



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.19992 of 2020

T.Baskaran

... Petitioner

vs.

1. The Director of School Education,
DPI Campus,
College Road, Chennai.
2. The Joint Director of School
Education (Higher Secondary),
DPI Campus,
College Road, Chennai.
3. The Chief Educational Officer,
Tuticorin District.
4. The District Educational Officer,
Tuticorin District.
5. Karappettai Nadar Higher Secondary School,
Tuticorin,
Rep. By its Secretary,
N.T.Selvaraj.

... Respondents

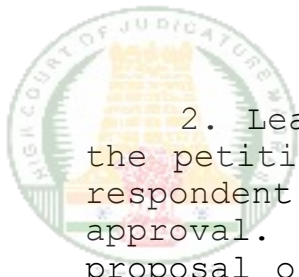
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the third respondent herein in his proceedings in Na.Ka.No.5881/Aa4/2019, dated 09.12.2020 and quash the same as illegal and further direct the 3rd and 4th respondents herein to approve the petitioner's appointment as Watchman in Karappettai Nadar Higher Secondary School, Tuticorin with effect from 11.06.2018.

For Petitioner : Mr.G.Mohankumar

For Respondents : Mr.K.S.Selvaganesan,
Government Advocate for R1 to R4
Mr.D.Nallathambi for R5.

ORDER

This Writ Petition has been filed challenging the order of the third respondent in Na.Ka.No.5881/Aa4/2019, dated 09.12.2020 and for a consequential direction to the respondents 3 and 4 to approve the appointment of the petitioner as Watchman in the fifth respondent school- Karappettai Nadar Higher Secondary School, Tuticorin with effect from 11.06.2018.



2. Learned counsel appearing for the petitioner submitted that the petitioner was appointed as Watchman on 11.06.2018. The fifth respondent school sent a proposal to the fourth respondent for approval. The fourth respondent did not pass any order on the proposal of the fifth respondent school. Hence, the petitioner has filed W.P.(MD)No.11352 of 2019, seeking a direction to the respondents 3 and 4 to consider the proposal dated 27.07.2018, forwarded by the fifth respondent in respect of his appointment as Watchman in the fifth respondent school with effect from 11.06.2018. This Court, by order dated 30.04.2019 directed the respondents 3 and 4 to consider the proposal sent by the fifth respondent and pass orders within eight weeks, after giving opportunity to the petitioner. However, the fourth respondent, without giving any opportunity to the petitioner or the fifth respondent, rejected the proposal of the fifth respondent in his proceedings dated 31.07.2019. Aggrieved over the same, the petitioner has filed W.P. (MD)No.19427 of 2019. This Court, by order dated 17.09.2019, quashed the proceedings of the fourth respondent, dated 31.07.2019 and directed the fifth respondent to re-submit the proposal along with the required documents within two weeks from the date of receipt of a copy of the said order and also directed the third respondent to consider proposal sent by the fifth respondent and pass orders within four weeks thereafter, after giving opportunity to the petitioner and the fifth respondent. As per the order of this Court, the third respondent issued notice to the petitioner and the fifth respondent for personal hearing held on 24.11.2020. The petitioner and the fifth respondent appeared before the third respondent and produced all the required documents and explained the facts. However, the third respondent rejected the proposal on the ground of non production of approval of Secretary to the fifth respondent school, list of candidates furnished by the employment exchange and the prior permission for appointment of the petitioner as Watchman. Challenging the same, the present Writ petition is filed.

3. Learned counsel appearing for the petitioner further submitted that there was some dispute with regard to the post of Secretary in the fifth respondent school and therefore, W.P(MD) Nos.19905 and 19906 of 2017 have been filed by the fifth respondent before this Court. This Court has granted an interim order. The request of the fifth respondent school to furnish list of candidates was rejected by the Employment Exchange, by its reply dated 23.04.2018, on the ground that there is no Secretary in the fifth respondent school. The fifth respondent, after issuing Notification in daily newspaper, conducted interview for the candidates, who appeared for the post and appointed the petitioner to the post of Watchman. After dismissal of writ petitions in W.P(MD)Nos.19905 and 19906 of 2017, Writ Appeal (MD) Nos.1711 and 1712 of 2018 have been filed before this Court. The Division Bench of this Court, by judgment dated 08.05.2019, allowed the Writ Appeals and election was conducted for the post of Secretary and the very same earlier Secretary was elected again as Secretary of the fifth respondent



school, who appointed the petitioner. The third respondent failed to follow the procedure of approval of sanctioned post of Watchman and failed to take into consideration the students strength of the fifth respondent school. The third respondent ought to have considered the application made in the newspaper prior to the appointment of the petitioner and there is no violation of any Rules, while filling up the present post of Watchman. The third respondent ought not have rejected the proposal, by taking into consideration the fact that the present post is a sanctioned non-teaching post. The appointment of the petitioner, made on 11.06.2018 is valid, as the tenure of incumbent Secretary was protected by the interim order of this Court and the appointment made in the capacity as Secretary is valid and prayed for allowing the writ petition.

