



W.P.(MD).No.8985 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 16.11.2023

ORDER PRONOUNCED ON : 20.11.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD).No.8985 of 2023

S.Sironmony

....Petitioner

Vs

1.The Government of Tamil Nadu
Represented by its Secretary
Department of School Education
Fort St.George
Chennai 600 009

2.The Director of School Education
College Road, Chennai 600 006

3.The District Educational Officer
Kuzhithurai, Kanyakumari District

4.The Correspondent
LMS Higher Secondary School
Mathicode, Kanyakumari District

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to approve forthwith the appointment of the petitioner as Watchman Cum Waterman in the fourth respondent School and to sanction and disburse the grant in aid



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towards his salary with all attendant benefits for the period between 01.04.2002 ie. from his date of his original appointment and 06.02.2006 by considering the representation of the fourth respondent dated 02.02.2011.

For Petitioner : Mr.T.Cibi Chakraborty

For R1 to R3 : Mr.V.Om Prakash
Government Advocate

For R4 : No appearance

ORDER

The present writ petition has been filed by a retired Watchman Cum Waterman of the fourth respondent School seeking a mandamus as against the respondents 1 to 3 herein to approve the appointment of the petitioner as Watchman with effect from 01.04.2002 instead of 07.02.2006.

2. According to the petitioner, he was originally appointed as a Watchman Cum Waterman in the fourth respondent School which is a Minority Aided Institution on 01.04.2002. The Government had issued G.O.Ms.No.212 (Personnel and Administrative Reforms(P) Department) dated 29.11.2001 imposing a ban on fresh appointment of government employees. The said ban was lifted by the Government by issuing G.O.Ms.No.14 (Personnel and Administrative Reforms (P) Department) dated 07.02.2006.



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3. When the proposal for approval of the appointment of writ petitioner was sent to the Educational Authority, citing the ban order, the approval was granted only with effect from 07.02.2006 instead of 01.04.2002.

4. The petitioner had filed W.P.No.7159 of 2016 before the Principal Bench on 23.02.2016 seeking a mandamus to approve the appointment from 01.04.2002 onwards. The said writ petition was dismissed on 22.08.2022 with liberty to file a fresh writ petition before the Madurai Bench citing lack of territorial jurisdiction. Thereafter, the present writ petition is filed before the Madurai Bench on 31.03.2023.

5. The learned counsel appearing for the writ petitioner relied upon the following judgments of our High Court:

(i) Writ Appeal(MD).No.36 of 2010 (The Chief Educational Officer and another Vs. The Correspondent St.Francis Xavier Higher Secondary School) dated 16.07.2013;

(ii) Writ Appeal(MD).Nos.888 to 891 of 2015 (The Secretary to Government and others Vs. A.Maria Selvam and others) dated 21.07.2015;

(iii) Writ Appeal(MD).No.2 of 2015 (The Director of School Education and another Vs. J.Frederick Jeyakumar and another) dated 10.04.2015;

(iv) Writ Appeal(MD).No.215 of 2017 (The State, rep.by its Secretary, Department of School Education and others Vs.P.Christopher and another), dated 26.02.2018;



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6.Citing the above said Division Bench judgements, the learned counsel for the writ petitioner had contended that even though an appointment has been made during the ban period, once the ban order is lifted, the approval has to be granted from the date of original appointment.

7.Per contra, the learned Government Advocate appearing for the official respondents had contended that the petitioner had attained superannuation on 30.04.2016 and after a delay of seven years, the present writ petition has been filed. Therefore, the writ petition has to be dismissed on the ground of laches.

8.He had further contended that during the ban period, the management has no power to make any appointment. In violation of ban order, the present appointment has been made. Therefore, the approval has been granted only from the date on which the ban order has been lifted. Hence, he prayed for dismissal of the writ petition.

9.I have considered the submissions made on either side and perused the material records



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10.The Government of Tamil Nadu has imposed a ban on any appointment on 29.11.2001 and the same was lifted on 07.02.2006. It is not in dispute that the petitioner was appointed as a Watchman during the ban period ie. on 01.04.2002. The authorities have chosen to approve the appointment with effect from 07.02.2006 on the ground that the ban order was lifted only the said date.

11.A learned Single Judge of this Court in a judgment reported in **2008 (5) CTC 648 (Thiruvalluvar Higher Secondary School Vs. the Government of Tamil Nadu and others)** has held that even though an appointment is made during the ban period, once the ban is lifted, the appointment has to be approved from the date of original appointment. The same view has been expressed by the Hon'ble Division Bench in **Writ Appeal (MD).No.36 of 2010 (The Chief Educational Officer and another Vs. The Correspondent St.Francis Xavier Higher Secondary School)** dated 16.07.2013 and another **Writ Appeal(MD).No.2 of 2015 (The Director of School Education and another Vs. J.Frederick Jeyakumar and another)** dated 10.04.2015 and had proceeded to follow the said decision. Another Division Bench judgment in **Writ Appeal(MD).Nos.888 to 891 of 2015 (The Secretary to Government and others Vs. A.Maria Selvam and others)** dated 21.07.2015 had followed the judgement of the Hon'ble Division Bench in **WA(MD).No.36 of 2010** and **WA(MD).No.2 of 2015** and has proceeded to dismiss the appeal filed by the



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Government, confirming the order of approval granted from the initial date of appointment.

12.In WA(MD).No.215 of 2017 dated 26.02.2018, the Hon'ble Division Bench was pleased to hold that the cause of action for seeking approval from the initial date of appointment is continuing cause of action and the relief could be sought for even after attaining the age of superannuation. Therefore, the Hon'ble Division Bench found that the writ petition was not hit by laches.

13.In the present case, the writ petition before the Principal Bench has been filed on 23.02.2016 even before the petitioner had reached the age of superannuation. Therefore, the contention of the learned counsel for the respondents that the writ petition has to be dismissed on the ground of laches is not legally sustainable.

14.In view of the above said facts, the respondents 1 to 3 herein are directed to approve the appointment of the writ petitioner as Watchman Cum Waterman in the fourth respondent School with effect from 01.04.2002 with all attendant benefits. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



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15.The writ petition stands allowed to the extent as stated above No costs.

20.11.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

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2.The Director of School Education
College Road, Chennai 600 006

3.The District Educational Officer
Kuzhithurai, Kanyakumari District



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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