



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.19427 of 2019

T.Baskaran

... Petitioner

-Vs-

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The Joint Director of School Education (Higher Secondary),
DPI Campus, College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Tuticorin District.

4.The District Educational Officer,
Tuticorin District, Tuticorin.

5.Karappettai Nadar Higher Secondary School,
Tuticorin, Represented by its Secretary,
N.T.Selvaraj, Tuticorin District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the fourth respondent in his proceedings in ஓ.பி.எண் 3425/23/2018 dated 31.07.2019 and quash the same as illegal and further direct the respondents 3 and 4 herein to approve the appointment of the petitioner herein as Watchman in Karappettai Nadar Higher Secondary School, Tuticorin with effect from 11.06.2018 based on the proposal dated 27.07.2018 forwarded by the 5th respondent herein.

For Petitioner : Mr.D.Nallathambi

For R1 to R4 : Mr.A.Thiagarajan,
Government Advocate.

ORDER

Heard Mr.D.Nallathambi, learned counsel appearing on behalf of the petitioner and Mr.A.Thiagarajan, learned Government Advocate, who takes notice on behalf of the respondents 1 to 4. Notice to the 5th respondent is dispensed with, since no adverse order is going to be passed against the 5th respondent.

2.By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

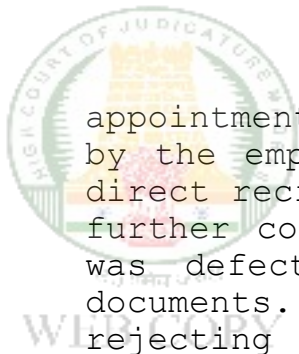


3.The order of the fourth respondent, dated 31.07.2019, is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondents 3 and 4 herein to approve the appointment of the petitioner herein as Watchman in Karappettai Nadar Higher Secondary School, Tuticorin, with effect from 11.06.2018, based on the proposal dated 27.07.2018, forwarded by the 5th respondent herein.

4.According to the petitioner, he was selected and appointed as Watchman in the 5th respondent school in a sanctioned post. The 5th respondent forwarded the proposal to the third respondent through the fourth respondent for approval of the appointment of the petitioner. According to the petitioner, the fourth respondent, instead of forwarding the said proposal to the third respondent, who is the competent authority to grant approval, has returned the proposal, without having any authority. The fourth respondent has wantonly returned the said proposal. The petitioner was appointed as Watchman, after due process of selection in a sanctioned post. The petitioner is entitled for approval of his appointment. Therefore, he filed W.P.(MD)No.11352 of 2019, seeking for a direction to direct the respondents 3 and 4 to consider the proposal dated 27.07.2018 submitted by the 5th respondent. This Court, by an order dated 30.04.2019, directed the respondents 3 and 4 to consider the proposal submitted by the 5th respondent, dated 27.07.2018 and pass appropriate orders, within a period of eight weeks from the date of receipt of a copy of the order, after affording opportunity of hearing to the petitioner.

5.According to the petitioner, without giving any opportunity to the petitioner or the 5th respondent, the fourth respondent, having no authority, passed the impugned order, dated 31.07.2019, rejecting the proposal submitted by the 5th respondent. The reason given by the fourth respondent is not valid and the fourth respondent with an ulterior motive to drag on the proceedings, rejected the proposal without any valid reason. It is well settled that for appointment of non-teaching staff, prior approval of the authority is not necessary. The petitioner relied on the judgment reported in **2016 (3) LLJ 49 (Deva Asir Vs. Secretary to Government, School Education Department, State of Tamil Nadu)**.

6.The respondents 1 to 4 filed counter affidavit. The learned Government Advocate appearing for the respondents 1 to 4 submitted that the petitioner was appointed on 11.06.2018 by the 5th respondent without following any due process of selection. During that period, the Secretary post was under challenge in the Writ Petition before this Court and the school was under direct control of the authorities. The 5th respondent without following the directions given by this Court appointed the petitioner. The



appointment of the petitioner as Watchman was not at all sponsored by the employment seniority. The petitioner was appointed by the direct recruitment without calling from the employment exchange. He further contended that the proposal submitted by the 5th respondent was defective and the 5th respondent has not enclosed required documents. The fourth respondent has given valid reason in rejecting the proposal and prayed for dismissal of the Writ Petition.

7.The learned counsel for the petitioner in reply to that submitted that the appointment of the Secretary was under challenge before this Court in the Writ Appeal. The 5th respondent succeeded and there is no litigation pending at the time of appointment and there is no direct payment ordered as alleged by the respondents and prayed for allowing this Writ Petition.

8.From the materials on record, it is seen that the 5th respondent, after appointing the petitioner as Watchman, has sent proposal, dated 27.07.2018 to the third respondent through the fourth respondent, seeking approval. Pending the said proposal, the petitioner filed W.P.(MD)No.11352 of 2019, seeking for a direction to the respondents 3 and 4 to consider the proposal submitted by the 5th respondent. This Court, by the order dated 30.04.2019, passed the following order:-

"5.In view of the above submission, this Court without going into the merits of the case, directs the Respondents 3 and 4 to consider the proposal sent by the 5th Respondent dated 27.07.2018 and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording opportunity of hearing to the petitioner.

6.The Writ Petition is disposed of with the above direction. No costs."

9.From the impugned order, it is seen that the fourth respondent, even after extracting the order of this Court, has not given any opportunity to the petitioner to put forth his case. The fourth respondent has mentioned certain documents required for consideration of approval of the appointment of the petitioner.

10.Considering the fact that the fourth respondent did not give any opportunity of hearing to the petitioner, as directed by this Court in its order dated 30.04.2019, this Court quashes the impugned order of the fourth respondent, dated 31.07.2019 and directs the 5th respondent to re-submit the proposal along with required documents as required by the authorities, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the third respondent is directed to consider and pass appropriate orders, after giving opportunity to the petitioner and the 5th respondent, on merits and in accordance



with law, within a period of four weeks thereafter.

11. With the above direction, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar (CS)

Myr

To

1. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2. The Joint Director of School Education (Higher Secondary),
DPI Campus, College Road,
Chennai-600 006.

3. The Chief Educational Officer,
Tuticorin District.

4. The District Educational Officer,
Tuticorin District, Tuticorin.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-87083[F] dated
17/09/2019)

W.P. (MD) No.19427 of 2019

17.09.2019

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