

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.1574 of 2019
Against W.P.No.4846 of 2016

M.Eswari

..... Appellant

-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

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.4846 of 2016 dated 06.08.2018 on the file of the High Court of Judicature at Madras.

Prayer in W.P.No.4846 of 2016:-

This Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mnadamus calling for the records relating to the impugned order of termination passed by the 2nd Respondent in his Pro.Na.Ka.No.2913/2009/A6 dated 17.12.2015 quash the same and consequently direct the respondents to reinstate the petitioner in service as cook Assistant in Panchayat Union Middle School, Chettimarampatti, Kaveripattinam Panchayat Union, Krighnagiri District with all consequentila service and monetary benefits.

For Appellant : Mr.C.Mahendran

For Respondents: Mrs.A.Srijayanthi
Special Government Pleader

J U D G M E N T

[Judgment of the Court was delivered by P.T.ASHA,J.]

This Intra-Court appeal arises out of the order dated 06.08.2018 in W.P.No.4846 of 2016 passed by the learned Judge of this Court.

2.Brief resume of the events preceeding the filing of the Writ Appeal is detailed herein below.

3.The appellant herein had been appointed as a Cook in the Government's Nutritious Meal Centre at Panchayat Union Elementary School, Dasupatti, Kaveripattinam Panchayat Union, Krishnagiri District by the 2nd respondent vide orders dated 05.09.2007. The appellant has been rendering blemishless services in the said post and while so the 1st respondent by order dated 12.09.2012 had directed the 2nd respondent to immediately terminate the services of nine Cooks and sixteen Cook Assistants which included the appellant. The said order was also communicated by the 2nd respondent to the appellant on 13.09.2012. The appellant herein and the others had challenged this order by filing Writ Petitions.

However, the appellant and the others continued to discharge their duties in their respective posts without being paid salary.

4.Thereafter the 2nd respondent had issued the order of termination dated 17.12.2015, wherein the 2nd respondent had stated that the order of termination has been passed on account of the Audit report of the Assistant Director, Local Fund Audit (Noon Meal Scheme), Dharmapuri, in his proceedings in Na.Ka.No.1215/2006 dated 25.10.2010 and the proceedings of the 1st respondent dated 12.09.2012 in Na.Ka.No.13921/2012/X2.

5.Challenging the said order the appellant and similarly placed persons had filed various Writ Petitions. By an order dated 06.08.2018, this Court was pleased to dismiss the above Writ Petitions by a common order holding as follows:

"4.This Court is of an opinion that when an order of appointment had been issued by an incompetent authority, having no jurisdiction and the said orders

have been sent for the approval of the District collector and the District Collector in turn, cancelled the orders of appointment on the ground that there is no delegation of power of authorization issued by the Government, permitting the Block Development Officer / The Commissioner, Panchayat Union to issue an order of appointment. Thus, the initial appointment of the Writ petitioners was irregular and not in accordance with the recruitment rules in force. Further, the Block Development Officer / The Commissioner, Panchayat Union have not empowered or authorized to issue an order of appointment for the post of Cook / Cook Assistant in Panchayat Union or in any other Union.

5.This being the legal position, this court is of an opinion that the order of appointment issued in favour of the Writ Petitioners, was an illegal one and therefore, it is left open to the Writ Petitioners to participate in the open competitive process, whenever the recruitment notification is issued. However, in respect of the illegal appointment, no relief can be granted and accordingly, the orders passed by the respondent is in accordance with law and there is no infirmity as such.

6.Accordingly, all the Writ Petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed."

6.Challenging the said order the appellant has preferred the above Writ Appeal. Meanwhile, one of the petitioners aggrieved by the order detailed supra had filed an appeal in W.A.No.657 of 2019. The Bench by its order dated 29.03.2019 was pleased to allow the above Writ Appeal holding as follows:

"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"

Considering the fact that the instant appeal also emanates from the order which is the subject matter of challenge in W.A.No.657 of 2019 the very same order would enure to the present Writ Appeal. The Writ Appeal is therefore disposed of in terms of the Judgement cited supra.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector
Krishnagiri District.

2.The Commissioner
Kaveripattinam Panchayat Union
Krishnagiri District.

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

+1 cc to Mr.C.Mahendran, Advocate, Sr.No. 44879

+1 cc to The Government Pleader, Sr.No. 45363

W.A.No.1574 of 2019

CSL/13.06.2019