



W.P.No.7646 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.7646 of 2009

M.P.No.2 of 2009

Geetha

... Petitioner

Vs

1.The Personal Assistant to District Collector
(Nutrition Meals)

Nagapattinam

2.The Block Development Officer cum
Panchayat Union Commissioner,
Sembanarkoil, Tharangambadi Taluk,
Nagapattinam Dt

3.The Secretary
Aided Primary School, Eravancherry,
Tharangambadi Taluk,
Nagapattinam Dt.

4.Durga Devi

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings in

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Na.Ka.396/2008/Sa.oo.thi dated 27.02.2009 and quash the same in so far as it is relating to fourth respondent is concerned and further directing first respondent to appoint the petitioner as nutrition meal scheme helper in the third respondent school and pass such other orders.

For Petitioner : Mr.B.Jawahar

For Respondents : Mr.Arun AAG

Assisted by S.Ravichandran AGP for R1

Mr.R.Kumaravel for R2

(Vakalat Returned)

RR3 & 4 served – No appearance

ORDER

The Writ Petition had been filed challenging the order of appointment of the fourth respondent and to direct the first respondent to appoint the petitioner as a Nutrition Meal Scheme Helper in the third respondent school.

2. Heard Mr.B.Jawahar learned counsel appearing for the petitioner and Mr.Arun learned Additional Advocate General Assisted by Mr.S.Ravichandran learned Additional Government Pleader

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appearing for the first respondent.

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3. The learned counsel appearing for the petitioner would submit that the first respondent had called for application for the post of Nutrition Meal Scheme Helper in Nagapattinam District. The petitioner having necessary qualification had applied for that post and was called for an interview, which she had also attended on 12.02.2009. But however, by the impugned order dated 27.02.2009, the fourth respondent was appointed to the third respondent school, even though she did not possess the necessary qualification. According to the learned counsel for the petitioner the fourth respondent had crossed 40 years of age and therefore, she was not qualified to be appointed. He would try to substantiate by contending that the daughter of the fourth respondent is studying in the same school and the date of birth of her child is 12.06.1979, but however, the fourth respondent had been claimed herself as born on 20.05.1971 and had given a certificate to that effect. Therefore, the petitioner had made a

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representation to the second respondent pointing out that the said disqualification, which had not evoked any response and therefore, he had approached this Court by filing this Writ Petition.

4.He would also further contend that the fourth respondent was not a native of the village and therefore, her appointment is in violation of the Government Order in G.O.Ms.No.203 and therefore, he would seek interference of this Court and set aside the order passed by the respondent.

5.Countering his arguments, the learned Additional Advocate General would submit that the selection has been made upon proper notification that had been issued and an interview was also conducted to that effect. He would further submit that the petitioner had not produced any documents to substantiate her claim that the fourth respondent does not fall within the qualifying criteria, as she had crossed the age of 40 years. He would submit that the Nutritious Meal Scheme Programme has been extended by the Government also in the Government aided schools such, as the third respondent school and the

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appointments are being made by the Government, as the scheme is wholly sponsored by the Government. He would submit that as per the communal roster, that had been followed, the third respondent school was to be allotted with a Schedule Caste candidate, but on the contrary, the petitioner is not a Schedule Caste candidate and therefore, she cannot as a matter of right seek for an employment.

6.He would further submit that huge agitation had forced the fourth respondent to submit a resignation and she had not joined the duty. He would submit that the Government issued various Government Orders and presently appointment to the post of Nutrition Meal Scheme Helper is governed by G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011. He would further submit that since the petitioner is not a qualified person and the fourth respondent had not joined the said post with the third respondent school Nutritious Meal Programme the in said school is being managed on temporary basis by drawing such person from other schools. He

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would submit that any new appointment only could be made based upon the aforesaid Government Order.

7. I have heard the rival submissions made on either side and perused the materials placed on record.

8.I have perused the order of appointment that has been impugned in this Writ Petition. From the aforesaid order, it is seen that the first respondent herein had ordered filling up a post by calling upon the application and filling the same based on the marks that had been obtained by such qualified candidates on the basis of interview. Further it has to be noted that the Government had brought the Nutritious Meal Programme for the benefit of the children studying in various schools including the school run by the Corporation and also the Government aided institutions. The various Government Orders have been passed including the Government Order in G.O.Ms.No.203, Social Welfare and Nutritious Meal Programme Department, dated 19.08.2005. It is to be noted that the said Government Order had been

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amended time and again and finally, a Government Order in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.08.2010, had been issued prescribing various qualification including the residents of the persons to be appointed. Therefore, it is clear that G.O.Ms.No.203, relied upon by the petitioner had been amended. The Government had also issued Government Orders in G.O.Ms.No.918, dated 03.11.1989, as to the procedure in which appointments should be made. The said Government Order had also undergone certain amendments and finally a Government Order in G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011 had been issued.

9.It is also pertinent to note that as per the original scheme of appointment of a Nutrition Meal Scheme Worker in a Government aided school, the concerned school should provide a list of five names from which the appointment will be made by the respective authorities. The said scheme was modified by nominating a committee. A further

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Government Order had also been issued empowering the District Collector concerned to approve such appointments. Based upon the subsequent amendment to G.O.Ms.No.918, dated 03.11.1989, the Government had started to make appointments dispensing with the requirements of a panel of the names to be submitted by the concerned Government aided institutions. This had been challenged before the Division Bench of this Court in a judgment in the case of ***Aided Primary School & Ors., vs. District Collector and Ors.***, reported in (2008) 1 MLJ 726, had held that subsequent to Government Orders in G.O.Ms.918, dated 03.11.1989, the further Government Order's amending G.O.Ms.No.918 by forming a committee and also providing for approval by the District Collector had not dispensed with the procedure of the nomination of the respective aided school and had upheld the right of the Government aided school in sending nomination and any appointment made in contravention would be bad. Thereafter, the Government had issued G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011.

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10. The Government by notifying the Government Order in G.O.Ms.No.4 dated 06.01.2011 had framed a new set of procedure. In the present case, from the impugned order it is clear that the appointments have been made pursuant to the order of the District Collector by calling for application and appointing persons, who had scored marks in the interview. This process had been undertaken by the first respondent, admittedly in the year 2009, whereas the order of Division Bench was made in the year 2007. Therefore, I am of the view that the order of appointment issued by the first respondent is *non est* order. But however considering the fact in respect of other persons, who had been appointed, there has been no challenge and they have been working for almost 14 years, I do not propose to interfere with the order of appointment. But however, coming to the facts of the case, the fourth respondent had submitted her resignation which has also been accepted and admittedly she had not been working. Therefore there is no necessity for this Court to adjudicate upon the validity of the

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appointment of the fourth respondent and at the same time, the claim of the petitioner to appoint her in that place, cannot be entertained, since I have categorically held that the process of appointment itself is *non est*.

11.In such view of the matter, if any appointment is to be made to the third respondent school under the scheme, then the Government shall follow the procedure laid down in G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011.

12.With the aforesaid observations, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking order : Yes/No

Neutral Citations : Yes/No

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K.KUMARESH BABU,J.

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