



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P[MD]No.20417 of 2014

and

M.P.[MD]Nos.1 & 2 of 2014 & 1 of 2015

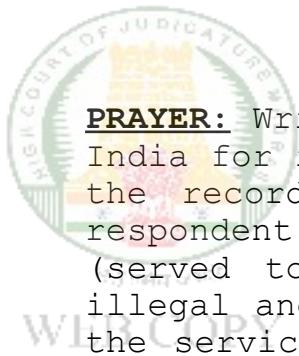
S.Dhanabalan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education,
Fort St. George,
Chennai.
- 2.The Director of School Education,
D.P.I. Campus,
College Road,
Chennai - 6.
- 3.The Joint Director (Personal),
O/o the Joint Director,
D.P.I. Complex,
College Road,
Chennai - 6.
- 4.The Chief Educational Officer,
O/o the Chief Educational Office,
Collectorate Campus,
Sivagangai,
Sivagangai District.
- 5.The District Educational Officer,
O/o. The District Educational Office,
Collectorate Campus,
Sivagangai,
Sivagangai District.
- 6.The Headmaster,
Government Higher Secondary School,
Palayanoor,
Sivagangai District.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fifth respondent in his proceedings ந.க.எண்.1533/அ1/96 dated 05.12.2014 (served to the petitioner on 09.12.2014) and quash the same as illegal and consequentially to direct the respondents to regularize the services of the petitioner with all consequential monetary and attendant benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mrs.S.Srimathy
Special Government Pleader

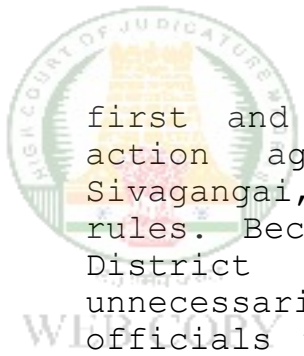
O R D E R

The order of rejection dated 05.12.2014, rejecting the claim of the writ petitioner for grant of regularisation is under challenge in the present writ petition.

2.The learned Counsel for the writ petitioner states that the writ petitioner was appointed as Night Watchman in Government School on compassionate grounds. The appointment was made considering the penurious circumstances of the writ petitioner. The initial appointment however was made on temporary basis under the Tamil Nadu and Subordinate Service Rules.

3.The learned Counsel for the petitioner states that the temporary appointment of the writ petitioner itself is not in accordance with law. The writ petitioner ought to have been appointed as permanent employee on compassionate grounds. Contrarily, he was appointed on temporary basis. However, the writ petitioner earlier filed W.P.[MD]No.8726 of 2009 and this Court disposed of the writ petition on 02.09.2009, with a direction to consider the representation of the writ petitioner. The representation submitted by the writ petitioner was considered and based on the Government letter dated 05.12.2013, the case of the writ petitioner was rejected on the ground that he was appointed in violation of the terms and conditions of the scheme of compassionate appointment and even at the time of appointment, he was overaged and therefore, the benefit of regularisation cannot be granted.

4.This Court is of the considered opinion that appointments are to be made under the special schemes strictly in accordance with the terms and conditions. The District Educational Officer, Sivagangai has committed an illegality in appointing the writ petitioner in violation of the terms and conditions of the scheme of compassionate appointment. In this regard, the competent authorities namely the



first and second respondents are bound to initiate appropriate action against the concerned District Educational Officer, Sivagangai, for appointing the writ petitioner in violation of the rules. Because of the negligence and violation committed by the District Educational Officer, Sivagangai, the Government is unnecessarily facing number of litigations and therefore, those officials who have committed blatant illegality of rules must be prosecuted under the Discipline and Appeal Rules.

5.The legal principles is that what is not permitted under law or the blatant violations committed under law cannot be cured so as to validate the appointments. This Court is of the considered opinion that the recruitment rules are violated and if the Courts started recognising certain violations of the recruitment rules, then the unconstitutionality occurred is recognised, which is certainly impermissible. Violations of law are to be treated as legal violations and the cases are to be dealt accordingly. The principles of equity cannot be extended in the matter of illegal appointments. The principles of equity can be applied wherever there is a possibility of balancing approach and compassion can be shown in certain circumstances where there is a gross injustice occurred to the litigant on account of certain actions of the state authorities. Thus, the principles of compassion and equity cannot be applied in cases of illegal appointments mostly on extraneous considerations.

