



S.A.No.673 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.673 of 2001

1.Kuppusamy(Died)
2.Subramani
3.Sakthivel
4.Muniammal
5.Murugeswari

....3rd Plaintiffs/2nd
Respondents/1st Appellants

(Petitioners 2 to 5 brought on record
as LRS of the deceased sole appellant
vide Court order dt.19.04.2017 in C.M.P(MD)
Nos.3793 to 3795/17 in S.A.No.673 of 2001)
-Vs-

The Commissioner,
Guziliamparai Panchayat
Union (Regular)
Guziliamparai.

...3rd Defendnat/2nd
Appellant/1st Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 16.02.2001 passed in A.S.No. 53 of 1999 on the file of the Additional Sub Judge, Dindigul, reversing the



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order and decree dated 21.10.1997 passed in O.S.No.138 of 1995 on the file of the District Munsif cum Judicial Magistrate, Vendasandur.

For Appellants : Mr.R.Nandakumar

For Respondent : No appearance

J U D G M E N T

The plaintiff is the appellant in this appeal. The deceased appellant/plaintiff has filed a suit in O.S.No.138 of 1995 before the District Munsif-cum-Judicial Magistrate Court, Vendasandur, against the respondent for declaration and injunction. The trial Court, after the trial, decreed the suit filed by the deceased appellant/plaintiff. Against which, the respondent/defendant filed an appeal in A.S.No.53 of 1999 before the Additional Subordinate Court, Dindigul. After hearing the appeal, the Additional Subordinate Judge, Dindigul, allowed the appeal and set aside the judgment and decree passed by the trial Court. Against which, the deceased appellant/plaintiff has filed the second appeal raising the following substantial questions of law before this Court:



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“1).Whether the learned appellate Court is right in reversing the judgment and decree of trial Court and non-suiting the plaintiff especially when the plaintiff has satisfied the requirement as stated in the advertisement.

2).Whether the respondent is estopped from contending that the appellant is not qualified for the post of Organiser when the respondent has selected him for the post after personal interview.”

2.The learned counsel appearing for the deceased appellant/plaintiff would submit that there was a paper publication in daily Thinathanthi, dated 22.07.1991 called for the post of Noon Meal Organiser, wherein, the qualification was mentioned as 10th standard failed or passed and the age limit was mentioned as within 25 to 30. On seeing the paper publication, the deceased appellant/plaintiff applied for the said post and after conducting personal interview and verification of the documents, he was selected for the post of Noon Meal Organiser and appointment order was issued to him, on 09.12.1991. Pursuant to which, he joined in that post



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and worked as a Noon Meal Organizer in Methaipatti Union School Centre.

All of sudden, without giving an opportunity, the deceased appellant/plaintiff was removed from service on 26.12.1991. Challenging the same, he filed a suit for declaration declaring the removal order dated 26.12.1991 passed by the respondent, is null and void and restraining the respondent not to disturb him from working as a Noon Meal Organiser in the said school. The Trial Court decreed the said suit. Against which, the respondent/defendant filed an appeal before the Additional Subordinate Court, Dindigul. The said appeal was allowed. Challenging the same, the deceased appellant/plaintiff has filed the present appeal. During the pendency of this appeal, the sole appellant/plaintiff died therefore, now the legal heirs of the deceased appellant are prosecuting this appeal.

3.The contention of the respondent/defendant is that as per G.O.Ms.No.918, Backward Classes Welfare, Nutritious Meal Programme and Social Welfare Department, dated 03.11.1989, the educational qualification fixed for the post of Noon Meal Organiser in Nutritious Meal



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Centres was either SSLC passed or failed under old regulations or SSLC passed or failed under new regulations. As the deceased appellant did not appear for SSLC, he was not having the prescribed qualification. Since his appointment was purely temporary, his service can be terminated at any time, even without any reason. The Trial Court has failed to appreciate the said fact and decreed the suit. Whereas, the lower appellate Court rightly appreciated that even not appearing for SSLC examination in old pattern, cannot be equated with SSLC failed in new pattern. Therefore, there is no merit in the second appeal and the substantial question of law, which has been formulated by this Court, is not applicable to the present case on hand and there is no estoppel against the law. Therefore, the deceased appellant is not entitled to get any relief as prayed for and hence, the second appeal is liable to be dismissed.

4.While admitting the second appeal, this Court has formulated the following substantial question of law:



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“Whether the respondent is not estopped from contending that the appellant is not qualified for the post of organiser when the respondent has selected him for the post after personal interview?”

