



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

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W.P.(MD) No.18253 of 2013
and M.P.(MD) Nos.2 to 4 of 2013

1.K.Sekar
2.S.Poonkodi
3.K.Mariyappan
4.Pandiyammal
5.M.Gurusamy
6.S.Ganesan

... Petitioners

Vs.

1.State represented by its Secretary
Department of Education
St. George Fort, Chennai.600 009

2.The Director of School Education
O/o. The Director of school Education,
Nungambakkam, Chennai.

3.The Chief Educational Officer,
O/o. The Chief Educational Officer,
The District Collectorate,
Kokkarakulam, Tirunelveli-9

4.The District Educational officer,
O/o. The District Educational Officer,
Tirunelveli-1

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the respondent No.4 in Mu.Mu.No.6931/a1/2013 dated 02.09.2013 and quash the same as unconstitutional and direct the respondents to regularise the services of the petitioners from the date of their appointment.

For Petitioner :Ms.A.Rajini

For Respondents :Mr.V.Muruganantham

Additional Government Pleader

ORDER

The prayer in the writ petition is for a writ of Certiorari and Mandamus to call for the records relating to the impugned proceedings of the respondent No.4 in



Mu.Mu.No.6931/a1/2013 dated 02.09.2013 and quash the same as unconstitutional and direct the respondents to regularise the services of the petitioners from the date of their appointment.

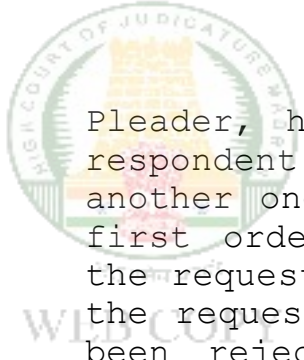
2. The case of the petitioners are that they were appointed temporarily in Schools under the third respondent jurisdiction by the Parent - Teachers Association. The petitioners 1 to 5 were appointed as Sweepers and the 6th petitioner was appointed as Office Assistant. According to them, for the past 10 years, they have been working as such temporarily. In the meanwhile, the Government had issued G.O.Ms.No.47 School Education (R1) Department dated 02.03.2013, by which, the Government has created 5000 new posts of sweepers, Watchman and Office Assistants to be employed in various Government and local body Schools. Since 5000 posts were created and since the petitioners have also been working temporarily, of course pursuant to the appointment made by the Parent - Teachers Association, for several years, they requested the respondents to make them permanent by utilising the posts created under the said Government order. Since the request of the petitioners were not considered, they had approached this Court by filing W.P.(MD) No.6737/2013 before this Court. This Court, by order dated 23.10.2013, passed the following order:

"The petitioners are employed for long time as sweepers/office Assistants/Night Watchman. They are not regularised in service. Now, the Government has issued G.O.Ms.No.47, School Education Department, dated 02.03.2013 creating 5000/- posts. When those posts are filled up, the respondents are directed to give priority to the petitioners in view of their long service."

3. Pursuant to the said order of this Court, since no orders were passed by the respondents thereby absorbing the services of the petitioners on permanent basis, the petitioners had approached this Court by way of contempt petition. During the pendency of the contempt petition, the respondents had produced an order dated 02.09.2013, wherein, it is stated that pursuant to the creation of 5000/- posts, by virtue of Government order in G.O.Ms.No.47, those posts would be filled up from among the eligible candidates to be sponsored by the Employment Exchange concerned and once the names of the petitioners are sponsored by the Employment Exchange, they would be considered and in view of the same, the request of the petitioners to absorb them immediately, cannot be accepted for the present. The said order dated 02.09.2013 has been under challenge before this Court in the present writ petition.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

5. Today, Mr.V.Muruganandham, learned Additional Government



Pleader, has produced two subsequent orders passed by the third respondent. One is dated 29.01.2014 in Na.Ka.No.6931/A1/2013 and another one is dated 31.01.2014 in Na.Ka.No.1520/A1/2013. By the first order dated 29.01.2014, the third respondent has rejected the request of the petitioners 5 and 6 herein and by the 2nd order, the request of other petitioners ie., the petitioners 1 to 4 has been rejected by the third respondent. Both these orders are passed, in detail, wherein, the third respondent, after having considered the directions given by this Court, as extracted above, has rejected the plea of the petitioners.

