



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.06.2023

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

K.Ramesh

.. Petitioner

Versus

The State Commissioner,
Commissionerate for the Disabled/Physically Challenged
Office at Jawaharlal Nehru Salai,
Inner Ring Road, K.K.Nagar,
Chennai – 600 078.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the entire records which culminated in issuing the impugned proceedings in Na.Ka.No.854/C.Pa.2/2016 dated 18.04.2016 on the file of the respondent, quash the same and consequently direct the respondent to select and appoint the petitioner to the regular post of Night Watchman in Government Higher Secondary School for the Deaf, Thanjavur by taking into consideration the services rendered by the petitioner as Night Watchman on daily wages basis from 21.03.2011 to till 28.08.2013.

For Petitioner : Mr.P.Ganesan for Mr.K.Premnath

For Respondent : Mrs.Meera Arumugam,
Additional Government Pleader



WEB COPY



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

ORDER

The petitioner has sought for issue a writ of certiorarified mandamus to call for the records in the impugned proceedings in Na.Ka.No.854/C.Pa.2/ 2016 dated 18.04.2016 on the file of the respondent and to quash the same and consequently direct the respondent to select and appoint the petitioner to the regular post of Night Watchman in the Government Higher Secondary School for the Deaf, Thanjavur.

2 The case of the petitioner is that in and by the proceedings dated 21.03.2011 he was appointed as Night Watchman-cum-Cleaner in the Government High Secondary School for the Deaf, Thanjavur on daily wage basis. It is the specific case of the petitioner that right from the date of his appointment, he has been in employment in the very same School. However by proceedings dated 15.05.2013, the Headmistress of the School, stopped the petitioner from attending his work citing administrative decisions.



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

WEB COPY

3 The petitioner approached the Labour Welfare Officer, Thanjavur and an enquiry was held and the Government Higher Secondary School for the Deaf, Tanjore, was directed to reinstate him on temporary employment.

4 The petitioner has given a representation to the respondent seeking re-employment to the post of Night Watchman on daily wage basis. Despite the recommendation given by the Headmistress of the School concerned, the services of the petitioner were not treated as one on daily wage basis. The petitioner therefore filed a writ petition in W.P.No.2068 of 2016 to issue Writ of Mandamus to direct the respondent to pass appropriate orders on his representation dated 30.12.2015. The writ petition was allowed on 21.01.2016 directing the respondent to dispose of the petitioner's representation within a period of four weeks. It is thereafter the impugned order came to be passed rejecting the petitioner's claim for employment. The impugned order is challenged by the writ petitioner on various grounds which have been narrated in the affidavit filed in support of



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

this writ petition.

WEB COPY

5 The respondent has filed a counter stating that the petitioner cannot claim appointment as a matter of right and the petitioner was fully aware that he was re-appointed only on a temporary basis. However the respondent has stated that the petitioner would be entitled to apply for the post of Night Watchman whenever notification for the regular post is issued subject to his fulfilling the criteria.

6 Heard Mr.P.Ganesan, learned counsel for the petitioner and Mrs.Meera Arumugam, learned Additional Government Pleader for the respondent.

7 It seen from the proceedings of the respondent dated 21.03.2011 that the petitioner was appointed as a Night Watchman cum Cleaner in a sanctioned post. It is admitted that the petitioner has been continuing service in the very same school. In fact at the time of this writ petition being admitted/entertained, interim order was granted to protect his



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

continuanee as Night Watchman in the said School and until today the petitioner, admittedly, is working in the said School as Night Watchman.

The reason cited in the impugned order is that the petitioner is not recommended by the Employment Exchange and that in view of the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, No.13 of 1959, his appointment cannot be considered, even though he may fulfill the other requisite conditions. However, it is seen that Section 3 of the said Act No.31 of 1959 exempts the vacancies in employment with regard to certain categories like Agriculture, Domestic Service and unskilled office work. Section 2(i) defines 'unskilled office work', means work done in an establishment by any of the following categories of employees, namely

1. Daftari
2. Jamadar, or orderly and peon,
3. dusting man or farash,
4. bundle or record lifter,
5. process server,
6. watchman,
7. sweeper



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

WEB COPY

8. any other employee doing any routine or unskilled work which the Central Government may, by notification in the Official Gazette, declare to be unskilled office work.

8 More over, this Court has also had an occasion to deal with a similar matter. The Division Bench of this Court in W.P.No.33647 of 2007 and Suo Motu W.P.No.32836 of 2007 in and by an order dated 29.04.2008 referring to provisions of the Act No.31 of 1959 held that the Act would not apply to the exempted categories not being sponsored by the Employment Exchange. Even in the Writ Appeal in W.A(MD).No.902 of 2015, the Hon'ble First Bench of Madurai Bench of Madras High Court held that in a Government Higher Secondary School, where several thousands of children are studying, it is incumbent for the authorities to look into their health and hygiene and keeping the post of Sweeper vacant would not be in the interest of the children and the Institution.

9 With regard to the facts of the present case, admittedly the petitioner was qualified to be appointed in the sanctioned post even on the date of his initial appointment as Night Watchman cum Cleaner and



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

WEB COPY

even though it is stated in the counter that as and when notification for the regular post is issued, the petitioner would be considered, in the light of appointment order issued to the petitioner way back on 20.03.2011 and considering the fact that he has been continuously serving for the past 12 years, it would not be conceivable to affirm the contention of the respondent that as and when notification is issued for regular post, the petitioner would be considered. The only reason put against the petitioner in the impugned order is that he should have been sponsored by the Employment Exchange. This Court has already found that the services of the Sweeper or Watchman are exempted from the application of the Act itself and therefore the impugned cannot be sustained.

10 In the result, the writ petition stands allowed. No costs. Consequently connected miscellaneous petition is closed. The impugned proceedings in Na.Ka.No.854/C.Pa.2/2016 dated 18.04.2016 by the respondent is hereby quashed and the respondent is directed to appoint the petitioner to the regular post of Night Watchman in Government Higher Secondary School for the Deaf, Thanjavur as prayed for in the writ petition.



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

WEB COPY

16.06.2023

Index: Yes/No
Internet: Yes/No
cgi

To

The State Commissioner,
Commissionerate for the Disabled/Physically Challenged
Office at Jawaharlal Nehru Salai,
Inner Ring Road, K.K.Nagar,
Chennai – 600 078.



WEB COPY



W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

P.B.BALAJI, J.,

cgi

W.P.No.17832 of 2016 and
W.M.P.No.15515 of 2016

16.06.2023