



W.P.(MD).No.17680 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.07.2023

PRONOUNCED ON : 28.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.17680 of 2020

R.Kottaiyan

... Petitioner

Vs.

1.The District Educational Officer,
Madurai.

2.The Headmaster,
Government Higher Secondary School,
Muduvarpatti,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned dismissal order passed by the first respondent in Na.Ka.No.2978/A1/2019, dated 03.11.2020 and quash the same as illegal, improper and unconstitutional, consequently, direct the first respondent to reinstate the petitioner forthwith into service as Sweeper and grant him all service and other monetary benefits, including backwages.



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For Petitioner : Mr.S.Balamurugan
For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned dismissal order passed by the first respondent, dated 03.11.2020 and consequently, direct the first respondent to reinstate the petitioner forthwith into service as Sweeper and grant him all service and other monetary benefits, including back wages.

2.The petitioner belongs to Schedule Caste Community, namely Hindu Arunthathiyar. The petitioner was called for certificate verification for the post of Sweeper based on employment seniority on 25.05.2012. At the time of certificate verification, he furnished his record sheet issued by the Headmaster, M.Kottakudi Panchayat Union Elementary School, dated 11.05.1985, in which his name is mentioned as R.Kottaiyan. By considering his qualification and other eligibility criteria, the first respondent appointed the petitioner as Sweeper in the special timescale of pay on temporary basis under Rule 10(a)(1) of the



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Tamil Nadu General Subordinate Service Rules, vide proceedings dated 23.11.2012 and posted the petitioner at the second respondent School. Thereafter, for more than 10 years, the petitioner is serving in the second respondent School. By virtue of G.O.Ms.No.50, School Education Department, dated 08.03.2019, the State Government directed to bring all the Sweepers who are working on the special timescale, into regular timescale, from the date of their initial appointment. In order to extend the benefit of the said G.O., the first respondent called for a report from the Block Educational Officer, Mudukulathur, regarding the genuineness of the petitioner's School certificates like record sheet issued by the Panchayat Union Elementary School, M.Kottakudi. On the basis of the report of the Block Educational Officer, Mudukulathur, dated 05.11.2019, the first respondent came to the conclusion that the petitioner had furnished a fake School certificate in the name as R.Kottaiyan. However, his school admission Nos.217 and 257 refers to the name as R.Udiyanathan. Contending that both R.Udiyanathan and R.Kottaiyan are different persons, the first respondent issued a show-cause notice on 27.01.2020 as to why the appointment order as Sweeper given to the petitioner should not be cancelled for furnishing a fake school certificate. Immediately, on receiving the show-cause notice, the



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petitioner submitted an elaborate explanation on 10.02.2020 stating that both the names viz., R.Udiyanathan and R.Kottaiyan are one and the same and the mystification of his name occurred only due to the illiteracy and ignorance of his parents. The petitioner had no nexus in the name confusion, and his parents told him that at the time of leaving M.Kottakudi Panchayat Union School, Ramanathapuram, his name R.Udiyanathan was changed as R.Kottaiyan in the record sheet of School. However, the School authorities inadvertently failed to make necessary correction in the original school records. After receiving the petitioner's explanation, dated 10.02.2020, the first respondent did not pass any order. Therefore, the petitioner filed a Writ Petition in W.P(MD)No.16154 of 2020, seeking to forward the process of the proposal of the petitioner to bring him under regular timescale of pay in the cadre of Sweeper from the date of his initial appointment ie., in the light of G.O.Ms.No.50, School Education Department, dated 08.03.2019 without referring the enquiry under show cause notice of the first respondent, dated 27.01.2020. However, without calling upon the petitioner for conducting an enquiry, on acceptance of the petitioner's explanation to the show cause notice, dated 27.01.2020, the impugned order, dated 03.11.2020 came to be passed by the first respondent and the same is counter-signed by the second respondent



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on 05.11.2020, thereby dismissing the petitioner from service.
Challenging the same, the present Writ Petition came to be filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner was initially admitted in the Corporation Middle School, Madurai on 02.07.1981 in the 1st standard. His parents were illiterate. Since the parents of the petitioner shifted their family to Ramanathapuram District, the petitioner was once again admitted in the 1st standard at M.Kottakudi Panchayat Union Elementary School, wherein he studied upto 5th standard and he left the School on 11.05.1985. In fact, the parents of the petitioner originally named him as R.Kottaiyan, whereas, at the time of admitting him in the School, his parents mentioned his name as R.Udiyanathan and thus, both the names referred to the petitioner alone. At the time of leaving M.Kottakudi Panchayat Union Elementary School, the name of R.Udiyanathan was changed as R.Kottaiyan in the school record sheet. However, the said correction was not effected in the main records of the School. All these anomalies happened only due to the illiteracy of the petitioner's parents and he had no nexus or knowledge in this regard.



