



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.13915 of 2018

and

W.M.P(MD)Nos.12638, 12639, 12640 & 20097 of 2018

V.Sasikumar

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 009.
- 3.The Chief Educational Officer,
Dindigul, Dindigul District.
- 4.The District Educational Officer,
Palani, Dindigul District.
- 5.The Secretary,
I.T.O.Higher Secondary School,
Ayakudi, Palani,
Dindigul District-624 613.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the fourth respondent, District Educational Officer in O.Mu.No.5615/Aa2/2016, dated 08.12.2016, quash the same and further direct the fourth respondent DEO to approve forthwith the appointment of V.Sasikumar as Watchman in the fifth respondent school w.e.f. the date of his appointment viz., 18.11.2016 with all attendant benefits including the arrears of salary and allowances.

For Petitioner	: Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers
For R1 to R4	: Mr.P.Subbaraj Government Advocate
For R5	: Mr.G.Sankaran

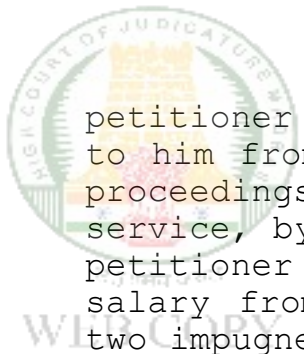


ORDER

This writ petition is filed by the petitioner to quash the impugned proceedings, dated 08.12.2016 issued by the fourth respondent, District Educational Officer in O.Mu.No.5615/Aa2/2016 and further direct the fourth respondent to approve the appointment of the petitioner as Watchman forthwith in the fifth respondent School w.e.f. the date of his appointment viz., 18.11.2016 with all attendant benefits including the arrears of salary and allowances.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Watchman in the fifth respondent School in self-financed Section. Subsequently, when the vacancy arose in the sanctioned post of Watchman due to voluntary retirement of the previous incumbent Thiru.P.Karupusamy on 02.06.2005, the petitioner was appointed as Watchman on 18.11.2016 by following the selection process. Thereafter, on 22.11.2016, the fifth respondent submitted proposal to the respondents 3 and 4, for approval of appointment of the petitioner. But, the same was returned by the fourth respondent, vide proceedings, dated 08.12.2016, directing the fifth respondent to re-submit the proposal enclosing the permission granted by the second respondent to fill up the vacant post of non-teaching staff. As no such permission is required for filling up the post of non-teaching staff, in private schools, the fifth respondent filed W.P(MD)No.24886 of 2016 before this Court. This Court, by order dated 23.12.2016, directed the fourth respondent to approve the appointment of the petitioner as watchman in the fifth respondent school within four weeks from the date of receipt of a copy of the said order. The said order has not been complied with. Hence, the fifth respondent filed Cont.P(MD) No.1942 of 2017 before this Court. Thereafter, the appointment of the petitioner was approved by the fourth respondent, by proceedings, dated 03.11.2017. After the approval, the fourth respondent sent the Transfer Certificate produced by the petitioner for verification to the Government High School, Ayakudi. The Headmaster of the Government High School, Ayakudi, sent a report stating that the Government High School, Ayakudi, has not issued the said certificate and there is no record in the School that the petitioner has studied 9th Standard till 24.10.1996. The certificate produced by the petitioner is bogus one. The Headmaster has also stated that the petitioner studied only up to 6th Standard during the year 1993-1994.

3. The learned counsel appearing for the petitioner submitted that the petitioner, on the wrong advise of the officials in the fourth respondent office, applied through his brother, for issuing the Transfer Certificate atleast to the effect that he studied up to 6th Standard. While so, the fourth respondent cancelled the approval of the appointment of the petitioner by the first impugned order, dated 10.05.2018 stating that the certificate produced by the



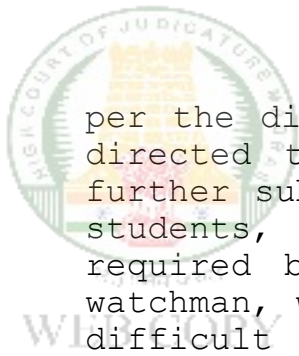
petitioner is not genuine and directed him to repay the salary paid to him from 18.11.2016. The fifth respondent in consequent to the proceedings of the fourth respondent, terminated the petitioner from service, by second impugned order, dated 12.05.2018 and directed the petitioner to remit the salary of Rs.2,81,936/- received by him as salary from 18.11.2016 to 30.04.2018. Challenging the above said two impugned orders, dated 10.05.2018 and 12.05.2018, the petitioner has come out with the present writ petition.

4. The learned counsel appearing for the petitioner further submitted that the qualification for appointment to the post of Watchman is only to read and write. In view of the same, there is no necessity for the petitioner to produce the certificate that he had studied up to 9th Standard. The Headmaster of the Government High School, Ayakudi, without verifying the records properly, gave a report that the certificate produced by the petitioner is bogus one. The signature in the Transfer Certificate produced by the petitioner was not denied. The fourth respondent ought to have seen that the Headmaster of the School has submitted the report only because the petitioner made fresh application for producing the Transfer Certificate of 6th Standard on the wrong advise of the officials of the fourth respondent. Merely because, the petitioner has made fresh application to the Headmaster of the School, the respondents ought not to have come to the conclusion that the original certificate produced by the petitioner is not genuine, without verifying the same and prayed for setting aside the impugned orders.

5. The respondents 1 to 4 filed counter affidavit along with Vacate Stay application. The fifth respondent filed separate counter affidavit.

