



W.P.No.31979 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.31979 of 2016

M.Poongavanam

... Petitioner

Vs.

1.The State of Tamil Nadu rep by its
Secretary to Government,
School Education Department,
Secretariat, Chennai-9.

2. The Director of School Education,
College Road, Chennai-6.

3. The District Educational Officer,
Thiruppathur, Vellore District.

4. The Headmaster,
Government Higher Secondary School,
Nimmiampattu, Vaniyampadi Taluk,
Vellore District

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus to call for the records of the
2nd respondent in Na.Ka.No.26133/A5/E2/2015, dated 05.10.2015 and quash the



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same and directing the respondents to regularise the service of the petitioner in the post of Sweeper on time scale of pay as per G.O.Ms.No.528, P&AR Department, dated 10.10.1988 and the Government clarification letter No.27293/Service F/88-1, P&AR(Ser.F)Department, dated 23.1.1989 and also Government Letter (Ms)No.123, School Education Department, dated 12.05.2000 with all benefits as was given to the petitioner's juniors and the similarly placed persons.

For Petitioner : Mr.A.R.Suresh
for A.R.Sannjay

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The petitioner herein was appointed as a Part Time Sweeper to the proceedings of the Head Master of the Government High School, Nimmyampattu dated 15.07.1986. The appointment was made based on the sponsorship of the employment exchange, which is reflected in the appointment order itself. On completion of ten years of service, the petitioner herein seeks for regularisation of her services in view of G.O.Ms.No.528, P&AR Department, dated



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10.10.1988. The request has been rejected through the impugned order by stating that the petitioner was not sponsored through employment exchange.

2. Learned counsel for the petitioner produced the copies of the appointment order dated 05.09.1986 as well as the proceedings of the fourth respondent dated 01.09.1986. Both these letters evidence that the petitioner has been duly sponsored by the employment exchange office through letter dated 19.08.1986. As a matter of fact, along with the petitioner, five other persons were also sponsored out of which, the petitioner was appointed.

3. Learned Government Advocate submits that the appropriate authority for appointment would be Chief Educational Officer and the Head Master is not empowered and therefore, there is no infirmity in the order.

4. The objection of the learned Government Advocate cannot be sustained for two reasons , firstly, the appointment made by the Head Master of Government High School makes a reference to the proceedings of the District Educational Officer dated 10.03.1986 through which, the petitioner has been



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appointed. Even otherwise, this objection on the authority of the Head master to appoint, is not a ground for rejection in the impugned order.

5. Secondly, in service jurisprudence, it is settled proposition of law that the authorities cannot improve their case through a counter affidavit. Even in the counter affidavit, it is not stated with clarity with regard to the authority to make such appointment except for vague sentence that the Head Master is not empowered to make appointment without reference to the proceedings of the Educational Officer dated 10.03.1986, which is reflected in the impugned order itself.

6. In G.O.Ms.No.528, P&AR Department, dated 10.10.1988, it has been ordered that the persons appointed on daily wages to discharge functions of the posts to basic service sponsored through employment exchange initially, be appointed against the regular vacancies that may arise in these posts on time scale of pay, under the same appointing authority, without their names being sponsored by the employment exchange once again, provided they were fully qualified for such post at the time of initial appointment on daily wages that is



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with reference to age and educational qualification. The Government Order came to be later clarified in its letter dated 23.1.1989 by bringing part time employees also for the benefit of G.O.Ms.No.528, P&AR Department, dated 10.10.1988. Likewise, the Government in G.O.Ms.No.22 P&AR Department dated 28.02.2006 has ordered to bring all the full time daily wage employees who have completed ten years of service as on 01.01.2006 into regular time scale of pay.

7. The reason adopted in the impugned order that the petitioner was not sponsored by the employment exchange seems to be a factual mistake. As observed earlier, the appointment order dated 05.09.1986 as well as the call letter of the fourth respondent dated 01.09.1986 makes a specific reference to the proceedings of the office of the employment exchange dated 19.08.1986. Thus, the impugned order itself which emanates from factual error cannot be sustained. Consequently, the petitioner is entitled to the benefit of G.O.Ms.No.22 P&AR Deptment dated 28.02.2006 as well as G.O.Ms.No.528, P&AR Department, dated 10.10.1988.



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8. In the light of the above findings, the impugned order passed by the 2nd respondent in Na.Ka.No.26133/A5/E2/2015, dated 05.10.2015 is quashed and accordingly, there shall be a direction to the respondents 1 and 2 herein to pass appropriate orders bringing the petitioner into regular time scale of pay by virtue of G.O.Ms.No..528, P&AR Department, dated 10.10.1988, on completion of ten years of service from the date of her initial appointment, in accordance with G.O.Ms.No.22, P&AR Department dated 28.02.2006 together with all service and monetary benefits. Such order shall be passed atleast within a period of six weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition stands allowed. No costs.

30.01.2023

Speaking/Non-speaking order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To



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M.S.RAMESH,J.,

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