

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.29358 of 2012
&
M.P.Nos.1 and 2 of 2012

S. Alexander

...Petitioner

- Vs.-

1. The Director of School Education
DPI Campus
College Road
Chennai-600006.
2. The District Educational Officer
North Chennai
Egmore
Chennai-600 008.
3. The Correspondent
ELM Fabricius Higher Secondary School
Purasawalkam
Chennai-600 017.
4. The Correspondent
TELC Girls Higher Secondary School
Purasawalkam
Chennai-600 007.

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to impugned proceedings issued by the second respondent in OMU.No.4189/Aa4/2010 dated 10.12.2010 and quash the same and consequently direct the respondents 1 and 2 to approve the appointment of the petitioner in the post of Watchman in the third

respondent School dated 1 September 2005 and consequently in the post of Office Assistant in the fourth respondent School with effect from 1 July 2010 with all consequential and attendant benefits including arrears of salary with interest within a time frame to be fixed by this Court.

For Petitioner : Mr.G. Sankaran

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

ORDER

This writ petition is directed against the order dated 10 December 2010 on the file of second respondent rejecting the proposal submitted for approval of appointment of the petitioner in the post of Watchman.

The facts:

2. The writ petitioner was appointed as Watchman by the management of Tamil Evangelical Lutheran Church managing ELM Fabricius Higher Secondary School, Purasawalkam, Chennai. The appointment was made against a sanctioned vacancy caused on account of the promotion of Thiru J.S. Raja. The management submitted a proposal for approval of appointment. The proposal was rejected by the second respondent on the ground that there was a ban for making appointment and as such it was not possible to approve the appointment. The said order is under challenge in this writ petition.

Submissions:

3. The learned counsel for the petitioner placed reliance on several orders passed by this Court in support of his contention that under similar circumstances this Court set aside the order passed by the Education Department and directed the concerned authority to grant approval of appointment.

4. The learned Additional Government Pleader submitted that the appointment in question was made during the currency of ban period and as such the second respondent was right in rejecting the application for approval of appointment.

Analysis:

5. The factual matrix shows that Government have sanctioned one post of Watchman pursuant to the application submitted by the fifth respondent. The management appointed Thiru J.S.Raja as Watchman. He

was later given promotion. The resultant vacancy was filled up by giving appointment to the petitioner. The petitioner joined duty on 1 September 2005, pursuant to the appointment order dated 31 August 2005. The appointment was therefore made against a sanctioned post. The only reason for rejecting the proposal for approval appears to be the currency of Government Order prohibiting appointments.

6. The petitioner has produced several judgments to substantiate his contentions that this Court entertained similar writ petitions and directed the education authorities to approve the appointment notwithstanding the ban on appointments.

7. A Division Bench of this Court in its judgment dated 4 August 2008 in W.A(MD).No.456 of 2008 allowed the writ appeal and modified the order passed by the learned Single Judge directing the Government to approve the appointment of the appellant therein from the date of initial appointment. The order reads thus:

"2. Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents 1 to 3.

3. The learned counsel for the appellant submits that the appointment of the appellant from the date of appointment should have been approved by the learned single Judge instead of restricting the prayer.

4. It has been brought to our notice that in similar circumstances the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned single Judge need to be modified to this extent. Accordingly, the writ appeal is allowed modifying the order of the learned single Judge dated 30.10.2007 made in W.P.(MD)No.484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment."

8. Similar view was taken by this Court in W.P.No.22816 of 2008 and 12045 of 2012 and directions were issued to approve the

appointment. The petitioner is similarly situated. Therefore, I am of the view that the petitioner must succeed.

Result:

9. In the result, the order dated 10 December 2010 is set aside. The second respondent is directed to consider the proposal for approval of appointment in the light of the judgment in W.A.(MD) No.456 of 2008 and taking into account the above observation. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

10. The writ petition is allowed as indicated above. Consequences the connected MPs are closed. No costs.

Sd/-
Deputy Registrar (J)

//True Copy//

Sub Assistant Registrar

Tr/

To

1. The Director of School Education
DPI Campus, College Road
Chennai-600006.
2. The District Educational Officer
North Chennai, Egmore
Chennai-600 008.

1 CC to Mr.G. Sankaran, Advocate SR.No. 8397

1 CC to the Government Pleader, SR.No. 8202

RSY (CO)
PSI (27.02.2015)

W.P.No.29358 of 2012