5.Heard the learned counsel appearing for the appellants and the learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

6.The specific case of the deceased appellant/plaintiff is that based on the paper publication/Ex.A1 made by the respondent, on 22.07.1991 in daily Thinathanthi, the deceased appellant/plaintiff had applied for the post of Noon Meal Organiser and he was also called for personal interview/viva voce, dated 26.08.1991. He also participated in viva voce and subsequently, he was issued with an appointment order/Ex.A.4, dated 09.12.1991. Accordingly, he also joined in the said post. Ex.A.6 clearly proved that he was appointed as Noon Meal Organiser. The



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respondent also admitted that the deceased appellant/plaintiff applied for the post of Noon Meal Organizer in Guziliamparai Panchayat Union. He was called for an interview and he was selected and appointment order was issued and joined as a Noon Meal Organizer in Methaipatti. While he was working as a Noon Meal Organiser in Methaipatti, an impugned order was issued on 26.12.1991, which was marked as Ex.B.3. The said impugned order was challenged before the trial Court on two grounds. The first ground is no opportunity was given to the deceased appellant and the second ground is principles of natural justice was not followed and the respondent is estopped from going back his stand. Though the respondent has not disputed all the facts, the only question is as to whether the respondent can be estopped from his stand by fixing the qualification. Though the learned counsel for the respondent would submit that there cannot be any estoppel against the Statute, there is no dispute that there cannot be any plea of estoppel against the Statute. But, in this case, admittedly, the respondent called for applications for Noon Meal Organizer for Guziliamparai Panchayat Union. Admittedly, the appellant also made an application and



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his application was considered and called for interview/viva voce and he got selected. Subsequently, appointment order was also issued and he joined the said post. Thereafter, the impugned order dated 26.12.1991 was issued.

7.On a careful reading of the paper publication/Ex.A.1 would clearly shows that it is not mentioned the prescribed educational qualification. However, it is only stated the qualification for the post of Noon Meal Organiser as 10th standard passed or failed and they have not indicated as to whether either for old pattern or new pattern. Further, the transfer certificate/Ex.A.2 of the deceased appellant reveals that the deceased appellant studied 10th standard in the year 1977 and 1978. Therefore, the deceased appellant studied 10th standard, but, he did not pass 10th standard in old pattern. Therefore, impugned order/Ex.B.3, was issued stating that the appellant does not write the examination of 10th standard under new pattern. Hence, his appointment was cancelled as stated earlier. In Ex.A1, does not reveal or indicate about the old pattern or new pattern and also did not indicate any G.O. Whether the said G.O., is applicable for



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the said post.

8.Further, it is seen that there is no Statute prescribed the qualification for the above said post. Therefore, the contention of the respondent that there cannot be estoppel against the Statute, is not acceptable to the present case on hand. In this case, in Ex.A.1, it is only mentioned that either 10th standard passed or failed. Admittedly, the deceased appellant failed 10th standard and further, the post of Noon Meal organiser is not a technical post. Ex.A1 does not prescribe any technical qualification, it only mentioned as either 10th standard passed or failed. Admittedly, the deceased appellant has not passed 10th standard and Ex.A.3 shows that he studied 10th standard and he did not get through the 10th standard under old pattern.

9.On seeing the certificates and documents, the deceased appellant/plaintiff was appointed and he was allowed to join in the said post. Subsequently, without any valid reason his appointment was cancelled



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and simply stated that he did not appear for examination in the new pattern. Therefore, he was terminated from service, which is illegal and arbitrary. Since the appellant did not get through the 10th standard under new pattern, his appointment was cancelled and however, they should have given a reason. The prescribed qualification is only 10th standard passed or failed, and the post is not a technical post. Therefore, at-least the deceased appellant should have been given an opportunity to get through the 10th standard within the stipulated time and therefore, the judgment and decree passed by the appellate Court is liable to be set aside. Once the respondent, after seeing the application and qualification of the appellant, called for interview and given appointment order to join the said post and subsequently, without giving any opportunity, the said appointment was cancelled. All of sudden, he was terminated from service stating that his appointment is purely temporary. Therefore, no opportunity was given to the deceased appellant, which is not acceptable. Therefore, no Statute is available to prescribe the qualification for the said post. Under these circumstances, the question of estoppel raised against the Statute is not



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acceptable. Therefore, the appeal is liable to be allowed and the judgment of the first appellate Court is set aside and the judgment of the trial Court is restored and the substantial question of law formulated in this appeal is answered accordingly.

10.In the result, this Second Appeal is allowed. Pending appeal, original appellant died, the legal heirs ie., the present appellants are entitled to get benefits to if any, from the respondent. The respondent is directed to extend the benefits if any, to the legal heirs of the original appellant. No costs.

03.04.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No



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P.VELMURUGAN,J.

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To

1. The Additional Sub Judge,
Dindigul.
- 2.The District Munsif cum
Judicial Magistrate,
Vedasandur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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