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WP.No.2273/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.2273/2017 & WMP.Nos.2239 & 2240/2017

K.Ramesh

... Petitioner

Versus

1.The State Commissioner

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

2.The Headmistress

Government Higher Secondary
School for Deaf, Thanjavur
Thanjavur District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records which culminated in issuing the proceedings in Na.Ka.No.2843/C.P.3/2012 dated 19.10.2016 on the file of the 1st respondent, quash the same insofar as it relates to the filling up of the post of Night Watchman in the 2nd respondent School and consequently direct the



WP.No.2273/2017

respondents to select and appoint the petitioner to the regular post of Night Watchman in the 2nd respondent school within a time limit that may be stipulated by this Court.

For Petitioner : Mr.P.Ganesan
For R1 : Mr.V.Nanmaran, AGP

ORDER

- (1) The writ petitioner had earlier filed WP.No.17832/2016 in the nature of a certiorarified mandamus seeking interference with the proceedings dated 18.04.2016 on the file of the respondent therein, namely, the State Commissioner, Commissionerate for the Disabled / Physically Challenged at Chennai and direct the said respondent to select and appoint the petitioner to the regular post of Night Watchman in Government Higher Secondary School for the Deaf at Thanjavur. The petitioner had sought that his earlier services as daily wages in the same post as Night Watchman from 21.03.2011 till 28.08.2013 should be taken into consideration.
- (2) In that writ petition, after hearing both Mr.P.Ganesan, learned counsel for the petitioner and Mrs.Meera Arumugam, learned Additional Government Pleader appearing on behalf of the respondent, vide



WP.No.2273/2017

order dated 16.06.2023, a learned Single Judge had passed the following order:-

"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 continuance 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 fulfil 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



WP.No.2273/2017

*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 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.



WP.No.2273/2017

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 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



WP.No.2273/2017

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

- (3) The effect of that particular order in the aforementioned writ petition is that the respondent therein was directed to appoint the petitioner to regular post of Night Watchman in the said School as sought by the writ petitioner. It is today confirmed by Mr.P.Ganesan, learned counsel for the petitioner that the petitioner is working as on date, in the same post in the same School at Thanjavur.
- (4) The present writ petition has been filed since, the 1st respondent herein, the State Commissioner, Commissionerate of Disabled/Physically Challenged at Chennai, had called for applications to fill up the post of Night Watchman in the Government Higher Secondary School for Deaf at Thanjavur. The post which was called for is the post of Watchman and the School is Government Higher Secondary School at Thanjavur where the petitioner is today



WP.No.2273/2017

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working as Watchman consequent and which earlier to the order dated 16.06.2023 in WP.No.17832/2016 referred above. The said order in the writ protects the petitioner herein. The impugned proceedings therefore, are quashed. They had been issued in direct contradiction to the order in WP.No.17832/2016.

- (5) No further orders are required in this particular writ petition. The writ petition, therefore, stands **closed**. No costs. Consequently, connected miscellaneous petitions are also closed.

25.07.2023

AP

Internet : Yes

To

1.The State Commissioner

Commissionerate for the Disabled/
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2.The Headmistress

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WEB COPY



WP.No.2273/2017

C.V.KARTHIKEYAN, J.,

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WP.No.2273/2017

25.07.2023