IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.01.2019
CORAM
THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN
W.P.No. 32923 of 2014
and
M.P.Nos.1 of 2014 and 1 of 2015

D. Kamala ... Petitioner

Vs

1. The District Educational Officer,
Vellore District.

2. The Headmaster,
Government Boys Higher Secondary School,
Pallikonda - 635 809.
Vellore District. .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of declaration, declaring the oral termination order of the 2nd respondent as null and void and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr. G.Elanchezhiyan

For Respondents : Mr.C.Munusamy,
Special Government Pleader

O R D E R

This writ petition has been filed seeking a declaration declaring the termination of the petitioner as null and void.

2. According to the petitioner, she was appointed as a sweeper on a consolidated pay by the second respondent/Head Master on 12.03.2001. The above post is a sanctioned post and the eligible list has been called for from the District Employment Exchange, and her name was also sponsored. As the petitioner being fully qualified to be appointed as a sweeper, the second respondent has appointed the petitioner in the above said sanctioned post on 12.03.2001, after following all procedures. After appointment, from 13.03.2001, the petitioner was continuously working in the said post till 18.07.2014 and salary was also paid regularly to her and a separate Service Register has also been created in the name of the petitioner.

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The above appointment has also been duly informed to the District Educational Officer by the second respondent and there is no objection for the appointment. Now, all of a sudden, without any enquiry and without notice whatsoever, the second respondent orally directed the petitioner not to attend the duty. Immediately, the petitioner sent a representation to the first respondent and other authorities permitting her to continue the service. But, till date, no action has been taken. Hence, the present writ petition has been filed.

3. The respondent has filed a counter affidavit stating that the petitioner has been appointed as a part time sweeper on the consolidated pay of Rs.335/- on a monthly basis and she has been appointed by the second respondent/Headmaster. The appointment is only a temporary appointment and she has been removed from service and she cannot claim appointment as a matter of right. Apart from that, as per G.O.Ms.No.22 P&AR 28.02.2006 and as per G.O.(M.S.) No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013, the petitioner is also not entitled to get regularization .

4. I have considered the rival submissions and perused the materials available on record carefully.

5. It is an admitted fact that the petitioner has been appointed as sweeper in the second respondent-School on consolidated pay on 12.03.2001 and she has been continuously working in the above said post from 13.03.2001 till 18.07.2014, nearly for 13 years. It is also admitted in the counter that even though the Headmaster is not an appointing authority, in view of the exigency, the Headmaster has been empowered to appoint the above person temporarily on consolidated basis. That being the stand, now, it is not open to them to contend that the Head Master has no power to appoint the petitioner. Apart from that, it is also not disputed that before terminating the petitioner, no notice was issued , no enquiry was conducted and even there is no order of termination has been passed by the respondent.

6. From the perusal of records, it could be seen that the petitioner has been appointed in a sanctioned post through Employment Exchange and she is also possessing necessary qualification. In the said circumstances, it cannot be said that the appointment of the petitioner is irregular. The respondents permitted the petitioner to work there for 13 years and it is not open to them to terminate the petitioner from service even without passing any order. Hence, I am inclined to allow the writ petition.

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7. Accordingly, this writ petition is allowed and respondent is directed to permit the petitioner to work in the school based on the appointment order dated 12.03.2001. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The District Educational Officer,
   Vellore District.

2. The Headmaster,
   Government Boys Higher Secondary School,
   Pallikonda - 635 809.
   Vellore District.

+1cc to Mr.G.Elancheziyan, Advocate, S.R.No. 5902
+1cc to the Government Pleader, S.R.No. 6040

W.P. 32923 of 2014

RK(CO)
GN(05/03/2019)

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