

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-01-2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.34389 to 34391 of 2017

And

W.M.P. Nos.38225, 38226 and 38227 of 2017

P.Rajkumar .. Petitioner in WP 34389/2017
L.Devaraj .. Petitioner in WP 34390/2017
G.Sudhakar .. Petitioner in WP 34391/2017

vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Education Department,
Chennai-9.
- 2.The Director of School Education,
DPI Buildings,
College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Tiruppur.
- 4.The District Educational Officer,
Tiruppur.
- 5.The Secretary,
S.L.N.Memorial Higher Secondary School,
Karadivavi - 641 658,
Tiruppur District. .. Respondents in all WPs

Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issue of Writs of Certiorarified Mandamus, calling for the entire records connected with the impugned proceeding of the fourth respondent vide Aa.Thi.Mu.Nos.4890/A3/2017, 4889/A3/2017 and 4891/ A3/2017 respectively dated 17.11.2017, signed on 28.11.2017 and quash the same and consequently, direct the respondents to approve the appointment of the petitioner as Waterman gardmen and Night Watchmen respectively in the fifth respondent-School w.e.f.

2.8.2017, with all consequential monetary benefits, in the light of the order passed in Deva Asir vs. Secretary to Government, Education Department, reported in 2016 (3) LLJ 49.

For Petitioner in all WPs : Mr.S.N.Ravichandran

For Respondents

1 to 4 in all WPs : Mrs.P.Rajalakshmi,
Additional Government Pleader.

C O M M O N O R D E R

These three writ petitions are directed against the proceedings dated 17.11.2017, signed on 18.11.2017, whereby the District Educational Officer, Tiruppur, returning the proposal, seeking appointments of Waterman, Gardner and Watchman respectively, sought for two more particulars. Firstly, a copy of the order according sanction for filling up of the aforementioned posts. Secondly, a copy of the Agreement Form, as the earlier Agreement Form submitted by the fifth respondent-School, namely, S.L.N. Memorial Higher Secondary School, Karadivavi-641 658, Tiruppur District, failed to carryout the signature of the Non-Teaching Staff. The fifth respondent-School is a Non-Minority Education Institution, receiving Grant-in-Aid from the first respondent.

2. In view of the falling of three vacancies, namely, Waterman, Gardner and Watchman, in the fifth respondent-School, on various dates, namely, for Waterman on 1.7.2006, for Gardner on 1.7.2008 and for Night Watchman on 1.8.2003 respectively, the fifth respondent-School issued a paper advertisement in 'Dinakaran Newspaper' inviting applications for all the three aforementioned posts. In the meanwhile, the fifth respondent-School also notified the vacancy in the District Employment Exchange on 12.5.2017, based on which, the District Employment Office also furnished a list of candidates on 5.6.2017. Only after complying with the procedure, the School Committee conducted an interview on 4.7.2017.

3. After selecting the three candidates for the posts of Waterman, Gardner and Night Watchman, the School Committee passed a resolution on 1.8.2017, selecting them on merits. On the next day i.e., 2.8.2017, orders of appointments were issued and all these three Non-Teaching Staff have also joined the service in the fifth respondent-School, on 12.8.2017.

4. On the date of their joining in service, the fifth respondent-School sent a proposal for seeking approval of their appointments as Waterman, Gardner and Night Watchman, to the District Educational Officer, Tiruppur, the fourth respondent herein. However, the fourth respondent finding that the prior

approval, namely, Staff Fixation Order has not been enclosed and that the Agreement Form also failed to carry the signature of the appointees, returned the proposal, seeking for furnishing the aforementioned two documents. It is at this stage, the petitioners are before this Court, challenging the impugned proceedings.

5. The learned counsel appearing for the petitioner submitted that since the fifth respondent-School was accorded with the approval of appointments of Waterman, Gardner and Night Watchman in the Staff Fixation Order dated 27.8.2016. The fourth respondent on receipt of the proposal, mentioning that all the three appointees, namely, Waterman, Gardner and Night Watchman were appointed in the sanctioned post, which fell vacant on retirement of the previous incumbents, ought not to have returned proposal. The learned counsel for the petitioner also made reliance from the judgment of this Court in Deva Asir vs. Secretary to Government, School Education Department [(2016) 3 LLJ 49 (Mad)], holding that there is no need to get prior permission from the Educational Authorities as per Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, before filling up of any sanctioned post, if it is already sanctioned.

6. The return of the proposal has been made only to protract and to cause further delay and moreover, when the fourth respondent is fully aware of the legal position, more particularly, Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, relating to the service conditions of teachers and other persons, the fourth respondent ought not to have returned the proposal.

