

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2009

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.37605 OF 2006
(O.A.NO.3434 OF 1998)

D.Rukmani

.. Petitioner

Vs.

- 1.The District Educational Officer,
Virudhachalam,
Cuddalore District
- 2.The Chief Educational Officer,
Cuddalore,
Cuddalore District.
- 3.The Head Master,
Govt. Higher Secondary School,
Veppur, Virudhachalam,
Cuddalore District.
- 4.State of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Fort St. George,
Madras-9.
- 5.The Assistant Employment Exchange
Officer,
Employment Exchange,
Sankarapuram,
Villupuram District.

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the first respondent in his proceedings in Na.K.No.13740/A1/95, dated 24.12.1997, to quash the same and to direct the respondents to reinstate the applicant into service and to pay her all backwages and other attendant benefits.

For Petitioner : Mr.S.Saravanakumar

For Respondents : Mr.R.Neelakantan, GA

ORDER

Heard both sides.

2.This writ petition arose out of O.A.No.3434 of 1998 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, it was transferred to this court and was renumbered as W.P.No.37605 of 2006.

3.The petitioner sought for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in his proceedings in Na.K.No.13740/A1/95, dated 24.12.1997, to quash the same and to direct the respondents to reinstate the applicant into service and to pay her all backwages and other attendant benefits.

4.The petitioner was appointed as a Scavenger on a part time basis with a consolidated pay of Rs.70/- per month with effect from 2.12.87. The Government issued G.O.Ms.No.528, P&AR Department, dated 10.10.1988 for considering the appointment of persons working in part time post to regular post provided the persons appointed in the part time posts have requisite qualification and within the age limit at the time of appointment on part time basis.

5.In the light of the said order, the petitioner was posted as a watchman on a temporary basis, but in a regular post with effect from 4.5.92. The petitioner gave her educational qualification certificate stating that she had studied at the Azad Middle School, Mettupalayam. The said certificate was sent for verification by the DEEO, Villupuram. The DEEO, Villupuram, by his letter dated 5.11.97 stated that the petitioner's school certificate was a bogus certificate.

6.On receipt of the said report, the petitioner was issued with a show cause notice by the first respondent DEEO, Virudhachalam by notice dated 24.11.97. The petitioner gave an explanation, dated 11.12.97 stating that she had studied in her native place at Sirunesalur and had produced a correct certificate. However, it is found in her record sheet showing that she had studied at Azad Middle School at Mettupalayam. Since the same was found to be bogus and the petitioner did not offer any satisfactory explanation, her services were terminated by the impugned order, dated 24.12.97. The petitioner moved the Tribunal with OA No.3434 of 1998. The Tribunal by its order dated 29.4.98 held that since the allegation made against the petitioner was a grave misconduct, she should have been proceeded under the relevant service rules and

by framing appropriate charge memo under rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules. The said interim order stood extended two times. But since the respondents did not restore the petitioner's service, she filed a contempt application being CA No.109 of 2000 before the Tribunal.

7. On notice on the contempt, the first respondent has filed a reply affidavit dated 7.6.2000 justifying her termination. The tribunal accepting the said explanation stated that there was no direction from the Tribunal to reinstate her in service and in the absence of any order of reinstatement, she cannot on the strength of interim order of stay granted by the tribunal get restored to service. The Tribunal also held that the question of reinstatement shall be decided only after final orders are passed.

8. The respondents have also filed a vacate stay application in MA No.603 of 2001. The respondents have also filed a reply affidavit dated 12.5.98 justifying the termination. It was clearly stated that the record sheet produced by the petitioner was a bogus one and she did not produce any other certificate issued by the Headmaster of the Government Elementary School, Harijan Welfare, Sirunesalur as claimed by her. It was also stated that the DEEO, Villupuram verified the record sheet alleged to have been issued by the Headmaster of Azad Middle School, Mettupalayam and found that it was not correct and the person who had signed as Headmaster had also not worked in the said school at the relevant time.

9. In the absence of the petitioner being appointed regularly and her appointment being made subject to the verification of her educational records, the petitioner is not entitled for any appointment as a watchman. Further, even at the time of entry, she had produced bogus school certificates.

10. In the original application, the petitioner claimed that the order of termination was opposed to principles of natural justice. It was also claimed before the Tribunal that a regular enquiry should be conducted in terms of the service Rules. This stand of the petitioner cannot be countenanced by this Court in the light of the authoritative pronouncements of the Supreme Court rendered in this regard in *State of Manipur v. Y. Tomen Singh* reported in (2007) 5 SCC 65. It is necessary to refer to the following passage found in paragraph 22 of the said judgment, which reads as follows:

22. The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility. It is true that where appointments had been made by a competent authority or at least some steps have been taken in that behalf, the principles of natural justice

are required to be complied with, in view of the decision of this Court in Murugayya Udayar.

11.In the light of the above, the stand taken by the petitioner is misconceived. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Asst. Registrar

/True Copy/

Sub Asst.Registrar

vvk

To

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+ 1 cc to M/s. S.Saravanakumar, Advocate, SR No.49728

PRE DELIVERY ORDER IN
W.P.NO.37605 OF 2006

AKR (CO)
RH (6.10.09)