



W.A.No.2897 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

CORAM

The Hon'ble Mr. Justice **PARESH UPADHYAY**
and
The Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**

W.A.No.2897 of 2021
and C.M.P.No.19526 of 2021

S.Tamilselvi

.. Appellant

vs

1.P.Tamilselvi

2.The District Collector ,
Thiruvannamalai District,
Thiruvannamalai.

3.Personal Assistant to the
District Collector (Noon Meal)
Thiruvannamalai.

4.The Commissioner,
Kilpennathur Panchayat Union, Taluk & District.

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the order
dated 04.10.2021 made in W.P.No.19509 of 2009.

For Appellant : Ms.S.Shanmitha

For Respondents : Mr.K.Venkateswaran for R1

Mr.M.Rajendran,
Additional Government Pleader
for R2 to R4



W.A.No.2897 of 2021

JUDGMENT
(Delivered by PARESH UPADHYAY.,J)

WEB COPY

1. Challenge in this appeal is made to the order dated 04.10.2021 recorded on W.P.No.19509 of 2009. This appeal is by the fourth respondent in the writ petition.

2. Learned Single Judge, by the impugned order had quashed and set aside the appointment order issued in favour of the fourth respondent and had further directed that, the writ petitioner is entitled to employment and the petitioner shall be provided with employment within two days from today i.e.,04.10.2021. The matter was ordered to be listed on 08.10.2021 for reporting compliance and it is stated that, the same was complied with on 06.10.2021 as ordered by learned Single Judge. It is noted that, the writ petition was of the year 2009 and the direction of learned Single Judge was to issue appointment order to the writ petitioner within two days.

3. Ms.S.Shanmitha, learned Advocate for the appellant has submitted that, the appellant had participated in the selection process, was selected and was appointed by the respondent – State Authorities and was working as Noon Meal Organiser since the year



W.A.No.2897 of 2021

2009 and by the impugned order dated 04.10.2021, without any effective opportunity of hearing to the present appellant, the order was passed setting aside her appointment dated 12.09.2009, further - in substance making her appeal ineffective, if not infructuous, since further direction was given by learned single Judge to give appointment to the writ petitioner in place of the present appellant within two days. It is submitted that the order of learned Single Judge is erroneous and the same be interfered with.

4. On the other hand, learned Advocate for the contesting respondent – original writ petitioner has supported the impugned order passed by learned single Judge. It is submitted by him that, the appointment of the present appellant was against the policy of the State and direction by the learned single Judge be not interfered with. Learned advocate for the writ petitioner has further submitted that, the writ petitioner was possessing all the qualification and was also belonging to the same village vis-a-vis the present appellant not being the resident of the same village and therefore the order of learned single Judge be not interfered with. It is submitted that this appeal be dismissed.



W.A.No.2897 of 2021

5. Learned Additional Government Pleader has referred to the contents of the counter filed on behalf of the State dated 01.12.2020 which was on record before learned Single Judge (at page 8 to 11 of paper book of this appeal). Learned Additional Government Pleader has, while referring to the said counter submitted that, the original record is also available with him in the Court, since the Officer is also present. Learned Additional Government Pleader has, while taking the Court through the contents of the counter to contest the writ petition has submitted that, the State stands by its stand as recorded in the counter which was on record. It is submitted that, the action of the State was legal and therefore it ought not to have been interfered with in the writ petition. It is submitted that, since there was direction by learned single Judge, the same was complied with, however the State stands by its action which was under challenge in the writ petition. It is submitted that appropriate order be passed by this Court.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-



W.A.No.2897 of 2021

6.1 The relevant part of the counter filed on behalf of the

State reads as under:-

"4.I respectfully submit that due to similarity in the names of the writ petitioner as well as the fourth respondent in the writ petition (both their names are Tamilselvi), there was a little confusion prevailed at the time of issuing the order of appointment. The fact remains that the order of appointment dated 12.09.2009 was handed over to the writ petitioner herein by the Honourable Minister for Food Supplies on 12.09.2009 in the presence of the first respondent herein, whose name is also Tamilselvi. The order of appointment dated 12.09.2009, which is impugned in this writ petition, is clear and crystal that it was issued only to the fourth respondent. This could be evident that the order of appointment dated 12.09.2009 prominently refers to the name of the husband of the fourth respondent as David Deva Kumar. On the other hand, the name of the husband of the writ petitioner is Senthil Murugan. The petitioner claiming that the order of appointment originally handed over to her but she was prevented from joining the post of Noon Meal Organiser, has come forward with this writ petition. I respectfully submit that even before the writ petitioner joins duty as Noon Meal Organiser, the anomaly in issuing the order of appointment to the writ



WEB COPY



W.A.No.2897 of 2021

petitioner was noticed and it was duly served on the fourth respondent. The fourth respondent also joined the post of Noon Meal Organiser and has been serving for the past more than 11 years. With this back ground, I am duty bound to bring to the notice certain facts, which are germane and necessary for consideration of this Honourable Court."

