

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

**Review Petition (Writ) No.13 of 2016
and its W.M.P.No.4916 of 2016**

**Writ Petition No.259 of 2016
and its W.M.P.No.148 of 2016
and
Contempt Petition No.2704 of 2015**

Minnalkodi

...Review Petitioner/writ petitioner

Vs

1. S.Anjadevi

..R-1 in Review Appln.
..R.3 in Writ Petition &
Contempt Petitioner

2. ThiruC.Suresh Kumar
The District Collector,
Cuddalore District.
Cuddalore.

..R-2 in Review Appln
..R-1 in Writ Petition &
R-1 in Contempt Petition

3. Mr.Dhakshinamurthy
The Commissioner,
Office of the Kammapuram Panchayat Union,
Chidambaram Road,
Kammapuram, Virudhachalam Taluk,
Cuddalore District.

..R-3 in Review Application &
R-2 in Contempt Petition

4. The Block Development Officer
(Block & Village Panchayats) Kammapuram Union,
Virudhachalam Taluk,
Cuddalore District.

..R-2 in Writ Petition

Review Application, filed under Order XLVII Rule 1 r/w 114 of the Code of Civil Procedure against the order passed by this Court in W.P.No.15110 of 2011, dated 31.01.2014.

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the order, dated 21.12.2015 in Na.Ka.No.BD1/4225/2011 of the first respondent and to quash the same, and consequently, to direct the respondents 1 and 2 to restore the appointment of the petitioner as Noon Meal Organizer in Panchayat Union Primary School, Keeramangalam Village, Vridhachalam, Taluk.

Contempt Petition filed under Section 11 of the Contempt of Courts Act to punish the respondents for wilful disobedience of the order passed by this Court, dated 31.01.2014, in W.P.No.15110 of 2011

For Petitioner/Writ Petitioner : Mr.AR.L.Sundaresan
Senior Counsel for
M/s.AL.Ganthimathi

For R-1 in Review Application &
R.3 in Writ Petition and
Contempt Petitioner : Mr.G.Anabaya Chozan

For R-2 in Review Application
R-1 in Writ Petition &
Contempt Petition : Mr.R.Rajeswaran
Special Government Pleader

For R-3 in Review Application
& R-2 in Writ Petition &
Contempt Petition : Mr.P.Chinnadurai
Government Advocate

COMMON ORDER

This Common Order shall dispose of the following cases, and for the sake of easy reference, the parties shall be referred to as per the rank assigned in the Review Application:-

<i>Rank of parties</i>	<i>Review Petition</i>	<i>Writ Petition</i>	<i>Contempt Petition</i>
Petitioner	Minnalkodi	Minalkodi	Anjadevi
R-1	Anjadevi	District Collector	District Collector
R-2	District Collector	B.D.O.,	Commissioner
R-3	Commissioner	S.Anjadevi	-

2. Heard Mr.AR.L.Sundaresan, the learned Senior Counsel appearing for M/s.AL.Ganthimathi, the learned counsel for the review petitioner, Mr.G.Anabaya Chozan, the learned counsel appearing for first respondent, Mr.R.Rajeswaran, the learned Special Government Pleader for second respondent and Mr.P.Chinnadurai, learned Government Advocate for third respondent.

3. This Revision Petition has been filed to review the order and direction issued by this Court in W.P.No.15110 of 2011, on 31.01.2014.

4. The said Writ Petition was filed by S.Anjadevi, in the year, 2011 (27.06.2011) to quash the order passed by the District Collector, dated 24.02.2011, and to direct the Official respondents to appoint her as Noon Meal Organizer, at Panchayat Union Primary School, Melapalayur Village, Virudhachalam Taluk, Cuddalore District. When the Writ Petition came up for admission on 29.06.2011, the learned Additional Government Pleader, took notice on behalf of Official respondents and the Court noted the averments of first respondent/S.Anjadevi that the review petitioner is aged more than 40 years and there was age bar at the time of selection, and

