is abolished.

3. She gave a representation on 25.6.2013 for taking her back and continue the engagement. According to the applicant, she was sponsored by Employment Exchange and was selected after an interview.

4. She filed OA 1616/13 for reinstating her in service as Staff Nurse in the Postal Dispensary. The Tribunal, after considering her long service, by order dt. 23.11.15 had directed the respondents to pass a speaking order on her representation under Central Civil Services (Temporary Service) Rules, 1965. But, the 1st respondent, by

order dt. 18.1.16 rejected her representation holding that she cannot be considered under CCS (Temporary Service) Rules, 1965. Hence, the applicant seeks to set aside the said order.

5. The respondents filed reply denying the claim of the applicant. The applicant was selected for the purpose of utilizing her in the leave vacancies at P&T Dispensary, Tiruchirappalli. It was specifically stated that the engagement will not give any right for regular appointment or absorption. They admit that the applicant was utilized as Staff Nurse in leave vacancies in between 15.7.1991 to 17.3.2013. In the year 2013, the post of staff Nurse was abolished. Subsequently she was being engaged as Auxiliary Nurse Midwife (ANM) as and when occasion arose.

6. The applicant was engaged since she had undertaken that she will not claim any permanent or temporary appointment. The applicant does not fulfil the conditions prescribed for getting the benefit under CCS (Temporary Service) Rules, 1965.

7. In the above backdrop, the applicant has filed MA 354/2019 seeking permission to implead the Under secretary, CGHS and Regional Officer, Central Government Health Services-C as respondents 5 and 6 in the OA. It is submitted that during the pendency of the OA, the proposed 5th respondent by order dt. 21.12.18 merged 33 Postal Dispensaries including Postal Dispensaries at Tirunelveli and Tiruchirappalli in Tamil Nadu w.e.f. 01.1.2019. Due to the said merger all the regular

employees had no threat of disengagement. Whereas the applicant was discontinued from work after 23.3.19. Therefore, to protect the interest of the applicant, it is necessary to implead respondents 5 and 6 as Party Respondents in the OA.

8. We had carefully gone through the pleadings and heard both sides. Annexure A9 letter dt.15.5.91 shows that the applicant was nominated by the District Employment Exchange, Tiruchirappalli for engagement in the leave vacancy at P&T Dispensary, Tiruchy as Nurse. It is specifically stated that it is for engaging her in the leave vacancy and will not confer any right for regular appointment or absorption. Thereafter, she worked as a Staff Nurse on ad-hoc basis in the Heavy Alloy Penetrator Project, Tiruchirappalli in between 07.6.93 to 28.8.93 (Annexure A10). Thereafter, the applicant was again engaged as Nurse (non-resident) in the Postal Dispensary, Tiruchy from March 2003 for various days. According to the applicant, she was engaged as Staff Nurse after going through various formalities. She was sponsored by the Employment Exchange. She gave a representation for regularisation as per Annexure A14 dt. 03.8.2011. Since there was no response, she filed OA 1616/13 before this Tribunal. This Tribunal, by order dt. 23.11.15 directed the respondents to consider the case of the applicant under CCS (Temporary Services) Rules, 1965 and take a decision. The CPMG, after considering the various aspects of the applicant's case had passed a speaking order dt. 18.1.16. According to him, the post of 2 Staff Nurse in the Tiruchirappalli Dispensary was abolished and

hence her services as Staff Nurse was stopped and she was engaged as Auxiliary Nurse Midwife (ANM) on need basis. He clarifies that the engagement of the applicant was purely for leave vacancies and she has no right to get regularised or absorbed.

9. On a perusal of the pleadings and annexures produced, it is clear that the applicant was engaged purely in leave vacancies and when the post was abolished she was disengaged. It is revealed that the respondents continued to engage her on need basis as ANM. In *K.C.Joshy v. Union of India [AIR 1991 SC 284]* the Hon'ble Supreme Court held that mere long period of engagement without anything more is not sufficient to create any right in favour of a person.

10. The respondents had also considered her case in the light of the provisions of CCS (Temporary Service) Rules and stated that the applicant is not eligible to be considered as the applicant's service was not "in the service of a temporary Government servant in a temporary post or officiating service in permanent post under the Government of India". The speaking order passed by the respondents is based on the law and regulations on the subject and he has given explanations regarding the reasons for his order. We do not find any infirmity in the order. So, there is no merit in the OA.

11. The OA lacks merit. It is mentioned in the speaking order that the applicant is being engaged as ANM on need base. So, the respondents can consider her name in

engaging her on casual vacancies of Staff Nurse or ANM considering her past experience.

12. OA is disposed off accordingly. Consequently, MA is allowed. No costs.

(T.Jacob)
Member(A)

18.03.2020

(P.Madhavan)
Member(J)

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