

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.14238 of 2003

R.Bakkiam

... Petitioner

Versus

1. The District Collector,
Pudukottai District,
Pudukottai.
2. The Commissioner,
Panchayat Union,
Annavaasal Panchayat Union,
Pudukottai District.
3. The Chairman,
Annavaasal Panchayat Union,
Illupur Taluk,
Pudukottai District.
4. The Manager,
Annavaasal Panchayat Union,
Pudukotai District.

5. Parisha Begum

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued vide Na.Ka.16215/2002 /C5 dated 13.08.2002 issued by the District Collector, Pudukottai District, the first respondent herein and to quash the same and consequently to direct the first respondent to set aside the selection and appointment of the fifth respondent as Cooking Assistant at Noon Meal Centre, Mukkanamalaipatti Panchayat Union Elementary School, Annavaasal Panchayat Union, Pudukottai District and further direct the first respondent to conduct a fresh selection for the post of Cooking Assistant at Noon Meal Centre, Mukkanamalaipattai Panchayat Union Elementary School, Annavaasal Panchayat Union, Pudukottai District at an early date.

For Petitioner : No Appearance

For Respondents : Mr.K.Ravi Kumar,
Additional Government Pleader
for R1
No Appearance for R2 to R5

ORDER

The prayer sought for here in is for a writ of certiorarified mandamus calling for the records pertaining to the impugned order issued vide Na.Ka.16215/2002 /C5 dated 13.08.2002 issued by the District Collector, Pudukottai District, the first respondent herein and to quash the same and consequently to direct the first respondent to set aside the selection and appointment of the fifth respondent as Cooking Assistant at Noon Meal Centre, Mukkanamalaipatti Panchayat Union Elementary School, Annavasal Panchayat Union, Pudukottai District and further direct the first respondent to conduct a fresh selection for the post of Cooking Assistant at Noon Meal Centre, Mukkanamalaipattai Panchayat Union Elementary School, Annavasal Panchayat Union, Pudukottai District at an early date.

2. The petitioner stated that the Cooking Assistant working in a Noon meal centre at Mukkanamalaipatti Panchayat Union Elementary School, Annavasal Panchayat Union, Pudukottai District died while was in service. Therefore, a vacancy arose. Hence the petitioner and three others, including the 5th respondent submitted their application for appointment on 20.04.2002 and 20.5.2002 to the third respondent. However, except the 5th respondent, no other candidates, including the petitioner were called for certificate verification. Therefore, the petitioner had given a request to the respondents for consideration of her candidature, which was turned down by the first respondent on 13.08.2002 stating that those who made application prior to the date of certificate verification held on 14.06.2002 alone were considered and since the petitioner did not make any application and he had come and gave an application in person only on the date of certificate verification and therefore, the petitioner was not considered and accordingly, among available candidates, who attended the certificate verification, on merits the fifth respondent was selected and appointed to the said post of Noon meal Assistant and the fifth respondent has been continuously working.

3. Aggrieved over the said order passed by the first respondent, dated 13.08.2002, the petitioner has filed this writ petition with the aforesaid prayer.

4. It is submitted by the learned Additional Government Pleader appearing for the respondents that, pursuant to the certificate verification, the fifth respondent was already appointed and long years she had been working as Noon meal Assistant in the said centre and therefore, if at all the petitioner is aggrieved over such appointment, she should have challenged the appointment made to the fifth respondent, instead she challenged only the communication issued by the first respondent stating that the fifth respondent has already been appointed and therefore, this writ petition need not be entertained.

5. I have considered the said submissions made by the learned Additional Government Pleader appearing for the respondents and also perused the materials placed before this Court, including the affidavit filed by the petitioner.

6. As has been rightly pointed out by the learned Additional Government Pleader appearing for the respondents, the impugned communication, dated 13.08.2002 is only an information stating that the fifth respondent has been appointed for the said post of Noon meal Assistant, as the petitioner did not make any application prior to the date of certificate verification.

7. If at all the petitioner is aggrieved over the appointment of the fifth respondent, she should only challenge the same and without challenging the appointment made to the fifth respondent, as by which a third party right has been created, the challenge made to the present order, dated 13.08.2002, which is only a communication giving the reasons for non-selection of the petitioner alone has been challenged.

8. Even though the fifth respondent has been made as a party herein, unless the order of appointment made in favour of the fifth respondent is put under challenge by the petitioner, such an appointment cannot be cancelled unilaterally and even if a decision is taken in the present writ petition, it would not serve the purpose as to whether the appointment made to the fifth respondent was justifiable or not cannot be decided.

9. In view of the above, this writ petition is liable to be dismissed and therefore, the same is dismissed. However, it is open to the petitioner to make a challenge against order of appointment made to the fifth respondent and if such a challenge is made, the point of latches cannot be raised by the respondents.

With these observations, this writ petition is dismissed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

pns/tsvn

To

1. The District Collector,
Pudukottai District,
Pudukottai.
2. The Commissioner,
Panchayat Union,
Annavaasal Panchayat Union,
Pudukottai District.
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Pudukottai District.
4. The Manager,
Annavaasal Panchayat Union,
Pudukottai District.

+1cc to Government Pleader sr.no.58416

nr 01/04/2019

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