

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.12.2016

Pronounced on : 16.02.2017

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.21156 of 2012

&

M.P.No.2 of 2012

N.Ramachandran
Son of Nallaiyan

.... Petitioners

Vs.

1.The Home Secretary,
St. George Fort,
Chennai.

2.The Secretary to the Government,
Department of Education,
St. George Fort,
Chennai.

3.The Director of School Education,
O/o. the Director of School Education Department,
Nungambakkam,
Chennai.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the G.O.47 dated 02.03.2012 issued by the second respondent and quash the same as illegal and unconstitutional and consequently directing the respondents to regularise the service of the petitioner while filling up the vacancies as per G.O.47 dated 02.03.2012 from the date of their appointment.

For Petitioners:Ms.S.Esai Rani

For Respondents:Mr.K.Venkataramani,
Addl. Advocate General, Assisted by
Mr.R.Govindasamy,
Spl. Govt. Pleader and
Mrs.M.E.Raniselvam, Addl.
Govt. Pleader

ORDER

Today, when the batch of writ petitions filed by various petitioners seeking regularisation of their services to the posts of Office Assistants, Night Watchmen, Watchmen, Sweepers, Water Supplier Attendants, etc., in W.P. No.20730 of 2012 etc., came up for hearing, I had passed the following order:

"2.The Parents Teachers Association (PTA) had appointed various persons for the posts of Office Assistants, Night Watchmen, Watchmen, Sweepers, Water Supply Attendant, etc., on ad hoc basis and these appointed persons had been serving in various schools for more than ten years on consolidated wages of approximately Rs.1,500/- p.m. The Government of Tamil Nadu had issued an order in G.O.Ms.No.47, School Education Department, dated 02.03.2012 whereby 5000 Sweepers and allied non-Teaching Staff were sought to be recruited on Special Scale of Pay. Some of the persons who were earlier appointed by the PTA and who had been serving in the Schools for a considerable period, had made a representation to the respondents to consider them for regularization of their services. When the appointments under G.O.Ms.No.47 was sought to be made, the Government, in certain cases, had rejected the claim of these ad hoc appointees stating that they were not properly appointed and that the caste reservation and age criteria were not taken into consideration at the time of ad hoc appointments. Further, the Government had also pointed out that these appointments were made on the basis of PTAs recommendations and hence, their services cannot be regularized and accommodated under G.O.Ms.No.47, dated 02.03.2012. Aggrieved against the rejections, these ad hoc appointees had filed these writ petitions before this Court.

3.Certain ad hoc appointees, whose recommendations were not considered, had also filed writ petitions, seeking Writ of Mandamus directing the respondents to regularize their services, since the Government had taken a decision to appoint 5000 Sweepers and allied employment under G.O. Ms.No.47 dated 03.02.2012.

4.I have considered the submissions made by the learned counsel for the petitioner as well as Mr.K.Venkata Ramani, the learned Additional Advocate General appearing on behalf of the respondents.

5.The PTA in the State of Tamil Nadu, which is a non-Government Organisation was established in the year 1964. The Association was organised with the object to develop good relationship and better co-operation between the parents and teachers, to guide children for their improvements in social, economic, cultural and educational activities, among other activities. Apart from the development of the students, the PTA also involves itself in the improvement and development of the school. Whenever, the School Management is in shortage of finance to meet necessary expenses like paying the remuneration for ad hoc appointees or expansion or construction of school buildings, the PTA also raises funds to assist in such activities. At times, whenever a situation arises whereby the Government is unable to provide fund immediately to aided schools owing to shortage in their budget and whenever the government, in principle, has agreed to provide funds, the PTA extends financial assistance during such situations.

6.In this background, in view of the acute shortage in the posts of Sweepers, Watchmen, Night Watchmen, Water Attenders and Office Assistants, etc., the Government had in principle, agreed to fill up the said vacancies. However, since the process of filling up the vacancies took considerable time, the PTA had, on ad hoc basis, appointed various persons to these posts until the State Government sanctioned these posts. Consequent to these ad hoc appointments and the Government having not taken an early decision to sanction these posts, the Ad hoc Appointees were continued to serve in Schools for a long period.

