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W.P.(MD)Nos.3866 and 3867 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.3866 and 3867 of 2016
and
W.M.P.(MD)Nos.3467 and 3468 of 2016

W.P.(MD)No.3866 of 2016:

Hindu Aided Primary School,
Kanjapur PO, Thiruppanandal Range,
Thiruvidaimaruthur Taluk,
Thanjavur District,
represented by its Secretary,
M.Ramalingam.

... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Principal Secretary
to Government,
Social Welfare and Nutritious Meal
Program Department,
Secretariat, Fort St. George,
Chennai 600 009.



W.P.(MD)Nos.3866 and 3867 of 2016

WEB COPY

2.The District Collector,
Thanjavur District, Thanjavur.

3.The Personal Assistant to Collector,
Noon Meal Programme,
Office of District Collector,
Thanjavur District.

4.R. Malarkodi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.no.3240-2015 Sa.Vu.Dhi1, dated 04.02.2016 and to quash the same and consequently, to direct the respondents 1 to 3 to fill up the post of Cook by adopting the method prescribed in G.O.Ms.No.294, Social Welfare and Nutritious Meal Programme Department, dated 21.10.1993.

For Petitioner	: Mr.G.Sankaran Senior Counsel for Mr.F.Deepak
For R1 to R3	: Mr.N.Muthuvijayan Special Government Pleader
For R4	: No appearance



WEB COPY

W.P.(MD)Nos.3866 and 3867 of 2016

W.P.(MD)Nos.3867 of 2016:

Rajan Babu Aided Primary School,
Manalur 609 804,
Thiruppanandal Range,
Thanjavur District,
Represented by its Secretary,
P.Kasinathan.

... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Principal Secretary
to Government,
Social Welfare and Nutritious Meal
Program Department,
Secretariat, Fort St. George,
Chennai 600 009.

2.The District Collector,
Thanjavur District, Thanjavur.

3.The Personal Assistant to Collector,
Noon Meal Programme,
Office of District Collector,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to forbear the respondents from filling up the post of Noon Meal Organizer / Cook/Cook Assistant in the petitioner School based on



WEB COPY

W.P.(MD)Nos.3866 and 3867 of 2016

the method as stated in G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011 and consequently, to direct the respondents to fill up the post by adopting the method prescribed in G.O.Ms.No. 294, Social Welfare and Nutritious Meal Programme Department, dated 21.10.1993.

For Petitioner : Mr.G.Sankaran
Senior Counsel
for Mr.F.Deepak
For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

COMMON ORDER

The writ petition in W.P.(MD)No.3866 of 2016 is filed for issuance of writ of Certiorarified Mandamus, to quash the impugned proceedings issued by the 2nd respondent, dated 04.02.2016 and consequently, to direct the respondents 1 to 3 to fill up the post of Cook by adopting the method prescribed in G.O.Ms.No.294, Social Welfare and Nutritious Meal Programme Department, dated 21.10.1993.

2. The writ petition in W.P.(MD)No.3867 of 2016 is filed for issuance of a



W.P.(MD)Nos.3866 and 3867 of 2016

WEB COPY

writ of Mandamus, to forbear the respondents from filling up the post of Noon Meal Organizer / Cook/Cook Assistant in the petitioner School based on the method as stated in G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011 and consequently, to direct the respondents to fill up the post by adopting the method prescribed in G.O.Ms.No.294, Social Welfare and Nutritious Meal Programme Department, dated 21.10.1993.

3. The petitioner school one post of cook fell vacant and the 2nd respondent vide impugned proceedings dated 04.02.2016 transferred the 4th respondent, Malarkodi from Panchayat Union Primary School, Melaveli to the petitioner school. The contention of the petitioner school that the order of transfer of the 4th respondent has deprived the right of the petitioner school to fill up the vacancy as per G.O.Ms.No.294 dated 21.10.1993 and further interfering with the right of the school. Hence the school has filled these two writ petitions.

4. The Learned Senior Counsel has relied on the judgment rendered by the



W.P.(MD)Nos.3866 and 3867 of 2016

WEB COPY

Learned Single Judge rendered in W.P.(MD)No.9044 of 2007, dated 04.12.2007, wherein the petition was allowed directing the respondents to make appointment only from the panel sponsored by the Management. In the meanwhile, the right of Private School Management regarding the appointment was dealt with in detail in W.A.(MD)No.125 of 2005 vide order dated 05.10.2007 and this Hon'ble Division Bench has held that the power of appointment to Noon Meal Organizer in a Private School vested with the School Management.

5. In the meantime the government issued G.O.Ms.No.4 dated 06.01.2011 framing guidelines, in which the power of appointment is conferred on the District Collector in respect of non-minority schools. As far as minority schools are concerned the committee shall select five persons and the school shall select from the said list of five persons. The said G.O. was challenged in a batch of writ petitions in W.P.(MD)No.7981 of 2012 and this Court vide order, dated 17.10.2012 has declared the said G.O. is ultra vires. Aggrieved over the same, the respondents preferred an appeal and the said appeal was allowed upholding



W.P.(MD)Nos.3866 and 3867 of 2016

WEB COPY

G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011, therefore, the order of the Learned Single Judge was set aside.

6. As per the procedure contemplated under G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011, the Committee will be constituted and headed by P.A. to District Collector and other two members. The Committee will select by calling for applications from the general public and select five candidates for one post. The said list of 5 candidates would be circulated to the School and the School will be selecting anyone from the said 5 candidates.

7. In the present case the respondents have transferred the 4th respondent and the same has been put to challenge and the petitioner school is also praying to forebear the respondents from filling the said post by following G.O.Ms.No.4. This Court is of the considered opinion that both the prayers cannot be entertained. The posts of Cook, Cook Assistant, Noon Meal Organizer are posts



W.P.(MD)Nos.3866 and 3867 of 2016

WEB COPY

belonging to government and the said post were never ever allotted to the school. The government with a noble cause of providing noon meal to the children of the government schools have initiated the said scheme. The government magnanimously extended the said scheme to the children studying in the private aided school both minority and non-minority schools. However, the private aided schools stated acting as if the said post is allotted to the school and started imposing conditions, invoked their rights to appoint and put spokes whenever the said post falls vacant. The said attitude can never be entertained.

8. In the present case since the official respondents thought it fit to fill the vacancy by transferring the 4th respondent in W.P.(MD)No.3866 of 2016 and the official respondents have every right to fill the said post by transferring the available candidate. Hence the impugned transfer order is perfectly valid in the eye of law. Since the G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department dated 06.01.2011 is upheld, the second prayer to forebear the respondents from invoking the said G.O.Ms.No.4 cannot be entertained.



W.P.(MD)Nos.3866 and 3867 of 2016

WEB COPY

9. With the above said observation, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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

25.01.2023

Tmg

To

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Social Welfare and Nutritious Meal
Program Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 2.The District Collector,
Thanjavur District, Thanjavur.
- 3.The Personal Assistant to Collector,
Noon Meal Programme,
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WEB COPY



W.P.(MD)Nos.3866 and 3867 of 2016

S.SRIMATHY, J

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W.P.(MD)Nos.3866 and 3867 of 2016

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