

(2009) 06 MAD CK 0171

In the Madras High Court

Case No : Writ Petition No. 49369 of 2006 and O.A. No. 3474 of 2001

G. Margandan

APPELLANT

Vs

The District Educational Officer and The Headmaster,
Government Higher Secondary School

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 06 MAD CK 0171

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A. Amalraj, for the Appellant; V. Arun, Government Advocate, for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel for the petitioner and the learned Government Advocate appearing for the respondents.

2. This writ petition has been filed to call for the records relating to the proceedings of the first respondent, dated 7.5.2001, and the proceedings of the second respondent, dated 11.5.2001, denying the petitioner the benefits conferred in G.O.Ms. No. 528, Personnel and Administrative Reforms (Per.F) Department, dated 10.10.1988. The said Government Order had directed that the persons appointed on daily wage basis, through the employment exchange, to discharge the functions of the posts in the Tamil Nadu Basic service, should be appointed against the regular vacancies that may arise in the said posts, on a time scale pay.

3. The learned Counsel for the petitioner had submitted that even though the petitioner is fully qualified to get the benefits conferred by G.O.Ms. No. 528, Personnel and Administrative Reforms (Per.F) Department, dated 10.10.1988, the respondents, by issuing the impugned proceedings, had denied the petitioner, the benefits conferred by the said Government Order, relying on the Government Letter No. 210/F/95-1, dated 20.1.1995, issued by the Secretary to

Government, Personnel and Administrative Reforms (P), Department, dated 20.1.1995, by which, it was clarified that the Government Order, dated 10.10.1988, shall not apply to appointments made on daily wages, if such appointments had been made on or after 4.3.1993.

4. The main contention of the learned Counsel for the petitioner is that the benefits granted by the Government Order in G.O.Ms.528, Personnel and Administrative Reforms (Per.F) Department, dated 10.10.1988, cannot be taken away by the Government Letter No. 210/F/95-1, dated 20.1.1995, issued by the Secretary to Government, Personnel and Administrative Reforms (P) Department. Further, the rights which had accrued to the petitioner due to the said Government Order, cannot be nullified by the subsequent letter, without giving the petitioner an opportunity of being heard in the matter. However, in the present case, the impugned orders have been passed, reverting the petitioner back to the post of a part-time watchman, arbitrarily, without following the principles of natural justice. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. Per contra, the learned Counsel appearing on behalf of the respondents had submitted that the petitioner had not challenged the proceedings of the Director of School Education, Chennai, in Na.Ka. No. 89803/R.8/2000, dated 15.3.2001, based on which the impugned proceedings have been passed. Further, while issuing the initial appointment order it was made clear that the petitioner would be reverted back to his original post, if such appointment is found to be irregular. Further, by the Government Letter No. 210/F/95-1, dated 20.1.1995, it was clarified that the Government Order, in G.O.Ms.528, Personal and Administrative Reforms (Per.F) Department, dated 10.10.1988, shall not apply to appointments made on daily wages, if they had been made on or after 4.3.1993. Since the petitioner had been appointed on daily wage basis, as a part time watchman in the Government Higher Secondary School, Gajalnaickenpatti, as per the proceedings of the Head Master in Roc. No. 229/Kho.15/96, dated 17.2.1997, he is not entitled to the benefits conferred by the said Government order.

6. Even though it may be clear that there is nothing wrong in issuing such a clarification conferring the benefits to those persons who had been appointed during a particular period, the learned Counsel appearing on behalf of the respondents was not in a position to show that an opportunity has been given to the petitioner before the impugned proceedings had been issued.

7. At this stage of hearing of the writ petition, the learned Counsel appearing for the petitioner had submitted that it would suffice, if the impugned proceedings of the second respondent, dated 11.5.2001, is set aside, leaving it open to the respondents to pass appropriate orders, if they choose to do so, based on the directions issued by the first respondent by his proceedings in Pro.Na.Ka. No. 4704/A1/2000, dated 7.5.2001, after giving opportunity of hearing to the petitioner.

8. In view of the submissions of the learned Counsel appearing for the petitioner, as well as the respondents, the impugned proceedings of the second respondent in Pro.Na.Ka. No. 115/2001, dated 11.5.2001, is set aside. However, it is open to the respondents to pass appropriate orders pursuant to the directions issued by the first respondent, by his proceedings, in Pro.Na.Ka. No. 4704/A1/2000, dated 7.5.2001, after giving a reasonable opportunity of hearing to the petitioner, taking into account the fact that the petitioner has been in continuous service in the post from which he was sought to be reverted, in view of the interim order, dated 29.5.2001, passed by the Tamil Nadu Administrative Tribunal in O.A. No. 3474 of 2001.

The writ petition is ordered accordingly. No costs.