4. In support of his submission, the learned counsel appearing for the petitioner has relied a judgment of this Court in **Deva Asir vs. Secretary to the Government, School Education Department, Chennai**, reported in **2016-III-LLJ-49 (Mad)**, wherein this Court has held as follows:

"24.1. The learned counsels for the petitioners submitted that once the posts are sanctioned by the Director under Rule 15(1) of the Rules, the DEOs/DEEOs are bound to sanction grant as per Rule 11 (2) of the Rules and there is no need to get prior permission from any authority to fill the vacancies that would arise in those sanctioned posts. Unless the State Government suitably amends the provisions of the Act and the Rules making it mandatory to obtain prior permission for filling up of those sanctioned non-teaching posts, the Government could not issue impugned Government Orders. I am in entire agreement with the said submission. Since there is no such provision in the Act and the Rules to seek prior permission, the official respondents in these writ petitions, DEOs/DEEOs, could not rely on the impugned Government Orders/Government Letters to seek permission of the State Government or the Director or any authority to fill up the sanctioned posts for approving of the same for the purpose of grant and therefore, the impugned Government Orders and the consequential proceedings refusing to approve of the non-teaching posts for the purpose of grant are issued in gross violation of the provisions of Sections 19 and 20 of the Act read with Rule 15 of the Rules."

5. Respondents 1 to 4 have filed counter affidavit. Mr.K.S.Selvaganesan, learned Government Advocate appearing for the

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respondents 1 to 4 submitted that the petitioner was not appointed by a legally constituted School Committee. The tenure of School Committee, the President and the Secretary cannot be extended. If the tenure of Secretary expires, the appointment made by the Secretary, after the expiry of his tenure, is not valid. The petitioner is only an employee in the fifth respondent school and working without approval for his appointment. The School Committee is the authority for appointment of staff. The petitioner has not impleaded the School Committee. When the petitioner was appointed, the appointment of newly elected Secretary was not approved by the authority. As per the order of this Court dated 17.09.2019, passed in W.P.(MD)No.19427 of 2019, the third respondent gave personal hearing to the petitioner and the fifth respondent and fifth respondent submitted explanation in support of the petitioner. After considering all the materials, the third respondent rightly rejected the proposal for the reasons mentioned in the impugned order. The same is valid and legal and prayed for dismissal of this Writ Petition.

6. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent.

7. From the materials on record, it is seen that the petitioner was appointed as Watchman in the sanctioned post, due to the demise of one R.D.James on 31.12.2005. The fifth respondent sought for the list of eligible candidates from the Employment Exchange. Employment Exchange, by its reply dated 23.04.2018, did not furnish the names of candidates on the ground that the appointment of the Secretary of the fifth respondent school was not approved. The learned counsel for the petitioner referred to the letter addressed by the fifth respondent to the Employment Exchange and the reply sent by the Employment Exchange, dated 23.04.2018, filed in the typed set of papers. In such circumstances, the fifth respondent published in newspaper, calling for applications for appointment of Watchman in the fifth respondent school. The failure on the part of the Employment Exchange cannot be put against the fifth respondent and cannot be faulted with the procedure adopted by the fifth respondent. According to the petitioner, only after publishing advertisement in the newspaper, he applied for the post and after interview of eligible candidates, the petitioner was appointed, as he was the most suitable candidate. In view of the same, the selection and appointment of the petitioner cannot be termed as illegal, as the fifth respondent school made efforts to get the list of eligible candidates from the Employment Exchange.