7.Though the Government was quite conscious of the fact that various persons like that of petitioners have been serving in the post of Sweepers, Watchmen, Office Assistants, etc., for a long period, curiously, an order in G.O.Ms.No.47, School Education Department, dated 02.03.2012, came to be passed whereby 5000 posts of sweepers and allied non-teaching staff were sought to be filled up through regular appointment. On a perusal of the G.O., it is seen that the Hon'ble Chief Minister of Tamil Nadu, had announced in the Legislative Assembly to appoint 5000 Sweepers and allied non-teaching staff in order to maintain cleanliness and healthy environment in all schools in the State of Tamil Nadu.

8. With this announcement in the background, the Government Order came to be passed and fresh appointments were sought to be made, without consideration of the existing ad hoc Appointees. It is rather unfortunate that the respondents had totally disregarded the long service put up by the Ad hoc Appointees like that of the petitioners, without any rationale in failing to regularise their services and opting to bring in new appointments. It is also seen that when the respondents had sought to reject the claim of some of the ad hoc appointees, the reason adduced was that their appointments were not made on regular basis and that their names were neither recommended by the Employment Exchange nor were they appointed by adopting caste reservation or taking into consideration their age eligibility criteria.

9. I am unable to accept the reasoning of the respondents in this regard. Admittedly, there was a severe crisis whereby appointments to these posts was imminent and necessary for the welfare of the school children. It is also not in dispute that the respondents were contemplating to sanction the posts of Sweepers, Watchmen, Night Watchmen, Office Assistants, etc., It is in contemplation of such a sanction that the PTA had made these appointments, which was also one of the objects of the PTA. While that being so, the Government's decision to appoint 5000 new persons to these posts without considering the plight of the Ad hoc appointments, who were serving for a considerable time on meagre consolidated pay, is totally irrational. The Government Order was also passed on the basis of the announcement made by the Hon'ble Chief Minister in the Legislative Assembly to appoint 5000 Sweepers and allied non-teaching staff in order to maintain cleanliness and healthy environment in all schools in the State of Tamil Nadu and thereby, in the given situation, the proper method to be adopted by the respondents would have been to regularise the ad hoc appointments and then resort to new appointments while trying to adjust the 5000 appointments announced by the Hon'ble Chief Minister. As such, the respondents attempt to justify their rejection orders stating that the ad hoc appointments were not regular, is illegal. Accordingly, I reject the reasoning of the respondents in passing orders disallowing the claim of the ad hoc appointees.

10.At this juncture, Mr.K.Venkata Ramani, the learned Additional Advocate General, appearing on behalf of Respondents, on written instructions would bring it to my notice that pursuant to G.O.Ms.47, dated 02.03.2012, the Government had already appointed 1495 Watchmen and 2213 Sweepers on 23.11.2012 and the remaining 506 vacancies of night watchman and 786 Sweepers are yet to be filled up and that the vacancies will be filled after getting appropriate orders from the Government. While that being so, there is no impediment on the part of the respondents to consider the case of the ad hoc appointees who have been serving various schools. Since the respondents have taken a decision to appoint new candidates vide G.O.Ms.No.47 dated 02.03.2012, the petitioners will be entitled to be regularised with effect from 02.03.2012.

11.As such, the petitioners in these writ petitions, who had also put in considerable service as ad hoc appointees on consolidated pay, are entitled to be regularised in the said post. Consequently, the Secretary to Government, Department of Education, Government of Tamil Nadu, Chennai, is hereby directed to regularise the service of the petitioners with effect from 02.03.2012, within a period of six weeks from the date of receipt of a copy of this order."

2. In view of the above order, the prayer sought for in the writ petition seeking to quash G.O.No.47, dated 02.03.2012, need not be interfered with. Nevertheless, in view of my findings in the above batch of writ petitions, the second respondent/the Secretary to Government, Department of Education, St. George Fort, Chennai, is hereby directed to regularise the service of the petitioner with effect from 02.03.2012, within a period of six weeks from the date of receipt of a copy of this order.

3. With the above direction, the writ petition stands allowed and consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Home Secretary,
St. George Fort,
Chennai.

2.The Secretary to the Government,
Department of Education,
St. George Fort,
Chennai.

3.The Director of School Education,
O/o. the Director of School Education Department,
Nungambakkam,
Chennai.

+lcc to M/S.S.Esairani, Advocate Sr.10333

W.P.No.21156 of 2012
&
M.P.No.2 of 2012

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