6. However, in the present order, which is impugned in this writ petition, that is the order dated 02.09.2013 of the third respondent is concerned, the said order has only stated that if the names of the petitioners herein are sponsored by the Employment Exchange to fill up the posts, pursuant to the appointment drive to be undertaken by the Government for the 5000 posts created pursuant to G.O.Ms.No.47, the names of the petitioners would also be considered and therefore, for the present, ie., at the time of passing the impugned order, the request of the petitioners would not be considered. In this impugned order, it has been specifically mentioned that the impugned order is passed in respect of only two of the petitioners herein, namely, S.Ganesan and M.Gurusamy, who are the petitioners 6 and 5 respectively. The impugned order is very silent about the other four petitioners. Nevertheless, the petitioners joined together had filed the present writ petition challenging the order dated 02.09.2013.

7. During the pendency of the writ petition, since two separate orders dated 29.01.2014 and 31.01.2014 have been passed by the third respondent, whereby the request of these petitioners have been specifically rejected or turned down and those orders, according to the learned counsel for the petitioners, so far have not been put under challenge before any Court of law, those orders are still in operation and unless and until the veracity of the said orders of the third respondent, whereby the plea of the petitioners rejected, is decided one way or the other, making an exercise to decide the issue now raised in the present writ petition challenging the order dated 02.09.2013 would be a futile exercise.

8. The learned counsel for the petitioners would submit that the petitioners have been continuously working in the respective jobs such as Sweepers and Office Assistants and their services are not dispensed with at any point of time.

9. In view of the aforesaid facts and circumstances, this Court has considered view that the petitioners can be given liberty to challenge the subsequent rejection orders dated 29.01.2014 and 31.01.2014 respectively.



10. In the result, the following orders are passed in this writ petition:

(i) In view of the orders passed by the third respondent in Na.Ka.No.6931/A1/2013 dated 29.01.2014 and 1520/A1/2013 dated 31.01.2014 respectively, whereby the specific request of the petitioners herein are rejected, the challenge made in this writ petition against the order of the third respondent dated 02.09.2013 has become infructuous and therefore, the merits of the said impugned order herein need not be gone into at this stage.

(ii) It is open to the petitioners herein to challenge the said orders dated 29.01.2014 and 31.01.2014 issued by the third respondent in the manner known to law, within Three months from the date of receipt of copy of this order.

(iii) Since the petitioners have been continuously working for several years, of course, on consolidated pay, pursuant to the appointment made by the respective Parent - Teachers Association of the Schools concerned, their services shall not be dispensed with till they approaches the Court of law to challenge the said orders dated 29.01.2014 and 31.01.2014 and the services of the petitioners shall continue as in the present in the respective schools.

(iii) In the respective Schools, where the petitioners are working, the respondents shall not make any appointment by creating a third party right by dispensing with the services of the petitioners.

11. With these observations and directions, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

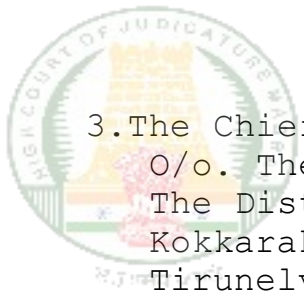
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Sub Assistant Registrar

To

1.The Secretary
Department of Education
St. George Fort, Chennai.

2.The Director of School Education
O/o. The Director of school Education,
Nungambakkam, Chennai.



3.The Chief Educational Officer,
O/o. The Chief Educational Officer,
The District Collectorate,
Kokkarakulam
Tirunelveli.

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4.The District Educational officer,
O/o. The District Educational Officer,
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+1 cc to MR.A.Rajini, ADVOCATE, SR NO: 5296

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