8. The other reason given in the impugned order is to furnish the approval of Secretary, who appointed the petitioner. According to the petitioner, W.P.(MD)Nos.19905 and 19906 of 2017, were filed by the fifth respondent, with regard to the dispute in the School Committee. In view of the interim order passed by this Court in the



said Writ Petitions, the Secretary continued in his post. During that time only, the petitioner was appointed as Watchman by the Secretary, who was permitted to act as Secretary of the fifth respondent school. The above said Writ Petitions were dismissed on 29.10.2018. Aggrieved over the same, Writ Appeal (MD) Nos.1711 and 1712 of 2018 were filed. The Division Bench of this Court, by judgment dated 08.05.2019, allowed the Writ Appeals and the relevant portions of the said judgment are extracted hereunder:

"7. It is not in dispute that the delay application came to be dismissed and this Special Leave Petition (Civil).No.170 of 2014, which was filed challenging the order passed in C.R.P. (MD).No.1839 of 2012, also was dismissed on 07.01.2014. The learned Sub Judge passed a further order in I.A.No.678 of 2012, on 25.04.2014, directing the Society to conduct the election and to report the same on 16.06.2014. Assailing the order, the Society preferred another revision in C.R.P. (MD).No.1053 of 2014. This Court on 07.05.2014 directed the Society to conduct the election and to report the compliance without announcing the results. Accordingly, the election to the Society was conducted on 18.06.2014, but the results were withheld as per the direction of this Court. Eventually, this Court dismissed the C.R.P. (MD).No.1053 of 2014 on 18.09.2014 with a direction to declare the results. The new Office Bearers assumed office on 24.09.2014. One Mr.C.S.Rajendran, was elected as a President, while Mr.P.Vinayagamoorthy, was elected as a Secretary.

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31. Indisputably the last triennium ended in 2017. Therefore, the District Registrar (Registration and Societies) Thoothukudi, is hereby directed to conduct the election either by himself or by appointing an responsible Officer to the Thoothukudi Vadathisai Hindu Nadar Mahamai Dharma karapettai Paripalana Sangam with the available members in Members' list already registered in Form VII i.e., 774 as expeditiously as possible, however not later than two months from the date of receipt of a copy of this order.

32. The next issue arises for consideration is whether the Secretary of Karapettai Nadar Higher Secondary School is entitled to continue till the new office bearers assume office.



33. It is pertinent to note that as per the Bye-law 10 of the Society, the elected member shall continue to hold the office till a new team assumes office. A resolution was passed by the Executive Committee of Karapettai Nadar School Paripalana Sabai on 08.09.2017 authorising / approving extension of the term of the office bearers till a new office bearers are elected. This Court issued a direction to hold election within a period of two months. Taking note of the above facts, the Secretary of karapettai Nadar High School is permitted to continue the post until new office bearers are elected."

9. From the above judgment made in the Writ Appeals, it is clear that the School Committee and Office bearers will continue in service, till the new office bearers are elected. The earlier Secretary continued to function as Secretary as per the interim order in the Writ Petition and as per the judgment of the Division Bench of this Court dated 08.05.2019, made in W.A.(MD) Nos.1711 and 1712 of 2018.

10. In view of the interim order in the Writ Petition and the judgment of the Division Bench of this Court in W.A.(MD) Nos.1711 and 1712 of 2018, the direction of third respondent in the impugned order to produce the order for approval of appointment of Secretary is erroneous, invalid and illegal. The third respondent has failed to consider the order passed in the Writ Petitions, judgment of the Division Bench of this court in the Writ Appeals. The petitioner was appointed on 11.06.2018 by the Secretary, who was legally permitted to act as Secretary of the fifth respondent school. In view of the same, the reason given in the impugned order for rejecting the proposal is not correct and therefore, the impugned order is liable to be quashed.

11. For the above reasons, the impugned order passed by the third respondent in Na.Ka.No.5881/Aa4/2019, dated 09.12.2020, is quashed. Accordingly, this Writ Petition is allowed. No costs. The respondents 3 and 4 are directed to approve the appointment of the petitioner as Watchman in the fifth respondent school and pass orders within a period of twelve (12) weeks from the date of receipt of a copy of this order.

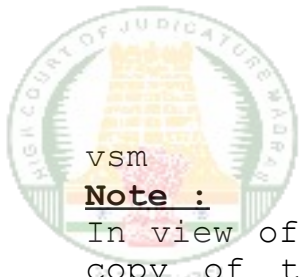
Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar (CS)



vsm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Director of School Education,
DPI Campus,
College Road, Chennai.
2. The Joint Director of School
Education (Higher Secondary),
DPI Campus, College Road, Chennai.
3. The Chief Educational Officer,
Tuticorin District.
4. The District Educational Officer,
Tuticorin District.

+1 CC to M/s.SPL GP (SR-22316[F] dated 13/07/2021)

+1 CC to M/s.G.MOHAN KUMAR, Advocate (SR-22422[F] dated 14/07/2021)

**W.P (MD) No.19992 of 2020
12.07.2021**

RC (02.08.2021) 7P-7C