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4.The learned counsel appearing for the petitioner specifically insisted that the enrollment card of the Employment Exchange, family card, Aadhar card, community certificate, legal heir certificate, PAN card, Bank Pass Book everything stands in the name of R.Kottaiyan. Even on 27.04.2010, the Medical Officer has entered the petitioner's name as R.Udiyanathan in the birth register relating to his son and the same was also rectified as R.Kottaiyan. In order to rectify the name perplexity permanently, the petitioner also changed his name from R.Udiyanathan into R.Kottaiyan by notifying the same in the Government Gazette, dated 07.08.2019. However, without considering any of these aspects, the first respondent issued a show cause notice dated 27.01.2020, for which also the petitioner responded promptly with an appropriate explanation. On receipt of the petitioner's explanation, without referring to the matter for the conduct of an enquiry, the first respondent passed the dismissal order, dated 03.11.2020. The said dismissal order is not sustainable considering the fact that the petitioner is employed in a post namely "Sweeper" which is categorized as one of the basic services, to be specific, the post of Sweeper is shown as category No.12 Class IV of the Special Rules for the Tamil Nadu Basic Service and the educational qualification of the



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candidates for appointment through direct recruitment to any of the categories in Class IV is that he must be able to read and write in Tamil as required under Rule 5(2)(aa) of the Special Rules for Tamil Nadu Basic Service. Though the petitioner has produced the school records substantiating that he studied upto 5th standard and left the school on 11.05.1985, the post of Sweeper do not mandate any specific educational qualification to be appointed in the said post. Moreover, the mistake in name in the school records whatever has occurred is not attributable to the petitioner, but to the illiteracy of his ignorance parents. Hence, the first respondent ought not to have dismissed the petitioner from service without subjecting him to proper departmental enquiry and without giving him an opportunity of explaining his ignorance and genuineness before the competent authority and the denial of an opportunity of being heard would amount to violation of principles of natural justice and hence, the impugned order of dismissal passed by the first respondent, dated 03.11.2020 is liable to be quashed and the Writ Petition needs to be allowed.

5.The learned counsel appearing for the petitioner also relied upon the Judgment passed by the Hon'ble Division Bench of this Court in ***C.Govindan Vs. The Inspector General (Prison) and***



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others reported in **2019 (1) Writ L.R 841**, which dealt with a similar matter and the relevant portion of which, is extracted as follows:-

"4. The Learned Counsel for the Appellant strenuously urged that the post of Sanitary Worker is shown as category 8 in Class IV of the Special Rules for Tamil Nadu Basic Service and the educational qualification of candidates for appointment through direct recruitment to any of the categories in Class IV is that he must be able to read and write in Tamil as required under Rule 5(2)(aa) of the Special Rules for Tamil Nadu Basic Service and that the stipulation of pass in VIII standard was only in respect of the posts in Class I, II and III and as such, the Appellant had been wrongfully removed from service by the Disciplinary Authority whose order was erroneously confirmed by the Appellant Authority. In support of the said contention, reliance is placed on the decisions of this Court in P. Mahendran -vs- Chief Engineer (Order dated 20.06.2003 in W.P. No. 6932 of 2002), N. Sekar -vs- Director of Medical Education [(2009) 4 CTC 158] and the Division Bench of this Court in E. Rengammal -vs- Superintendent (Order dated 25.01.2018 in W.A.No.1085 of 2016) in which one of us (K.K. Sasidharan, J.) is a party.



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5. We find that there is substantial force in the aforesaid contention raised on behalf of the Appellant inasmuch as the production of the bogus certificate showing that the Appellant had passed VIII standard was inconsequential. The educational qualification prescribed for the instant post was that the candidate must be able to read and write Tamil. It is not the case of the Respondents that the Appellant was not able to read and write Tamil.

6. In that view of the matter, fortified by the aforesaid decisions cited by the Learned Counsel for the Appellant, we hold that the order No. 1993/E.S.2/2009 dated 29.04.2009 passed by the Inspector General of Prison, confirming the order No. 5295/SJ1/95 dated 03.10.1996 passed by the Superintendent of Prisons, Central Prison, Salem, cannot be sustained and accordingly, the same are quashed and the Appellant is liable to be reinstated with continuity of service. It is further made clear that if the Appellant had attained the age of superannuation in the interregnum, he shall be treated as having served continuously in the post till retirement for the purpose of terminal and pensionary benefits. However, having regard to the fact that the Appellant had produced a bogus certificate of having passed VIII standard though the same was not required for being appointed to that post, we are of the considered view that the



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Appellant shall not be entitled to any monetary benefits till today. The concerned authorities shall issue necessary orders in this regard, which shall be communicated to the Appellant and a report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court by 31.05.2019 without fail."

