



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.15017 of 2014

and

M.P.(MD)Nos.1 to 4 of 2014

WEB COPY

Thiruvayee

... Petitioner

-Vs-

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Commissioner,
Manamadurai Panchayat Union,
Manamadurai, Sivagangai District.

3.The Block Development Officer (Va.Voo.),
Manamadurai Panchayat Union,
Manamadurai, Sivagangai District.

4.The Headmaster,
Panchayat Union Elementary School,
Panaikulam Village, Manamadurai Panchayat Union,
Ilayangudi Taluk, Sivagangai District.

5.S.Sujatha

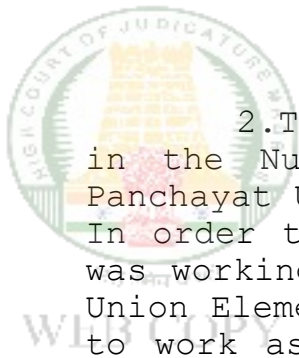
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order Na.Ka.A.5/545/2014 dated 15.07.2014 passed by the third respondent and quash the same and consequently, direct the first respondent to regularize the service of the petitioner from June, 2007 and grant all the service and monetary benefits.

For Petitioner : Mr.A.Thirumurthy,
For M/s.Victory Associates.
For R1 to R4 : Mr.D.Muruganantham,
Additional Government Pleader.
For R5 : No Appearance

ORDER

The order of rejection dated 15.07.2014, rejecting the claim of the writ petitioner for grant of regularization or permanent absorption in the post of Cook in the Panchayat Union School, is under challenge in the present Writ Petition.

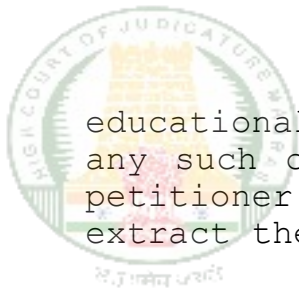


2.The writ petitioner states that the post of Cook had arisen in the Nutritious Meals Centre opened in the fourth respondent Panchayat Union Elementary School, Panaikulam Village on 07.03.2006. In order to meet out the urgent circumstances, one Vellaiammal who was working as Cook in the Nutritious Meals Centre in the Panchayat Union Elementary School at Keelapidavur, was given additional charge to work as Cook in the fourth respondent school. In view of the fact that the said Vellaiammal was unable to prepare and serve food in two Panchayat Union Schools, the writ petitioner was engaged to perform the duties and responsibilities of Cook in the fourth respondent Panchayat Union Elementary School, Panaikulam Village. However, the writ petitioner was not appointed by the competent authorities and by following the procedures contemplated under the Government Orders. The writ petitioner was not issued with an order of appointment and she was engaged by the authorities and directed to perform the duties and responsibilities of the post of Cook by providing a promise that she will be absorbed in the regular post.

3.In view of the fact that the case of the writ petitioner was not considered for regularization and permanent absorption, the writ petitioner earlier filed W.P.(MD)No.2723 of 2014 and this Court passed an order on 20.02.2014 to consider the representation. Accordingly, the representation submitted by the writ petitioner was considered and the claim of the writ petitioner was rejected in proceeding dated 15.07.2014. The impugned order itself stated that the 5th respondent was appointed by way of selection process and the writ petitioner had not submitted any application in order to participate in the process of selection. Thus, the case of the writ petitioner was not considered for appointment.

4.This Court is of an opinion that mere engagement or contract appointment in order to perform certain duties and responsibilities would not confer any right on the candidate to claim regularization and permanent absorption. In other words, illegal appointments or irregular appointments cannot be a ground for regularization. Admittedly, the writ petitioner was not appointed by the competent authority nor she was issued with an order of appointment in a selection process. Thus, the benefit of regularization and permanent absorption in violation of the rules cannot be granted by this Court, in view of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** reported in **(2006) 4 Supreme Court Cases 1**.

5.This apart, the process of selection was conducted and the 5th respondent participated in the process of selection and accordingly, the 5th respondent was appointed as Cook and she is serving as Cook for the past 5 ½ years. The impugned order as well as the counter affidavit state that the writ petitioner has not submitted any application in order to participate in the process of selection. The writ petitioner has not possessed requisite



educational qualifications also. In the absence of production of any such certificate by the writ petitioner, the case of the writ petitioner was not considered. In this regard, it is relevant to extract the paragraph No.4 of the counter affidavit:-

"4.Further as per the communal roster followed the post of cook is allotted to general turn and the post of assistant is allotted to Seermarabinar and further the above said S.Sujatha is the widow and considering her educational qualification, she had been appointed and she is serving in that post, after participating in the interview. The petitioner had never attended any interview and she doesn't possess the required qualification and when that be in so she is not entitled to claim to be appointed or regularized as if she is working in that post, when there is no documentary proof authorizing her to perform the services of the assistance as claimed by her."

6.In view of the fact that the 5th respondent was appointed by following the selection process and the writ petitioner had not even participated in the process of selection, the benefit of regularization and permanent absorption cannot be granted.

7.Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

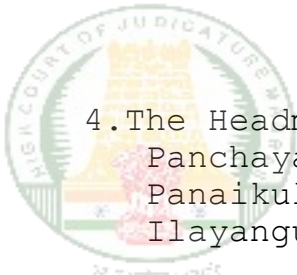
Assistant Registrar

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Sub Assistant Registrar(CS)

To

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Sivagangai.
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+1 CC to M/s.SPL GP (SR-82832[F] dated 21/08/2019)

W.P. (MD) No.15017 of 2014
20.08.2019

_KK/SAR/04.09.2019/4P-6C/