therefore, the learned Additional Government Pleader was directed to ascertain the facts and to get instructions in that regard, and the matter was adjourned by a week. Therefore, the matter should have come up for hearing during the first week of July, 2011, but, it was not listed neither within the said week nor within the month of July, 2011, and it was listed only during the month of August, 2011, before this Court, i.e., on 16.08.2011, and on the said date, at the request of the learned Additional Government Pleader, the matter was adjourned to 18.08.2011. Accordingly, the matter was listed on 18.08.2011, and on the said date, this Court directed notice of motion to be ordered, returnable in three weeks. Subsequently, the matter went before different Courts and listed on 28.09.2011, 21.10.2011, 11.11.2011 and 14.11.2011. After 2011, it appears that the matter was not listed for nearly 4 years, and it is not known as to what could be the reasons for the matter being not listed. However, the fact remains that even during the said 4 years, neither the Official respondents, nor the review petitioner have chosen to file any counter affidavit. The case ultimately came to be listed before this Court on 31.01.2014. This Court noted the docket orders and observed that the matter, though was adjourned on six occasions, no counter affidavit was filed, and though the review petitioner had received

notice, she had not engaged any counsel, though her name was printed in the causelist, and thereafter, proceeded to hear the matter on merits.

5. In the writ petition, against which this Review Petition, writ petitioner/S.Anjadevi, pointed out about various disqualifications of other candidates, who have participated in the selection, viz., Sathya, and Sasikala, apart from third respondent/Minnalkodi. In para No.8 of the affidavit, filed in support of the Writ Petition, it was stated that on enquiry, the writ petitioner/S.Anjadevi came to know that the review petitioner/Minnalkodi is aged 44 years and she is not eligible for the post. Further, it was stated that review petitioner, who was working in the Tamil Nadu Police Service, retired from service by way of Voluntary Retirement Scheme, and applied for the post of Noon Meal Organizer, and she is hailing from a rich, affluent, and politically influential family, and using her influence, she secured the job. In para No.9, it was stated that review petitioner was living eight kilometers away from the place, where, the vacancy has arisen, and notwithstanding the same, the officials have accepted her application and appointed her as Noon Meal Organizer. These averments were taken note of by this Court, since the same was not

controverted, the writ petition was allowed by order, dated 31.01.2014, and the operative portion of the order reads as follows:-

" 5. The learned counsel for the petitioner reiterated the grounds raised in the writ petition and submitted that the petitioner belongs to a poor downtrodden community living in Melapalayar village along with her family members and she was working as a Coolie and supporting her family and applied for the selection to the said post and she was attended for interview on 19.11.2010. Though 43 candidates applied for the post, only 19 candidates were called for the interview in the office of the second respondent. The petitioner further states that she is a resident of the same village and she was completed Higher Secondary course and meritorious candidate, fully eligible for the post. Further, it is stated that other candidates namely, Sathya, W/o.Rajavelu, resides 4kms away from the school, the other applicant Sasikala, W/o.Senthil Kumar, resides 10kms away from the school and the vacancy has been reserved as general category and not a reserved vacancy for either widow or destitute women etc. In paragraph 8 of the affidavit, a specific averment has been made that on enquiry, the petitioner came to know that the third respondent is aged about 44 years and therefore, not eligible. In paragraph 9 of the affidavit, it has been stated that the third respondent

was working in the Tamil Nadu Police Service, subsequently, she took voluntary retirement from service and thereafter, applied for the post of Noon Meal Organizer, she is hailing from a rich and politically influential family and she is living 8 kms away from the school in question and therefore, she is not eligible. Though opportunity has been granted to the third respondent to deny and refute the allegations, the third respondent has not chosen to appear before this Court, either in person or through counsel. Furthermore, the respondents 1 and 2 had also not filed counter affidavit till date denying or disputing the averments made by the petitioner.

6. The learned Government Advocate appearing for the respondents 1 and 2 submitted that based on the place of residence, no priority can be granted and in this regard reliance was placed on the decision of this Court in W.P.No.11584 of 2011, [Anjadevi vs. The District Collector], dated 29.04.2011.

7. After hearing the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2, and in the absence of any denial on the part of the third respondent to the avements made in the writ petition, this Court is inclined to accept the submission of the

learned counsel appearing for the petitioner and the averments made by the petitioner in the affidavit more particularly in paragraphs 8 and 9. For such reasons, the order of appointment of the third respondent, is quashed. The respondents 1 and 2 are directed to issue a notification and conduct fresh selection for the said post, in which the petitioner shall also be entitled to participate in the selection process. Such notification shall be issued, within a period of six weeks from the date of receipt of a copy of this order.

