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W.P.No.474 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.474 of 2023
and W.M.P.Nos.423 & 424 of 2023

A. Adhista Kumar

... Petitioner

Vs.

1.The Secretary to Government,
Adi-Dravidar and Tribal Welfare Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Adi-Dravidar Welfare,
Chepauk, Chennai – 5.

3.The District Adi-Dravidar & Tribal Welfare Officer,
Trichy District,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 2nd respondent in Ne.Mu.Ka.No.Tha.4/1804/2021 dated 12.01.2022 and the consequential orders of the 3rd respondent in Na.Ka.No.W4/12539/2022 dated 16.12.2022 and quash the same and direct the respondents to continue the petitioner in the post of 'Cook' with all monetary benefits.



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For Petitioner : Mr.S. Kamadevan

For Respondents : Mr.P. Sanjay Gandhi,
Government Advocate

ORDER

By an order dated 22.01.2021, the petitioner was appointed as a Cook by the District Selection Committee of the third respondent herein. The petitioner's qualification was XII-Std. Subsequently, through the impugned order dated 16.12.2022, the third respondent herein had placed reliance on a letter of the second respondent dated 26.05.2020 and cancelled the appointment stating that as per the letter of the second respondent, the maximum educational qualification is X-Std fail and since the petitioner has passed X-Std and held further higher qualification, he is ineligible to hold the post.

2. The learned counsel for the petitioner placed reliance on a decision of the Madurai Bench of this Court in the case of '**C. Muthu Vs. The Commissioner, Adi-Dravidar and Tribal Welfare Department &**



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others' passed in ***WP.(MD).No.16948 of 2022 etc., batch dated 24.11.2022***, as well as in the case of '***M. Suman Vs. The Additional Chief Secretary to Government & others'*** passed in ***WP.(MD).No.258 of 2023 etc., batch dated 06.02.2023*** and submitted that in the identical circumstances, this Court had set aside the similar orders.

3. The learned Government Advocate appearing for the respondents submitted that since there are specific instructions by the second respondent herein, prescribing the maximum educational qualification, the petitioner is over qualified and therefore, he is ineligible to hold the post.

4. It is a settled proposition that when the Government Orders are passed by invoking Article 162 of the Constitution of India, such orders cannot be diluted through executive circulars or letters. Likewise, such Government Orders cannot be watered down by prescribing or subscribing further qualification or conditions to a Government Order by the Subordinate Officers to the Government.



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5. In the instant case, the Government had passed an Order in G.O.Ms.No.53 Adi-Dravidar and Tribal Welfare Department dated 14.08.2013, limiting the educational qualification with an efficiency to read and write the Tamil language alone for the post of a Cook etc.

6. This Government Order seems to have been given a new interpretation by the letter dated 26.05.2020, prescribing the maximum educational qualification as a fail in X-Std.

7. In the decisions relied upon by the learned counsel for the petitioner in *C. Muthu and M. Suman's case (supra)*, this aspect was considered and held that the circular of the second respondent herein, will not be binding so as to overcome the Government Order in G.O.Ms.No.53 dated 14.08.2013.

8. Thus, the consequential action initiated by the respondents through the impugned order dated 16.12.2022, cannot be sustained and therefore, the petitioner would be entitled to be reinstated back into service.



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9. In the light of the above findings, the impugned order dated 12.01.2022 passed by the second respondent and the consequential impugned order dated 16.12.2022 passed by the third respondent, are hereby quashed. Accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petitions are closed.

19.06.2023

Speaking order
Index:Yes
Neutral Citation: Yes

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To

- 1.The Secretary to Government,
Adi-Dravidar and Tribal Welfare Department,
Fort St.George,
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M.S.RAMESH,J.

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