6.In all such circumstances, an inference is to be drawn for such illegal appointments made in connivance with the appointees also. The legal principles in respect of illegal and irregular appointments were decided by the Constitution Bench of this Court in the case of ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others*** reported in ***(2006) 4 Supreme Court Cases 1***. Therefore, any illegality in the appointments are to be dealt in accordance with law and any misplaced sympathy in this regard will result in deprival of opportunity to the eligible candidates who all are waiting to secure public employment in accordance with the recruitment rules and on merits.

7.In the present case, learned Counsel for the writ petitioner vehemently contended that the writ petitioner is allowed to work for a considerable length of time. However, admittedly, his initial appointment was in violation of the recruitment rules in fore. At the time of appointment, the writ petitioner was over-aged. He was not eligible for appointment. The father of the writ petitioner died on 06.06.1988 and the compassionate appointment itself was provided in the year 1994 after a lapse of about 6 years from the date of the death of the deceased employee. Even at the time of appointment, the writ petitioner was over-aged and crossed 30 years. Therefore, the normal presumption that the family was in penurious circumstances cannot be accepted for the purpose of extending the scheme of compassionate appointment. Even in such cases, the appointments are



to be made strictly in accordance with the terms and conditions of the scheme itself.

8. Though the writ petitioner approached this Court in the year 2009 and a direction was issued to consider the representation and pass an order within a period of eight weeks from the date of receipt of a copy of the order, the period of eight weeks lapsed in the year 2009 itself. The writ petitioner has not pursued his remedy for about five [5] years from the date of the order passed in W.P. [MD]No.8726 of 2009. If at all the writ petitioner was vigilant in pursuing the remedy, he should have approached the Court immediately when the respondents have not complied with the order within a period of eight [8] weeks as directed by this Court in W.P.[MD] No.8726 of 2009 dated 02.09.2009. However, the respondents have passed the impugned order after a lapse of five years from the date of passing of the order and thereafter, the writ petitioner filed the present writ petition during the year 2014.

9. May that it be, this Court is of the considered opinion that if at all the case of the writ petitioner is a fit case for grant of relaxation, the petitioner has to approach the Government for the purpose of grant of relaxation. Relaxation is a concession. Relaxation cannot be granted by the Courts. Relaxation of the rules including the educational qualification age etc., are to be granted by the Government on exceptional circumstances where there is a gross injustice. Thus, the Court cannot grant any relaxation so as to grant the benefit for the purpose of regularisation of the appointment of the writ petitioner which was otherwise in violation of the recruitment rules in force.

10. This being the factum, the writ petitioner is at liberty to approach the first respondent by way of submitting his representation for grant of relaxation and it is left open to the first respondent to consider the case of the writ petitioner with reference to the facts and circumstances and in accordance with the provisions of law. However, the Court cannot grant relaxation in respect of the recruitment rules in force as the initial appointment of the writ petitioner was in violation of the recruitment rules in force.

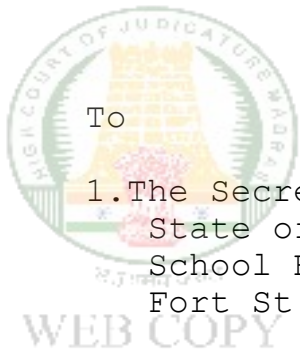
11. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)



To

1.The Secretary to Government,
State of Tamil Nadu,
School Education,
Fort St. George, Chennai.

2.The Director of School Education,
D.P.I. Campus,
College Road, Chennai - 6.

3.The Joint Director (Personal),
O/o the Joint Director,
D.P.I. Complex,
College Road, Chennai - 6.

4.The Chief Educational Officer,
O/o the Chief Educational Office,
Collectorate Campus,
Sivagangai, Sivagangai District.

5.The District Educational Officer,
O/o. The District Educational Office,
Collectorate Campus,
Sivagangai, Sivagangai District.

6.The Headmaster,
Government Higher Secondary School,
Palayanoor,
Sivagangai District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate
(SR-76848[F] dated 23/07/2019)
+1 CC to M/s.SPL GP (SR-77308[F] dated 24/07/2019)

W.P[MD]No.20417 of 2014
23.07.2019

MR

ES/16.10.2019/5P/9C