6. Mr. P.Subbaraj, learned Government Advocate appearing for the respondents 1 to 4 and Mr.G.Sankaran, learned counsel appearing for the fifth respondent referred to various averments in the counter affidavit and submitted that the petitioner obtained appointment by producing the bogus Transfer Certificate. The petitioner admitting the report of the Headmaster of the Government High School, Ayakudi, applying for another Transfer Certificate to the effect that he studied only up to 6th standard. In view of such admission, the cancellation of approval of appointment of the fourth respondent and the termination order issued by the fifth respondent are valid and legal. The petitioner had obtained employment by producing bogus certificate and received salary and therefore, on termination, the petitioner is liable to refund the amount. In view of his admission, by applying the second Transfer Certificate to show that he has studied only up to 6th standard, his approval was cancelled.

7. The learned counsel appearing for the fifth respondent further submitted that the fifth respondent remitted the amount of Rs.2,81,936/- paid to the petitioner to the Government account as

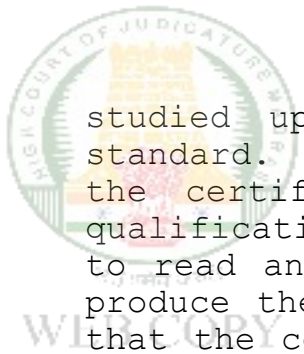


per the direction of the fourth respondent. The petitioner may be directed to repay the said amount to the fifth respondent. He further submitted that in the fifth respondent School more than 700 students, both boys and girls are studying and therefore, it is required by the fifth respondent School to fill up the post of watchman, which remains to be a single sanctioned post. It is very difficult for them to maintain the School particularly, in the night hours and thereby, functioning of the fifth respondent School is affected. When the fifth respondent submitted a proposal for prior permission for granting permission to fill up the post of Watchman, the said proposal was not considered by the respondents 1 to 4 with a direction to the fifth respondent to resubmit the proposal after disposal of the present writ petition filed by the petitioner. The learned counsel appearing for the fifth respondent prayed for a direction to the respondents 1 to 4 to give permission to fill up the post of Watchman, in the sanctioned posts and prayed for dismissal of the writ petition.

8. 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 and perused the materials available on record.

9. From the materials on record, it is seen that the petitioner was working in the fifth respondent School in self-financed Section and subsequently, he was appointed on 18.11.2016 in the sanctioned post. After the orders of this Court in the writ petition and the contempt petition filed by the fifth respondent School, the appointment of the petitioner was approved by the fourth respondent. After approving the appointment of the petitioner, the fourth respondent sent the Transfer Certificate produced by the petitioner to the Government High School, Ayakudi, where the petitioner has studied, for verification. The Headmaster of the said School sent a report that the Transfer Certificate produced by the petitioner was not issued by the said School. The admission number recorded as 1219 in the Transfer Certificate produced by the petitioner, is belonged to another student. The name of the petitioner V. Sasikumar with admission No.1325 is not found in the counterfoil maintained in the School. In the Transfer Certificate, the date of relieving of the petitioner has been stated by the School as 24.06.1996 and the same is not found in the students attendance register. The petitioner's name is found only in the 6th standard in the year 1993-1994. The Headmaster of the School, where, the petitioner has studied, has stated that the petitioner studied only up to 6th standard during the year 1993-1994 and there is no record to show that the petitioner studied up to 9th standard in the year 1996. The petitioner instead of taking steps to prove the Transfer Certificate produced by him is genuine, accepting the report of the Headmaster of the School, applied another Transfer Certificate to show that he has studied only up to 6th standard. There cannot be

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studied up to 6th standard and also he has studied up to 9th standard. The petitioner having failed to prove the genuineness of the certificate produced by him, now, cannot contend that the qualification for appointment of the petitioner as Watchman is only to read and write and therefore, there is no necessity for him to produce the bogus certificate. The petitioner has failed to prove that the certificate produced by him at the time of appointment is genuine. The order of the fourth respondent cancelling the approval and termination of the petitioner by the fifth respondent are valid and legal. It is not in dispute that the petitioner after being appointed in the sanctioned post worked as Watchman from 18.11.2016 in the fifth respondent school till his termination, dated 12.05.2018 and therefore, he is entitled to the salary.

10. The learned counsel appearing for the fifth respondent sought permission to appoint Watchman in the sanctioned post. He also brought to the notice of this Court that the orders of the writ petition and the judgments of the writ appeal, wherein, this Court held that no prior permission is required for the fifth respondent to fill up the sanctioned posts.

11. In view of the above facts, the order of the fourth respondent, dated 10.05.2018, cancelling the approval and the order of the fifth respondent for ordering termination are confirmed. The order for recovering the amount from the petitioner alone is set aside. It is open to the fifth respondent to fill up the sanctioned post of Watchman by following due process of law. It is also open to the fifth respondent to approach the respondents 1 to 4 for refund of the amount of Rs.2,81,044/- remitted by the fifth respondent in the Government account.

12. In the result, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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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 Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
 - 2.The Director of School Education,
College Road,
Chennai-600 009.
 - 3.The Chief Educational Officer,
Dindigul,
Dindigul District.
 - 4.The District Educational Officer,
Palani,
Dindigul District.
- +1 CC to M/s.G.SANKARAN, Advocate (SR-21912[F] dated 09/07/2021)
- +1 CC to M/s.ISAAC CHAMBERS, Advocate SR-21917[F] dated 09/07/2021
- +1 CC to M/s.SPL GP (SR-21933[F] dated 09/07/2021)

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