



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.1113 of 2012
and
M.P(MD)No.3 of 2012

S.Sailaja ... Appellant/3rd Respondent

Vs.

1.S.Muthulakshmi ... 1st Respondent/Petitioner

2.The Personal Assistant to the Collector(Noon Meal)
Collectorate,
Musiri,
Trichy District.

3.The Block Development Officer,
Panchayat Union Office,
Musiri,
Trichy District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.03.2012 passed in W.P(MD)No.11649 of 2009.

Prayer in WP(MD). 11649/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI MANDAMUS, to call for the records of the proceedings of the 1st respondent in Na.Ka.P6/808/08 dated 24-08-2009 and quash the same and further direct the 1st respondent to appoint the petitioner as Cooking Assistant in Adhidhiravida Welfare Primary School, Thiruthalaiyur.

For Appellant :Mr.S.Balamurugan
For R-1 :No Appearance
For R-2 and R-3 :Mr.M.Murugan,
Government Advocate



JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)

This Writ Appeal is directed against the order dated 13.03.2012 passed in W.P(MD)No.11649 of 2009.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The Writ Appellant is the third respondent in the Writ Petition. Originally, the Writ Petition was filed by one Muthulakshmi challenging the order dated 24.08.2009 passed by the Personal Assistant to the District Collector appointing one Sailaja, wife of Chengis as Cook Assistant in Adi Dravida Welfare Primary School, Thiruthalaiyur. According to the Writ Petitioner, who is the first respondent herein, she is an agricultural coolie, having lost her husband in the year 2000, struggling to meet both ends meet. She had applied for the post of Cooking Assistant at Noon Meal Centre at Adi Dravida Primary School based on the advertisement of the second respondent. She has attended the interview and she was not informed with regard to the selection. While so, the third respondent who is the appellant herein was appointed to the said post of Cooking Assistant by the proceedings dated 24.08.2009. Therefore, the said appointment was challenged.

4. According to the writ petitioner, both the Writ Appellant and the Writ Petitioner belong to the same village and belong to SC Community. However, the Writ Petitioner has stated that she is a widow and senior in age and therefore, she should be given preference over the Writ Appellant herein for the post of Cooking Assistant.

5. The learned Single Judge while passing the order had held that as both the aspirants belong to the same community and same village, how the Writ Appellant was appointed as Cooking Assistant was not made clear by the official respondents. Therefore, the appointment of the Writ Appellant dated 24.8.2009 was set aside and a direction was given to the second respondent to conduct a fresh interview for the post of Cooking Assistant within a period of eight weeks calling upon the Writ Petitioner as well as the Writ Appellant and pass appropriate orders on merits. As the appointment order dated 24.08.2009 was set aside by the learned Single Judge, the third respondent in the Writ Petition had preferred the above Writ Appeal.

6. Even after service of notice, the first respondent/Writ Petitioner had never appeared either in person or through counsel.



7.The learned Government Advocate appearing for the respondents 2 and 3 would submit that in spite of the order of the learned Single Judge, the employment of the Writ Appellant was continued and the direction given was not obeyed. While so, by proceedings dated 15.7.2016, those who had already completed five years of service were promoted as Cook. Accordingly, the Writ Appellant, who had also put in more than five years of service, was promoted as a Cook and she continued in the said employment.

8. The learned Government Advocate would also submit that for any appointment for the SC Community, the age limit is 35 years. The first respondent was 36 years even on the date of filing of writ Petition and today, she would have crossed 46 years in age. Therefore, she cannot be considered for any fresh appointment.

9. It is to be noted that the learned Single Judge had specifically set aside the order of appointment dated 24.08.2009 of the third respondent and also directed a fresh interview to be conducted for the post of Cooking Assistant in Adi Dravida Welfare Primary School, Thiruthalaiyur, within a period of eight weeks from the date of receipt of a copy of that order.

10. The writ appeal is filed only by the third respondent in the writ petition as her appointment was set aside by this Court. However, the employment of the Writ Appellant was continued and the direction given was not obeyed and she was given promotion as a Cook. The appellant who has knowledge that her appointment was set aside and preferred an appeal against the same, had the audacity to accept the promotion. The officials concerned also had acted on their own despite having knowledge about the order of this Court.

11. In view of the above facts, the appeal by the appellant does not deserve to be considered as she had continued or allowed to be continued in the post even after her appointment was set aside. Therefore, the order of the learned Single Judge, dated 13.03.2012 passed in W.P(MD)No.11649 of 2009, is confirmed and the writ appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

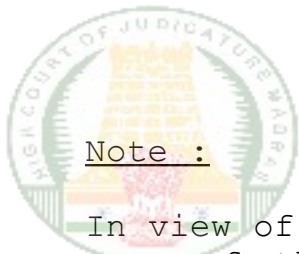
Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Personal Assistant to the Collector(Noon Meal)
Collectorate,
Musiri,
Trichy District.

2.The Block Development Officer,
Panchayat Union Office,
Musiri,
Trichy District.

+1 CC to M/s.S.BALAMURUGAN, Advocate (SR-12411[F] dated
19/03/2021)

W.A(MD)No.1113 of 2012
17.03.2021

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NS (CO)
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