8. In the result, Writ Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed. "

6. It appears that, the Official respondents initially did not comply with the aforesaid order passed by this Court, and on the Contempt Petition being filed, they passed the order on 21.12.2015, setting aside the appointment of review petitioner. Challenging the same, review petitioner has filed W.P.No.259 of 2016. After filing the said writ petition on 04.01.2016, this Review Petition was filed on 15.02.2016.

7. In the review petition, the review petitioner would state that she was under the *bona fide* impression that vakalath, which was given to some counsel (name not disclosed), and he would file vakalath on her behalf and would follow up the matter whereas, the fact remains that no vakalath was filed and the matter was pending since 2011. Therefore, at this juncture, such plea is a far fetched plea, especially, when the review petitioner herself has admitted that she has not entered appearance, and that she had knowledge of the pendency of the writ petition. Therefore, the said contention cannot be a ground for review of the order, when this Court has clearly recorded the fact regarding her non appearance in para No.4 of the order, dated 31.01.2014, and the stories, now sought to be spun by her, appears to be unbelievable, as for four long years, the review petitioner appears to have gone into slumber. The only ground raised by the review petitioner is by stating that she is only 36 years old, and not 44 years. However, with regard to other grounds, which were stated by S.Anjadevi, in the Writ Petition filed by her, stating that review petitioner was earlier in Tamil Nadu Police Service, she took voluntary retirement, and applied for the post of Noon Meal Organizer, she is rich, affluent, owning vast extent of land in the Village, not residing nearby the Village, have never been denied

by the review petitioner, and even adverted to in the review petition. That apart, the Official respondents have not placed any material in the review petition, but have filed a counter affidavit in connection with W.P.No.259 of 2016. Even the said counter affidavit does not deal with the other issues, except to state that review petitioner is disqualified on the ground of distance. However, the counter affidavit does not, in any manner, advance the case of the review petitioner.

8. It is settled legal position of law that a review is not an appeal in disguise. Furthermore, the review petitioner has not disclosed full facts in the review petition, though this Court accepted the reasons given by the writ petitioner/S.Anjadevi, for allowing the Writ petition. The contention of the review petitioner that she was under the *bona fide* impression that vakalath was given to some counsel, and he would file vakalath on her behalf and would enter appearance is too untenable, for the reason that Office records shows that notice sent by this Court in W.P.No.15110 of 2011, has been received by the review petitioner on 29.08.2011. Therefore, it is beyond comprehension to state that for four long years, she had not engaged any counsel. However, this is in no way germane to

entertain a review, but placed on record to establish the conduct of the review petitioner. Thus, it is too late for the review petitioner to now argue that previous employment in the police service was not a disqualification, etc., since the order under review cannot be tested on such grounds. That apart, there is no specific averment as regards the property holdings of the review petitioner, either denying or disputing it.

9. For all the aforesaid reasons, the review petitioner has not made out any grounds for reviewing the order passed by this Court in W.P.No.15110 of 2011. Accordingly, the Review Petition is dismissed, as being devoid of merits. In view of the dismissal of this Review Petition, no orders are required to be passed in the Contempt Petition. Accordingly, the Contempt Petition is closed. Similarly, in the light of the order passed in the Review Petition, there are no grounds, which survives for adjudication in the present Writ Petition filed by the review petitioner. Therefore, W.P.No.259 of 2016 is closed.

10. In the result, the Review Petition is dismissed, Writ Petition and the Contempt Petition are closed. No costs. Consequently, the connected Miscellaneous Petitions too are closed.

30.03.2016

sd

Index : yes/no

To

- .
1. The District Collector,
Cuddalore District.
Cuddalore.
 2. The Commissioner,
Office of the Kammapuram Panchayat Union,
Chidambaram Road,
Kammapuram, Virudhachalam Taluk,
Cuddalore District.
 3. The Block Development Officer
(Block & Village Panchayats) Kammapuram Union,
Virudhachalam Taluk,
Cuddalore District.

T.S.Sivagnanam, J.

sd

**Review Application (Writ) No.13 of 2016
Writ Petition No. 259 of 2016
and
Contempt Petition No.2704 of 2015**

30.03.2016