6.Per contra, the learned Government Advocate appearing for the respondents contended that the petitioner was appointed as Sweeper vide appointment order dated 23.11.2012, in Clause 4 of which, it was indicated that if the educational certificate is found to be bogus, then it would result in automatic removal from service and hence giving an opportunity of hearing is not mandated in terms of the appointment order given to the petitioner. However, on the basis of the report received from the Block Educational Officer, Mudukulathur, the petitioner was directed to submit his explanation within 15 days as to why he should not be removed from service for obtaining an appointment on the basis of the fake certificate. Though the petitioner submitted his explanation on 10.02.2020, the discrepancy of the name registered by his father in the Panchayat Union Elementary School, M.Kottakudi, as R.Udiyanathan and the record sheet in the name of

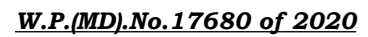


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R.Kottaiyan would reveal that the certificates whatever he has produced are fake. Moreover, the fact that he has also changed his name R.Uthiyanathan as R.Kottaiyan by notifying the same in the Government Gazette on 07.08.2019 would be to his disadvantage. Hence, it is crystal clear that his name was R.Udiyanathan at the time of getting appointment in the year 2012 and by giving false information that he is R.Kottaiyan, he obtained an appointment by cheating the authorities and hence, his removal from service by an order dated 03.11.2020 by the first respondent does not warrant any interference.

7.Heard Mr.S.Balamurugan, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents and perused the materials available on record.

8.The report received from the Block Educational Officer, Mudukulathur would reveal that though the petitioner's father registered the name of the petitioner as R.Udiyanathan in the Panchayat Union Elementary School, M.Kottakudi, he obtained the record sheet in the name of R.Kottaiyan which was not noticed by him,



9. This comes in evidence from the fact that on 27.04.2010, of the petitioner which is entered in the birth register of his e Medical Officer concerned as R.Udiyanathan was also s R.Kottaiyan. This exercise was done even before the joined the service as a Sweeper with the first respondent on 2. Thereafter, even to rule away from any kind of confusion,



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he duly changed his name from R.Udiyanathan to R.Kottaiyan by notifying the same in the Government Gazette on 07.08.2019. That apart, the post of Sweeper is one of the basic services classified by the Government of Tamil Nadu which falls under the category 12 in Class IV of the Special Rules for the Tamil Nadu Basic Service for the appointment of which, the educational qualification prescribed is only that the candidate should be able to read and write Tamil. So the discrepancies whatever is identified in the certificates with respect to his educational qualification are irrelevant for the purpose of this case. Though the petitioner has submitted that he has studied upto 5th standard, the post of Sweeper does not mandate any educational qualification.

10.The Judgment passed by the Hon'ble Division Bench of this Court **C.Govindan Vs. The Inspector General (Prison) and others** reported in **2019 (1) Writ L.R 841**, which is relied on by the learned counsel appearing for the petitioner, is applicable to the facts and circumstances of this case. It is not the case of the respondents that the petitioner is not able to read and write Tamil. However, the respondents are also not justified in attributing the mistakes which have crept in the school records as to the name of the petitioner as



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R.Uthiyathan in the school records to the petitioner. The complete commotion happened only due to the ignorance and illiteracy of the petitioner's parents. Considering the fact that the petitioner is holding the post of Sweeper which is one of the basic services of the State of Tamil Nadu, the impugned order of removal, dated 03.11.2020 passed by the first respondent, without giving an opportunity of hearing to the petitioner, would have serious implication in the future of the petitioner and his family thereby pushing him to the abject poverty.

11.In that view of the matter, the impugned order of dismissal from service passed by the first respondent dated 03.11.2020 is quashed and the first respondent is directed to reinstate the petitioner with continuity of service. However, the petitioner shall not be entitled to any back wages for the period from 03.11.2020 to the date of his reinstatement. The concerned authority shall issue necessary orders in this regard within a period of four weeks from the date of receipt of a copy of this order, which shall be communicated to the petitioner.



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12.With the above observation, this Writ Petition stands allowed. There shall be no order as to costs.

28.07.2023

NCC : Yes
Index : Yes
Internet : Yes
ps

To

- 1.The District Educational Officer,
Madurai.
- 2.The Headmaster,
Government Higher Secondary School,
Muduvarpatti,
Madurai District.



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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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