6.2 It is noted that, though the dispute is qua one person, as a matter of fact 101 persons were appointed by the District Collector, Tiruvannamalai. The appointment orders were not issued by registered post but some function was organized and the covers were being handed over by the Hon'ble Minister. One cover, presumably containing order of appointment of someone was handed over and received by the writ petitioner, is the only material with the writ petitioner has with her. After the function was over, it was pointed out to her that, it is not the writ petitioner Ms. Tamilselvi who should have gone on the stage but it is the present appellant Ms. Tamilselvi who should have gone to the stage. The entire controversy is based on this factual aspect only. We find that, public employment can not be regulated like this. The finding of learned Single Judge, more particularly in para : 8 referring to the Hon'ble Minister who attended that function, with the vocabulary which could have been avoided, is



W.A.No.2897 of 2021

also taken note of by this Court. Even if the petition is not stretched that far, we find that, the counter filed by the authorities dealt with all the aspect how the present appellant was entitled to employment and how she was rightly given the appointment order and further, how the writ petitioner was not entitled to that, as asked for by her. According to us, finding of learned Single Judge on the face of the counter of the State and in absence of any other material on record contrary to it is erroneous and the same therefore needs to be quashed and set aside.

6.3 During the course of hearing, it has also transpired that, the document relied on behalf of the writ petitioner (at page 26 of the paper-book), the fair copy of which is at page 27 - 28 of the paper-book is not the complete record as pointed out by learned Additional Government Pleader which may have its own consequences, however we do not intend to stretch the matter that far and we arrive at the conclusion that, the case pleaded by the State in its counter dated 01.12.2020 did not warrant any further scrutiny, unless any further counter was filed on behalf of the writ petitioner and the learned advocate for the writ petitioner concedes that there was no further material placed on record on behalf of the writ petitioner. The



W.A.No.2897 of 2021

impugned order therefore needs to be quashed and set aside.

WEB COPY

6.4 Before the final order is recorded, few glaring aspects need to be taken note of. Para 8 of the order inter-alia reads thus:-

"8. From a reading of the advertisement, it is very clear that the candidate for the post of Noon Meal Organiser should reside in the same village. Admittedly, the writ petitioner is residing in the same village while the fourth respondent is residing at a distance of 2 Kms away from the place of work. This Court is unable to conclude whether there is involvement of the Minister or not as the Minister has not been made as a party though allegations have been made against the Minister. "

According to us, the matter did not have this dimension.

6.5 The appointment in question was dated 12.09.2009. The case of the writ petitioner was that it was her appointment order which was used by the fourth respondent. There could not have been two appointment orders. The appointment order was already set aside by learned single Judge. This would lead to a limbo, where there is no appointment order. Learned single Judge gave further direction that the writ petitioner shall be given appointment and that appointment



W.A.No.2897 of 2021

shall be given within two days from the date of the order. We find that, in substance, the challenge to the said order was thus rendered ineffective, if not infructuous. Such things ought to have been avoided. The order further gave direction that the compliance of directions shall be reported within few days and it was ordered to be notified on 08.10.2020. The State obliged to it. That is how the writ petitioner is in employment.

8. For the reasons recorded above, the following order is passed:-

8.1 This appeal is allowed.

8.2 The impugned order passed by learned Single Judge is quashed and set aside.

8.3 The writ petition is dismissed.

8.4 Since the order of learned single Judge now stands quashed and set aside, the consequential order passed in favour of the writ petitioner will not hold the field.



W.A.No.2897 of 2021

WEB COPY

8.5 The appellant, who was appointed and whose appointment was set aside by learned single Judge, shall be deemed to be in employment all throughout, with all consequential benefits.

8.6 No costs. Connected miscellaneous petition would not survive.

(P.U., J) (D.B.C., J)
22.11.2022

Index:No
raa/26

To

- 1.The District Collector ,
Thiruvannamalai District,
Thiruvannamalai.
- 2.Personal Assistant to the
District Collector (Noon Meal)
Thiruvannamalai.
- 3.The Commissioner,
Kilpennathur Panchayat Union,
Thiruvannamalai Taluk & District.



WEB COPY



W.A.No.2897 of 2021

**PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.**

raa

W.A.No.2897 of 2021

22.11.2022