

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM:

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

W.A. No. 657 of 2019

G. Mallika Appellant/Petitioner

-vs-

1. The District Collector,
Krishnagiri District.
2. The Commissioner,
Kaveripattinam Panchayat Union,
Krishnagiri District.
3. The Chairman,
Kaveripattinam Panchayat Union,
Kaveripattinam,
Krishnagiri District. Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order passed by this Court in W.P. No. 4845 of 2016 dated 06.08.2018.

Prayer in W.P.No.4845 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of termination passed by the 2nd respondent in his Pro.NaKa.No.2913/2009/A6 dt.17.12.2015 quash the same and consequently direct the respondents to reinstate the petitioner in service Bannihalli Pudhur, Kavripattinam Panchayat Union, Krishnakiri District with all consequential service and Monetary benefits.

For Appellant : Mr. R. Neelakandan for
Mr. C. Mahendran

For Respondents: Mr. C. Munusamy,
Special Government Pleader

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 06.08.2018 in W.P. No. 4845 of 2016 passed by the Learned Judge of this Court.

2. The chronological sequence of events leading to the filing of this Writ Appeal are given below:-

- (i) The Government of Tamil Nadu issued G.O. (Ms) No. 11, Social Welfare and Nutritious Meal Programme (NMP1) Department dated 22.01.2007 prescribing the procedure for the selection of candidates for the post of Cooks and Noon Meal Assistants under the Noon Meal Programme. Suffice here to refer to clause (2) to para 4 of that Governmental order, which is relevant for the purpose of this case, and reads as follows:-

"The Personal Assistant (NMP) to the District Collector shall be the appointing authority in respect of Cook and Noon Meal Assistant in the NMP Centres. The Personal Assistant (NMP) to the District Collector is permitted to fill up the posts of Cooks and Noon Meal Assistants in the NMP Centres for future vacancies and also to fill up the vacancies ordered in G.O. (MS) No. 4, SW & NMP Department, Dated: 05.01.2007. The BDO will notify the vacancies, call for applications, conduct interviews and send proposals for appointment of suitable persons to the Personal Assistant (NMP) to Collector of the District, for issuing appointment orders...."
- (ii) During the year 2007-2008, the Block Development Officer, Kaveripattinam initiated action for filling up the posts of 9 Cooks and 16 Noon Meal Assistants in Kaveripattinam Panchayat Union.
- (iii) In furtherance to the aforesaid Governmental Order, the Appellant, who had applied for the post of Cook, was appointed to that post by the Block Development Officer, Kaveripattinam by proceedings Na. Ka. No. 343/2007 (AA8) dated 05.09.2007 and continued to work in that post.
- (iv) The Commissioner of Panchayat Union, Kaveripattinam after taking note of the an objection at para 31 of the Audit for Noon Meal Scheme for the year 2008-2009 and the consequential resolution dated 11.01.2012 passed by the Panchayat Union, ordered to temporarily stop the payment of salaries to the Appellant and other Cooks and Noon Meal Assistants till their appointment was approved and ratified by the District Collector.
- (v) The District Collector, Krishnagiri by proceedings R.C. No. 13921/2012/Ex.2 dated 12.09.2012 recorded that the 25

persons appointed as Cooks and Noon Meal Assistants in Noon Meal Centres by Thiru. Amaravel, former Block Development Officer, Kaveripattinam, were paid salaries without obtaining any permission to continue their services from the District Collector and took exception to the recommendation of the Commissioner of the the Panchayat Union, Kaveripattinam for regularization of their services contrary to the Rules and directed the Commissioner of Panchayat Union, Kaveripattinam to remove all the 25 persons appointed by the former Block Development Officer, Kaveripattinam from service immediately, and observed that the officials sanctioning salaries to those persons (except those who had approached the Court of law) would be personally responsible to compensate the loss incurred by the Government in that regard.

- (vi) The Appellant challenged the aforesaid proceedings R.C. No. 13921/2012/Ex.2 dated 12.09.2012 of the District Collector in W.P. No. 34243 of 2012 before this Court.
- (vii) The Commissioner of the Panchayat Union, Kaveripattinam by proceedings Na. Ka. No. 2915/2009/A1 dated 17.12.2018 referring to the order of the District Collector, Krishnagiri in proceedings R.C. No. 13921/2012/Ex.2 dated 12.09.2012, held that the Appellant and 4 other Cooks and 13 Noon Meal Assistants had been appointed in violation of Rules and communicated that order to the concerned Noon Meal Organizers with an instruction not to allow the aforesaid persons to work from the date of that order and warned that disciplinary action would be initiated against them for violation of that order.
- (viii) The Appellant challenged the aforesaid proceedings Na. Ka. No. 2915/2009/A1 dated 17.12.2018 of the Commissioner of the Panchayat Union, Kaveripattinam in W.P. No. 4845 of 2016 before this Court.
- (ix) The Writ Court by an interim order dated 10.02.2016 in W.P. No. 4845 of 2016 directed status quo to be maintained and posted the matter after two weeks.
- (x) The Writ Court by another interim order dated 14.03.2016 in W.P. No. 4845 of 2016, held as follows:-
 - "4. I find some substance in the submission made by the learned counsel for the petitioners, because this Court has already granted an order of stay on 25.01.2016 against the operation of the termination orders dated 17.12.2015 passed in respect of similarly placed persons. When the matters are pending for consideration, the Respondents cannot pass the termination orders

