



W.P.(MD)No.8642 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.8642 of 2018

and

W.M.P.(MD)Nos.8106 & 8107 of 2018

Vanitha

... Petitioner

Vs.

1.The District Collector,
Trichy,
Trichy District.

2.The Commisisoner
Panchayat Union,
Thuraiyur,
Trichy District.

3.The Secretary / Correspondent
Hindu Aided Elementary School,
Krishnapuram,
Thuraiyur Taluk,
Trichy District.

4.Sumathra

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in Sa.Mu.Na.Ka.No.PA.6/995/2016, dated 28.02.2018 and quash the same and consequently directing the first respondent to appoint the petitioner to the post of cook assistant in the third respondent school.

For Petitioner : Mr.S.T.Sasidharan Tamilkani

For Respondents : Mr.S.P.Maharajan - for R1

Special Government Pleader

Mr.M.Saravanan - for R3

No Appearance - for R2 & R4

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent in his proceedings in Sa.Mu.Na.Ka.No.PA.6/995/2016, dated 28.02.2018 and quash the same and consequently, direct the first respondent to appoint the petitioner to the post of Cook Assistant in the third respondent school.



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2. The case of the petitioner is that the petitioner is a resident of Krishnapuram and she had completed 5th Standard at Panchayat Union Elementary School, Nambukurichi. She married one Ganesan in the year 2007 and blessed with two children. The petitioner is a deserted woman and her husband left her for the past 5 years and she belongs to Scheduled Caste Community. Whiles, one post of Cook Assistant fell vacant in the third respondent School, for which, they called for application and the petitioner applied for the same and attended the interview on 15.06.2017 with all necessary documents, which were mentioned in the proceedings of the second respondent, dated 18.06.2017. The third respondent also recommended the petitioner to appoint her as a Cook Assistant in his School through his letter, dated 04.05.2017 and the same was sent to the second respondent. However, the first respondent passed the impugned order, dated 28.02.2018 appointing the fourth respondent as Cook Assistant, without any qualification. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner submitted that the petitioner is a meritorious candidate and having completed 5th Standard and

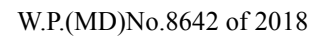


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she is also a deserted woman. However, without considering such candidature, appointing the fourth respondent is not sustainable one. Further, as per G.O(Ms)No.4, dated 06.01.2011, the competent Authority to appoint the Cook Assistant is P.A. to the District Collector, however, the District Collector himself had issued appointment order for the post of Cook Assistant in favour of the fourth respondent, which is not sustainable one. The District Collector has no jurisdiction to appoint the fourth respondent. Accordingly, he prayed for appropriate orders.

4. The learned Special Government Pleader appearing for the first respondent submitted that the fourth respondent's date of birth is 1981, whereas, the petitioner's date of birth is 1988 and the fourth respondent is senior to the petitioner in the Employment Exchange as well and both have completed 5th standard and further, the fourth respondent has produced the income certificate and she is a resident of same village, whereas, the petitioner is a resident who has the residence 3 kms. away from the third respondent school and in all practical purpose, the fourth respondent is a meritorious candidate. Considering her merit and seniority, the first



5. The learned Special Government Pleader further submitted that the superior authority can issue appointment, however, the lower authority has no power to issue appointment order. In the presence case, the PA to District Collector can appoint the person, however, even if such situation arises, the District Collector himself can also issue the appointment order, which cannot be interfered with. Accordingly, he prayed for the dismissal of the writ petition.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The facts in the present case are not in dispute. Admittedly, the petitioner is a resident of Krishnapuram and she had completed 5th Standard at Panchayat Union Elementary School, Nambukurichi. The petitioner is a deserted woman and her husband left her for the past 5 years and she



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belongs to the Scheduled Caste Community. One post of Cook Assistant fell vacant in the third respondent School, for which, they called for application and the petitioner applied for the same and attended the interview on 15.06.2017 with all necessary documents, which were mentioned in the proceedings of the second respondent, dated 18.06.2017. The third respondent also recommended the petitioner to appoint her as a Cook Assistant in his School through his letter, dated 04.05.2017 and the same was sent to the second respondent. However, the first respondent passed the impugned order, dated 28.02.2018 appointing the fourth respondent as a Cook Assistant, without any qualification. As per G.O(Ms)No.4, dated 06.01.2011, the competent Authority to appoint the Cook Assistant is P.A. to the District Collector, however, the District Collector himself had issued appointment order for the post of Cook Assistant in favour of the fourth respondent.

8. The superior authority can issue appointment, however, the lower authority has no power to issue appointment order. In the presence case, the PA to District Collector can appoint the person, however, even if



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such situation arises, the District Collector himself can issue the appointment order, which cannot be interfered with. Hence, the prayer sought for in these writ petitions cannot be granted.

9. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM

To

1.The District Collector,
Trichy,
Trichy District.



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M.DHANDAPANI,J.

RM

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