7. This Court having taken note of the Staff Fixation Order dated 27.8.2016 and the proposal made by the fifth respondent-School, passed an order dated 5.1.2018, which reads as under:-

"The impugned orders dated 17.11.2017, signed on 28.11.2017, are indeed very frivolous and cryptic in nature, wasting the precious time of the Court.

2. The reasons for this Court to arrive at such an opinion is even the staff fixation order was already there sanctioning one post each of Waterman, Gardner and Night Watchman in the fifth respondent-School. Further, the previous incumbents, viz., Karuppan (in case of WP No.34389 of 2017), Sundaram (in case of WP No.34390 of 2017) and Shanmugam (in case of WP No.34391 of 2017) who were serving as Waterman, Gardner and Night Watchman

respectively, had retired on reaching the age of superannuation and in the said respective posts only, the fifth respondent-School has appointed the petitioners and this fact has also been mentioned in the proposals sent by the fifth respondent-School to the District Educational Officer, Tiruppur, the fourth respondent and notwithstanding such proposals and without even looking at the staff fixation order, the impugned orders have been wrongly passed by the fourth respondent.

3. Hence, the District Educational Officer, Tiruppur, the fourth respondent, is hereby directed to appear before this Court in person on 10.1.2018 (Wednesday) to show cause as to why exemplary costs of Rs.25,000/- payable from his wallet, be not imposed on him.

Post on 10.1.2018 (Wednesday)."

8. Pursuant thereto, a detailed separate counter-affidavit has been filed in each of the three writ petitions, tendering unconditional apology. The relevant paragraph from one of the counter-affidavit, namely in W.P.No.34389 of 2017, reads as under:-

"7. It is submitted that on receipt of the proposal returned by the fourth respondent, the petitioner filed the present writ petition. Upon hearing the matter on 5.1.2018, this Hon'ble Court passed order as follows:-

"... Therefore you viz., the District Educational Officer, Tiruppur. Be and hereby summoned to appear before the High Court of Judicature at Madras on Wednesday, the Tenth day of January, 2018, (10/01/2018) to show cause as to why exemplary cost of Rs.25,000/- payable from your wallet, be not imposed on you".

Hence to avoid impose of cost, the fourth respondent got an oral instruction from Joint Director of School Education (Secondary) to grant approval to the petitioner in the post of Waterman.

8. It is submitted the fifth respondent-School has also rectified the discrepancies except getting prior permission from the Director of School Education and resubmitted the proposal on 9.1.2018. In spite of that the fourth respondent has got oral instruction from the Joint Director of School Education (Secondary) to approve the appointment of the petitioner in the post of Waterman and the said approval order was passed with a condition stating that the order is subject to the outcome of the writ petition.

9. It is further submitted that the respondent has no intention to return the proposal, it was returned only due to the violation of the procedure. Therefore to satisfy this Court, the approval was granted to the petitioner, the respondents have no personal motive to return the proposal of the fifth respondent. However, this Court comes to a conclusion that this respondent committed any mistake, I once again tender my unconditional apology before this Hon'ble Court to purge me from the present writ petition. It is humbly submitted that the respondent always have highest regard over the orders of this Hon'ble Court and always obey the orders of this Hon'ble Court.

Under the abovesaid circumstances, it is humbly prayed that this Hon'ble Court may be pleased to dispose of the writ petition with suitable orders and thus render justice."

9. The learned Additional Government Pleader, appearing for the respondents 1 to 4, producing the order according approval of appointment of Waterman, Gardner and Watchman in the fifth respondent-School, and would submit that the salary for all these three persons will be cleared within a period of two weeks. Since the genuineness of their Educational Certificates have not been verified till date, the order of temporary approval has been granted. However, once the fifth respondent-School submits the relevant documents, certifying the correctness and the genuineness of their educational qualifications and other Certificates, on perusal of the same, the fourth respondent will also issue Final Order, granting permanent approval, within three weeks thereafter.

10. Recording the said statement and accepting the unconditional apology, the three writ petitions are disposed of, directing the respondents to carryout the aforementioned directions without fail. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

Svn

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Education Department,
Chennai-9.
- 2.The Director of School Education,
DPI Buildings,
College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Tiruppur.
- 4.The District Educational Officer,
Tiruppur.

+1cc to Mr.S.N.Ravichandran, Advocate SR.No.4521
+1cc to Government Pleader SR.No.5538

WPs.34389 to 34391 of 2017

VGI (CO)
GN(08/02/2018)

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