against the Petitioners. Therefore, it is clarified that there shall be an order of interim stay of the impugned orders in these Writ Petitions. Post the matter on 24.03.2016."

- (xi) In view of the endorsement made by the Appellant, the Writ Court by order dated 24.01.2018 permitted the Appellant to withdraw W.P. No. 34243 of 2012.
- (xii) The Writ Court by the order dated 06.08.2018 dismissed W.P. No. 4845 of 2016 on the ground that the appointment of the Appellant as Cook by the Block Development Officer was without any delegation of power or authorization issued by the Government in that regard and left it open to the Appellant to participate in the open competitive process whenever the recruitment notification was issued.

Aggrieved thereby, the Appellant has preferred this appeal.

3. We have heard Mr. R. Neelakandan, Learned Counsel appearing for the Appellant, Mr. C. Munusamy, Learned Special Government Pleader appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

4. The Learned Counsel for the Appellant strenuously urged that as per G.O. (Ms) No. 11, Social Welfare and Nutritious Meal Programme (NMP1) Department dated 22.01.2007, the Block Development Officer was the competent authority to notify the vacancies, call for applications, conduct interviews and send proposals for appointment of suitable persons to the Personal Assistant (NMP) to the District Collector for issuing appointment orders and as such, it could not be said that the appointment of the Appellant as Cook in the Noon Meal Centre by the Block Development Officer was without any delegation of power or authorization by the Government. It is contended that in any event, the Appellant, who had applied for the post of Cook in pursuance of the notification for the vacancy and was found suitable by the Block Development Officer, cannot be held responsible for the appointment order having been signed by the Block Development Officer instead of Personal Assistant (NMP) to the District Collector. It is further urged that the payment of salaries to the Appellant for more than a decade from 05.09.2007 to 06.08.2018 till the dismissal of the Writ Petition, cannot be termed as illegal, as work had been extracted from her for the same and she was in no way responsible for any irregularity that may have been committed by the Block Development Officer by issuing the appointment order, instead of forwarding his recommendation to the Personal Assistant (NMP) to the District Collector, and seeks the intervention of this Court.

5. The Learned Special Government Pleader appearing for the Respondents contended that the appointment of the Appellant

along with other Cooks and Noon Meal Assistants was illegal as their appointment orders had been issued by the Block Development Officer, who has not been authorized in that regard, and has sought for the dismissal of this appeal.

6. We find considerable force in the submission made by the Learned Counsel for the Appellant that the Block Development Officer was authorized under G.O. (Ms) No. 11, Social Welfare and Nutritious Meal Programme (NMP1) Department dated 22.01.2007 to notify the vacancies, call for applications, conduct interviews and send proposals for appointment of suitable persons to the Personal Assistant (NMP) to the District Collector and that the Appellant cannot be blamed for that Block Development Officer having issued their appointment orders, instead of the Personal Assistant (NMP) to the District Collector. At the same time, when the Block Development Officer is not the competent authority to issue the appointment order, it would not be appropriate to direct the reinstatement of the services of the Appellant. The proper recourse, in such circumstances, would be to direct the Personal Assistant (NMP) to the District Collector, Krishnagiri to call for the recommendations made by the Block Development Officer for filling up the posts of Cooks and Noon Meal Assistants (including the Appellant) and after examining the same, pass reasoned orders thereon in accordance with law and communicate the decision taken to the concerned parties and file a report of compliance in that regard before the Registrar (Judicial) of this Court by 30.06.2019. The reinstatement of the Appellant in service would depend upon the outcome of the orders to be passed by the Personal Assistant (NMP) to the District Collector, Krishnagiri.

7. In the result, the Writ Appeal is allowed, the order dated 06.08.2018 in W.P. No. 4845 of 2016 is set aside and the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vjt

To

1.The District Collector,
Krishnagiri District.

2.The Commissioner,
Kaveripattinam Panchayat Union,
Krishnagiri District.

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3. The Chairman,
Kaveripattinam Panchayat Union,
Kaveripattinam,
Krishnagiri District.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+lcc to Mr.C.Mahendran, Advocate, S.R.No.30234
+lcc to the Government Pleader, S.R.No.31028

W.A. No. 657 of 2019

PA (CO)

RRS (09/04/2019)



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