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W.P.(MD)No.4646 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.4646 of 2016

S.Karpagam

... Petitioner

vs.

1.The Gandhigram Institute of Rural
Health and Family Welfare Trust,
Soundaram Nagar,
Gandhigram Post,
Dindigul District,
represented by its Chairman.

2.The Director (incharge),
The Gandhigram Institute of Rural
Health and Family Welfare Trust,
Soundaram Nagar,
Gandhigram Post,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Ref.GIRH/ESTT/2015-2016/0747, dated 02.09.2015 and to quash the



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same and consequently, to direct the respondents herein to regularize the services of the petitioner as Basic Servant in the 1st respondent institute from the date of the petitioner's initial appointment with all monetary and attendant benefits.

For Petitioner : Mr.S.Ramsundarvijayraj
for M/s.Veera Associates

For Respondents : Mr.V.Vijay Shankar

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent, dated 02.09.2015 and consequently direct the respondents herein to regularize the services of the petitioner as Basic Servant in the 1st respondent institute from the date of the petitioner's initial appointment with all monetary and attendant benefits.

2. The petitioner was appointed as a Basic Servant on 02.06.2005, with effect from 13.05.2005 on daily wages at a rate of Rs.30/- per month. The said appointment order is extracted here under:



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“SUBMITTED TO THE DIRECTOR

DL. 2/6/2005

*Sub: Engagement of a woman Labour for the Director's
Residence - Reg.*

*As discussed with the Director, based on the necessity of a
woman labour for the Director's engaged w.e.f. 13.5.2005 on
daily wages at the rate of Rs.30/- per day.*

*Necessary daily attendance statement will be maintained in
respect of her attendance for the work and her labour charges
will be paid through voucher payment on completion of the every
month.*

This may please be approved.”

Thereafter, the petitioner was continuing in service. Again, the respondents issued another appointment order with partial modification and appointed the petitioner in consolidated pay of Rs.2,000/- per month. The respondents have issued relieving order on 31st August of every year. Thereafter, reappointed the petitioner on the next day, i.e., 1st September of every year. Likewise, the petitioner was relieved every year and reappointed until 2015. Through the impugned order, the respondents have relieved the petitioner from 02.09.2015 onwards. Challenging the



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same, the present writ petition is filed.

3. In the meanwhile, the petitioner along with five other daily wage employees had filed another writ petition in W.P.(MD)No.18168 of 2015, for issuance of a writ of Mandamus, to direct the respondents to regularize the service of the petitioners therein. The petitioner in the present writ petition is shown as 2nd petitioner in W.P.(MD)No.18168 of 2015. The said writ petition was dismissed, vide order, dated 18.12.2020. The petitioner herein has challenged the relieving order in this writ petition along with the consequential prayer to regularize the service of the petitioner.

4. Pending writ petition, the respondents have issued a paper publication, dated 11.01.2023, for recruiting to the post of domestic staff and the said paper publication is produced before this Court.



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5. The learned Counsel appearing for the respondents submitted that for the post of domestic staff the qualification fixed is 8th standard pass. Since the petitioner is not having the said qualification, the petitioner cannot be considered for the said post. Moreover, the petitioner has not applied after issuing the paper publication. The respondents submitted that the petitioner is over age as on the date and the petitioner is out of service from 2015 onwards until now. Therefore, for all these reasons, the petitioner's candidature cannot be considered by the respondents.

6. Heard Mr.S.Ramsundarvijayraj, learned Counsel appearing for the petitioner and Mr.V.Vijay Shankar, learned Counsel appearing for the respondents.

7. It is an admitted fact that the petitioner was appointed in the year 2005 on daily wages basis. Thereafter, the petitioner was taken into



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service under consolidated pay from 2011 onwards until 2015. Whenever an in service candidate is available then the employer ought to granted some weightage to the said candidate Therefore, the petitioner's candidature ought to be considered by the respondents. As far as the educational qualification is concerned, the respondents submitted that the petitioner is not having 8th standard pass. However, the learned Counsel for the petitioner submitted that the petitioner has completed open basic education which is equivalent to 8th standard and has produced the certificate to that effect, which is extracted here under:

*“GANDHIGRAM RURAL INSTITUTE-DEEMED UNIVERSITY
Re-Accredited by NAAC with 'A' Grade DEPARTMENT OF
LIFELONG LEARNING & EXTENSION
NATIONAL INSTITUTE OF OPEN SCHOOLING
GANDHIGRAM-624 302*

*Dr. V.Seeni Natarajan
Professor & NIOS Coordinator*

Date: 22.06.2015

CERTIFICATE



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This is to certify that A. Karpakam, D/o, Alpandi has joined NIOS Open Basic Education equal to VIII std course during the academic year 2015. This course is equal to VIII std offered by Tamil Nadu State Board of Examination.

*(V. SEENI NATARAJAN)
Co-Ordinator National Institute of Open Schooling Study Centre
Dept of Lifelong Learning and Extension
Gandhigram Rural University
Gandhigram-624 302
Dindigul Dist, Tamil Nadu State."*

8.The learned Counsel appearing for the respondents submitted that the said certificate cannot be accepted since it only states that it is equal to 8th standard and the petitioner has only done open basic education which will not be equivalent to a person who had studied in the School from 1st standard to 8th standard. The said plea cannot be accepted, since the education under open university is acceptable. Moreover, the petitioner has done the basic education in open university which is certified by the Gandhigram Rural Institute-Deemed University, which is one of the wing of the respondents.



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9. The next contention that was raised by the respondents is that the petitioner is over aged. When there is an in-service candidate in the respondent institution, those candidates should be given preference rather than taking any candidates from the open market. Therefore, the petitioner is entitled to be considered with weightage of marks. Therefore, the respondents ought to consider for relaxing the age as far as the petitioner is concerned.

10. However, the petitioner has not submitted any application for the paper publication, dated 11.01.2023. The petitioner is directed to submit an application immediately. The respondents shall consider the petitioner's candidature sympathetically. The respondents shall be a model employer while considering the petitioner's candidature.



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11. With the above said observation, the writ petition is disposed

of. No costs.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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S.SRIMATHY, J

Tmg

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