



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM
and
THE HON'BLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.510 of 2019
and C.M.P. (MD)No.4361 of 2019

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Personal Assistant to District
Collector,
(Noon Meal Projects),
Virudhunagar District,
Virudhunagar.
- 3.The Block Development Officer,
Virudhunagar Panchayat Union,
Virudhunagar District. ...Appellants/Respondents

-Vs-

- 1.M.Rajeswari ..Respondent/Petitioner
- 2.The Headmaster,
Government High School,
Pattamputhur Village,
Virudhunagar Panchayat Union,
Virudhunagar District. ..2nd Respondent/1st Respondent
- 3.R.Jegadeswari
(R3 is suo-motu impleaded as per order
dated 27.04.2019 in W.A.No.510/2019) ...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 23.01.2019 made in W.P.(MD)No.14188 of 2012.

Prayer in WP(MD). 14188/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, to direct the respondents to appoint the petitioner as a Cook in the Noon meal center situated in the Government High School, Pattamputhur, Virudhunagar Panchayat Union, Virudhunagar District or any of the School situated in the Virudhunagar Panchayat Union within the stipulated period.



For Appellants : Mr.N.Shanmuga Selvam,
Addl. Government Pleader

For Respondents : Mr.M.Jothibasur of R1

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JUDGMENT

[Judgment of the Court was made by **T. S. SIVAGNANAM, J.,**]

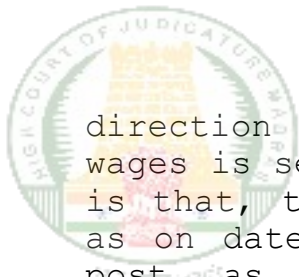
This Appeal by the District Collector, Virudhunagar District and two others is directed against the order dated 23.01.2019 in W.P. (MD) No.14188 of 2012.

2. The said Writ Petition was filed by the first respondent herein challenging her non-selection to the post of Cook in the Noon Meal Centre, attached to the Government High School, Pattamputhur, Virudhunagar Panchayat Union, Virudhunagar District. The Writ Petition was allowed by the impugned order on the ground that the records were manipulated and the name of Mrs.R.Jegadheeswari, who is the third respondent herein, was interpreted. Subsequently, the files were called for by the Court and it was reported to be not traceable.

3. The learned Writ Court, after elaborately considering the factual details, was fully convinced that non-selection of the first respondent was vitiated by malafides and fraudulent practices. Therefore, the writ petition was allowed.

4. To be noted, the writ petition was filed in the year 2012, but by then, the third respondent was selected and she had also joined duty. The first respondent/writ petitioner was not allowed to join. Writ Petition was ultimately allowed on 23.01.2019. Though we fully subscribe to the ultimate conclusion arrived by the learned Single Judge stating that the non-selection was vitiated by malafides and other fraudulent practices, we are not agreeable to the ultimate relief granted by the learned Writ Court, by directing that the first respondent/writ petitioner should be permitted to join and she should be paid all back wages and attendant benefits. Admittedly, no order of appointment was issued to the first respondent/ writ petitioner and consequently, the question of her being treated as an employee does not arise. The fundamental legal principle is that even if the name is found in the selection list that will not confer any right to appointment on such a candidate. Therefore, we have to necessarily set aside and modify that portion of the order passed by the learned single Judge.

5. Accordingly, this Writ Appeal is partly allowed and the finding of the learned single Judge for non selection of the first respondent/writ petitioner is upheld. However, the consequential



direction granted to allow her to join duty and to receive back wages is set aside. One more reason for coming to such a conclusion is that, the selection process was conducted somewhere in 2012 and as on date, the first respondent cannot be accommodated in such a post, as it is not clear whether there is any vacancy or not. Furthermore, the third respondent had already joined duty in the year 2012 and she is still continue. Therefore, the best that can be done is to direct the appellants to permit the first respondent/writ petitioner to apply for being appointed as Cook in any one of the Noon Meal Centre in the District/area. But such an application is filed, the same shall be considered in accordance with the scheme without rejecting the application on the ground of age of the first respondent/writ petitioner. It is made clear that the direction issued by the learned Single Judge directing that the respondent/writ Petitioner should be permitted to join duty and also be paid back wages is set aside.

6. With the above observation, this Writ Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

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 District Collector,
Virudhunagar District,
Virudhunagar.
- 2 The Headmaster,
Government High School,
Pattamputhur Village,
Virudhunagar Panchayat Union,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-18267[F] dated 30/04/2021)

W.A. (MD) No.510 of 2019
and C.M.P. (MD) No.4361 of 2019
29.04.2021