

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 877 of 2019
and
C.M.P. No. 6738 of 2019

1. The District Collector,
Dharmapuri District,
Collectorate,
Dharmapuri - 636 705.
2. The Commissioner,
Panchayat Union,
Pennagaram,
Dharmapuri District. Appellants/Respondents

-vs-

Madhubala Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent,
praying to set aside the order dated 29.11.2018 made in W.P. No.
3135 of 2018.

Prayer in WP.No. 3135 of 2018.

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 1st Respondent, dt.5.2.2018 in Na.Ka.No.1521/2016/XI and quash the same, consequently direct the respondents to reinstate the petitioner as Noon Meal organizer at Panchayat Union Elementary School, Sandanakodikal, Pennagaram Panchayat Union, Dharmapuri District will all service benefits.

For Appellants : Mr. V. Jayaprakash Narayanan,
Government Pleader

For Respondent : Mr. M.R. Jothimanian

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 29.11.2018 in W.P. No. 3135 of 2018 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. It is the admitted case of the Petitioner that she had appeared before the Interview Committee for the post of Noon Meal Organizer at Sandanakodikal on 13.07.2017 and had not produced any certificate showing that she had passed X Standard, which is essential qualification for holding that temporary post. According to the Petitioner, she had passed X Standard Examination in September 2017 and after producing the mark sheet in proof thereof, she was issued with the appointment order by proceedings Na. Ka. No. 1521/2016/X1 dated 13.11.2017 passed by the District Collector, Dharmapuri. However, without any prior notice or conducting any enquiry, the appointment of the Petitioner was cancelled after working for three months by proceedings Na. Ka. No. 1521/2016/X1 dated 05.02.2018 passed by the District Collector, Dharmapuri. The Petitioner had filed W.P. No. 3135 of 2018 challenging the said cancellation of her appointment and had sought for consequential direction to reinstate her in service with all service benefits.

3. The Learned Judge, who heard the Writ Petition, by order dated 29.11.2018 held that the appointment of the Petitioner had been cancelled on the ground that she had appeared before the Personal Assistant to the District Collector and had produced bogus certificate for substantiating her qualification of having passed X Standard, but on a perusal of the scrutiny report, it was evident that she had not produced any certificate in proof of having passed X Standard and in such circumstances, the claim that the Petitioner had produced bogus certificate cannot be true and set aside the order of cancellation of the appointment dated 05.02.2018 in Na. Ka. No. 1521/2016/X1 and directed reinstatement of the Petitioner within a period of two weeks from the date of receipt of copy of that order. Aggrieved thereby, the Respondents have preferred this appeal.

4. We have heard Mr. V. Jayaprakash Narayan, Learned Government Pleader appearing for the Respondents, Mr. M.R. Jothimanian, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

5. It is not in dispute that at the time when the Petitioner attended the interview on 13.07.2017, she had not passed X Standard, which is essential qualification for the post of Noon Meal Organizer. It was only in September 2017 that the Petitioner had passed in Mathematics subject, while she had passed other subjects, viz., Tamil, English, Science and Social Science in March 2008, as seen from the mark sheets produced before this Court. In other words, the Petitioner became qualified to hold the post only in September 2017.

6. The Learned Counsel appearing for the Petitioner strenuously urged that inasmuch as the order of appointment has been issued to the Petitioner only on 13.11.2017, that is, after she had passed X Standard, she cannot be said to be not possessing the requisite qualification so as to cancel her appointment.

7. We are unable to accept the said contention in view of the settled legal position recapitulated by the Hon'ble Supreme Court of India in Rajasthan Public Service Commissioner -vs- Kaila Kumar Paliwal [(2007) 10 SCC 260], which reads as follows:-

"21. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date."

Inasmuch as the Petitioner did not have the requisite educational qualification at the time of interview on 13.07.2017, she was not eligible to be appointed to that post. The mere circumstance that the order of appointment had been issued to her on 13.11.2017 after she acquired the educational qualification, cannot be a ruse to sustain her illegal appointment. When the Petitioner had been granted relaxation of essential qualification without mentioning any such power in the notification inviting applications for the post, it would tantamount to an infraction of equality of opportunity in public employment guaranteed under Article 16 of the Constitution, as it deprives persons similarly placed to the Petitioner from participating in that selection, and in such circumstances, the Respondents are justified in recalling the appointment of the Petitioner which had been made in an illegal manner. The Constitution Bench of the Hon'ble Supreme Court of India in State of Punjab -vs- Jagdip Singh [AIR 1964 SC 521] has held that where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the

particular status. It would necessarily follow as a corollary thereof that if a person has been appointed without necessary qualification prescribed for the post, the appointing authority not only has the inherent power but also the fiduciary responsibility to expeditiously recall that appointment.

8. Coming to the next question that the order of cancellation of appointment dated 05.02.2018 had been passed by the District Collector, Dharmapuri, without any prior notice or conducting any enquiry, it requires to be highlighted that the Petitioner has not been able to establish any real prejudice caused by the non-issuance of such notice or conduct of any enquiry in that regard before cancelling her appointment. Suffice here to refer to the decision of the Hon'ble Supreme Court of India in Mohd. Sartaj -vs- State of Uttar Pradesh [(2006) 2 SCC 315], in which after referring to the case laws on the subject, it has been held that when the cancellation order has been issued within a very short span of time giving no probability for any legitimate expectation regarding continuation of service to the person appointed without the requisite qualification, there cannot be any complaint of prejudice caused by not serving notice or giving hearing before the order of cancellation was issued as the grant of opportunity would not have made any difference.

9. Since the order passed by the Writ Court is in contravention of the aforesaid legal principles, the same cannot be sustained. It is however made clear that the cancellation of appointment of the Petitioner, which is upheld, would not preclude the right of the Petitioner to apply in a fresh recruitment, if she is otherwise eligible and not disqualified for being appointed to the same post.

10. In the result, the Writ Appeal is allowed and the order dated 29.11.2018 in W.P. No. 3135 of 2018 is set aside and the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The District Collector,
Dharmapuri District,
Collectorate,
Dharmapuri - 636 705.

2. The Commissioner,
Panchayat Union,
Pennagaram,
Dharmapuri District.

+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.29907
+1cc to Mr.R.Jothimanian, Advocate, S.R.No.29629

W.A. No. 877 of 2019

RST (CO)
RRS (09/04/2019)



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